CENTRE FOR MONITORING AND RESEARCH

MONTENEGRIN CITIZENSHIP AND DOMICILE & HOW TO GET TO AN UP-TO-DATE CENTRAL VOTER REGISTER

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INTRODUCTION

Electoral legislation reform at the level of fulfilling the political criteria for Montenegro's membership in the European Union (EU) is a key issue that arouses the interest of the domestic and international public every year. However, this year, instead of the expected opening of a political dialogue on amendments to the Law on Elections of Councillors and MPs and the comprehensive reform of the entire set of election laws, the focus of the Government of Montenegro has been on initiatives to amend the Law on Registers of Domicile and Residence as well as the Decision on the Criteria for Determining the Conditions for Acquiring Montenegrin Citizenship. Instead of systematically overcoming numerous problems that burden the election process and that domestic NGOs and international election observers have been pointing out for several years, these initiatives have opened a much more sensitive problem, which is why part of the public have rightly asked: Is the current government really trying to prepare the terrain for a change in the structure of the electorate in Montenegro?

This study focuses on the government's initiatives to amend the Law on Registers of Domicile and Residence and the Decision on the Criteria for Determining Conditions for Acquiring Montenegrin Citizenship to try to uncover the reasons behind the government's decision to revise these documents. Is the goal really harmonisation with the laws of the European Union or do these initiatives have the ultimate goal of arranging the Voter Register? In any case, these initiatives are rightly perceived by the public as a 'unilateral' attempt to sort out the Voter Register without a proper analysis of its current state, an analysis of other models for sorting the Voter Register, comparative experiences, the involvement of all relevant actors and a broad parliamentary dialogue, which can produce suspicion that a hidden agenda of a kind of ethnic, political and electoral engineering exists. All this results in resistance and fear among a significant portion of the population. The Government of Montenegro must take this into consideration, and through clear and unambiguous actions, calm those who feel fear and discomfort. Whether any political or national calculations, covert actions and hidden motives will be removed depends on the sincerity, persuasiveness and credibility of these arguments, so that this does not lead to feelings of socio-political humiliation, resentment, trauma and frustration in a portion of the population, thereby further feeding the existing social divisions.

The goal of this study is to bring readers closer in a simple way to the issues related to the current application of the Law on Registers of Domicile and Residence and the Decision on the Criteria for Determining the Conditions for Acquiring Montenegrin Citizenship. In addition, the study seeks to explain the correlation between government initiatives and voter registration issues, as well as the announcement of the liberalisation of the citizenship system. This study aims to answer very important questions, such as: Why are these topics being promoted now? What are the government's motives and goals? Why are these activities not coordinated with the activities on determining the number of Montenegrin citizens who have acquired the citizenship of another state contrary to the Law on Montenegrin Citizenship, as well as with the process of initiating a comprehensive parliamentary dialogue on electoral legislation reform?

The study is divided into four chapters. In the first chapter, the legal framework governing the issues of domicile and citizenship in Montenegro is presented, with a special focus on the issues that have so far been assessed as controversial in their application. The second part of the study is dedicated to the presentation of international standards and comparative experiences in terms of the right to vote, residence and citizenship. In the third chapter, a comprehensive analysis of the current situation and the possible consequences of the adoption of certain legal

solutions is provided. A special part of this chapter is dedicated to the presentation of activities related to the control of the Voter Register which were conducted at the beginning of 2021 in two election processes at the local level (Niksic and Herceg Novi) by the Centre for Monitoring and Research (CeMI). The fourth chapter presents concluding remarks and recommendations for decision makers and stakeholders.

Finally, this study is part of CeMI's research efforts to approach this layered problem with caution, without presenting arbitrary or unverified facts. The study presents data from which our research team drew certain conclusions and recommendations that will be the focus of our interest and public advocacy in the future. CeMI has already on several occasions drawn the attention of decisionmakers at the national and international level to the need to create conditions for fair and free elections in Montenegro. Unfortunately, these initiatives of the government move us away from that goal. We believe that the amendments to the Law on Registers of Domicile and Residence and the proposed Decision on the Criteria for Determining the Conditions for Acquiring Montenegrin Citizenship are steps in the wrong direction which contribute to the collapse of the foundations of Montenegrin statehood and can with a high degree of certainty result in a deepening of the instability of the socio-political environment in the run-up to the next elections in Montenegro.

1. LEGAL FRAMEWORK

1.1. The issue of domicile and potential difficulties and challenges in determining of domicile

The Law on Registers of Domicile and Residence[1] regulates the manner in which the register of domicile and the register of residence of Montenegrin citizens are kept along with the content of those registers. The Register of Domicile and the Register of Residence are computer-controlled databases of Montenegrin citizens with domicile or residence in Montenegro as well as Montenegrin citizens with a residence in another country. Domicile is the place in Montenegro where a Montenegrin citizen settled with the intention of permanently living there, which is the centre of his or her life activities and with which he or she has a permanent connection. Residence is the place and address where a Montenegrin citizen temporarily resides. An integral part of the register is the documentation that is the basis for the entry of data into the register. The register of residence consists of the following records: domicile of Montenegrin citizens; Montenegrin citizens with domicile in Montenegro and residence in another state; deregistration of the domicile of Montenegrin citizens who moved to another state.

The Government of Montenegro has problematised the legal provision according to which Montenegrin citizens who intend to move out of Montenegro are not obliged to deregister their domicile; instead this exists as an option prescribed by law. Namely, Article 12 of the law stipulates that: *'A Montenegrin citizen who emigrates from Montenegro in order to settle in another state with the intention of living there permanently may deregister his domicile'.* It seems that when writing this law, the sponsor (government) did not have in mind international rules and standards which regulate in more detail the issues of deregistration of domicile, eviction, temporary and permanent residence, residence permits, visas, etc., and did not try to respect them; nor were potential terminological and normative dilemmas, ambiguities and differences considered. When we discuss deregistration / confiscation / deletion of domicile, the essence and basic premise is that 'there is an intention for a person to settle permanently in another state'. Therefore, the biggest challenge in the eventual administrative procedure that will be conducted in order to deregister / confiscate / delete the domicile of a Montenegrin citizen will be that the competent authority (Ministry of Interior) proves and determines that a particular person really intends to permanently settle in another state, that is, that he or she has already settled permanently in another country.

When considering the issue of domicile, its two elements should be kept in mind: the **objective element (corpus),** that is, the fact that an individual has settled (started, established a home) in a certain place; and the **subjective element, that is, the intention (will) to live there permanently (animus semper mamendi).** Yet once established, the domicile is not lost by the mere loss of one of its core elements. For example, a person who is (temporarily) absent from the city where his/her domicile has been established will not lose that status if he/she wishes to live there permanently, that is, as long as he/she intends to return to it. Likewise, a person who has established his/her domicile in a particular city but no longer intends to (permanently) live there will not lose his/her domicile in that city as long as he/she still lives that way, that is, until he/she actually moves to some other place.

[1] "Official Gazette of Montenegro", No. 46/15

The complexity of the terminology regarding domicile (as well as the models of domicile) and how potentially ambiguous and thus difficult it is to determine the category of domicile are best illustrated by examples of some international agreements which deal with this issue.

The 1977 OECD Model Convention (Organisation for Economic Cooperation and Development in Europe)[2] on avoiding dual taxation defines in Chapter 1 the persons to whom the Convention applies: 'This Convention shall apply to persons who are residents of one or both of the Contracting States'. Further, Chapter II defines the basic terms used in the Convention, including the term 'Resident' which means the following: *'For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature'. Aside from that, the Convention regulates the manner by which the status of a natural person is determined – residents of the contracting state – which means that a person is considered a resident (a) of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State in which his personal and economic relations are closer (centre of vital interests). Further, if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State (b) he shall be deemed to be a resident only of the State in which he has an habitual abode. Pursuant to the provisions of the Convention, if a person has his habitual abode in both States, or neither of them, he shall be deemed to be a resident only of the State of which he is a national, and if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.*

With regard to relevant documents of the Council of Europe and their terminology, Resolution (72) on the standardisation of the legal concepts of 'domicile' and 'residence'[3], as adopted by the Council of Ministers in 1972, defines the following: *'The concept of domicile imports a legal relationship between a person and a country governed by a particular system of law or a place within such a country. This relationship is inferred from the fact that that person voluntarily establishes or retains his sole or principal residence within that country or at that place with the intention of making and retaining in that country or place the centre of his personal, social and economic interests. This intention may be inferred, inter alia, from the period of his residence, past and prospective, as well as from the existence of other ties of a personal or business nature between that person and that country or place'.*

When we talk about regional experiences regarding the terminological definition of domicile, we should mention the General Tax Law of the Republic of Croatia4, which in Article 38 stipulates that *'a taxpayer resides where he owns or holds an apartment for at least 183 days in one or two calendar years. Staying in the apartment is not mandatory. (2) If the taxpayer in the Republic of Croatia owns or has more than one apartment, the domicile competent for taxation shall be determined according to the domicile of the family, and for single taxpayer according to the place where he mostly stays or according to the place from which he mostly goes to work or performs activities. (3) If a taxpayer has [fiscal] domicile in the country and abroad, he shall be considered a domestic taxpayer. (4) The taxpayer shall have his habitual residence in the sense of this Law, in the place where he stays under the circumstances on the basis of which it may be concluded that he does not reside in that place or in that area only temporarily'.*

[2] See more: https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf
[3] See more: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804dd56f
[4] See more: https://narodne-novine.nn.hr/clanci/sluzbeni/2008_12_147_4043.html

We also should not lose sight of one very important fact, and that is that other countries have their own legislation that creates several categories and types of residence and domicile, and each country regulates these issues for itself in different ways according to its legislation.

Based on the previous views and the dilemmas that they create, the question justifiably arises as to how the Montenegrin Ministry of Interior official who conducts the procedure of verification/deregistration of domicile will determine the decisive fact that a particular Montenegrin citizen has permanent domicile in another country, given that many countries do not submit data on the domicile of their citizens. Even if another state submits the data, it will submit it in accordance with its own legislation; thus, there may be a dilemma as to whether or not a particular person really has domicile in that other state, has some other type of temporary or permanent residence in that other state or has a third category of residence known only to the legal system of that other state which would allow domicile from Montenegro to be deregistered on that basis.

An additional dilemma and legal nonsense can be caused by the situation in which a foreigner in Montenegro cannot have domicile at all according to Montenegrin legislation but only permanent or temporary residence. This raises the question as to how a Montenegrin citizen who has been granted permanent residence in another country 'to be charged with having domicile and that he resides permanently in another country' when Montenegro does not prescribe the possibility for a foreigner permanently residing in Montenegro to have domicile in Montenegro. Thus, there may be a complete lack of reciprocity in relation to Montenegrin citizens and even open discrimination in the approach to resolving this issue.

1.2. The issue of citizenship

Montenegro has the obligation to fully regulate the manner and conditions of acquiring and losing Montenegrin citizenship in order to ensure full harmonisation of regulations and practices with European and international standards, continuity of Montenegrin citizenship within the state-legal continuity of Montenegro and efficient exercise of Montenegrin citizenship. The previous Law on Montenegrin Citizenship[5] did not regulate certain issues that must be regulated by law (certain issues of receipt, loss, proof of citizenship, submission of data from records, etc.), thereby making it necessary to pass a new law. The new Law on Montenegrin Citizenship[6] was adopted and came into force in 2008. The Law on Montenegrin Citizenship regulates three groups of issues – the acquisition and loss of citizenship, the procedure for the acquisition and loss of citizenship, and the keeping of records on citizens.

According to the current Law on Montenegrin Citizenship, a Montenegrin citizen is a person who has acquired Montenegrin citizenship in accordance with previous regulations if he is registered in the register of citizens in Montenegro.

It is important to emphasise that Montenegrin citizenship was not established for the first time after the restoration of its independence nor by the adoption of the said law. The first register of Montenegrin citizens was established after World War II. In SFR Yugoslavia and the republics within it, the person had both Yugoslavian citizenship and citizenship of the member republic. Records on citizens of Member States, and thus Yugoslav citizens, were kept by Member States through their bodies. In that period, Montenegro had four laws on Montenegrin citizenship: the Law on Citizenship of the People's Republic of Montenegro, passed in 1949; the Law on Citi-

[5] "Official Gazette of Montenegro", No. 41/99
[6] "Official Gazette of Montenegro", No. 13/08

zenship of the Socialist Republic of Montenegro, adopted in 1965; the Law on Citizenship of the Socialist Republic of Montenegro, adopted in 1975; and the Law on Montenegrin Citizenship, passed in 1989. The fifth Law on Montenegrin Citizenship[7] was passed during the existence of FR Yugoslavia.

All these laws regulated the issue of bases and conditions for acquiring and terminating Montenegrin citizenship and keeping records on Montenegrin citizens.

Regarding the manner of acquisition, the current law retains the position that Montenegrin citizenship is acquired by origin, birth in the territory of Montenegro, admission and under international treaties and agreements. This is in line with international standards and the principle of state competence under which states determine who their citizens are according to their own laws, and other countries must accept those laws if they are in accordance with international conventions, customary international law and legal principles that are generally recognised when it comes to citizenship. In doing so, the guiding principle is the absence of discrimination based on sex, race, colour, national origin or ethnic origin.

As a rile, the Law on Montenegrin Citizenship allows the possession of one citizenship, except in the following cases:

- Montenegrin citizen who also had the citizenship of another state on 3 June 2006 has the right to retain Montenegrin citizenship;
- Montenegrin citizens who acquired another citizenship after 3 June 2006 may retain Montenegrin citizenship until the signing of a bilateral agreement with the country whose citizenship was acquired but no longer than one year from the date of adoption of the Constitution of Montenegro (i.e., until 22 October 2008)
- A person who is admitted to Montenegrin citizenship on the basis of concluding a marriage with a Montenegrin citizen.

The Law on Montenegrin Citizenship does not in general allow dual citizenship because the condition for admission to Montenegrin citizenship is that the person has a release from the previous citizenship. However, there are exceptions to this principle:

- A Montenegrin emigrant and a member of his or her family up to the third degree of kinship in the direct line may acquire Montenegrin citizenship by admission if he or she has legally and continuously resided in Montenegro for at least two years and meets other legally prescribed conditions;
- A person who has been married to a Montenegrin citizen for at least three years and has been legally and continuously residing in Montenegro for at least five years, may acquire Montenegrin citizenship by admission;
- A person whose admission to Montenegrin citizenship is of special importance for the state, scientific, economic, cultural, economic, sports, national and other interests of Montenegro may acquire Montenegrin citizenship without release;
- A Montenegrin citizen who also had the citizenship of another state on 3 June 2006 has the right to retain Montenegrin citizenship.
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Outside these situations, dual citizenship can only be acquired on the basis of ratified international treaties or agreements concluded by Montenegro and subject to reciprocity.

[7] "Official Gazette of Montenegro", No. 41/99

In 2008, the Government of Montenegro established the basis for the negotiation and conclusion of bilateral agreements between Montenegro and other countries on dual citizenship with the Draft Agreement.8 After that, the Ministry of Interior submitted the Draft Agreement to the competent authorities of Serbia, Northern Macedonia, Slovenia, Croatia and Bosnia and Herzegovina and proposed to immediately start negotiations on concluding bilateral agreements on dual citizenship. The draft agreements on dual citizenship were submitted by the competent authorities of Croatia and Serbia.

The competent authority of Northern Macedonia provided information it does not need to conclude an agreement on dual citizenship with Montenegro. The competent body of Slovenia did not submit a response because in that period, parliamentary elections were held in Slovenia and a new government was elected. The competent authority of Bosnia and Herzegovina accepted the initiative for negotiations on concluding the contract and, in that sense, the appropriate procedure provided by the internal legislation of Bosnia and Herzegovina was initiated. However, after that, all activities on this issue ceased.

The delegation of the Government of Montenegro and the delegation of the Government of Croatia held the first round of negotiations on the conclusion of the Agreement on Dual Citizenship in Cavtat. The reason for the meeting of delegations was the signing of the Readmission Agreement. At the meeting, the Draft Agreement on Dual Citizenship was discussed only in principle, given that the delegation of the Government of the Republic of Croatia did not share the position of its government regarding the solutions in the Draft Agreement proposed by Montenegro, especially when it came to determining who is considered a dual citizen. After that, there were personnel changes at the top of the Ministry of Interior of the Republic of Croatia and all activities on this issue ceased.

Four rounds of negotiations were held with the delegation of the Government of Serbia. Some progress was made, but the text of the dual citizenship agreement has not been harmonised.

[8] At the session of 18 September 2008

2. INTERNATIONAL STANDARDS AND COMPARATIVE EXPERIENCES REGARDING VOTING RIGHTS, DOMICILE AND CITIZENSHIP

The UN International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, stipulates in Article 25 that *every citizen has the right and opportunity, without discrimination, to participate in the management of public affairs, either directly or through freely chosen representatives; to vote and to stand for election in periodic and genuine, general, equal and secret suffrage, which shall ensure the free expression of the will of the voters.* Furthermore, General Note no. 25(57), adopted on 12 July 1996, stipulates that in accordance with Article 40, paragraph 4 of the ICCPR, State Parties should specify and explain in their relations the reasons for deprivation of the right to vote. According to this international legal instrument, reasons should be 'objective and reasonable'.

At the level of the Council of Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms provides in Article 14 that the *enjoyment of the rights and freedoms provided for in the Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.* Protocol no. 1 of the Convention provides in Article 3 that the *Contracting Parties undertake to hold free election at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.* The Convention guarantees the right to freedom of expression, stipulating that *it may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public security, to prevent disorder or crime, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of information obtained in confidence, or to maintain the authority and impartiality of the judiciary.*

There is a high degree of ignorance of concepts and case law in Montenegro when it comes to international standards in this area. Therefore, in this chapter, more attention is paid to the use of the findings of Marc Gjidar, who dealt with this issue in the paper **'Suffrage and Electoral Rights of Expatriates'.** The reader can find more information on this issue by consulting the aforementioned publication.

Furthermore, the '**Code of Good Governance in Electoral Matters – Guidelines and Explanatory Report',** which was adopted at the 52nd Session of the Venice Commission,9 states that deprivation of the right to vote and to stand for election may be provided subject to the following conditions (cumulatively): a) it must be provided for by law; b) the proportionality principle must be observed and the conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them; c) deprivation of rights must be based on mental incapacity or criminal conviction for a serious offence; d) the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law. Thus, provisions denying political rights can be established. Such provisions must, however, comply with the usual conditions under which fundamental rights may be restricted, in other words, they must: 1) be provided for by law; 2) respect the principle of proportionality; 3) be caused by mental incapacity or serious criminal liability. Also, political rights can be denied only on the basis of an explicit court decision. However, in the case of denial of rights on the grounds

[9] Venice Commission, *Code of Good Practice in Electoral Matters - Guidelines and Explanatory Report*, Venice, 2002.

of mental incapacity, an express court decision may concern that incapacity and require ipso jure deprivation of civil rights. The Conclusion10 states that respect for the five basic principles of European electoral law (universal, equal, free, secret and direct suffrage) is essential for democracy. It enables democracy to be expressed in different ways but within certain limits. These limits stem primarily from the interpretation of said principles. This Code provides a minimum of rules to be followed to ensure compliance. Second, it is insufficient that the electoral law (in the strict sense) consists of rules that are in line with European electoral principles: the latter must be placed in their context and the credibility of the electoral process must be guaranteed. In the first place, fundamental rights must be respected, and second, the stability of regulations must be such as to exclude any suspicion of manipulation. Finally, the procedural framework must allow the regulations which are adopted to be effectively enforced.

Through an analysis of the decisions of the European Court of Human Rights in Strasbourg (hereinafter: ECHR), it can be concluded that the restriction of the right to vote can occur only in exceptional situations. When it comes to assessing certain restrictions on political rights, the ECHR takes into account the special circumstances of the country in question: for example, the circumstances inherent in countries in democratic transition. On the other hand, ECHR also considers that NATO membership and accession to the European Union are events that mark the end of the period of democratic transition.

The ECHR has taken the view that a democratic society can take the necessary measures to protect itself against activities aimed at violating the rights and freedoms prescribed by the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 3 of Protocol No. 1, which establishes the ability of a citizen to influence the composition of the legislature, includes the possibility that restrictions on the right to vote may be imposed on an individual who, for example, has committed serious crimes and misdemeanours or whose conduct has threatened the rule of law or democracy. The ECHR considers as legitimate the tendency of the state to verify the existence of sufficiently close or lasting ties between individuals and the country. However, the exclusion of any group or category of citizens should always be in accordance with the principles on which the provisions of Article 3 of Protocol No. 1 are based.

The exercise of supervision over measures that restrict or deprive the right to vote belongs first and foremost to the competent national court (especially the Constitutional Court) with reference to relevant national and international documents, in particular, the European Convention and its Protocols, as well as the developed case law of the ECHR. Restrictions on suffrage in general, especially those affecting a whole category of citizens, have been subject to strict scrutiny by the ECHR, which has set several requirements that have been upheld in a series of court decisions, for example, in the decision of 6 October 2005 in Herst v. The United Kingdom11. This court decision certainly preserved the margin of appreciation of states, but the tendency to narrow it is very pronounced. In conducting supervision over the proportionality of the measures taken by the state, the Court required cumulative compliance with all the criteria stated in the said decision.12

In the case of Kurić and others v. Slovenia13, the Court ruled that Slovenia violated the provisions of the ECHR related to respect for private and family life in the process related to the

[10] Ibid, paragraph No. 114, p. 32
[11] No. 2, Application No. 74025/1
[12] Marc Gjidar, *Suffrage and Electoral Rights of Expatriates*, Collection of Works of the Law Faculty in Split.
[13] Application no. 26828/06. The case before the ECHR was first named after the first signed prosecutor – Makuc and Others v. Slovenia. The first signed prosecutor Milan Makuc passed away on 1 June 2008, so the case that bore his name until then was renamed after the second signed prosecutor Mustafa Kurić.

'erased' (about 25,000 citizens who were erased from the register of permanent domicile), and the Court recognised a right to non-pecuniary compensation to these persons and ordered Slovenia to issue a compensation proposal to the 'erased' withing a year.

European supervision is stricter when the restriction / abolition of the right to vote applies to an entire group of citizens, especially if they are citizens who are considered vulnerable or are historical victims of certain political and other types of exclusions and discrimination, which was the case with the court decision in Kiss c / Hungary[14]. Furthermore, on 5 June 2006, in the case of Lykourezos c / Greece[15], the States according to the Court were granted the possibility to 'regulate the procedure of national elections'. But at the same time, the Court established certain principles according to which, on the one hand, it allowed that *'There are numerous ways of organising and running electoral systems and a wealth of differences, inter alia, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into their own democratic vision'* of democracy ... However, the Court has developed the practice of harmonising the legal systems of Member States in electoral matters through the establishment of convergence between the legislations of most states signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This policy of case law has also been legitimised by the Council of Europe through measures adopted by the Parliamentary Assembly or the Venice Commission. The Court went a step further in restricting the margin of appreciation imposed by States with regard to the judgement of 8 July 2010 in Sitaropoulos and others v. Greece[16]. The Court considers that the effectiveness of the 'right to free elections' requires that citizens be able to participate in the election of the national Parliament at their place of domicile, even when they are abroad. In the present case, the Court sought to strengthen the true democratic significance of the parliamentary elections. Moreover, the Court went very far in recognising the voting rights of emigrated citizens, bearing in mind that Greece is a country that has a significant diaspora abroad, many of whose members have citizen status. The Court reached these conclusions by referring to the positive obligations directly arising from Article 3 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, the court recognised the right to monitor and punish the shortcomings of the legislator according to the international obligations of the state.[17]

Attention should also be drawn to another important court decision rendered on 27 April 2010 in the case of Tanase c / Moldova[18], in which the Court recalled that if a state has the right to be convinced by appropriate means of the loyalty of future representatives, that duty of loyalty is owed to the state and not to the government. The duty of loyalty to the state includes respect for the Constitution, laws, institutions, independence and the territorial integrity of the country. The government must not use the duty of loyalty (or the duty of restraint) to weaken the ability to challenge political opposition parties or to reduce their parliamentary representation. The Court, therefore, exercised strict scrutiny over the reasons given for restricting the exercise of voting rights, given that they form an essential part of the public freedoms which may be exercised in a democracy and, as such, are inherent in a democracy.[19]

There is no doubt that a restriction / abolition of the right to vote (especially if it conceals political motives and arises from an electoral calculation of a political nature) that would be general, excessive, automatic, arbitrary and undifferentiated with regard to the exercise of the right

[14] Application No. 38832/06
[15] Application No. 33554/03
[16] Application No. 42202/07
[17] Marc Gjidar, op.cit.
[18] Application No. 7/08
[19] Marc Gjidar, op.cit.

established by the European Convention for the Protection of Human Rights and Fundamental Freedoms would lack an acceptable margin for assessing the state to which the right to vote should be restricted. At the same time, it would be completely inconsistent with Article 3 of Protocol No. 1, which has the purpose of respecting the general right to vote and the free expression of the opinion of the people on the election of the legislative body. That would severely damage the very core of the right to vote; a complete deprivation of the right to vote that would affect a significant number of people, especially those who had to go abroad to flee war and rampant nationalism.

The European Commission has addressed the issue of national laws which deny the right to vote to citizens of the European Union living outside the country of origin. In its 2010 report on European Community citizenship, the Commission noted that one of the obstacles faced by some people as political actors is the loss of the right to participate in national elections in the country in which they are nationals when they are living abroad. This deprives them of the right to participate in national elections, both in the Member State of origin and in the Member State in which they currently reside. Undoubtedly, each Member State has the sovereign right to decide on the composition of the electorate for national elections (Article 4, paragraph 2 of the Treaty on European Union). However, national policies that deny *(de jure or de facto)* citizens their right to vote in fact limit the enjoyment of rights related to citizenship, freedom of movement and residence in the territory of the European Union, which is a fundamental right of every citizen of the Union.

The ECHR in its judgement of 7 May 2013 in Shindler v. The United Kingdom[20] (paragraphs 110 and 115 of the judgement) pointed out that it is possible for EU citizens residing in another Member State to continue to maintain, throughout life, close ties with the country of origin so that they are directly affected by its adopted regulations (laws) (e.g., taxation, pension rights, property rights, urban regulations, provisions relating to the evaluation of educational and professional qualifications acquired abroad, etc.). Thanks to the media and modern communication technologies, it is easy to follow political events from abroad and participate in the political and social life of the country.[21]

At its session on 19 February 2013, the European Parliament emphasised the need to consider existing national policies on deprivation of the right to vote of citizens who do not live in the country and the reasons for such treatment. In its 2013 report, the Commission announced that it would propose constructive ways for citizens residing in a Member State to fully participate in the democratic life of the Union while retaining their right to vote in national elections in their country of origin (Action 12). Thus, in its Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 29 January 2014 (Com – 2014 – 33 final), the Commission wanted to propose ways to strengthen the voting rights of EU citizens which would enable them to participate in the democratic life of the Union and the right to free movement; which would reduce the consequences of policies, measures and national practices which lead to the denial of the right to vote to citizens; and which would recommend open and appropriate solutions. The Commission stated that among the Member States, a small minority (five of them) applied a legal regime that could lead to the loss of the right to vote for their nationals living in other Member States **'for the sole reason that they live abroad for a longer period of time'.** However, for example, in the case of the Federal Republic of Germany, German nationals living abroad may vote in national elections if they meet one of the following two conditions: that they have lived in Germany for a continuous period of at least 3 months in the last 25 years after the age of 14 or that they are personally and direct-

[20] Application No. 19840/09
[21] Marc Gjidar, op.cit.

ly acquainted with the political situation in Germany and that it concerns them personally. In Austria, citizens must ask to remain in the voter register before they move out of the country, and they should renew this request every 10 years, which can be done electronically. If they are removed from the voter register, citizens living abroad must be informed of this and the public should be informed that those who do not have a residence have the right to register to vote.[22]

The Council of Europe and the ECHR in the light of Article 3 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that when it comes to the right to vote in national elections, the conditions – including residence – are provided by the state. This status as recognised by the states as well as the obligation of domicile must meet a number of conditions, including: the fact that daily political problems have less of an impact on the life of a person without residence, and that the person does not know them very well; that this can be a difficulty for election candidates because it is more difficult for them to present their programmes to citizens living abroad who do not have the opportunity to influence the selection of candidates and the content of their programmes; the fact that the right to vote has a direct impact on voters, on laws passed by elected political bodies; and that it is legitimate to limit the influence of citizens living abroad in elections when it comes to things that will affect people living in the country. However, these restrictions should be aligned with the principles that require participation in political life, according to which the right to vote cannot be considered a privilege that should be reserved only for certain individuals. Namely, in every democratic state, the principle applies that the largest number of citizens must be able to exercise the right to vote. Likewise, any deviation from the general character of the right to vote, from the principle of universal suffrage, automatically undermines the democratic validity of the legislature and the laws it adopts.[23]

In addition, the ECHR pointed out that there is now a favourable voting trend for non-resident citizens. The Court has indicated that new technologies as well as cheaper and faster transportation enable emigrants to maintain a closer connection with the state in which they are citizens, which encourages states to expand the rights of those without domicile to participate in national elections. As for the Member States of the European Union, it depends on their requirements in accordance with the obligations signed at the time of accession or obligations that are part of the acquis communautaire. **Thus, recognising that the composition of the electorate for national elections is the responsibility of states, the European Union issues a reminder that they must exercise that competence in accordance with Union law and, in particular, in accordance with the rules on freedom of movement and residence in all Member States.** Any overt or covert discrimination based on citizenship is illegal under European rules (especially if it is based on political opinions attributed – in some circles or certain statements by politicians – to citizens living outside their country of origin and which citizenship they have).[24] Therefore, if the domicile criterion is not punishable in principle, this should not lead to a breach of the general principles of Union law, in particular the principle of non-discrimination. This was also confirmed by the Court of Justice of the European Union in the Eman and Sevinger cases.[25]

The Commission has made a number of recommendations and proposals to reduce the risk of the loss of the right to vote for European Union citizens who only use the right to free movement and free residence. According to the Commission, the solutions that are adapted to the context of the European Union are as follows:

[22] Ibid
[23] Ibid
[24] Ibid
[25] Case No. C-300/04, *M.G. Eman and O.B. Sevinger* [2006] ECR 2006 I-08055

1. Give citizens, who may be denied the right to vote, the opportunity to prove their further interest in the political life of the Member State of which they are nationals. National policies deny them the right to vote, based on the assumption that, after living abroad, they will be cut off from political processes in their country of origin. However, the citizens of the European Union today have the means to stay in touch with political life in their country of origin. European citizens themselves need to decide on the strength of the ties they want to have with the country they come from. As proof of such connections, a request to be registered in the voter register should be sufficient, as this is the simplest solution. **Therefore, any Member State that conditions the right of their citizens to vote in national elections only by domicile, should allow for the retention of the right to vote if they show a continuing interest in national policy, including requiring them to remain registered in the voter register, even if they are using their right to free movement and residence in the territory of other Member States.** At best, a Member State may require them to renew their retention requirements at certain intervals, for example every 10 years (as is the case in Austria). To enable this, it should be possible to apply for or remain registered electronically.

2. Provide citizens, who are leaving to live or are already in another Member State, with the opportunity to be properly informed (that is, simply, definitively and clearly) about the conditions under which they can retain their right to vote.

3. Strengthen the political participation of EU citizens, eliminating the consequences of losing the right to vote and correcting the lack of participation of EU citizens living in another Member State to participate in the political life of the nation (enabling voting by modern means). A citizen who does not reside in the country of origin and who will therefore be deprived of political rights and the right to participate in national elections because he / she does is not the citizen of the receiving country is denied and cannot vote in state elections in either the country of origin or the receiving country.[26]

Therefore, according to the European Commission, existing policies of denial of voting rights must be considered and corrected in the light of socio-economic and technological innovations, the reality of European integration and the current trend of open political participation. Furthermore, citizens of the European Union, according to the law deriving from the citizenship of the European Union, must be treated equally and considered members of the same community, both in their country of origin and in their country of residence. Finally, the accompanying Recommendation in the Report of 29 January 2014 emphasizes that the solution of the political rights of citizens, who exercise the right to free movement and free residence, is based on the principle that citizens decide on the level of interest to the political life of their country of origin, or the country whose citizenship they have.[27]

2.1. The issue of domicile – The experience of the Republic of Croatia

What are the regional experiences that could be applicable in the case of Montenegro? The Law on Domicile of the Republic of Croatia makes a clear distinction between 'temporary residence' abroad and 'permanent emigration'.

Temporary residence means that Croatian citizens who are temporarily abroad for work, education, long-term medical treatment or other reasons of a temporary nature are obliged to re-

[26] Marc Gjidar, op.cit.
[27] Ibid

port their temporary departure from the Republic of Croatia without the obligation to register a change of domicile and are not obliged to return their ID card because they are not emigrating from the Republic of Croatia. In doing so, the person in question must enclose appropriate documentation on the reasons for the temporary stay abroad – a certificate of employment or education, a permit for residence abroad and, in some cases, a written statement on the reasons for the stay abroad. It is also stated that the application for (temporary) residence must be renewed after five years of temporary residence abroad, and then, if the stay is extended, the application must be renewed after the expiration of every succeeding three years. Croatian citizens who temporarily reside abroad in accordance with the above have domicile in the Republic of Croatia and have the right to an ID card.

Permanent emigration means that Croatian citizens who intend to emigrate from the Republic of Croatia and permanently settle abroad are obliged to deregister their domicile in the Republic of Croatia and return their ID cards. Citizens who have permanently emigrated from Croatia and who intend to live in another country are obliged to deregister their domicile in the Republic of Croatia. Croatian citizens who deregister their domicile due to the reason of permanent emigration from the Republic of Croatia are obliged to return their ID cards for destruction. Deregistration of domicile does not result in the loss of Croatian citizenship and the person remains a Croatian citizen except that he or she no longer has the right to an ID card because it is a public document which, among other things, proves domicile in the Republic of Croatia. If the stated obligation is not fulfilled, the procedure of deletion from the Republic of Croatia domicile and residence register will be initiated. The Croatian solution can be a good basis for further normative work on amendments to the Law on Registers of Domicile and Residence.

Due to the aforementioned, the Montenegrin legislator must be aware of the risks, that is, that there is a fine line between the right of the state (read government) to sovereignly regulate issues of domicile and, thus, the voting process and a potential encroachment and endangerment of constitutionally and legally guaranteed rights. This is because in addition to the fact that there can be a disputable way of taking away a person's domicile, the person loses numerous other rights that he/she derives from the right of domicile.

2.2. International law and dual citizenship

So far, international law has not developed any binding standard regarding dual or multiple citizenship, hence tolerating it or exercising its restriction is the question of the political will and need of each of the sovereign states. The effect of globalisation and increased population migration has resulted in an increase in numbers in this area. No country has been successful in combating the emergence of dual or multiple citizenship.

The European Convention on Nationality (Council of Europe, 1997), to which Montenegro is a signatory, is neutral in terms of dual or multiple citizenship. Article 15 reflects the fact that a number of countries in Europe accept dual citizenship, while other countries in Europe are willing to exclude it. In this way, the right of each state to decide whether to allow its citizens to possess the citizenship of one or more other states is recognised. However, a Contracting State should allow children who acquire different nationalities automatically at birth to retain those nationalities and for its nationals to retain citizenship if they acquire another citizenship by marriage. This is also an obligation for states that want to avoid dual citizenship because in these cases, matters take place automatically thanks to the parallel application of the laws of two or more states.

The Convention has several principles for the acquisition of dual citizenship:

1. States Parties shall permit (Article 14):
   - children who automatically acquire different nationalities at birth, to retain those nationalities,
   - their nationals to possess another nationality when the second nationality is automatically acquired by marriage,
2. States Parties shall not be restricted in permitting in their laws (Article 15):
   - to its nationals who acquire or possess the nationality of another State in order to retain or acquire their nationality,
   - that the acquisition or retention of their nationality is not conditional on the renunciation or loss of another nationality,
3. Contracting State shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation is not possible or cannot reasonably be required,
4. The state, in its domestic law, does not have to regulate the issue of loss of citizenship ex lege or on the initiative of the given state, except in the case, among other things, of voluntary acquisition of another citizenship (Article 7, paragraph 1, item 9).

In Chapter VI – State Succession and Citizenship (Article 18), the Convention deals with matters relating to citizenship arising from the succession of states in accordance with the definition contained in general public international law. The Vienna Convention on Succession of States in respect of Treaties of 1978 defines 'succession of states' as the replacement of one state by another in the responsibility for the international relations of territory. The provisions concerning the succession of states and citizenship are based on existing general international practice and contain general guiding principles. They allow states to decide on the appropriate application of these provisions in their internal legislation.

Although these provisions do not apply directly to natural persons, their purpose is to ensure, as far as possible, that persons living in a certain region are not placed at a disadvantage by mere changes in territory. These principles also apply to the signatory states, regardless of whether they are successor states or predecessor states. However, due to its nature, this chapter applies to successor states.

The main objective, although not the only one, is to avoid the state of deprivation of citizenship which is underlined in paragraph 1 of Article 18, so that this chapter focuses on the granting and retention of citizenship. Its aim is to strengthen the provisions of existing international agreements on the avoidance of statelessness, such as Article 10 of the Convention on the Reduction of Statelessness.

Article 19 supports the resolution of citizenship issues by agreement between the successor States and requires States to ensure that such agreements comply with the principles and rules contained in Chapter VI of the Convention or the principles and rules referred to in this Chapter of the Convention.

The Protocol on the avoidance of statelessness in relation to state succession is an instrument for the implementation of the European Convention on Nationality that determines the key factors in granting citizenship, which above all is the will of the person, without discrimination, in the case of termination of the state. It is guaranteed that everyone who at the time of the succession of states had the citizenship of the predecessor state and who is or will become a stateless person as a result of the succession of the state is entitled to the citizenship of the successor state. According to this document, one of the conditions for the successor state to grant

citizenship is that the person at the time of succession had a permanent residence and actually lived in the territory of that state.

2.3. Dual citizenship risks

According to many experts on this subject, the model for the acquisition of dual citizenship does more to open additional controversial issues than it does to solve existing ones. Namely, the widespread exercise of dual citizenship is rare in comparative practice, and the cases in which it has provided some concrete, good solutions are even rarer. Comparative examples of Northern Macedonia, and especially Slovenia, indicate that this issue is very restrictively perceived.

Dual citizenship, although a regular consequence of state succession, can have some undesirable effects, and the right measure should be found to protect the interests of the state and the interests of the individual, with smaller states, as a rule, restricting dual citizenship. This is because if the law establishes dual citizenship on an extremely broad basis, the negative consequences could not be eliminated, that is, later amendments to the interstate agreement or a law with possibly stricter conditions in relation to dual citizenship would not help due to the impossibility of retroactive application of the agreement or the law and the impossibility of revocation of already acquired rights.

Therefore, in relation to dual citizenship, Montenegro, through its legislation, followed the relevant international documents on citizenship, the practices of countries that are small in territory and population and sought to find the right measure to protect the interests of the state and the interests of individuals.

The undesirable effects of dual citizenship result from the fact that a person with dual citizenship is a domestic citizen in each of the countries of which he or she is a citizen and, therefore, may have dual rights and obligations. Dual citizenship also raises the issue of double loyalty, in particular if a large minority from one country lives in the other, especially a neighbouring country. For small states, it could happen that most of its citizens also have citizenship in larger neighbouring states, which could lead to difficulties in preserving national identity. The issue of security could also be raised. In the case of a small state, neighbouring states could also create the legal possibility of a grant of citizenship to members of their people in that state.[28]

In the case of open borders and the free movement of people and the lack of information exchange between states, some sensitive issues remain open: the employment of dual nationals in public sector areas, especially related to security and defence; diplomatic protection of holders of dual citizenship in third countries; issues related to readmission agreements; compulsory military service; some aspects of political rights; and more places of permanent residence (if not regulated by a contract) and, to that end, the right to access social, economic and other rights in both states.

[28] Serbia and Croatia already have such regulations

2.4. The issue of citizenship – regional experiences and the experience of Slovakia

The European instruments on citizenship are very clear – citizenship is the exclusive sovereign domain of each state and it is up to each state to decide whether or not to have dual citizenship and, if so, to what extent. The domestic law of European states regulates dual citizenship in different ways –it tolerates it, prohibits it or allows a mixed system.

Bilateral agreements on citizenship are possible, but practice shows that they are not typical and that they regulate the conditions for acquiring citizenship in another contracting state as well as the consequences of dual citizenship; that is, they regulate the consequences of dual citizenship that arose primarily as a result of different legal systems in contracting states, both in the manner of acquisition and in the cessation of nationality. In that sense, the agreements concluded by Croatia and Bosnia and Herzegovina, that is, FR Yugoslavia and Bosnia and Herzegovina, are distinctive.

2.4.1. The agreement between FR Yugoslavia and Bosnia and Herzegovina

The Dual Citizenship Agreement between FR Yugoslavia and Bosnia and Herzegovina from 2002 regulates the privileged manner of acquiring the citizenship of the other contracting party, on the principle of reciprocity in matters of dual citizenship, which means that:

- a national of one state may also acquire the nationality of the other contracting state when he or she has fulfilled the agreed conditions and vice versa (the conditions are more lenient than for other foreigners);
- the acquisition of dual citizenship is carried out in accordance with the procedure established by the legislation of each of these states;
- the acquisition of citizenship will not be conditioned on the termination of previous citizenship;
- issues related to military and other compulsory service, taxes and other financial obligations are regulated;
- issues of exercising the right to vote are regulated, as a rule, in accordance with the laws of the states;
- the enjoyment of diplomatic and consular protection in third countries is regulated;
- referral to work in the diplomatic–consular office in the state of which he / she is a citizen is regulated;
- the exchange of information on dual citizens is regulated;
- the issue of repatriation from a third country and other issues are regulated.

2.4.2. The agreement between Croatia and Bosnia and Herzegovina

The 2007 Agreement between Croatia and Bosnia and Herzegovina on dual citizenship allows a citizen of one contracting party to acquire the citizenship of the other contracting party in the manner and according to the procedure established by the regulations of the contracting parties. In doing so, a person who has acquired the nationality of the other contracting party shall not, in the manner and in the procedure prescribed by law, lose his or her nationality as a result of possessing or acquiring another nationality, nor shall he or she be required to apply for termination of nationality.

The agreement also regulates these issues:

- exercising rights and fulfilling obligations,
- performing military and other compulsory service,
- exercising active and passive suffrage.

2.4.3. Experience of Slovakia

According to the Slovakian concept, a person is a Slovakian citizen if he or she had Slovakian citizenship on 31 December 1992 or was a citizen of Czechoslovakia who was not a citizen of Slovakia on 31 December 1992 but who chose Slovakian citizenship. This possibility was limited to a transitional period of 12 months and allowed for dual citizenship of Slovakia and the Czech Republic. But no similar law was adopted in the Czech Republic and, therefore, Czech citizens who wanted to be citizens of Slovakia had to denounce their Czech citizenship. This was the case until 1999, when dual citizenship was allowed. In 1994, the Czech Republic and Slovakia signed an agreement under which both states exchange records of their citizens who have acquired the citizenship of another state, even retroactively.

3. ANALYSIS OF THE CURRENT SITUATION AND POSSIBLE IMPLICATIONS OF FUTURE LEGAL SOLUTIONS

At the session held on 26 March 2021, the Government of Montenegro adopted the **Information on Planned Amendments to the Law on Registers of Domicile and Residence,** which presents key findings arising from the analysis of the legislative framework with the ultimate goal of regulating the Voter Register and reinstating citizens' trust in the electoral process. The Information points out that one of the key problems, which is also a source of distrust in the electoral process itself, is the fact that the right to vote is used by Montenegrin citizens who essentially have a fictitious domicile, that is, who registered and never deregistered their domicile in Montenegro and who de facto live, work or have settled abroad with the intention to live there. The analysis of the regulations led to the conclusion that the fact that these persons do not have the obligation to deregister their domicile has already been left as a possibility prescribed by the Law on Registers of Domicile and Residence[29]. Namely, Article 12 of the Law, which regulates deregistration of domicile, stipulates that: 'A Montenegrin citizen who emigrates from Montenegro in order to settle in another state with the intention of living there permanently may deregister his domicile'. This provision has brought and created the possibility for such persons to exercise the right to vote in Montenegro where they no longer live.

At the same session, the Government adopted the **Information on the Results of the Conducted Analysis of the Legislative Framework and Case Law regarding Montenegrin Citizenship.** The Information states the following: *'Following the announcement of Prime Minister Krivokapic on amendments to the Law on Montenegrin Citizenship, which had the well-founded goal of considering the existing legal solution in the direction of liberalization in accordance with best practices, the Ministry of Interior analyzed the legislative framework and case law on this subject. The results obtained during this analysis required prompt acquaintance of the Government of Montenegro with it, given that they provide an opportunity to resolve the issue of a number of citizens who live, earn and pay taxes in this country and do not have Montenegrin citizenship'.* This information highlights the political will and readiness of the Government of Montenegro to work on the liberalisation of Montenegrin citizenship, that is, to facilitate the acquisition of Montenegrin citizenship by reducing the number of required years of residence and making changes to the Decision on criteria for determining conditions for acquiring Montenegrin citizenship.[30]

The Ministry of Interior has formed a working group to draft amendments to the Law on Registers of Domicile and Residence which will turn the possibility to deregister domicile into an obligation. The draft Law on Amendments to the Law on Registers of Domicile and Residence stipulates the possibility for the Ministry of Interior to request a field check from the police of the accuracy of the addresses. The Ministry will ex officio issue a decision on deregistration of residence if a field check determines that the Montenegrin citizen does not actually live at the registered address. At the very end of the Information, it is stated that the goal of the Ministry of Interior is not to deprive anyone of any right by deleting them from the register of domicile but to simply determine the factual situation, that is, determine the exact number of Montenegrin citizens who have domicile in Montenegro. As stated in the Information, domicile for a period of two years at 18 years of age or older provides the exact number of citizens who have the right to vote in Montenegro in accordance with the Constitution of Montenegro.

[29] "Official Gazette of Montenegro", No. 46/15
[30] "Official Gazette of Montenegro", No. 47/08, 80/08, 30/10 and 56/12

The Explanation of the Draft Law on Registers of Domicile and Residence, among other things, states the following: *'The main goal of the planned amendments to the Law is to prepare the Draft Law on Amendments to the Law on Domicile and Residence in order to improve the legislative and regulatory framework prescribing the legal basis in order to check the accuracy of the data in the register of domicile,* ***while the ultimate goal is to regulate the Voter Register and restore the trust of citizens in the electoral process. What led to the proposed amendments to the Law is the fact that only a regulated domicile means an accurate and precise Voter Register. The Law on Registers of Domicile and Residence is the main legal document that regulates of the Voter Register, and consequently the restoration of citizens' trust in the electoral process itself'.***

However, before adopting amendments to the Law on Registers of Domicile and Registers, the legislator should provide information on the number of Montenegrin citizens abroad. This is necessary in order to narrow the room to manoeuvre for ill-intentioned daily political manipulations and calculations, as well as for future projections of the domicile register. It would also be useful to have an idea of how many citizens, at least roughly, can be 'under attack' by future legal provisions. Montenegrin citizens are predominantly distributed along three geographical determinants – Western Europe, the USA and the Republic of Serbia.

3.1. Montenegrin citizens with temporary and permanent residence abroad

Insight into the statistical data of EUROSTAT – European Statistical Agency shows that as of 31 December 2019, in the EU countries as well as in the United Kingdom, Switzerland, Norway and Iceland, there were 31,114 valid residence permits (this number includes adults and minors) whose holders are Montenegrin citizens. Of this number, 17,956 were permanent residence permits as shown in Table 1.

Table 1: *Overview of granted residence permits to Montenegrin citizens*

COUNTRY	NO. OF VALID RESIDENCE PERMITS	% OF TOTAL NUMBER	NO. OF PERMANENT RESIDENCE PERMITS	% OF TOTAL NUMBER
Germany	18,794	60.4%	11,550	61.5%
Luxembourg	3,501	11.25%	2,000	11.1%
Switzerland	2,520	8.1%	0	0%
Italy	2,007	6.45%	1,237	6.9%
France	1,556	5%	849	4.7%
Other countries	2,736	8.8%	2,370	13.2%

Source: *EUROSTAT (https://ec.europa.eu/eurostat)*

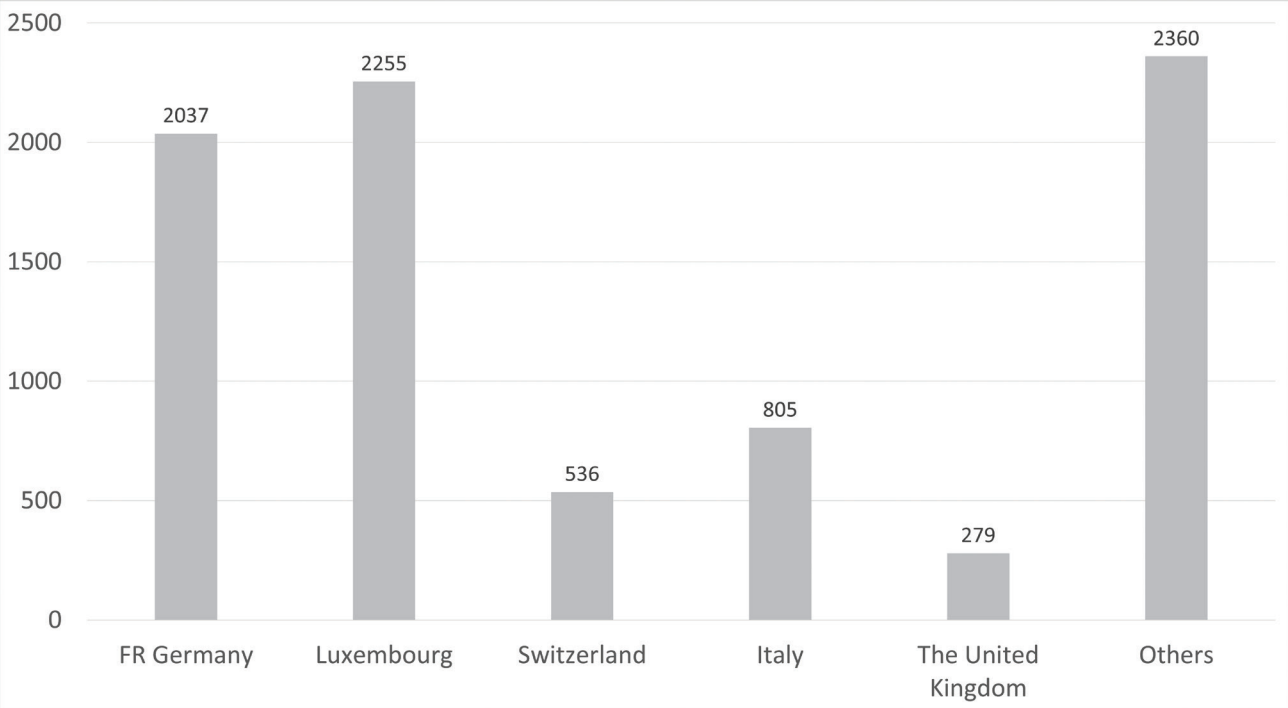
Keeping in mind the epidemiological situation with COVID-19, it can be assumed that the number of issued residence permits to Montenegrin citizens in 2020 has decreased significantly and that in 2021, it will be drastically lower.

3.2. Montenegrin citizens who acquired citizenship of another country

3.2.1. EU member states and other European countries

Insight into EUROSTAT statistics shows that 8,272 Montenegrin citizens acquired citizenship in one of the EU member states in the period 2000–2019 (i.e., over 20 years) or in Great Britain, Switzerland, Norway and Iceland by admission.

Graphic 1: *Overview of granted citizenships in EU countries, The United Kingdom, Switzerland, Norway and Iceland to Montenegrin citizens*



However, a significant portion of these 8,272 persons renounced Montenegrin citizenship in the process of acquiring citizenship in one of these countries by admission (primarily FR Germany), so that they are no longer in the register of citizens and domicile, that is, the Voter Register of Montenegro. According to the data of the Ministry of Interior, in the period from 5 May 2008 to 18 May 2021, there were 2,828 such persons (while there were 72 applications in the process of resolving requests for release from Montenegrin citizenship). Most of these were dismissed due to admission to the citizenship of the Federal Republic of Germany – 2,045. Also, some of the 8,272 persons were minors (about 20%), who are not in the Voter Register of Montenegro.

Based on the previous quantitative indicators, it can be estimated that some 5,000 to 6,000 Montenegrin citizens who also have citizenship in some other EU or EFTA member states could find themselves affected by the future legal provisions of the Law on Registers of Domicile and Residence.

3.2.2. The United States of America

According to the statistics of the US Citizenship and Immigration Services, 2,281 Montenegrin citizens acquired US citizenship in the period between 2008–2019, that is, in 12 years. Data cannot be found for the period before 2008 because the data for that period refers to the citizens of Serbia and Montenegro, that is, FR Yugoslavia. With respect to Montenegrin citizens who have Lawful Permanent Resident Status, 2,779 citizens acquired a Green Card in the period between 2010–2019, that is, in 10 years. We should keep in mind that the data on Green Card holders and persons who have acquired US citizenship intersect because a significant part of the 2,779 'Green Card' holders in the mentioned period acquired citizenship and thus belong in the category of 2,281 persons who acquired citizenship; thus, these two categories cannot simply be combined. If we start from the fact that, on average, 190 Montenegrin citizens acquired US citizenship annually, we can assume and estimate that starting from the 1990s when a significant number of Montenegrin citizens went to the US, the total number of Montenegrin citizens who also have US citizenship range from 5,000 to 6,000.

Table 2: *Overview of granted citizenships and Green Cards to Montenegrin citizens in the USA for the period 2008–2019*

THE UNITED STATES OF AMERICA		
YEAR	NO. OF ACQUIRED CITIZENSHIPS	NO. OF GRANTED GREEN CARDS
2008	32	No data
2009	140	No data
2010	167	120
2011	205	204
2012	227	265
2013	231	265
2014	202	289
2015	209	251
2016	222	387
2017	187	323
2018	205	299
2019	254	376
TOTAL	**2,281**	**2,779**

Source: *US Citizenship and Immigration Services (https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data)*

3.2.3. Republic of Serbia

When it comes to the number of Montenegrin citizens living in the Republic of Serbia, two categories should be distinguished: the first category consists of those who during the state union had to deregister their residence from Montenegro in order to register residence in the Republic of Serbia. These persons are no longer on the Montenegrin Voter Register. The second category are persons who did not deregister their residence from Montenegro because after 3 June 2006, the competent authorities of the Republic of Serbia no longer required deregistration of residence from Montenegro in order to register residence in the Republic of Serbia, that is, regulate Serbian citizenship and issue Serbian ID cards. **How can data on the number of Montenegrin citizens from the second category be obtained?**

Statistical data from the Republic of Serbia on the number of citizenships granted cannot be obtained because data are not published in any publicly available report, nor can they be found in any available analysis, study or any other document. In the absence of precise and reliable data, the question arises as to whether or not it is possible on the basis of some incomplete statistical data, indicators and parameters to reach appropriate projections of the number of Montenegrin citizens who acquired Serbian citizenship from 3 June 2006.

The data obtained at the end of 2008 from the representatives of the Ministry of Interior of the Republic of Serbia are a possible indicator on the basis of which certain projections can be reached. The notification from the Ministry of Interior of the Republic of Serbia to the Ministry of Interior of Montenegro during the negotiations on signing the Agreement on Dual Citizenship between the two countries (at the end of 2008) indicated that during the period from 3 June 2006 to 24 December 2008:

- 33,046 Montenegrin citizens residing in the Republic of Serbia acquired the citizenship of the Republic of Serbia (according to Article 52 para. 2 of the Law on Citizenship of the Republic of Serbia that was in force at that time), and
- 1,680 Montenegrin citizens who did not have a residence in the Republic of Serbia on 3 June 2006 acquired the citizenship of the Republic of Serbia (according to Article 23 of the same Law).

Thus, in less than 19 months, close to 35,000 Montenegrin citizens residing in Montenegro acquired the citizenship of the Republic of Serbia. It can be said with certainty that the largest number of Montenegrin citizens whose residence is in Montenegro acquired the citizenship of Serbia in the first years after the restoration of Montenegrin independence, and that over time, it has begun to significantly decline.

The control of the Voter Register of Herceg Novi, conducted by CeMI, revealed that 2,691 voters residing in another country were registered in Herceg Novi, which represents 10.55% of the electorate. Out of that number, 1,974 voters had residence in Serbia, which accounts for 7.74% of the total of 25,507 registered voters in that municipality (data from the 2020 parliamentary elections), while other persons (717) have residence in Bosnia and Herzegovina.

Given the aforementioned indicators, it can be roughly assumed and estimated that the number of Montenegrin citizens residing in Montenegro who have Serbian citizenship and a residence in that country ranges from 50,000 to 80,000 people.

3.3. The number of persons whose voting right is questionable in Montenegro

Based on the above, it can be assumed that due to the possible uncertainty of actual domicile, approximately 5,000 to 6,000 Montenegrin citizens who have the citizenship of an EU and EFTA member states and about 18,000 Montenegrin citizens with approved permanent residence, as well as 5,000 to 6,000 Montenegrin citizens who have US citizenship, about 3,000 to 4,000 Green Card holders and between 50,000 and 80,000 Montenegrin citizens who have the citizenship of the Republic of Serbia and reside in that country could find themselves 'under attack' by more restrictive regulation on this issue.

Table 3: *Estimate of the number of Montenegrin citizens whose right to vote in Montenegro is questionable*

Country	Basis of uncertainty	Number of Montenegrin citizens
EU and EFTA	Citizenship	5,000 – 6,000
EU and EFTA	Permanent Residence	18,000
USA	Citizenship	5,000 – 6,000
USA	Residence (Green Card holders)	3,000 – 4,000
Serbia	Citizenship	50,000 – 80,000
Total	Residence	21,000 – 22,000
Total	Citizenship	61,000 – 92,000
Total	**Citizenship and residence**	**83,000 – 114,000**

When looking at the data, it can be estimated that on the basis of the questionability of the residence, between 21,000–22,000 Montenegrin citizens living in the countries that were the subject of the assessment could be left without the right to vote, while on the basis of the illegal retention of Montenegrin citizenship after acquiring citizenship of another country after 3 June 2006 (most of whom have domicile in that other country), between 62,000 and 92,000 Montenegrin citizens could lose the right to vote. The total potential impact on the Voter Register goes to 114,000 Montenegrin citizens who could be deleted from the Montenegrin Voter Register. Of course, we should bear in mind that this figure could be higher because only selected countries were included in the assessment.

3.4. Foreign citizens with temporary and permanent residence in Montenegro and acquisition of Montenegrin citizenship

In order to understand the motives and reasons for the adoption of the Law on Montenegrin Citizenship, as well as the Law on Foreigners and the Law on Employment and Work of Foreigners (all three laws were adopted in 2008; in addition, the Law on Employment and Work of Foreigners does not exist anymore because it was incorporated into the Law on Foreigners), it is necessary to explain and understand the circumstances and environment that existed in the period preceding the adoption of these laws (period 2005, 2006, 2007, 2008). Prior to the entry into force of these three laws, Montenegro had an extremely liberal system of employment

of foreigners in accordance with the decree on employment of non-resident individuals[31], and between 50,000 and 60,000 non-residents worked in the Montenegrin labour market annually, mostly from Serbia, Bosnia and Herzegovina, and Northern Macedonia. We should not forget 2007 and 2008 when there was a real boom in the sale of real estate and a large number of Russian citizens arrived in Montenegro, with about 5,000 of them on a temporary residence in each of those years. Due to the need to preserve the openness of the labour market and, at the same time, bring the work of foreigners to the optimal level, the Law on Employment and Work of Foreigners from 2008 introduced a quota system for issuing work permits to foreigners. The government determined the quota of work permits for foreigners on an annual basis based on the criteria prescribed by the Decree on Criteria and Procedure for Determining the Number of Work Permits for Foreigners[32], bearing in mind that so many foreigners residing in Montenegro in those years could lead to serious labour market distortions in the context of the domestic labour force.

Starting from the fact that Montenegro in the previous period accepted a large number of displaced and internally displaced persons whose final resolution of status occurred in 2008, in coordination with the European Union and UNHCR in which the first steps have already been taken, as well as the previously mentioned facts of the residence of a large number of foreigners in Montenegro, the decisionmakers had a justified fear of disturbing the demographic structure of Montenegro as well as disturbing the balance of the labour market. This was the main reason and motive for introducing some more or less restrictive solutions in the already mentioned laws. Therefore, for example, the Law on Employment and Work of Foreigners provided for the so-called formula '1 + 2' when issuing work permits, which provided that the work permit could be issued to a foreigner for one year and then extended for a maximum of two more years, after which the foreigner had to make a break and thus lose the continuity of residence. Also, the formula '1 + 2' was prescribed by the Law on Foreigners, in the part of granting temporary residence on the basis of work (for other legal bases of temporary residence, the stated formula was not applied).

When the Decision on the Criteria for Determining the Conditions for Acquiring Montenegrin Citizenship by Admission in 2008 was adopted, the first mistake was made. Defining and prescribing the type and required number of years of residence for acquiring citizenship should not have been the subject of a bylaw, but only of the Law on Montenegrin Citizenship. Thus, for example, the notion of continuous residence of foreigners in terms of regulating residence in Montenegro is correctly defined by the Law on Foreigners and not by some of its bylaws.

The second mistake was made with the clumsy definition of 'legal and uninterrupted residence', which, quite understandably, caused dilemmas and confusion in the following years, both among the foreigners themselves and among the judges of the Administrative Court. The term 'legal and uninterrupted residence' referred to those types of previous residences of all those persons who did not have Montenegrin citizenship but had legal residence in Montenegro: domicile based on the Law on Domicile and Residence[33] and previous laws on domicile and residence; permanent residence (in accordance with the Law on Foreigners and the previous Law on Movement and Residence of Foreigners); residence on the basis of recognised status as a refugee in Montenegro; and residence on the basis of the recognised status of displaced persons in Montenegro from the former SFRY republics (on the basis of the Decree on the Protection of Displaced Persons[34]).

[31] "The Official Gazette of the Republic of Montenegro", No. 28/03
[32] "The Official Gazette of the Republic of Montenegro", No. 69/08
[33] "The Official Gazette of the Republic of Montenegro", No. 45/93
[34] "The Official Gazette of the Republic of Montenegro", No. 37/92

Among the mentioned types of residence, there was no temporary residence that could be approved on the basis of the Law on Foreigners and which, undoubtedly, was a legal residence in Montenegro that could have its continuity for a certain number of years, depending on the legal basis. It is indisputable that the intention of the decisionmakers was to 'slow down' the path to citizenship for this category of foreigners with approved temporary residence, of which there were tens of thousands in those years. This 'path to citizenship' was primarily slowed down by the Law on Employment and Work of Foreigners and the Law on Foreigners which took a restrictive attitude on the issue of work permits and, with them, temporary residence and, finally, the approval of permanent residence (legal and uninterrupted residence required for the acquisition of citizenship). Namely, it was almost impossible to achieve the uninterrupted five years of temporary residence necessary to obtain permanent residence because applying the formula of '1 + 2' to this category of foreigners (who resided in Montenegro on the basis of work and employment) meant that residence had to be terminated after the third year of continuous and uninterrupted stay, after which they had to go again 'from the beginning'. The mentioned formula of '1 + 2' was applied only when granting temporary residence on the basis of employment and work. When granting temporary residence on other legal grounds (primarily on the basis of family reunification, which, in numbers, came immediately after those approved on the basis of employment and work), the formula of '1 + 2' was not applied, but foreigners with approved temporary residence on these grounds could reach five continuous and uninterrupted years of temporary residence and thus acquire permanent residence, from which moment they would begin to run a 'legal and uninterrupted residence' to acquire citizenship. In this way, the Law on Foreigners was, in fact, a kind of filter and 'purgatory' before going 'under the auspices' of the Law on Montenegrin Citizenship.

What is very important and should not be forgotten is the fact that in the opinion of many political actors, this 'restrictive' Law on Montenegrin Citizenship allowed the admission of almost 31,000 new citizens in 15 years (about 5% of the total population in Montenegro) and that, in the opinion of some political actors, this 'unfair' Law on Foreigners allowed 30,052 permanent residences and 29,042 temporary residences (according to data obtained from the Ministry of Interior).

Comparative analysis serves to contribute to the objectification and better understanding of certain social phenomena and to a better understanding of a social fact (qualitatively and quantitatively) through that perception and comparison. Therefore, when talking about whether and to what extent the Montenegrin Law on Citizenship is restrictive or liberal, some objective value must be determined against which the level of restrictiveness or liberality can be determined. Therefore, EUROSTAT statistics should be provided relative to the admission to citizenship of the EU and EFTA (Switzerland, Liechtenstein, Norway and Iceland) Member States:

Table 4: *Number of approved citizenships in EU and EFTA countries (for a period of 20 years) and number of approved citizenships in Montenegro (for a period of 15 years)*

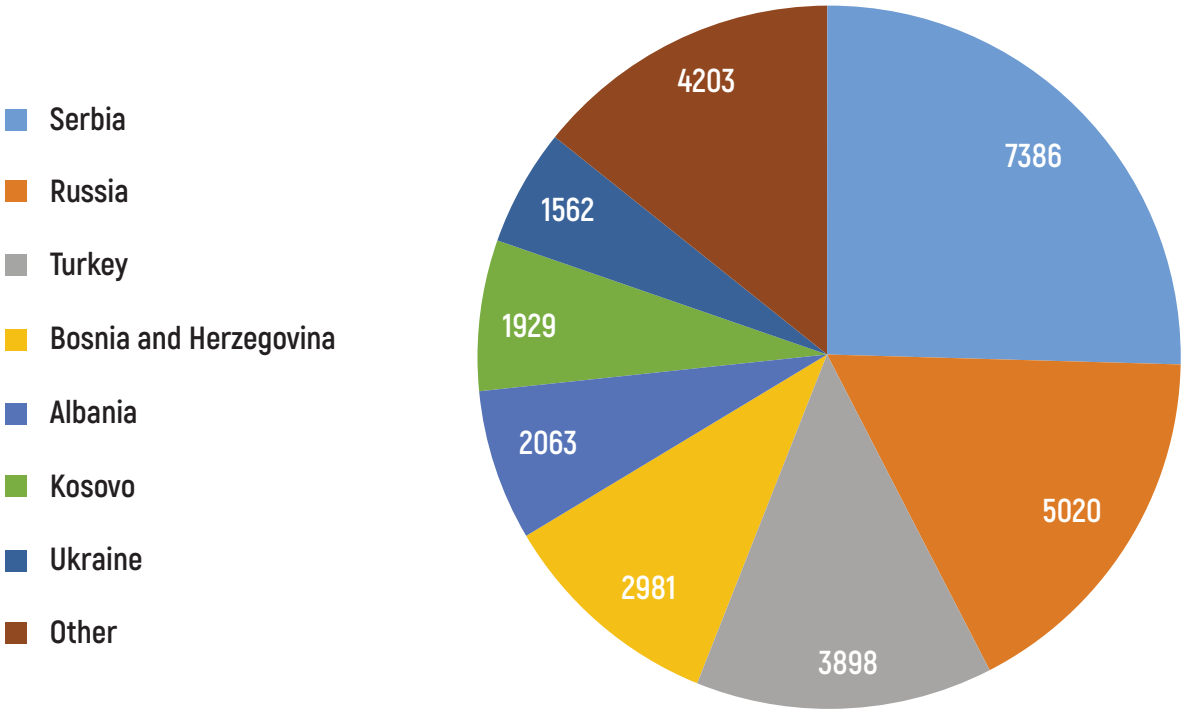
COUNTRY	NUMBER OF APPROVED CITIZENSHIPS (FROM 2000-2019)	IN AVERAGE	
		ANNUALY	PER 1000 INHABITANTS
Slovakia	4,200	382	0.07
Lithuania	2,100	191	0.07
Poland	44,000	4,000	0.10
Bulgaria	11,500	1,045	0.15
Romania	38,000	3,454	0.17
Czech Republic	28,800	2,618	0.25
Croatia	22,600	2,055	0.5
Latvia	14,300	1,300	0.69
Slovenia	17,500	1,590	0.76
Hungary	87,000	7,909	0.82
Denmark	56,800	5,164	0.89
Austria	88,400	8,036	0.92
Estonia	13,800	1,255	0.97
Germany	1,234,600	112,236	1.35
Malta	8,600	782	1.5
Iceland	6,300	572	1.6
France	1,260,700	114,609	1.74
Cyprus	24,300	2,209	1.79
Italy	1,243,200	113,018	1.88
Norway	150,700	13,700	2.46
Luxemburg	48,300	4,391	7.08
Liechtenstein	7,100	645	16
Montenegro	**31,000 (from 2006-2020)**	**2,067**	**3.31**

Source: *EUROSTAT (https://ec.europa.eu/eurostat)*

Bearing in mind the fact that in Montenegro, close to 31,000 citizenships have been granted over a period of 15 years, an annual average of 2,067 approved citizenships can be obtained. If we keep in mind that this is the annual average of approval during the current 'restrictive' Law on Montenegrin Citizenship, we can assume and project how many foreigners can acquire Montenegrin citizenship in the coming period, how much can acquire it under the existing normative framework and how many under the possibly liberalised framework.

According to the data obtained from the Ministry of Interior, there are 29,042 foreigners in Montenegro with approved temporary residence.

Graphic 2: *Number (in thousands) of foreign nationals with approved status of foreigner with temporary residence – by countries*



Source: *Ministry of Interior of Montenegro*

When the data obtained from the Ministry of Interior on the 29,042 foreigners with approved temporary residence are analysed in more detail, the following can be concluded:

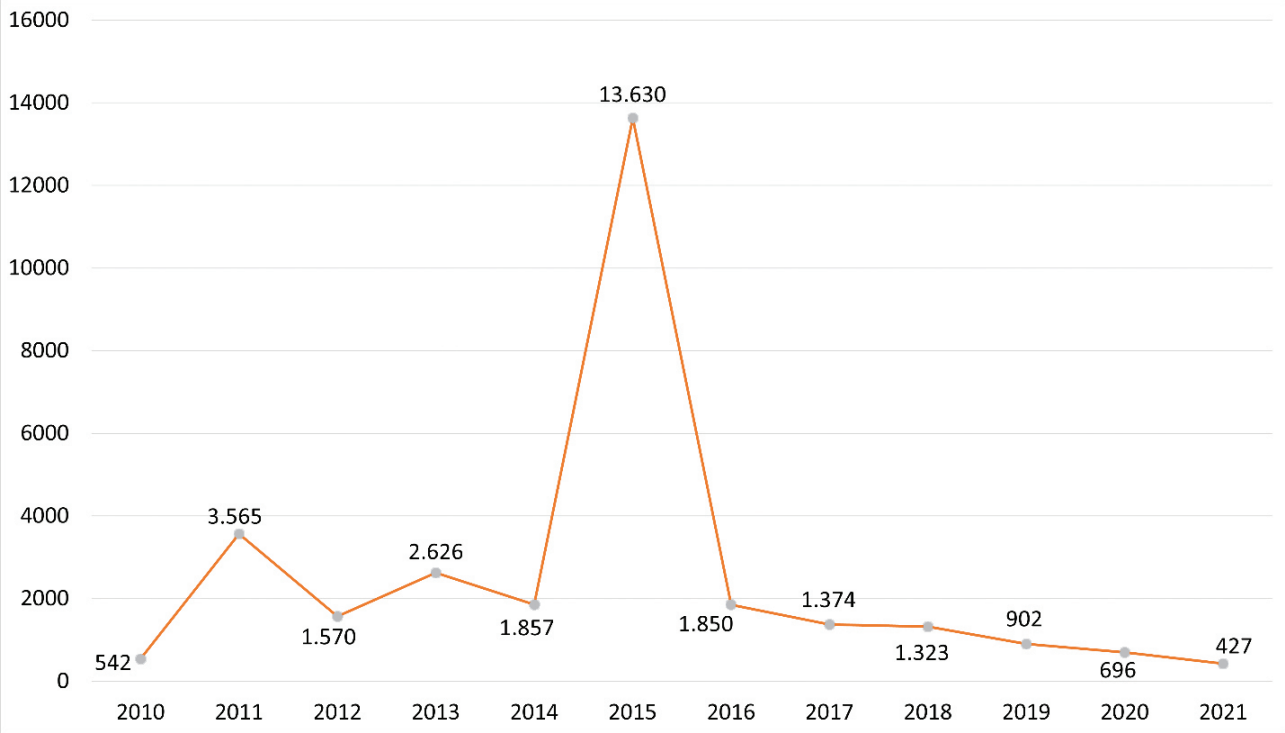
- For about 22,000 foreigners, the legal ground of the approved temporary residence is such that it enables applying for and obtaining a permanent residence (after fulfilling the conditions provided by law);
- For about 7,000 foreigners, the legal ground of the approved temporary residence is such that it does not enable applying for and obtaining a permanent residence;
- Bearing in mind the fact that in 2018, the number of approved temporary residences was 30,273, in 2019, it was 44,573 and in 2020, it was 33,601, it can be concluded with significant certainty that a large number of these 29,042 foreigners with approved temporary residence in Montenegro have resided there for years, and thus, in the next few years, they will meet the main legal condition to apply for permanent residence (have five uninterrupted years of temporary residence in Montenegro);
- Based on the previous figures, a projection with a high degree of certainty can be made that in the next three to five years, about 20,000 to 22,000 foreigners will have the legal opportunity to apply for permanent residence.

When the data on 30,052 foreigners with approved permanent residence are analysed in more detail, the following can be concluded:

- The largest number of foreigners with approved permanent residence comes from the Republic of Serbia, Kosovo, Bosnia and Herzegovina, and the Republic of Croatia;
- 9,970 permanent residences were granted to former displaced persons from Bosnia and

Herzegovina and the Republic of Croatia and internally displaced persons from the Republic of Serbia and Kosovo;
- 9,284 permanent residences were granted to citizens of the states of the former SFRY who had registered domicile in Montenegro (predominantly citizens of the Republic of Serbia);
- 5,916 permanent residences were granted to foreigners who had a sufficient number of years of approved uninterrupted temporary residence in Montenegro (of which 3,007 persons were citizens of the former Yugoslav republics, while 2,909 were citizens of all other states);
- 2,034 approved permanent residences refer to minors.

Graphic 3: *Number of foreigners with active permanent residence by years when they were approved*



Source: *Ministry of Interior of Montenegro*

As presented in Graph 3, the number of approved permanent residences is declining from year to year due to the pressure to resolve permanent residence for displaced and internally displaced persons as well as other persons from the former Yugoslav republics (the highest number of permanent residences for these persons was approved in 2015), that is, the largest number of these persons regulated their permanent residence by 2018.

What else do the data presented in this study tell us?

Bearing in mind the legal condition of five years of permanent residence required to obtain Montenegrin citizenship (in case of marriage with a Montenegrin citizen – Article 11 of the Law on Montenegrin Citizenship) or the legal condition of 10 years of permanent residence (in case of naturalisation – Article 8 of the Law on Montenegrin Citizenship), it is possible to reach a well-founded projection that in the next five years, about 25,000 persons with approved permanent residence (persons who acquired permanent residence in the period

2010–2017) will legally be able to apply for Montenegrin citizenship by admission (either according to Art. 8 or Art. 11 of the Law on Montenegrin Citizenship).

If we add to this the fact that out of the total number of temporary residences, 10,129 of them were approved and extended on the basis of family reunification, then if the Decision on Criteria for Determining Conditions for Acquiring Montenegrin Citizenship by Admission (whose amendments were announced and withdrawn) was changed in a way to liberalise the acquisition of citizenship for this category of persons (to have their temporary residence counted as a continuous residence required for obtaining citizenship), it can be expected that in the next five years, several thousand of these persons would also be legally able to acquire Montenegrin citizenship.

Therefore, based on the previous indicators, it is reasonable to give an estimate and projection that 25,000 to 28,000 foreigners could be in the legal position to apply for Montenegrin citizenship within the next five years.

As for the argument that most of these 25,000 to 28,000 foreigners will have to renounce their current citizenship which will then be a certain obstacle to apply for Montenegrin citizenship, a counter-argument is made: most of these foreigners come from the Republic of Serbia, whose Law on Citizenship in Article 34 prescribes: 'A person who has been released from the citizenship of the Republic of Serbia and acquired foreign citizenship and a person whose citizenship of the Republic of Serbia was terminated at the request of his parents by remission or renunciation may regain the citizenship of the Republic of Serbia if he has reached the age of 18 and has not been deprived of his legal capacity and if he submits a written statement that he considers the Republic of Serbia as his state'. Thus, the question is whether there is anyone in Montenegro who can guarantee that these persons will not, after being released from Serbian citizenship and obtaining Montenegrin citizenship, re-apply for Serbian citizenship pursuant to Article 34 of the Serbian Law on Citizenship.

It is very questionable whether the previous fears can be dispelled by the possible conclusion of the Agreement on Dual Citizenship between Montenegro and the Republic of Serbia. It should be remembered that during 2008, four rounds of negotiations were held: 1 October 2008 in Belgrade, 8 October 2008 in Budva, 15 October 2008 in Belgrade and 21 November 2008 in Belgrade.[35]

The experience of conducting these negotiations between the delegations of the two countries does not instil confidence in the possibility of reaching a compromise. After these four rounds, the following four key issues remained inconsistent:

1. The moment when the acquisition of dual citizenship is recognised – 22 October 2008 or the date of conclusion of the contract (Art. 1 and 2 of the Draft Agreement of Montenegro) – the

[35] The delegation of the Government of Montenegro consisted of: Svetozar Djurovic, Secretary of the Ministry of Interior, Srdja Spajic, Secretary of the Ministry of Justice, Osman Subacic, Assistant Minister of Interior, Dragan Djurovic, Assistant Minister of Foreign Affairs, Ivan Milic, Advisor to the Minister of Interior, Gordana Krivokapic, Independent Adviser in the Cabinet of the Minister of the Interior.
The delegation of the Government of the Republic of Serbia consisted of: Aleksandar Veljkovic, Head of the Department for Normative and Legal Affairs of the Secretariat of the Ministry of the Interior, M.Sc. Vladimir Cvijan, acting Secretary General of the President of the Republic of Serbia, Momirka Marinkovic, Director of the Directorate for Consular Affairs of the Ministry of Foreign Affairs, Zorica Loncar - Kasalica, Head of the Directorate for Administrative Affairs of the Ministry of Interior, Zoran Kovacevic - Minister, Counselor at the Embassy of the Republic of Serbia in Podgorica The Delegation of the Government of the Republic of Serbia was composed of: Aleksandar Veljkovic, Head of the Department for Normative and Legal Affairs of the Secretariat of the Ministry of Interior; M.Sc. Vladimir Cvijan, acting Secretary-General of the President of the Republic of Serbia; Momirka Marinkovic, Director of the Directorate for Consular Affairs of the Ministry of Foreign Affairs; Zorica Loncar - Kasalica, Head of the Directorate for Administrative Affairs of the Ministry of Interior; Zoran Kovacevic - Minister, Counselor at the Embassy of the Republic of Serbia in Podgorica.

Draft Agreement of Montenegro contained a provision that the date should be 22 October 2008 and the Draft Agreement of the Republic of Serbia stated that it should be the moment of the conclusion of the Agreement;
2. Prohibition of double residence (Art. 11 of the Draft Agreement of Montenegro) – the Republic of Serbia did not accept Art. 11 of the Draft Agreement of Montenegro which regulated the issue of avoiding double residence;
3. Termination of admission to citizenship without release of a citizen of the other contracting party (Art. 12 of the Draft Agreement of Montenegro) – the Republic of Serbia did not accept Art. 12 of the Draft Agreement of Montenegro on termination of admission of citizens of the other contracting party without release in exceptional cases and did not accept the alternative proposal of that article (termination of admission without release of the citizen of the other contracting party who resides in the territory of that other contracting party);
4. Content and deadline for exchange of lists of persons who have acquired dual citizenship (Art. 14 of the Draft Agreement of Montenegro) – the Republic of Serbia did not accept Art. 14 of the Draft Agreement of Montenegro which sets clear deadlines for exchange of data on persons who acquired dual citizenship by 22 October 2008 (within 30 days from the day of concluding the contract as proposed by Montenegro), regardless of in which contracting party country they reside. The Republic of Serbia has proposed: 'upon the entry into force of this Agreement, the contracting parties shall exchange lists of dual nationals according to their residence in the territory of each of the contracting parties' (Art. 11, para. 2 of the Draft Agreement of the Republic of Serbia).

Also, a significant number of these 25,000 to 28,000 foreigners are citizens of Bosnia and Herzegovina. Their Law on Citizenship, in Article 14, provides: 'A person whose citizenship of BiH, for the purpose of acquiring or retaining the citizenship of another state, has ceased by renunciation or release, may apply for re-acquisition of citizenship of BiH, if they fulfil requirements from the Art. 9, except requirements from para. 1 point a) and b), only if he has been granted temporary residence in the territory of Bosnia and Herzegovina for at least one year immediately prior to the submission of the application or has been granted permanent residence'. The same question is raised in this case: Who can provide guarantees that a person from Bosnia and Herzegovina, after being released from their citizenship and acquiring Montenegrin citizenship, will not go to Bosnia and Herzegovina, regulate temporary residence for only one year (which can be fictitious) and then reacquire BiH citizenship. Also, a significant number of BiH citizens coming from the Republika Srpska do not care very much about BiH citizenship because, in addition to it, they have the citizenship of the Republic of Serbia. Thus, losing their Bosnia and Herzegovina citizenship would not be an obstacle to acquiring Montenegrin citizenship.

The essence is that the laws on citizenship of these two countries are very liberal in terms of re-acquisition of citizenship, and there are practically no obstacles to it (except in BiH where the condition of one year of temporary residence must be fulfilled).

Starting from the fact that a significant number of Montenegrin citizens have been released from Montenegrin citizenship in the previous 13 years due to the acquisition of another citizenship (2,828) and the fact that a significant number of Montenegrin citizens living abroad may lose their residence in Montenegro with the announced amendments to the Law on Registers of Residence, and thus the right to vote, and the fact of the announced liberalisation of the acquisition of Montenegrin citizenship as well as the projection of how many young people want to leave Montenegro, it can be concluded that public fear of a changing demographic, national and ideological structure of Montenegro is justified.

3.5. The control of the Voter Register in Montenegro

As part of the regular activities undertaken by CeMI as part of Voter Register control, a check on a part of the voters registered in the Voter Register of the Municipality of Niksic, as well as the complete Voter Register of the Municipality of Herceg Novi, was conducted. The control determined that 2,691 voters residing in another country were registered in the Voter Register in Herceg Novi, which represents 10.55% of the total electorate in this municipality. Out of this number, 1,974 voters had residence in Serbia, which makes up 7.74% of the total of 25,507 registered voters in that municipality (as many as there were during the parliamentary elections last year), while other persons (717) have residence in Bosnia and Herzegovina. Also, 82 persons have triple residence, that is, triple citizenship is registered.

On March 18, CeMI submitted a request to the Ministry of Interior for access to the Voter Register, after which it checked all voters from the Herceg Novi Voter Register. CeMI conducted a comparative check with the Voter Register of Serbia, which is available on the website www.upit.birackispisak.gov.rs, and with the Voter Register of Bosnia and Herzegovina via the website www.izbori.ba.

Voter Register control in the Municipality of Herceg Novi is the only comprehensive control of the Voter Register for an election process. CeMI, as an accredited organisation for the control of the electoral process, has the right to control the Voter Register, as well as to access certain data. In accordance with the regulations on personal data protection, CeMI submitted data on persons who are illegally registered in the Voter Register to the Ministry of Interior and requested their deletion both from the municipality of Herceg Novi and the municipality of Niksic. The total number of persons who have been proven to be double registered in the Voter Register and that should be removed from the Montenegrin Voter Register is 3,652, which represents 0.67% at the level of the Voter Register of Montenegro. It was proven on the basis of checking irregularities in one municipality and part of the irregularities in another that they together represent 0.67% of the national Voter Register (almost one parliamentary mandate), which in a situation of deep political division can decide who has the ruling majority. It is also worth noting that the legal threshold for obtaining a guaranteed mandate for the Croatian minority is 0.35% and is 0.7% for others, so that the number of proven illegally registered voters is higher than the price of reserved seats for the national parliament, and the effect may be stronger when considering that it is a matter of applying d'Hondt formula.

Although in the run-up to the local elections in Niksic, Ministry of Interior representatives announced checks and deletions from the Voter Register, the Ministry of Interior did not take any action to delete persons who were illegally registered in the Voter Register. None of these cases were resolved before the elections. The Council for Transparency of the Ministry of Interior of Montenegro, which is responsible for eliminating irregularities in the Voter Register, and the Council for the Control of the Voter Register, chaired by the Deputy Prime Minister of Montenegro, have not taken any actions with respect to this data. Instead, a representative of CeMI was called by the police and questioned with the aim of trying to prove that private data had been misused. At CeMI, they interpreted this as pressure to cover up the issue.

On 28 April 2021, the Ministry of Interior issued a statement that, based on certain indications and information, it began checking 8,000 citizens who are in the Voter Register of the Republic of Serbia, Bosnia and Herzegovina and the Republic of Kosovo due to the presumption that, in addition to Montenegrin, they have a citizenship in another country. A check was performed on a total of 2,703 persons, and proceedings will be initiated against 2,108 for loss of Montenegrin citizenship by force of law, with 595 persons found to have dual citizenship in accordance

with the Law on Montenegrin Citizenship, that is, the citizenship of another state was acquired before 3 June 2006, which is in line with Montenegrin law. The Ministry of Interior stated that pursuant to Article 31 para. 3 of the Law on Montenegrin Citizenship, these persons will be able to declare themselves by giving a statement on the record that they want to keep their citizenship, which means that they do not automatically lose Montenegrin citizenship. These persons are given a period of three months to submit proof of the submitted request for release from the citizenship of another country, and within a year, they are obliged to submit proof of release from the citizenship of another country. After that, if someone submits proof of release from the citizenship of another country, a decision is made to suspend the procedure and the said person retains Montenegrin citizenship and remains legally registered in the Voter Register. Otherwise, Montenegrin citizenship is lost by force of law.

Such conduct of the Ministry of Interior in practice has no legal grounds, that is, legal grounds according to the Law on Montenegrin Citizenship. The arguments for this statement are as follows: Article 31 para. 2 of the Law on Montenegrin Citizenship prescribes: 'Montenegrin citizenship is lost by force of law on the day of occurrence of facts or circumstances referred to in Article 24 of this Law, on which the competent authority ex officio issues the decision'. Para. 3 of the same article prescribes that: 'In the procedure of issuing the decision referred to in para. 2 of this Article, the competent authority is obliged to enable the person to state the facts and circumstances referred to in Article 24 of this Law. The decision can be made without the statement of the person who was duly summoned if they do not submit a written statement within a prescribed period of time'. Article 24 para. 1 point 1 of the Law prescribes: 'An adult Montenegrin citizen, who also has the citizenship of another country, by force of law loses Montenegrin citizenship, if he has voluntarily acquired the citizenship of another country, except in the case provided by Article 18 para. 2 of this Law (in case it was acquired on the basis of an international agreement)'. Article 24 para. 4 stipulates that: "The competent authority is obliged to initiate proceedings ex officio, after the cognition of the facts referred to in para. 1 to 3 of this Article'.

What do the above legal provisions tell us?

First of all, para. 2 of Article 24 and para. 2 of Article 31 represent imperative norms (citizenship is lost by force of law on the day of occurrence of facts and circumstances/Adult Montenegrin citizen, who also has citizenship of another country, by force of law loses Montenegrin citizenship if voluntarily acquired citizenship of another country). The Ministry of Interior is obliged to apply these imperative norms in the manner prescribed by law. The law does not recognise the interpretation and practice of the Ministry of Interior, according to which a person is given a certain deadline to consider whether they still want to retain Montenegrin citizenship if they renounce another citizenship, and this practice represents disavowal and derogation of the law itself, that is, it represents a certain form of gymnastics with the aim of enabling the participation of the person in the procedure (on which occasion they should decide which citizenship they will keep) in accordance with the Law on Administrative Procedure, and then during the procedure itself, however, deciding that they would remain 'faithful' to Montenegrin citizenship and that they would correct the illegal act of acquiring another citizenship by renouncing that other citizenship and thus correct the obvious violation of the Law on Montenegrin Citizenship.

The legal situation according to which a person is given a certain deadline to consider which citizenship they will keep or which citizenship they will renounce must be explicitly prescribed by the Law on Montenegrin Citizenship (the procedure and deadline given to a person), that is, it must have legal grounds exclusively in that Law, and in no way can be covered by the rights of the party in the administrative procedure and the rules of administrative procedure or to seek the legal basis for such conduct of Ministry of Interior officers, which in this administrative matter must be exclusively based on the Law of Montenegrin Citizenship.

After all, this kind of behaviour of the Ministry of Interior sends a message to the citizens to freely try and take the citizenship of another country, so if the Ministry of Interior catches them and discovers them, they will have a year to renounce that other citizenship. The goal, meaning and spirit of the Law on Montenegrin Citizenship is not to enable, encourage and allow such actions of citizens in practice.

When it comes to the application of Montenegrin regulations in such situations, specifically the Law on Montenegrin Citizenship and the Law on Registers of Domicile and Residence (both current and future amendments), resolving this issue has two dimensions: **the first is political** in terms of political will and readiness to initiate ex officio proceedings to establish all relevant facts about allegations and indications that a person has a residence or citizenship in another country that may be acquired contrary to the Law on Montenegrin Citizenship, and **the second is a professional dimension,** which refers to the readiness, independence, expertise, skill and integrity of the officials of the Ministry of Interior to complete the procedure initiated ex officio on this issue.

The best indicator of the weakness and unwillingness (political and professional) of the state of Montenegro and its competent bodies (above all, the Ministry of Interior) to implement Article 24 of the Law on Montenegrin Citizenship is the small number of initiated and completed proceedings to revoke Montenegrin citizenship ex officio. According to the data of the Ministry of Interior, in the period from 5 May 2008 to 18 May 2021, there were 1,408 requests for loss of Montenegrin citizenship by force of law that were initiated ex officio, of which 561 decisions on the loss of Montenegrin citizenship by force were issued (less than 40%). Thus, for a period of 13 years, an average of 108 ex officio requests were initiated annually, that is, an average of 43 persons lost Montenegrin citizenship annually by force of law.

4. CONCLUDING REMARKS AND RECOMMENDATIONS

The manner in which the Government of Montenegro at its session of 26 March 2021 adopted two pieces of information and the speed and insufficient level of transparency that accompanied the preparation of amendments to the Decision on Criteria for Determining Conditions for Acquiring Montenegrin Citizenship by Admission (later withdrawn due to public pressure) and the inexpertness and the ignorance of the matter to be regulated when formulating changes to the Decision, indicates that the changes were not introduced from the professional side, but that the procedure was introduced without a much-needed analysis of the current situation and the outcomes and results to be expected from the changes. Given that there are professionals and experts in this field in the Ministry of Interior, this points out that they were not consulted during the preparation of the Information and amendments to the Decision, but that the procedure was initiated and done 'from the outside'.

If the main reason for the adoption of the two Information and the amendments of the Decision was, as stated by the Ministry of Interior, the correction of injustices, this 'correction of injustices' should have been and needed to have been approached differently. If there have been cases, and certainly there have been, in which a person has been harmed in the procedure of deciding on the application for acquisition of Montenegrin citizenship by admission, these cases can be analysed and reviewed within the existing normative framework. To determine their number and specificity, and to proceed with the retrial and resolution of those cases in which an error by the state body can be determined (e.g., regarding the opinion of the National Security Agency, etc.), it is important to have in mind the judgements of the Administrative Court as well as the legal statements of the Administrative Court for each individual case. Such an analysis would determine the exact number of persons according to whom the 'Montenegrin system of citizenship' was unfair and it would not require too much time or commitment of human resources, given that the register of Montenegrin citizens is an electronically managed database that allows quick and easy finding of all 'disputed' cases.

The amendments to the Decision should therefore be approached only after a detailed analysis of the current situation, which should not only cover issues of case law, that is, how the judges of the Administrative Court resolved cases in administrative disputes in this area as described in the Information in less than three pages as adopted by the Government at the end of March this year. During the implementation of the Law on Montenegrin Citizenship and the Law on Foreigners, there were, in practice, certainly errors of officials, misunderstandings, uneven practice in resolving requests, and inadequate and irrational actions and opinions of NSA officials which, all together, more or less, aggravated the resolving of the requests of foreigners who, as ignorant parties, were often not instructed and informed by the competent officials about their rights and obligations, etc. But that needs to be analysed and the real picture clearly established in order to avoid any politicisation of this matter.

In this way, it would show the seriousness, thoroughness and the right way to resolve possible disputes, and show whether the Decision needs to be changed precisely because of these injustices from the past or whether the Decision aims to liberalise the future citizenship of certain categories of foreigners. Therefore, it should be clarified whether the Government is amending the Decision to correct injustices from the past, to prevent injustices that may occur in the future, to facilitate the admission of citizenship of persons married to Montenegrin citizens or, as the Prime Minister pointed out, due to the large number of persons who have lived for a long time in Montenegro without regulated citizenship (and that number is not specified). The way

in which this matter has been addressed implies and raises suspicion that these are political reasons.

This unilateral attempt to compile the Voter Register through amendments to the Law on Registers of Domicile and Residence without coordination with activities to determine the number of Montenegrin citizens who, contrary to the Law on Montenegrin Citizenship, have acquired citizenship of another state, and without proper analysis of the current situation (except poor and short Information adopted at the Government session on March 26), analysis of other models of arranging the Voter Register, comparative experiences, involvement of all relevant subjects and broad parliamentary dialogue really raises 'reasonable suspicion' that it is aimed at deregistration, that is, the marginalisation of certain nationalities that traditionally live in determined countries which, in combination with the liberalisation of legal conditions for admission to Montenegrin citizenship, can significantly affect the change of national and ideological structure in the electorate. Only the regulation of matters of citizenship and domicile together can lead to an accurate and precise Voter Register. One does not go without the other and cannot give the expected results. Merely emphasising and conducting activities to resolve the issue of domicile without simultaneous and coordinated activities to clean the register of citizens of all those who do not deserve to be on it will not lead to a quality arrangement of the Voter Register.

It is very important to state one indisputable legal and professional fact which should be especially borne in mind by political actors who often express the view that arranging the register of domicile and residence, that is, deleting from it all those citizens who live abroad and who thus lose the right to vote, will not lead to the deprivation of Montenegrin citizenship of these citizens. Such political entities' statements are incorrect and unfounded. Deletion from the register of domicile and residence can also lead to the loss of Montenegrin citizenship. This can be explained by the following example: **if in the procedure of re-registration, that is, deregistration of residence of a certain person as provided by the Draft Law on Amendments to the Law on Registers of Domicile and Residence (upon request or ex officio), it is determined that the person has acquired residence in that country on the basis of the fact that he or she became a citizen of that country after 3 June 2006, the official of the Ministry of Interior must not ignore this established fact and is obliged in accordance with Article 24 of the Law on Montenegrin Citizenship to initiate the proceeding ex officio for deprivation of Montenegrin citizenship to that person,** and in the same way, to everyone, whether it is a person living in one of the countries of Western Europe, in the United States of America or the Republic of Serbia. All political actors and decisionmakers must be aware of this because these are possible legal repercussions (Pandora's box that can be opened) of the process of reviewing and determining the credibility and accuracy of a person's domicile in Montenegro.

Procedures to be imposed by the new law – re-application within one year, conducting an administrative procedure of deregistration of domicile/residence ex officio on the basis of a field inspection in which the interested person will take part, proving in that administrative procedure the fact that the person moved from Montenegro to another country with the intention to live in it without the Draft Law itself defining in more detail what is meant by the intention to live permanently in another country or for a person to permanently emigrate or permanently settle in another country and other details, several stages of proceedings and demanding an administrative procedure that must precede the adoption of each individual act – will cause administrative chaos with which a small number of Ministry of Interior officers committed to conducting these procedures will not be able to successfully cope, not to mention administrative disputes and the deadline of the Administrative Court to decide upon the lawsuit on deletion from the Voter Register within 24 hours of receiving the lawsuit in accordance with Art. 14 and 15 of the Law on Voters Register.

Therefore, any individual administrative act that is not adopted in accordance with the rules of administrative procedure (and having in mind the large number of future administrative procedures and the high probability of administrative omissions that will occur due to a large number of future cases and weak administrative capacities of competent services) will be illegal and will result in years of administrative and judicial outwitting between citizens and the state and increased costs to the state due to the expected large number of claims for damages (both to national courts and to the court in Strasbourg). Also, Montenegrin citizens will be forced to re-register in the register of domicile and residence, which can lead to a boycott by a significant number of citizens, disinterest on the part of another group of citizens, and all this together will make the whole process meaningless and unreliable.

The competence and authority of the police to conduct field checks on the accuracy of reported residence can lead to the risk of interference with constitutionally guaranteed rights and to potentially excessive discretionary powers of the police if they are not clearly and unambiguously specified by law, which can then be easily abused (politically through exercising political influence on police officers or in terms of potential corrupt actions of police officers).

The question is whether the proposed norms are in line with the principles of proportionality, according to which public administration can impose obligations on citizens only to the extent necessary to achieve the purpose of a given norm, so the norms must be proportional to the goals that we want to achieve.

A potential consequence of the decisions on deregistration of residence would be the denial of citizens to have access to the rights that belong to them on the basis of domicile, which would cause legal uncertainty for a significant number of citizens in exercising fundamental and civil rights. This may be controversial from the aspect of the principle of legality which requires that a norm restricting a particular right must have its basis in the Constitution.

There is a question and dilemma as to what extent the process of the naming of neighbourhoods, streets, squares and buildings which are not yet completed can be a real obstacle to the implementation of future provisions of the Law on Registers of Domicile and Residence. In Montenegro, there are still a significant number of neighbourhoods, streets and buildings that are not adequately and appropriately marked.

Recommendation 1:

The Parliamentary Committee for Comprehensive Reform of Electoral Legislation should carefully consider all recommendations of relevant domestic and international organisations concerning the conditions for exercising the right to vote. No legal text nor any provision within the law that directly or indirectly regulates the area of organisation of electoral processes may be adopted with hidden political motives behind the intention of decision makers to conduct a kind of ethnic, political and electoral engineering. This recommendation refers in particular to the procedure under which amendments to the Law on Registers of Domicile and Residence will be considered.

Recommendation 2:

The European Union, the United States, Germany and the United Kingdom, as well as the OSCE / ODIHR and other relevant international organisations active in the Western Balkans, need to be more actively involved in the matter related to the verification of citizenship data among coun-

tries in the region, upon which depends the exercise of the right to vote. At the political level, it is necessary to encourage governments in the countries of the region to show a full degree of cooperation in establishing reliable information on the status of persons suspected of being registered in the voter registers of two or more countries in the region without a legal basis. Initiatives of NGOs, the media and independent researchers aimed at revealing complete data on persons who are registered without a legal basis in the voter registers of several countries should be encouraged by international organisations so that they are not exposed to persecution by political elites, to whom this kind of information does not go in favour.

Recommendation 3:

Article 24 of the Law on Montenegrin Citizenship stipulates that the competent authority is obliged to initiate proceedings ex officio after the cognition of the facts that a certain person has acquired the citizenship of another country contrary to the law. However, what is missing in order for this legal norm to gain its full momentum and a satisfactory degree of implementation is an appropriate bylaw in addition to political will and readiness which would elaborate this 'ex officio action', something like 'standard operating procedures' whereby officers, based on field and operational findings of the police (similarly provided by the Draft Law on Registers of Residence and Domicile regarding the field checks), would carry out clearly prescribed procedures based on the law and use available records and databases available to both their authorities and other state authorities of Montenegro, as well as available records and databases of state authorities of other countries (e.g., websites such as www.upit.birackispisak.gov.rs and www.izbori.ba).

Recommendation 4:

The administrative procedure to revoke Montenegrin citizenship by force of law may be further strengthened by an inspection of the records of state border crossings, on the basis of which the documents used by a person to cross the state border in the previous period can be determined. Furthermore, data available to other bodies (Health Insurance Fund, Tax Administration, Pension and Disability Insurance Fund, Employment Bureau, etc.) can be used, such as whether taxes are regularly paid in Montenegro, whether contributions to earnings are made in Montenegro, whether someone who is not employed is registered with the Employment Bureau, whether some form of social benefits are received or health insurance and health care services are received in Montenegro, whether pension benefits are paid in Montenegro, etc. There is a significant range of possibilities for establishing some facts, especially in the era of technological development and the availability of a large amount of information and software which creates possibilities for pairing existing databases and drawing certain conclusions.

Recommendation 5:

The Voter Register can be 'sorted and cleaned' by checking and controlling the source registers upon which the Voter Register is composed (primarily the register of citizens). The validity and correctness of the Voter Register depends on the validity and correctness of the source registers. The existence of a 'phantom' in the Voter Register can only be the result of the fact that a person without meeting the legal requirements or without the appropriate legal basis is registered in the register of citizens or register of domicile in order to vote for a particular political party or group. It should be remembered that in 2008, the Central Population Register (CPR) was established as a computer-controlled database on the basis of data from the register

of national identification numbers, register of residence and domicile, register of Montenegrin citizens, register of marriages and other records kept by law and other regulations. Thus, the data downloaded for the CPR are data on the national identification number from the register of national identification numbers; birth, personal name, parents, change or deletion from the birth register; marriage status from the register of marriages; death from the register of the dead; acquisition and termination of Montenegrin citizenship from the register of Montenegrin citizens; residence of Montenegrin citizens and members of their households, residence and temporary residence of foreigners with permanent and temporary residence and Montenegrin citizens with permanent or temporary residence abroad from the register of residence. Data from the Central Register are permanently kept. Data on persons who have died or whose data have been annulled shall be kept for 20 years in the Central Register, after which they shall be transferred to the body responsible for archival affairs. Prior to the 'operability' of the Central Population Register, the process of entering all previously mentioned data into the CPR – which had been kept in the form of books and written records (birth register, citizenship register, etc.) – took some time. All of these books and written records were scanned and became an integral part of the CPR. This means that by inspecting the CPR, all relevant data about a person can be verified on the basis of source registers. It is this detailed check through the CPR (source registers and related administrative proceedings) that can establish whether a person has acquired citizenship and domicile in accordance with the law because there are written traces and documentation of administrative proceedings conducted for that person which were scanned and stored in CPR or paper form. In this way, all of the approximately 540,000 registered voters can be checked. This, of course, would require time and the additional engagement of Ministry of Interior officers (15-20 Ministry of Interior officers could check everything about 540,000 registered voters in up to a year and a half, and detect and locate all those voters who, without the appropriate legal basis, entered in the register of citizens or domicile and residence, that is, who entered in those registers by certain abuses/illegal actions). Therefore, the good will of the government and minister is needed, certain financial resources to compensate the work of the officials is needed, and one larger room and a sufficient number of computers with access to the CPR are needed.

Recommendation 6:

It is necessary to consider an extension of the deadline for re-registration of residence from one to two years from the date of entry into force of the Law, as well as the possibility of re-registration electronically based on an appropriate platform, which would significantly reduce the cost of arrival in Montenegro (in particular for those residing in the USA, Canada, Australia…), as well as provide significant time savings for many citizens who have temporary residence abroad.

LITERATURE

1. "Official Gazette of Montenegro", No. 13/08

2. "Official Gazette of Montenegro", No. 41/99

3. "Official Gazette of Montenegro", No. 46/15

4. "Official Gazette of Montenegro", No. 47/08, 80/08, 30/10 and 56/12

5. "The Official Gazette of the Republic of Montenegro", No. 28/03

6. "The Official Gazette of the Republic of Montenegro", No. 37/92

7. "The Official Gazette of the Republic of Montenegro", No. 45/93

8. "The Official Gazette of the Republic of Montenegro", No. 69/08

9. Application No. 19840/09

10. Application No. 26828/06

11. Application No. 33554/03

12. Application No. 38832/06

13. Application No. 42202/07

14. Application No. 7/08

15. Case No. C-300/04, *M.G. Eman and O.B. Sevinger* [2006] ECR 2006 I-08055

16. Marc Gjidar, *Suffrage and Electoral Rights of Expatriates*, Collection of Works of the Law Faculty in Split

17. No. 2, Application No. 74025/1

18. Venice Commission, *Code of Good Practice in Electoral Matters - Guidelines and Explanatory Report*, Venice, 2002

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