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## The Development of Kin-state Policies and the Croatian Citizenship Regime

The close relations between Croatia and the Croat ethnic communities abroad precede the constitution of the contemporary Croatian state. However, the salience of these relations intensified during the Croatian struggle for independence from the former multinational Yugoslav federation, reached its peak during the 1990s following the proclamation of independent Croatia and remained one of the most salient issues of the Croatian politics till today. In 1991, the newly proclaimed Croatian state defined itself primarily as a national state of the Croatian ethnic nation. It has been largely argued by many scholars<sup>1</sup> that such novel Constitutional definition of the state opened a venue for the policies of ethnic engineering leading to, on the one hand, exclusion of certain minorities from Croatian citizenship, while on the other, enabled the limitless incorporation of all ethnic Croats regardless of their residency.<sup>2</sup> Closer scrutiny of Croatian citizenship policies, legal provisions regulating the dual nationality status within the Croatian citizenship regime and the recently enacted Strategy on the relations of Croatia with Croats abroad, reveal that from the 1990s until the present date, the Croatian state resembles in many features of Brubaker's model of the nationalizing state, being perceived as a state 'of' and 'for' a particular ethno-cultural community.<sup>3</sup>

This paper aims to provide an analytical overview of the developments of the Croatian state's relations with its ethnic compatriots abroad within the framework of Croatian citizenship. For the purpose of this paper, citizenship regime will be defined as 'the concept which encompasses a range of different legal statuses viewed in their wider political context, which are central to the exercise of civil rights, citizenship and full socio-economic membership within a particular territory'.<sup>4</sup> The trajectory of the development of this relationship will be analyzed through three sections of this paper. Firstly, the overview of the special position of the Croat ethnic community within the Constitution and the Law on Croatian Citizenship will be provided. Here, the particular accent will be on the preferential treatment of Croats regarding their dual citizenship status, and the political consequences of these provisions. The second part will move to analyze of the ongoing political debates on the scope of political rights that Croatia should grant to its ethnic compatriots abroad. Finally, the paper will analyze the implications of the recently enacted Strategy on the relations between Croatia and Croats abroad and the Law on Relations between the Republic of Croatia and Croats Abroad.

### Dual nationality, Croats abroad and the evolution of the Croatian citizenship regime

The development of Croatian kin-state policies and the regulation of dual citizenship within the Croatian citizenship regime cannot be thoroughly studied without understanding the specific political context which enabled the introduction of today's dominant ethnic conception of Croatian nationhood in all constitutive acts of the Croatian state.

During the Socialist Federative Republic of Yugoslavia, the Socialist Republic of Croatia was defined as a national state of Croats, but also as a state of Croatian Serbs and state composed of its other nations and minorities. Thus, *de facto* defining Croats and Croatian Serbs as two constitutive nations of the republic. Croatian republican citizenship was primarily assigned according to the *ius sanguinis* principle, and besides the republican citizenship, each Croatian citizen also possessed a Yugoslav federal citizenship.<sup>5</sup> Dual

<sup>1</sup> Hayden, R. 1992. Constitutional nationalism in the formerly Yugoslav Republics. *Slavic Review*, 51: 654-673.

Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. *Europe-Asia studies*, 62 (10), 1639-1660.

Verdery, K., 1989. Transnationalism, nationalism, citizenship and property: Eastern Europe since 1989. *American Ethnologist*, 25 (2), 291-306.

<sup>2</sup> Ragazzi, F. and Štiks, I., 2009. Croatian citizenship: from ethnic engineering to inclusiveness. In: R. Baubock, B. Perchinig and W. Sievers, eds. *Citizenship policies in the New Europe*. 2nd ed. Amsterdam: Amsterdam University Press, 339-363.

Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. *Europe-Asia studies*, 62 (10), 1639-1660.

<sup>3</sup> Brubaker, R. 1996. *Nationalism reframed, nationhood and the national question in the New Europe*. Cambridge: Cambridge University Press. (p. 106.)

<sup>4</sup> Shaw, J. & Štiks, I. 2010. The Europeanization of citizenship in the successor states of the Former Yugoslavia: an introduction. *CITSEE Working Paper 2010/09*. School of Law, University of Edinburgh. (p. 5.)

<sup>5</sup> For the more detailed overview of the Constitutional developments and evolution of the Croatian citizenship regime see: Ragazzi & Štiks 2009, Koska 2011 and Ragazzi, Štiks & Koska 2013.

republican citizenships were not possible within the federative citizenship regime. However, migrants from one republic to another could adjust their republican citizenship according to their residency through simple administrative procedures. Nevertheless, these migrants were rarely encouraged to do so, particularly due to the fact that within the federative citizenship regime, the republican citizenship was legally and practically more or less irrelevant and ineffective compared to the other legal statuses that citizens could have.<sup>6</sup> Hence, for the Yugoslavs it was a federative citizenship, not the republican one, from which all individual rights were derived and which ensured their equality before the law. Considering that in the case of migration, social, political and economic rights were based according to ones place of residency and not on their formal republican citizenship; many migrants did not change their citizenship status with the change of their residency. Since citizenship acquisition was regulated according to *ius sanguinis* criteria, children of these migrants did not have and in many cases were not aware of the fact that they did not have the citizenship of the republic in which they lived and in which they were born. However, what was considered as a mere bureaucratic and administrative formality during the existence of Yugoslavia, after Croatian succession for many Croatian residents it became a huge obstacle for social and political integration into the newly constituted state.

The late 1980s and early 1990s will represent the critical juncture in the development of the Croatian citizenship regime. By the end of the 1980s, as a response to the political and economic crisis in Yugoslavia the key political elites in Croatia moved toward the idea of Croatian independence and later toward state succession. However, on the eve of the first democratic elections in 1990, the republic was divided between two competing visions of the future Croatian polity.<sup>7</sup>

The ruling reformed Communist Party of Croatia – Party of Democratic Change (SKH-SDP) sought the support from more moderate segments of the Croatian public and the members of the Serb minority in Croatia by offering a more inclusive vision of the future state. They sought the establishment of the highest possible state independence, but still within the Federative structure and institutions of Yugoslavia. On the other hand, the growing nationalism in Serbia gave impetus to the emergence of the right-wing Croatian Democratic Union (HDZ) party led by its charismatic president Franjo Tuđman. HDZ aimed to mobilize public support on two political goals: firstly, HDZ argued for full Croatian independence and state secession from Yugoslavia. Secondly, it aimed to constitute the new state as a national state of the Croatian nation which will bring together the Homeland and Emigrated Croatia. In HDZ terms, Croatian nation was imagined as an exclusive community of ethnic Croats regardless of their residency. As Ragazzi<sup>8</sup> argues, these two ideas combined were utilized by HDZ's elite to mobilize an otherwise fragmented Croatian emigrant organization and to gain their support in the election campaign. Later on their support was important for financing the Croatian army and Croatia's campaign toward independence. It was at this time that the diaspora discourse was introduced as a high stakes issue into mainstream Croatian politics.

The majority electoral model enacted by the former communist elites for the first democratic elections went largely in favor of the HDZ. In the 1990 elections,<sup>9</sup> HDZ won a relative majority with 40 per cent of the votes, while SKH-SDP won 36 per cent. Nevertheless, the majority electoral formula transformed the HDZ' relative electoral victory into an almost two-thirds majority in the Croatian Parliament. Such majority enabled HDZ to promote its conception of the Croatian nation as a foundation of the key constitutive acts of the Croatian state. By the end of 1990, the newly constituted Croatian Parliament enacted the new Croatian Constitution. Within the provisions of the Constitution, Croatia was defined as 'a national state of the Croatian people and members of other nations and minorities who are its citizens'. According to such definition, the Croatian

<sup>6</sup> Medvedovic', D., 1998. Federaland republican citizenship in the former SFRY Yugoslavia at the time of its dissolution. *Croatian Critical Law Review*, 3 (1–2), 21–56.

Omejec, J., 1998. Initial citizenry of the Republic of Croatia at the time of the dissolution of legal ties with the SFRY, and acquisition and termination of Croatian citizenship. *Croatian Critical Law Review*, 3 (1–2), 99–128.

Ragazzi, F. and Štikš, I., 2009. 'Croatian citizenship: from ethnic engineering to inclusiveness'. In: R. Baubock, B. Perchinig and W. Sievers, eds. *Citizenship policies in the New Europe*. 2nd ed. Amsterdam: Amsterdam University Press, 339–363.

Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence to EU integration. *CITSEE Working Paper* 2011/15. Edinburgh: School of Law, University of Edinburgh.

<sup>7</sup> Grdešić, I. 1991. Izbori u Hrvatskoj: birači, vrijednovanja i preferencije, in *Hrvatska u izborima* 1990, 49–97, Zagreb: Naprijed.

Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence

to EU integration. *CITSEE Working Paper* 2011/15. Edinburgh: School of Law, University of Edinburgh.

<sup>8</sup> Ragazzi, F., 2009. The Croatian 'diaspora politics' of the 1990s: nationalism unbound? In: U. Brunnbauer, ed. *Transnational societies, transterritorial politics, migrations in the (post)Yugoslav area, 19th–21st centuries*. Munich: Oldenbourg Verlag, 145–168.

<sup>9</sup> Grdešić, I. 1991. Izbori u Hrvatskoj: birači, vrijednovanja i preferencije, in *Hrvatska u izborima* 1990, 49–97, Zagreb: Naprijed.

Serbs lost their previous status of being a constituting nation of the republic and became a minority. At the same time the new constitution institutionalized special obligations of the Croatian state towards its co-ethnics abroad. Namely, article 10 of the Constitution stated that the Croatian state does not belong solely to the Croats residing on Croatian territory, but that the state has constitutional obligations to provide special care and support for the members of Croatian people residing outside the Croatian territory regardless of their citizenship status.

Once the novel definition of the state was set, the second major task of the new political elites was to determine the membership criteria of the initial Croatian polity. In 1991, on the same day on which Croatia proclaimed its independence, the Croatian Parliament passed a new Law on Croatian Citizenship (LCC). As Štiks<sup>10</sup> argues, the citizenship legislation became an invaluable tool for further ethnic engineering. The LCC was founded on two main principles:<sup>11</sup> legal continuity and ethnical criteria. The first principle secured that all citizens of the former SR Croatia will be full citizens of the new state. However, the legislators were aware that within the former federative citizenship regime, many Croatian residents did not possess Croatian citizenship. To overcome this shortcoming of the legal continuity principle, the legislator implemented ethnic criteria for citizenship acquisition to LCC, according to which the criteria for the full political membership will be determined. Croatian ethnicity became important criteria for full citizenship status in two ways: firstly, with the provisions contained in art. 30 par 2 of the LCC, registered residents in Croatia who did not hold Croatian citizenship, but who could prove that they belong to the Croatian people (meaning Croatian ethnic community). They were entitled to citizenship status if they provided a written statement that they consider themselves Croats. Secondly, the ethnic criterion was also contained in art. 16, which allowed for and facilitated the naturalization of members of the Croatian people abroad. The LCC provided discretionary powers for the bureaucracy (namely to the Ministry of Interior) to determine whether an individual's claim to be of the Croatian ethnic community is valid. In the case where a person was a registered resident of Croatia, but was not an ethnic Croat he would become a legal alien and could apply for Croatian citizenship through a complex naturalization

procedure. Within this procedure, the ambivalent approach to the status of dual citizenship represented a particular obstacle for the naturalization of non-Croat residents.

Within the LCC dual citizenship was not regulated by a single direct provision of the law. Besides article 2 which states that the citizens of the Republic of Croatia who also have foreign citizenship are considered exclusively as Croatian citizens by the Government of the Republic of Croatia. Dual citizenship was regulated by the articles that determine naturalization criteria for different categories of applicants. The review of these articles reflects the ambivalent attitude of the state toward such status. While the applicants who wanted to acquire Croatian citizenship through regular naturalization procedures (non-Croats) had to renounce their former citizenship, or provide proof that such renunciation will be made following the admission to Croatian citizenship (art. 8, par 2), members of the Croatian people residing abroad and applying for Croatian citizenship through the facilitated naturalization process (art. 16) were exempt from this requirement, hence were entitled to multiple citizenship status.<sup>12</sup>

In practice, these provisions were utilized toward the realization of particular HDZ nationalist goals in the 1990s. The majority of the applicants to Croatian citizenship status according to the regular naturalization procedures were the non-Croat residents who had the republican citizenship of the other ex-SFRY republics. While in the most cases they satisfied the residency and language requirements for the admittance to Croatian citizenship, they also had to give proof of the renunciation of their previous citizenship, or to provide proof that such renunciation will be completed once they are granted Croatian citizenship. However, in the context of the violent breakup of Yugoslavia, and little or non-existent diplomatic relations between most of the newly established post-Yugoslav states (and in the case between Serbia and Croatia mutual non-recognition of the statuses followed by the violent conflict), it was clear that it was both legally and practically impossible for such applicants to meet this condition to be admitted to Croatian citizenship. On the other hand, Croatia actively promoted the incorporation of thousands of its ethnic compatriots abroad, regardless of their previous citizenship status. Such policies were most prominent in the relation to the Croats from Bosnia and

<sup>10</sup> Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. *Europe-Asia studies*, 62 (10), 1639–1660.

<sup>11</sup> Omejec, J., 1998. Initial citizenry of the Republic of Croatia at the time of the dissolution of legal ties with the SFRY, and acquisition and termination of Croatian citizenship. *Croatian Critical Law Review*, 3 (1–2), 99–128.

<sup>12</sup> Additionally, the foreign citizenship renunciation was not asked from the applicants born in Croatia with at least five years of registered residency on the date of application (art. 9), members of the Croatian emigration (art. 11), dependents of Croatian citizens (art. 10) and applicants whose naturalization represents a special interest for the Republic of Croatia (art. 12).

Herzegovina, who became the major beneficiaries of the named policies. According to the Ministry of Interior data, from 1991 till 2010, Croatia admitted 1,109,407 applicants to Croatian citizenship. From this number 678,918 applicants had BiH's citizenship at the moment of application, while 834,731 were born in BiH.<sup>13</sup> In other words, as Ragazzi argues, Croatia utilized its citizenship policies in order to establish its *de facto* sovereignty over significant portions of citizens of this republic.<sup>14</sup>

In 2011, two decades after its enactment, the largest changes were introduced to the law. Besides the introduction of the foreign citizenship renunciation criterion for the applicants born in Croatia (art 9), these changes did not alter the previously established provisions for dual citizenship. Hence, the Croatian state which is constitutionally defined as the national state of the Croatian people still presumes that ethnic Croats may express their citizen loyalties to more than one state, while the common foreigners that naturalize through regular naturalization procedures are expected to express their exclusive loyalty only to the Croatian state. Once the described citizenship constellation was set, allowing open access to Croatian citizenship to all Croats abroad, the issues regarding the scope of political rights that should be attributed to non-resident citizens emerged in the Croatian political arena.

### External voting rights and diaspora politics

In the contemporary electoral studies several ideal types of justification for electoral rights within particular countries can be identified. Bauböck<sup>15</sup> defines five such positions: traditional republican model, ethno-nationalist model, two variants of liberal democratic model and finally, a model based on the stakeholders principle. According to the traditional republican principle, both the membership in the political community (formal citizenship status) and the residency in the state should be required from the individual in order to grant him voting rights. Contrary to the traditional republican approach ethnic nationalism supports voting rights for all expatriates. However, it

also excludes all permanent residents without formal citizenship from the acquisition of voting rights. Two variants of liberal democratic counterclaims argue for more inclusive criteria for granting voting rights: on the one hand, there are the advocates of voting rights of all individuals who are subjected to the laws within a particular territory. Hence, every permanent resident on the given territory, regardless of his citizenship status, should be granted a right to vote. The more inclusive access to voting rights is advocated by the liberals supporting *what affects all shall be approved by all* principle.<sup>16</sup> Here, neither residency nor citizenship should be set as a condition for voting rights in the particular polity. This approach argues that all who are affected by the particular policies should be included in the *demos* that creates these policies. Finally, as a fifth model, Bauböck proposes a stakeholdership principle. According to this principle, both the formal citizenship status and an interest in membership that makes an individual's fundamental rights dependent on the protection by a particular polity,<sup>17</sup> should be set as a necessary conditions for determining whether a particular individual should be given voting rights in a given polity. Considering the above mentioned typology, Croatia implemented the electoral laws that fall within the ethno-nationalist principle. This was the political outcome of the novel constitutional definition of the Croatian nation that led to constitutional warranties of equal voting rights of all citizens regardless their residency (Art 45).

The first electoral law enacted following the proclamation of independence and for the purposes of Parliamentary and Presidential elections in 1992 envisioned voting rights for non-resident Croatian citizens. However, it did not foresee special parliamentary representation for 'diaspora' voters. For the 1992 parliamentary elections, the so called segmented electoral system was selected.<sup>18</sup> Within such a system, the resident citizens were allowed to vote on two lists: on the state list and on the single mandate electoral lists. In the former list, sixty seats were allocated according to the voting results on a unitary list where the country as a whole was represented as a single electoral unit. In the later, Croatia was divided into 60 (sixty) single-mandate electoral counties. Each resident citizen could cast his second vote for the electoral count of his residency. While the electoral law granted

<sup>13</sup> Data issued by Croatian Ministry of Interior in 2010. Document in authors possession.

<sup>14</sup> Ragazzi, F., 2009. The Croatian 'diaspora politics' of the 1990s: nationalism unbound? In: U. Brunnbauer, ed. *Transnational societies, transterritorial politics, migrations in the (post)Yugoslav area, 19th–21st centuries*. Munich: Oldenbourg Verlag, 165.

<sup>15</sup> Bauböck, R. 2005. Expansive citizenship-voting beyond territory and membership, *Political Science and Politics*, October 2005, 38: 683-687

<sup>16</sup> Bauböck, R. 2005. Expansive citizenship-voting beyond territory and membership, *Political Science and Politics*, October 2005, 38: 686

<sup>17</sup> Bauböck, R. 2005. Expansive citizenship-voting beyond territory and membership, *Political Science and Politics*, October 2005, 38: 686

<sup>18</sup> Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p. 19.)



non-resident citizens to vote, they were allowed to cast their ballots only on the state list, hence no special representation for these voters was foreseen. This practice was radically changed on the eve of the 1995 elections.

In 1995, following the military operation “Storm”, through which Croatia regained control over the territories formerly held by Serb rebels, the ruling HDZ convoked the early Parliamentary elections. HDZ desired to utilize its growing party support following military victory and to consolidate their position on power. On the eve of the elections the new electoral legislation was enacted.<sup>19</sup> One of the major novelties with the legislation was the introduction of the special representation of non-resident voters.<sup>20</sup> For the 1995 elections, this electorate was allocated with fixed quota of twelve representatives in Parliament, who were to be elected through the special electoral unit, from the so called “diaspora list”. Since its introduction, the diaspora list became an object of ideological disputes between the right wing and left-center political parties in Croatian politics.

Theoretical foundation for introduction of this list depends on the replacement of the territorial with the ethno national conception of citizenship.<sup>21</sup> However, Kasapović highlights additional, more problematic political arguments specific to the Croatian political context that allowed the introduction of the diaspora list. Proponents of these policies conceive diaspora voting rights as a tool for reparations for the diaspora’s historical sufferings for the Croatian cause in the past, including the diaspora’s contributions to the national economy, the emigration’s affiliate interests with Croatian politics and the diaspora’s contributions to state independence during the Homeland war.<sup>22</sup> However, such pro-diaspora voting argumentation was largely chal-

lenged by the traditional republican line of argumentation according to which a person that does not have to suffer the consequences of the policies he chooses should not be allowed to vote.<sup>23</sup>

Furthermore, the more severe opponents of the diaspora’s voting rights argue that introduction of the diaspora list in Croatia is a blatant example of electoral engineering. Till today, in five consecutive elections since 1995, all seats voted through this list went to HDZ. However, the issue that raised public attention lately, is related to the question of who are the voters who vote on these lists? As Kasapović<sup>24</sup> argues, traditional emigration expressed a very low interest for participation in Croatian elections. In practice, the Croats from Bosnia and Herzegovina formed the great majority of the total share of non-resident citizens that exercised their right to vote.<sup>25</sup> This community’s participation in Croatian election is not problematic solely because its members, nor their ancestors, have ever lived in Croatia. More problematic is the fact that the Croat community in Bosnia and Herzegovina is not a national minority in BiH, but is one of its constitutionally defined constitutive nations. Hence, it remains questionable to what extent does their participation in Croatian elections contribute to their full integration into the fragile post-Dayton Bosnian state.

Nevertheless, as these voters have developed into a stable HDZ’s constituency<sup>26</sup> it was in HDZ’s best interest to argue for the diaspora list, as much as it was in the interest of the opposition parties to argue against them.<sup>27</sup> However, due to the growing public pressure for the changes of these regulations, the changes were introduced already for the 2000 parliamentary elections. The fixed (over)representation of the diaspora was replaced with representation in propor-

<sup>19</sup> Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p.22-23.)

<sup>20</sup> It may be important to note that almost simultaneously with the enactment of the new electoral law, granting special representation for diaspora, the Parliament has suspended the provisions of the Constitutional law on human rights and minorities that granted proportional representation to the minorities with a share of total population larger than eight per cent (namely Croatian Serbs). Hence, the enactment of these laws enabled greater incorporation of Croats to Croatian body politics, while at the same time secured a greater ethnic homogenization of the representatives in the Parliament by limiting the political rights of the Serbian minority, the single largest minority group in Croatia.

<sup>21</sup> Kasapović, M. 2012. Voting rights, electoral systems, and political representation of Diaspora in Croatia. *East European Politics and Societies and Culture*, 26(4): 778.

<sup>22</sup> Kasapović, M. 2012. Voting rights, electoral systems, and political representation of Diaspora in Croatia. *East European Politics and Societies and Culture*, 26(4): 780-781.

<sup>23</sup> Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p.27.) Kasapović, M., 2010a, 2012. *Državljanstvo i biračko pravo u Hrvatskoj. Političke analize*, 2, 782.

Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence to EU integration. *CITSEE Working Paper* 2011/15. Edinburgh: School of Law, University of Edinburgh.

<sup>24</sup> Kasapović, M., 2010b. 2012. Tko i kako predstavlja ‘dijasporu’. *Političke analize*, 3, 779,780.

<sup>25</sup> In the 2007 Parliamentary elections out of total number of 90,472 voters that voted on the ‘diaspora list’ 82,226 were voters from BiH. Similarly, in the 2011 Parliamentary elections, out of 21,114 voters on this list, 16,912 were from BiH (Kasapović 2012: 779)

<sup>26</sup> Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p. 27.)

<sup>27</sup> Koska, V. 2012. 'Framing the citizenship regime within the complex triadic nexuses: the case study of Croatia', *Citizenship Studies*, 16 (3-4): 402.

tion to the electoral turnout in Croatia. The number of diaspora seats was hence calculated according to the average voting cost of the seat won on the national lists.<sup>28</sup>

Since the introduction of the proportional criteria this number was altered; in the 2000 elections the diaspora was allocated with six seats, in 2003 elections with four and in 2007 elections with five. What did not change in all elections were the electoral results that went in favor of HDZ who won all seats reserved for non-resident citizens. The debate over the diaspora representation reached its peak during the 2007 elections when it became one of the key issues during the election campaign. The debate was temporarily settled in 2010, when during the constitutional changes enacted in order to prepare for Croatia's accession to EU, HDZ and the left-center parties reached the agreement leading to the constitutionally defined fixed quota of three representatives allocated to non-resident citizens.<sup>29</sup>

### Kin state and policies toward the Croat communities abroad

Considering the named debate on the scope of political representation of diaspora, it would be misleading to conclude that Croatia is moving toward more de-ethnicized conceptions of citizenship.<sup>30</sup> While there was party cleavage on the issue of the scope of political rights that should be granted to non-resident citizens, the symbolic connection between the Homeland and the Croats abroad remained indisputable value for all political parties, regardless their position on the political spectrum.

This stability of ethnic principles on which the Croatian nation is conceived and according to which the state is 'owned' by the members of the transnational ethnic community has been manifest in a number of elements: firstly, in the unaltered provisions of the Law on Croatian Citizenship. In 2011, two decades after the enactment of the first citizenship legislation, the Croatian Parliament enacted the largest changes to its citizenship legislation. However, besides the administrative and technical details, the key foundation

of citizenship remained unchanged: the *ius sanguinis* remains the primary principle for citizenship acquisition, while the naturalization provisions privileges non-resident Croats compared to the non-Croat residents.<sup>31</sup>

Secondly, on 5th May 2011, the Croatian Government announced the Strategy on relations of the Republic of Croatia with Croats outside the Republic of Croatia. The Strategy symbolically and legally reinforces a special bond between Croatia and Croats abroad by obliging the state to get actively involved in the protection of the non-resident Croat communities but also the promotion of the Croatian strategic interests through these communities.<sup>32</sup> However, the language of the Strategy and later enacted Law on Relations between the Republic of Croatia and Croats Abroad emphasizes the state's obligation to the ethnic Croats abroad, not merely to the non-resident Croatian citizens. Furthermore, in order to avoid the conceptual blurriness associated with the previous usage of the single term diaspora, the Strategy introduces a more nuanced differentiation of the Croat communities abroad and assigns specific strategic approach to each of these categories. For the regulation of future relations of Croatia with its ethnic-kin communities abroad, three categories of these communities have been defined.<sup>33</sup>

The first category that the Strategy recognizes is the Croatian community in BiH (2011:5). Since Croats represent one of the constitutive nations of this multinational federation, the Strategy declares that Croatia's strategic interest is to support the integration, stay and return of the members of this community to BiH. Through its actions in international politics and through bilateral relations with BiH, Croatia has to act in a manner to secure, promote and protect equal status for Croats in the federation. The second category of Croats abroad is formed of Croat communities that are national minorities

<sup>31</sup> The law introduced more specific procedures for determining applicants' membership in the Croat ethnic community and/or genuine connection to Croatian emigration. However, the greatest restrictions to naturalization are introduced for regular immigrants with permanent stay. For a more detailed overview of the recent amendments on Croatian citizenship legislation see Ragazzi, Štikš, & V. Koska (2013).

<sup>32</sup> Vlada RH, 2011:3. *Strategija o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske*. (Strategy on relations of the Republic of Croatia with the Croats outside of the Republic of Croatia). Available at <http://www.mfa.hr/custom-pages/static/hrv/files/110509-Strategija-prema-Hrvatima-izvan-RH.pdf>

<sup>33</sup> Vlada RH, 2011:1, 4-11. *Strategija o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske*. (Strategy on relations of the Republic of Croatia with the Croats outside of the Republic of Croatia). Available at <http://www.mfa.hr/custom-pages/static/hrv/files/110509-Strategija-prema-Hrvatima-izvan-RH.pdf>

<sup>28</sup> According to this rule, the number of total diaspora voters that voted in elections was divided with the number of voters needed for winning the single mandate on national list. The given number represented the number of seats that will be allocated to diaspora (Zakošek 2002: 24-25).

<sup>29</sup> For further information on the Croatian elections and external citizens voting rights see Zakošek 2002, Ragazzi 2009, Kasapović 2010a, 2010b, 2012, Koska 2011, 2012, Ragazzi & Balalovska 2011.

<sup>30</sup> Koska, V. 2012. 'Framing the citizenship regime within the complex triadic nexuses: the case study of Croatia', *Citizenship Studies*, 16 (3-4): 404.

in other European states (2011:5). Croatia has to secure and promote their minority rights in their countries of residence. Croatia expects that these countries will grant Croat minorities the same minority protection and rights that Croatia grants to constitutionally recognize national minorities on its territory. The last category of Croats abroad is the Croatian emigration and the descendants of Croatian emigrants in transoceanic and European countries (2011:6). The Strategy defines that Croatian strategic interest is to establish and preserve special cultural, political and economic connections with its emigration, to provide support to Croats in the economically and politically unstable countries, and furthermore, to promote and provide support to their repatriation and integration into Croatian society.

The radical novelty announced with the Strategy (2011:6) and the Law on Relations between the Republic of Croatia and Croats Abroad (art 37) is the introduction of the legal status of 'Croat without Croatian citizenship' from which certain cultural, social and economic rights will be derived. This measure should allow special rights for the Croats who had to forfeit their Croatian citizenship during their naturalization to the countries which do not recognize dual citizenships. Furthermore, the Law foresees the establishment of a special institutional framework for promotion of the interests of non-resident Croats (art. 12, art. 16). This framework will consist of the newly established institutions, such as Special state office for the Croats abroad, Governments Council for the Croats Abroad, and Parliamentary committee for Croats abroad. In addition, the ministries of foreign affairs, interior, science, education, sport, culture, economy, health, social welfare, tourism, regional development and finance together with the Croatian Heritage Foundation and other relevant institutions will be actively involved in the creation and implementation of the Croatian policies for Croats abroad.

While these laws openly emphasize the ethnic foundations of the Croatian state, they also enable the state to utilize citizenship related policies as devices for the promotion of Croatia's particular regional and international interests. The strategy presupposes the existence of the homogeneous Croatian ethnic communities, whose group status, rights and interests Croatia has to promote and protect. Thus, it delegates to the Croatian state a two-fold authority over the Croatian communities abroad: Croatia reserves the right to determine what constitutes the best interest of a particular Croat community abroad, and consequently it is Croatia that defines whether these interests are adequately protected by its host states. In the long run such provisions equip Croatia with a venue through which the

discourse on Croat communities abroad can be rhetorically utilized for putting pressure on and possible diplomatic interventions in the internal affairs of the neighboring states. Such interventions may be legitimate acts of the state to promote the cultural identity and the rights of its compatriots, but they also have a potential for the manipulative interventionist actions within the regional political arena.

Additionally, the Strategy's accent on state responsibilities towards co-ethnics abroad clearly creates a hierarchy of Croatia's obligations towards different categories of non-resident citizens. The Strategy completely omits consideration (as the outcomes of the wars in the 1990s) that there are dozens of thousands of the former Serb refugees abroad. Not all of them migrated to the neighboring republics; some sought protection in the other European or transoceanic countries. All these migrants technically form a new non-ethnic Croatian diaspora, which is entitled to a number of rights that stem from their citizenship status. Furthermore, considering that they used to live in Croatia and still have numerous unresolved status issues with the state, in Bauböck's<sup>34</sup> term, they certainly may have stronger normative stake *vis a vis* the Croatian state than, for example, third generation descendants of traditional Croatian emigration. Also, the Strategy does not mention whether the legal status of the 'Croat without Croatian citizenship' may be attributed to the former non-Croat Croatian citizens, who had to forfeit Croatian citizenship in the countries that do not recognize multiple citizenships, equally as it is attributed to Croats in the same position in their host state.

Clearly, the Strategy stretches the meaning of the membership to the political community beyond the territorial borders and beyond the formal citizenship status. Nevertheless, it does not happen by invoking universal personhood as the ground for rights that would stem from the trans-border citizenship, or as post-national theories<sup>35</sup> claim, beyond or besides it. Rather, the particularistic and exclusive membership in the trans-generational, ethnic community is perceived to be the primary source of the cultural identification with, membership in and representation of the state. Through such measures Croatia continues to perceive itself more as an 'ethnic' than 'civic' state, as it is highlighted in the particular wording of the Strategy:

<sup>34</sup> Bauböck, R. 2005. 'Expansive citizenship-voting beyond territory and membership', *Political Science and Politics*, October 2005, 38: 683-687

<sup>35</sup> Soysal, Y. (1994) *Limits of Citizenship*, Chicago, IL: University of Chicago Press.  
Jacobson, D. (1996) *Rights Across Borders. Immigration and the Decline of Citizenship*. Baltimore: Johns Hopkins University Press.  
Bosniak, L. 2000. 'Citizenship Denationalized', *Indiana Journal of Global Law Studies*, Vol. 7: 447-509

Croats outside the Republic of Croatia are the most natural social and cultural elements in the promotion and international affirmation of Croatian society and culture on the European and world level.<sup>36</sup>

### Conclusion

The overview of the first two decades of the development of the Croatian citizenship regime reveals that the relationship between Croatia and its ethnic kin abroad played a crucial role in the construction of today's predominant understanding of the Croatian nation as a transnational ethnic community. By being reinforced in the key constitutional documents, further developed in preferential treatment of Croats in naturalization procedures, and finally in setting the special administrative bodies and institutions for regulating the policies towards the Croats abroad, the discourse of the Croatian state as a guardian of ethnic Croats regardless of their residence remains a tool which can be easily utilized by political elites for the various political outcomes.

As this paper presented, during the 1990s it was utilized by nationalist elites in order to promote greater national homogenization during the process of the consolidation of the new state. In the later stage, the issue of voting rights of non-resident Croats became an object of disputes between left and right for both symbolic and instrumental reasons. However, such disputes never challenged the preferential treatments that ethnic Croats should have in naturalization procedures or in special protection on behalf of the state. Finally, even though its salience in the political arena depends on the particular social, economic and political conditions at a given time in Croatia, with its institutionalization through the Strategy and the Law on Relations between the Republic of Croatia and Croats Abroad, the discourse on state obligations towards the Croats abroad will remain at the disposition for future Croatian elites either for the struggles over symbolic politics in domestic, or greater interventions in the regional political arena. How will these policies develop (whether they will continue to lose salience for the Croatian public and move Croatia more to the de-ethnicized conceptions of nationhood, or will the ethnic aspect of Croatian nationhood further be reinforced) following the Croatian accession to EU after 1<sup>st</sup> July 2013, remains to be seen.

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*Sulyok Márton*

## Priorities for Kin-State Policies within Constitutions<sup>1</sup>

When discussing the priorities for Hungarian kin-state policy, the following will first be addressed. Before we begin to map out the key issues underlying the relation of constitutional values and kin-state policy trends, we will first and foremost say a few words about the importance and actual meaning of kin-state policy. How should we interpret kin-state policy within a definitive inquiry focused on constitutional values that are present in fundamental laws?<sup>2</sup>

Let me evoke the thoughts of my paternal ancestor, Ignác Kuncz, who – in 1902, disserting about the likeness of nation-states – wrote that *the nation is the active collective subject of the state in thought, will and act*.<sup>3</sup> Obviously, the directions of the academic discourse have significantly changed since the appearance of nation states doctrine in the work of the Council of Europe, but, nonetheless, I assert *that kin-state policy as reflected by modern nation-concepts is indeed a reflection of thought, will and act*, all implemented by the constitutional legislator. (Moreover, kin-state policies will formulate *reflections on the cultural reality that the concept of nation designates*.<sup>4</sup>)

<sup>1</sup> This paper is the written *summary of the main conclusions* of a talk presented at the round-table “Hungary and Hungarian Kin-State Policy” on the Trends and Directions of Kin-State Policies in Europe and Across the Globe international conference (September 28th 2012, Budapest, Magyarság Háza).

<sup>2</sup> The Fundamental Law of Hungary sets forth in its Preamble (National Avowal) that the nation is the fundamental, principal framework for the community, and its most important cohesive values are fidelity, faith, and love.

<sup>3</sup> Original in Hungarian: “A nemzet az *activ államalany gondolatban, akaratban és tettben*.” Ignác Kuncz: *A nemzetállam tankönyve*, Stein János M. Kir. Könyvkereskedése, Cluj-Napoca, 1902, 4. As an analogy, we will mention Jakab’s argument referring to Brubaker in *Defining the Borders of the Political Community – Constitutional Visions of the Nation*, where he cites that the category of nation structures perception, informs thought and organizes political action. (p. 1.) (The paper is available in the SSRN Working Paper Series, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2045648](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045648))

<sup>4</sup> Council of Europe Parliamentary Assembly (PACE) Recommendation 1735 (2006) The concept of “nation”, Article 6. <http://assembly.coe.int/ASP/Doc/Xref-ViewHTML.asp?FileID=17407&Language=EN>