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Montenegro's Minorities in the Tangles of Citizenship, Participation, and Access to Rights

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This paper examines the relationship between citizenship, participation, cultural and socio-economic rights of minorities in Montenegro by focusing on the divergence between policies and their implementation. Taking an interdisciplinary approach, it combines insights from law with ones from social and political studies. The paper is divided into three sequential analytical sections. The first section focuses on the definition of minorities in Montenegro, examining the relation between the status of minority and citizenship. The second section relates the previously analyzed concepts of citizenship and minority to representation and participation. It seeks to examine electoral legislation within the framework of 'authentic representation' of minorities, enshrined in the 2007 Constitution of Montenegro. The final section assesses minority access to cultural (group) and socio-economic (individual) rights. The section brings forward the argument that, despite the existing legal guarantees, many of these rights are too complex to realize in practice, particularly those related to language and education in one's own language.

Keywords: Montenegro, minorities, citizenship, rights, status, language, Roma

With the burgeoning of states in post-communist Europe, matters of status, access, participation and membership became key elements of state- and nation-building. The interplay of these socio-political processes in transitional contexts often placed minorities in positions which limited the full exercise of their rights. Different political environments, particularly in the Balkans, generated different policies towards minority groups. In light of this, the aim of this article is to examine the relationship between citizenship, participation and representation, and cultural and socio-economic rights of minorities in Montenegro. It argues that the inadequate minority protection in Montenegro emerges both from inconsistent legislation and the

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socio-political context in the country which represents an obstacle to the implementation of minority rights guarantees.

The appeal to minorities was crucial in the quest for Montenegrin independence, and has induced the ‘instrumentalisation of minorities’ by the pro-independence camp (Bieber, 2003). The minority-oriented platform, which the camp led by the Democratic Party of Socialists (Demokratska Partija Socijalista, DPS) adopted after the party split in 1997, was intended to attract minority votes. This platform of the pro-independence camp served as the setting stone in establishing the constitutional and legal frameworks for minority protection in Montenegro after the country became independent in 2006. However, minority rights are still a contested issue in Montenegro due to a number of inconsistent and conflicting legal provisions and the uneven implementation of laws.

The issues of status and definition of minorities have undergone three stages in Montenegro. After the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY), Montenegro became part of the Federal Republic of Yugoslavia (FRY, composed of Serbia and Montenegro). From the adoption of the 1992 Constitution until September 1997, the designation used for minorities in Montenegro was ‘national and ethnic minorities’ (*nacionalne i etničke manjine*). The second stage in Montenegro’s definition of minorities lasted from September 1997, when the Montenegrin parliamentary parties ratified a document on the position of minorities¹, until the adoption of the Law on Minority Rights and Freedoms (*Zakon o manjinskim pravima i slobodama*) in May 2006. The 1997 Agreement on the Minimum Principles for the Establishment of a Democratic Infrastructure in Montenegro (*Sporazum o minimumu principa za razvoj demokratske infrastrukture u Crnoj Gori*) referred to autochthonous minorities as ‘minority peoples’ (*manjinski narodi*), a term that encompassed Albanians, Bosniaks, Croats and Muslims.² Changes in minority legislation were caused by the 1997 split of the ruling DPS, which subsequently prompted the political polarization of Montenegrin politics into pro-Milošević and anti-Milošević camps, or, after 2000, into pro-independence and pro-union blocs (Morrison, 2009; Bieber, 2002; Bieber, 2003; Šístek and Dimitrovová, 2003). The third stage in framing minority definition and status was initiated shortly before the 2006 referendum on independence, as a consequence of efforts by the ruling coalition to attract minority votes.³ The term ‘minority’ (*manjina*) used in the 2006 Law on Minority Rights and Freedoms includes ‘autochthonous, numerically inferior minority

groups, national minorities, ethnic minorities and their representatives' (Article 1). The novelty is that 'minority' (*manjina*) no longer includes only the non-Christian Orthodox population or autochthonous minorities, but also Serbs, Roma, and other people not covered by earlier definitions of 'minority'.⁴

In order to analyse minority rights in Montenegro, this paper combines insights from law with ones from social and political research. It is divided into three sections, which complement one another. The first section focuses on the definition of minorities in Montenegro, in light of academic debates on the relationship between the status of minority and citizenship. The inextricability of the two concepts in Montenegro generated a situation whereby a significant portion of non-citizens (particularly Roma) were unable to exercise their rights. The second section relates these concepts of citizenship and minority to participation and representation. It seeks to view electoral legislation within the framework of 'authentic representation' of minorities enshrined in the 2007 Constitution of Montenegro. The same section looks at minority groups in the Parliament of Montenegro, in the context of the claim that the distinct representation of minority groups is a reflection of their relative political power at the time of the debate over Montenegrin statehood and nationhood. The final section examines minority access to cultural (group) and socio-economic (individual) rights enshrined in the 2006 Law on Minority Rights and Freedoms. Despite the legal guarantees, many of these rights (e.g. employment, language and education in one's own language) are too complex to realize in practice due to a combination of factors that include not only those aspects of minority rights that are dependent on minorities' political influence, but also the broader socio-economic context.

1. The Inextricability of Citizenship and Minority Status in Montenegro

There is no universally accepted definition of 'minority' in international law. One of the major points of contestation in this respect has been whether a minority needs to possess citizenship of the state of residence. Capotorti (1991) and Deschênes (1985) maintain that the status of minority is conditional on citizenship, while non-citizens are protected under the general norms of international public law. By contrast, Tomuschat (1983), Nowak (1995) and Eide (1993) claim that the development of the United Nations' instruments for the protection of human rights induced a shift in the concept of minority, and that definition is thus no longer attached to the status of

citizenship. Rather, minority rights have developed under the framework of Article 27 of the International Covenant on Civil and Political Rights (ICCPR) to include rights of foreigners and non-citizens (Human Rights Committee, 1994).

These conflicting views on the relationship between the status of citizenship and the definition of minorities are also mirrored in Montenegrin law and society, where they create two tensions that serve as an obstacle to some groups' exercise of minority rights. The first is a conflict of norms, which reflects the inconsistency between the definitions of minority and citizenship in the 2006 Law on Minority Rights and Freedoms and in the 2007 Constitution. The second, which originates from the norm conflict, is the inconsistent implementation of the definition of a 'minority', which has had an adverse effect on the Roma population in particular.

1.1. Conflict of Norms

The 2006 Law on Minority Rights and Freedoms establishes a direct link between citizenship and minorities. Pursuant to Article 2 of the Law, a 'minority' is defined as:

A group of citizens of Montenegro, fewer in number than the prevailing population, who have common ethnic, religious, or linguistic characteristics, different from the remaining population, who are historically connected to Montenegro and who are motivated by the desire to preserve national, ethnic, cultural, linguistic and religious identity.

Yet, the inextricability between 'citizenship' and minority status in Montenegro collides with the international association of minority rights with the overall concept of human rights and not the rights of citizens (CoE, 2008: 9).

The situation of Montenegro's minorities has become ever more complex after the 2006 referendum on independence. The 2007 Constitution and the 2008 Citizenship Act changed the definition of 'citizenship'. Namely, when Montenegro was part of different legal and constitutional orders, the term 'citizen' had two different connotations. It denoted both the relationship between individuals and the republic of Montenegro (*državljanin*), and the relationship between Montenegro and the citizen (*državljanin*) of Serbia⁵ residing in Montenegro (*građanin*).

The attachment of minority rights to the term '*državljanin*' in the 2006 Law on Minority Rights and Freedoms excluded those citizens who, at the time of independence resided on the territory of Montenegro, but who were not formally in possession of Montenegrin citizenship (*građani*). The Register of Electors contains approximately 25,000 Serbian citizens residing in Montenegro (OSCE, 2008), in

addition to another 16,364 of displaced persons and internally displaced persons (IDPs)⁶ who still do not have Montenegrin citizenship (UNHCR, 2011). The issue of citizenship of these groups is related to the voting arithmetic in Montenegro, which the ruling elites seek to preserve by preventing an influx of pro-Serb votes (Džankić, 2010).

In contrast to the 2006 Law on Minority Rights and Freedoms, the 2007 Constitution of Montenegro makes no explicit link between citizenship (*državljanstvo*) and the status of minority. The Preamble to the Constitution makes reference to ‘free and equal citizens (*građani*), representatives of peoples and national minorities living in Montenegro: Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats and others’. If the 2007 Constitution is compared to the 2006 Law on Minority Rights and Freedoms, the underlying conclusion is that there has been a departure from the link between the status of citizenship and the guarantees of minority rights. The Constitution stipulates a general prohibition of discrimination, which is not related to the citizenship status (*državljanstvo*). Yet, after the adoption of the Constitution, the Law on Minority Rights and Freedoms was not amended to provide a more comprehensive framework for the protection of minority rights.

1.2. Implementation Issues

As discussed, the status of minority in Montenegro presupposes citizenship, and thus the exercise of minority rights should be inextricable from citizenship. Yet there is a conflict between this norm and its implementation in the context of defining minorities. The official definition of minority groups is based on the census data, which represent the overall population of Montenegro, including citizens, aliens, non-citizens and stateless people. Hence, defining a group as a minority may include its members who reside in the territory of Montenegro but are not in possession of Montenegrin citizenship. However, if any of the group’s members should wish to exercise his or her minority rights, they are required to be citizens of Montenegro. This has resulted in a paradoxical situation for the Roma, Ashkali and Egyptian (RAE) communities, who formed 0.5% of Montenegro’s population in the 2003 census (Monstat, 2003).⁷ As these census results were used at the time of adoption of the 2007 Constitution, RAE communities were not listed in the preamble but were instead included in the definition of ‘others’. By 2011, the RAE population had increased to 1.34%, exceeding the number of Croats in Montenegro by 35% (Monstat,

2011), who are mentioned in the Montenegrin Constitution. Yet the census does not differentiate between the population possessing and not possessing Montenegrin citizenship, which makes the factual definition of who the minority groups are quite contested.

2. The Unwieldy Issues of Participation and Representation of Minorities in Montenegro

Similar to the definition of minority, participation and representation of minorities have also been marked by tensions between conflicting norms and inconsistent implementation. The point of origin of these tensions has been the political context of Montenegro, marked by the divide over statehood and identity. Consequently, until November 2011 the Constitution of Montenegro was not harmonized with election legislation. The main point of contention was minority representation, which is significant in the context of Montenegro where no ethnic group forms a numerical majority (Monstat, 2011). Although the recent change to the election legislation has brought minority rights closer to their constitutional guarantees, elections that are in line with the new legislation will not take place until late 2012. Until then, the current minority representation dating from the pre-referendum period remains in place, offering insufficient guarantees for minority representation.

2.1. Conflict of Norms

When the 2007 Constitution of Montenegro was adopted, its main goal was to placate the members of different ethnic, national and political groups. As such, it created legal guarantees for the establishment of a multiethnic environment. The Constitution identified ‘nationalities’ and ‘national minorities’ in Montenegro as ‘Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats, and others, loyal to a civic and democratic Montenegro’. Article 79 of the Constitution envisaged the protection of human and minority rights (para. 1), ‘authentic representation’ of minorities in the Parliament of Montenegro (para. 1, pt. 9) and other institutions of local administration where minorities form a significant portion of the population, and ‘proportional representation’ in public service and local self-government (para 1, pt. 10).

The latter provision sparked a debate in Montenegro over how to define ‘authentic representation’, which is different from ‘proportional representation’. ‘Authentic representation’ of minorities is not legally defined as proportional

representation in the country's parliament. At the time of the adoption of the Constitution, the legislator deliberately refrained from relating this concept to proportional representation because of the respective share of different minorities, particularly Serbs, within the overall population. Hence, the main question that emerged was whether or not 'authentic representation' meant representation by parties representing national identities, or whether it implied that minorities could 'authentically' be represented through non-ethnic parties as well.

Until the recent changes, the election legislation that was in place since 2004 was in conflict with the Constitution in terms of regulating the political representation of different minority groups, as special rights were only in place for representatives of the Albanian minority. As will be discussed further, special representation for the Albanian minority was introduced as a package of political reforms in 1998, which aimed to attract this minority's support to the ruling coalition. Due to the plurality of ethnic groups in Montenegro, of which Albanians are not the largest⁸, these rules were the subject of political negotiations that were ongoing for over five years after the country became independent.

As a result of the 2011 Amendments and Addenda to the Law on the Election of Representatives and Deputies (*Izmjene i dopune zakona o izboru odbornika i poslanika*), the rules applying to the Albanian community were substituted by equivalent provisions related to 'minority people or minority community' (Articles 36, 43 and 94). As a consequence, representatives of minorities do not need to reach the 3% threshold to enter the Parliament of Montenegro (Article 94). Rather, according to the amended Article 94 of the Election Law, should minority parties not reach the 3% threshold individually, they may opt to join their votes to a collective list that would then ensure up to three mandates, providing that each individual minority party wins 0.7% of votes. Paragraph 2 (pt. 2) of the same article establishes special rules for the Croat minority in Montenegro, which is numerically inferior to other minority communities. Should all election lists of the Croat minority fail to reach 0.7%, the most successful one will be granted one mandate, provided it reaches 0.35% of the vote (Article 94). This provision aims to ensure political representation of the Croat minority.⁹

The package of changes adopted in November 2011 was largely induced by the condition to harmonize election legislation with the Constitution that the European Union (EU) imposed on Montenegro prior to the opening of accession negotiations

(European Commission, 2010). Yet, although some compromise was reached with the adoption of the new Election Code, the issue of ‘authentic representation’ still lingers.

2.2. The Current Minority Representation in Montenegro

Serbs are the largest minority group in Montenegro, accounting for 28.73% of the state’s population (Monstat, 2011). Consequently, political representatives of Serbs in Montenegro maintain that the Serb population should be given the status of a constituent people (YIHR, 2010: 19). Before 2006, this was the political camp that supported preservation of the common state and thus represented people who identified themselves as Serb.¹⁰ Apart from the Socialist People’s Party (SNP), it also contained minor parties that placed greater emphasis on the ‘Serb’ identity of Montenegrins, such as the People’s Party (*Narodna Stranka*, NS), Serb People’s Party (*Srpska Narodna Stranka*, SNS), Serb Radical Party (*Srpska Radikalna Stranka*, SRS)¹¹, who established the Serb List (*Srpska Lista*, SL) coalition after the referendum. After the September 2006 elections, the former unionist camp initially fragmented into two major opposition players of almost equal strength, the SNP and the SL. From 2006, the SNP—the former leader of the unionist camp and previously the main opposition player—revised its political agenda and profiled itself as a civic party. Hence, the SNP is not a representative of the Serb people in Montenegro *stricto sensu*. In 2006, the SNP lost some of its support to the SL, which sought to present itself as the representative of the Serbian people in Montenegro. In the first years of its parliamentary existence, the SL was faced with internal tensions over whether Serbs should be a minority in Montenegro, and thereby entitled to special representation in parliament, or a constituent people, whose rights would be guaranteed through consociation. As a result of these overlapping tensions and the desire of some of the SL leadership to reform the coalition into a more civic political player, a faction detached to form the Serbian People’s List (*Srpska Narodna Lista*, SNL). The remnant of the SL transformed into New Serb Democracy (*Nova Srpska Demokratija*, Nova). Nova was supported by 9.3% of the electorate in 2009, compared to 14.68% of support for the SL in 2006. Hence Nova won eight mandates, four down from those previously held by the SL.

Other second major minority groups in Montenegro are Bosniaks and Muslims, which form 8.65% and 3.31% of the population, respectively (Monstat, 2011). In the 1991 census, in which only the ethnic category of Muslim was

available¹², the share of the community in Montenegro was 14.6%. The census data of 2003 and 2011 indicate that there was a polarization in the corpus of people who defined themselves as Muslims in the early 1990s.¹³ The population was divided into Bosniaks (7.8%) and Muslims (4.0%), as a result of the split in this group's intellectual circles over the issues of national identity and cultural heritage (see Dimitrovová, 2001). At the beginning of the 1990s, when the undivided DPS sided with the regime in Belgrade during the war in Bosnia, most of the Bosniaks and Muslims supported their ethnic Party of Democratic Action (*Stranka Demokratske Akcije*, SDA), a sister party of the main Bosniak national party in Bosnia and Herzegovina. A share of Muslim votes was also directed towards, and went to, the pro-independence, anti-war SDP and LSCG. The united DPS was never able to attract minority votes, owing to its involvement in the former Yugoslav conflicts, which in Montenegro included the kidnapping and deportation of 18 Bosniaks/Muslims and one Croat in 1993 (Šístek and Dimitrovová, 2003: 159-170). In fact, when the leaders of SDA were arrested in 1993, SDA's votes scattered to minor International Democratic Union (*Internacionalna Demokratska Unija*, IDU), Bosniak Democratic Alliance (*Bošnjački Demokratski Savez*, BMS) and Party of National Equality (*Stranka Nacionalne Ravnopravnosti*, SNR). In February 2006, these parties merged into the Bosniak Party (*Bošnjačka Stranka*, BS). After the 2006 elections, the BS held two seats (out of three) in coalition with the Liberal Party (*Liberalna Partija*, LP). In 2009, the BS became a member of the DPS-led coalition and currently holds one seat in parliament. The reason why the ethnic parties of Bosniaks and Muslims do not attract as many votes is that a large number of them vote for the SDP and the DPS, respectively.

The Albanian minority in Montenegro is represented both independently, and through coalitions. Ethnic Albanian parties—Democratic Union of Albanians (*Demokratska Unija Albanaca*, DUA/*Unioni Demokratik i Shqiptarëve*, UDSH), Democratic Alliance in Montenegro (*Demokratski Savez u Crnoj Gori*, DSCG/*Lidhja Demokratike në Mal të Zi*, LDMZ) and the new Albanian Alternative (*Albanska Alternativa*, AA/*Alternativa Shqiptare*)—all hold one seat each. The Albanians in Montenegro are mostly situated in areas bordering either Albania or Kosovo (Monstat, 2011). At the time of the Yugoslav break-up, there was only one Albanian party in Montenegro: the Democratic Alliance in Montenegro (DSCG/LDMZ), founded in September 1990 in order to 'protect the interests of ethnic Albanians at a

time of rising Serb nationalism and ethnic tensions' (Šístek and Dimitrovová, 2003: 170). DSCG/LDMZ ran alone in the 1992 electoral race and failed to reach the threshold for entering the Montenegrin Parliament (CDT, 1992). Six years after the creation of the DSCG/LDMZ, the Democratic Union of Albanians (DUA/UDSH) was established in Montenegro as an offshoot of Ibrahim Rugova's Democratic League of Kosovo (*Lidhja Demokratike e Kosovës*, LDK) in Kosovo. The 1998 political compromise which brought the Albanians closer to Đukanović's camp, and also attracted some Albanians to vote for the DPS, guaranteed this minority five seats in the republic's assembly. Ever since, Albanian parties have exercised their minority rights through the institutional framework of Montenegro, obtaining ministerial positions and special provisions which have remained in place until now.

The Croat population of Montenegro is rather small (1.1% in 1991; 1% in 2003; 0.97% in 2011), and concentrated in the southwest part of the Bay of Kotor, bordering Croatia. Similar to the Albanian, Bosniak and Muslim minorities, prior to Đukanović's reorientation against the regime in Belgrade, they mostly supported the LSCG and SDP. Given the involvement of Montenegrin soldiers in the attacks against Dubrovnik, followed by the large influx of ethnic Serbs from Croatia and Bosnia in the coastal areas of Montenegro, the societal position of this minority was somewhat tense, although no large-scale incidents occurred (Šístek and Dimitrovová, 2003: 170). Since 1997, the DPS improved relations with Croatia, reaching out to the Croat minority in Montenegro which did not have political representation until the establishment of the Croatian Civic Initiative (*Hrvatska Građanska Inicijativa*, HGI) in 2002. Yet, due to the inexistence of separate electoral rules that would guarantee political representation to Croats in Montenegro, this numerically small minority would not reach the 3% threshold necessary for parliamentary representation on its own. Consequently, owing to its support to the DPS/SDP coalitions in the 2006 and 2009 elections, the HGI holds one seat in the Parliament of Montenegro, which was given to the party as part of the pre-election coalition agreement. Croat support to the governing coalition has also yielded special rules for this minority in the recently amended election code.

3. Minority Access to Group and Individual Rights

Minority laws do not exist in a vacuum, but are shaped by and implemented in circumstances that are unique to every state. Hence it is important to understand not only the legal and political environments in which minority rights are shaped, but also the socio-economic context in which they are exercised. The former relies on the size and political power of different minorities as a guarantee that minority rights will be enshrined in laws and applied in practice. The latter affects the implementation of minority rights in that it may be either favourable or unfavourable to the exercise of socio-economic rights, and minority rights in the context of the latter.¹⁴ The conflicting norms and the socio-political context in which they are implemented create a number of difficulties for the adequate protection of minorities in Montenegro, which is most manifest in cases related to the use of language and employment.

3.1. Ensuring Linguistic Representation: A Cumbersome Task

As a member state of the Council of Europe, Montenegro is party to a number of instruments aimed at ensuring linguistic representation for different minorities. The 2007 Constitution lists the Montenegrin language as the official language of Montenegro, while Bosnian, Croatian, Serbian and Albanian are languages in ‘official use’ (Article 13).¹⁵ The Constitution further stipulates that the languages in ‘official use’ are those of groups that form at least 1% of the population of Montenegro, as per the 2003 population census.

Similar to the provisions relating to the representation of minorities, the use of languages has been narrowed down in procedural and substantive laws, whereby the status of minority languages depends upon the territory where the minority forms a majority, or a substantial share of the population. This is particularly relevant for procedural legislation, whereby a minority language is official if used in the administration of that municipality. For instance, in Tuzi (a part of the Capital Municipality of Podgorica, where the Albanian population makes up 60% of the overall population), Albanian is recognized as an official language. In municipalities where minorities live in significant numbers, there are also similar provisions related to language. In the Plav and Ulcinj municipalities, where the Albanian population makes up 19.7% and 72.1% of the population respectively, the Albanian language is

also in official use. In the Plav municipality, where the share of the Bosniak and Muslim population combined exceeds 55%, there are provisions for administrative use of Bosnian.

Table 1. Ethnic structure of Montenegro in 2011 (by municipality). Source: Monstat (2011)

	Monte-negrin %	Serb%	Albanian %	Bosniak %	Muslim %	Croat %	Roma %	Egyptian %
Andrijevića	32.46	61.86	0.02	0	0.14	0.04	0	0
Bar	46.50	25.34	5.98	5.12	7.70	0.60	0.48	0.08
Berane	26.02	42.96	0.21	17.72	5.75	0.12	1.56	0.5
Bijelo Polje	19.13	35.96	0.12	27.34	13.00	0.09	0.73	0
Budva	48.19	37.71	0.52	0.43	0.59	0.87	0.17	0.75
Cetinje	90.54	4.36	0.23	0.02	0.07	0.25	0.58	0
Danilovgrad	64.19	27.07	0.44	0.09	0.21	0.30	0.15	0.01
Herceg Novi	33.68	48.89	0.13	0.24	0.52	2.14	0.84	0.09
Kolašin	57.42	35.75	0	0	0.21	0.08	0	0
Kotor	48.88	30.57	0.45	0.13	0.28	6.87	0.33	0.28
Mojkovac	59.12	35.47	0	0.09	0.05	0.02	0.19	0
Nikšić	63.70	25.31	0.10	0.27	0.58	0.21	0.67	0.62
Plav	6.27	16.01	18.88	51.9	5.55	0.04	0	0
Pljevlja	24.34	57.07	0.06	6.91	5.65	0.05	0.04	0
Plužine	27.79	65.55	0	0	0	0.06	0	0
Podgorica	57.35	23.26	5.13	1.98	2.22	0.36	2.14	0.37
Rožaje	1.75	3.58	5.04	83.91	4.55	0.03	0	0.32
Savnik	53.82	42.42	0	0	0.1	0.05	0	0
Tivat	33.25	31.61	0.69	0.68	0.81	16.42	0.25	2.39
Ulcinj	12.44	5.75	70.66	2.25	3.87	0.23	0.8	0.37
Žabljak	50.43	41.30	0	0	0.11	0.06	0	0
Montenegro	44.98	28.73	4.91	8.65	3.31	0.97	1.01	0.33

As the demographic picture of Montenegro is very diverse (illustrated by Table 1 above), many of the municipalities do not have provisions similar to those in force in Tuzi, Plav and Ulcinj. According to the Montenegrin government's Strategy for the Development of Minorities (2008: 12-14), the organizational structure of the administration 'has not defined the authorities which will conduct such proceedings in line with law in different parts of Montenegro'. Yet, in criminal law and civic disputes, the courts are bound to inform the parties, when these are minority representatives, of the opportunity to use one's own language in the proceedings. So far, there is no official data as to how many proceedings were conducted in minority languages. This is mostly due to the fact that the determination of the conduct of

proceedings in different languages has been deemed difficult, particular in view of the ‘sister languages’, that arose from the former Serbo-Croatian.

Similar issues arise in Montenegro in relation to education in one’s own language, which is guaranteed by law but is intimately related to the overall socio-economic context. Kmezić (2008: 263) observes that:

Montenegrins, Serbs, Croats, Muslims and Bosniaks, use an almost identical language and have been educated using the same curricula in the official Serbian language. Hence, although the Constitution of the Republic of Montenegro [sic] (article 79. para 4.) recognizes the right of the members of national and ethnic groups to be educated in their mother tongue, only members of the Albanian minority can exercise this right.

Given not only the similarities of language outlined by Kmezić but also the demographic profile of Montenegrin settlements, this set of rights remains pure rhetoric. At present, only the Albanian minority exercises the right to education in their own language (CoE, 2008: 22).

An even greater cause of concern is the education of the Roma population, not least because of the poor social position of this group. The Roma language does not enjoy official status in Montenegro, because at the time of the adoption of the Law on Minority Rights and Freedoms, the percentage of Roma did not reach 1% (Monstat, 2003).¹⁶ The lack of education in the Romani language is a serious challenge for education of RAE children, as a number of them cannot follow classes in the Montenegrin language (CoE, 2008: 23; Zeković and Delić, 2006). Hence, few RAE children complete formal education, which limits their perspective of being adequately represented in other segments of the country’s socio-political life.

3.2. Employment: Conflicting Laws, Inconsistent Practice

The Montenegrin Law on Employment and the Labour Code prohibit any discrimination on grounds of ethnicity in relation to employment (Article 3). One might conclude therefore that the legislation in Montenegro ostensibly creates a non-discriminatory framework; however in practice neither are the laws consistent in ensuring minority access to employment, nor does the practice of employment guarantee proportional representation to minorities.

Effectively, in terms of minority employment, Article 159 of the Criminal Code stipulates that:

[a]nyone who, due to national affiliation or affiliation to an ethnic group, race or confession, or due to absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, property or other personal status denies or restricts the rights of man and the citizen prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on the grounds of such differences, grants privileges or exemptions, shall be sentenced to imprisonment not exceeding three years.

This article collides with the constitutional provisions related to the proportional representation of minorities as it does not allow affirmative action; under the scope of Article 159 affirmative action for minorities would be discriminatory towards the non-minority community and as such would be considered a criminal act punishable by imprisonment. By contrast, the 2007 Constitution notes that ‘special measures aimed at creating the conditions for the realization of national, gender, or overall equality’ are not considered discriminatory (Article 8). However, the scope of application of these two legal acts is different as the Constitution relates to the more general ‘establishment of conditions’ (Article 8), while the Criminal Code personalizes the scope of application of Article 159 by referring to ‘anyone who [...] denies or restricts the rights’. The interpretation of these provisions has not been applied in practice, but it creates an inconsistency in the Montenegrin legal framework for the protection of minorities and it might prove problematic in the future.¹⁷ The above provision of the Criminal Code might prove cumbersome for those implementing affirmative action, should any cases be raised on these grounds.

The inconsistency of the legislative framework presents a serious impediment to the implementation of minority rights, although the lack of data and cases brought before the courts on grounds of discrimination might wrongly indicate that the practice of employment in Montenegro is generally favourable to minorities. As noted by Sindik (2006), there is a general perception in Montenegro that employment depends not only on qualifications, or affirmative action, but also on political affiliation. As a consequence of the dominance of political actors over many segments of society, the participation of minorities in central-level public institutions is significantly lower than in local administration. This was particularly manifest in the years preceding the referendum on independence in 2006 when minorities were pivotal, even though they were not properly represented at the state and local levels (Budisavljević, 2002).

A more recent study (YIHR, 2010) shows that determining minority access to employment is a cumbersome task, as almost half of respondents in the study preferred not to state their ethnic background. At the same time, both political elites and the representatives of minorities in Montenegro underlined that minorities often face obstacles in seeking employment (YIHR, 2010: 20). This is particularly the case with the Albanian and RAE populations, who are faced with language and cultural barriers.

4. Conclusion

This paper focused on the relationship between citizenship, participation, cultural and socio-economic rights of minorities in Montenegro. It outlined the existence of three stages in the development of a framework for minorities in Montenegro (1992-1997, 1997-2006, 2006-onwards), yet focused predominantly on the post-independence period, which significantly altered the definition of minorities. In this context, the study argued that the main issues related to minority protection in Montenegro emerge as a consequence of two tensions: (1) the conflict of norms; and (2) the inconsistent implementation of norms, due to the norm conflict and socio-political environment. The result of these tensions is best reflected in the EU's stance towards Montenegrin minority policies. While there is a general acknowledgement of some progress in establishing a functioning framework for the protection of minority rights in Montenegro, the most recent Progress Report of the European Commission (2011) indicates the need for better implementation of laws, as well as enhanced functioning of the minority councils and the fund for minorities—institutions that have recently been established to enhance minority rights.

Through an interdisciplinary focus, which combined a legal analysis and insights from political science, this study considered the inconsistencies in minority-related policies and examined their implementation. The first section of the study looked at the interplay between the concepts of minority and citizenship, in the context of broader normative debates over whether the status of minority is inextricable from citizenship. The interrelatedness of these two concepts in the Montenegrin legislation places a large number of non-citizens of Montenegro (particularly RAE IDPs) in a position in which they are unable to exercise their human, rather than minority, rights.

The second section focused on the participation of minorities in the political life in Montenegro. The much contested constitutional guarantees of ‘authentic representation’ in the Parliament of Montenegro created a broad debate over whether this implied representation by ethnic parties. In practice, although the Montenegrin minorities ostensibly do not vote for ethnic parties (apart from the Albanian population), their electoral preferences follow the cleavages created in the period from 1997 and 2006, and in that sense replicate the divisions from the pre-referendum period.

By looking at the guarantees of minority rights enshrined in the 2006 Law on Minority Rights and Freedoms, including the rights to the use of language (Article 11), education in their own language (Article 13), assembly (Article 9), participation in decision-making (Article 26), the last section of the paper highlighted that these rights are too complex to realize in practice, because of the inconsistent legislation, the politicization of the Montenegrin society, and unclear lines between languages and cultures. As a consequence of the interplay between these factors, minority access to many cultural (group) and socio-economic (individual) rights remains at the rhetorical level. This raises the question of whether the legislative framework for the protection of minority rights in Montenegro is merely a beautiful façade which conceals a troubled reality of interethnic relations in an unconsolidated Balkan state.

Notes

1. The Agreement on the Minimum Principles for the Establishment of a Democratic Infrastructure in Montenegro was signed on 1 September 1997. The signatory parties included the Democratic Party of Socialists (DPS), Social-Democratic Party (Socijaldemokratska Partija, SDP), People’s Party (Narodna Stranka, NS), and the Liberal Alliance of Montenegro (Liberalni Savez Crne Gore, LSCG). The Socialist People’s Party (Socijalistička Narodna Partija, SNP), legally established in February 1998, continued to use the term ‘*nacionalne i etničke manjine*’ from the 1992 Constitution.
2. The term national or ethnic groups (*nacionalne ili etničke grupe*) was used to denote peoples who were not autochthonous inhabitants of Montenegro, such as Macedonians, Slovenians, Hungarians and Roma. Additionally, the definition of minorities was closely related to religion and Christian Orthodox people were not included.
3. The referendum on independence took place on 21 May 2006, and was organized in line with the framework established by the EU, whereby 55% of the vote was required for a successful outcome. In the years before the referendum, the Montenegrin population became polarized on grounds of their attitudes towards statehood and their perceived ethnonational identity. The division between Montenegrins and Serbs in Montenegro was the main focus of the statehood vs. identity debate. These two

communities eventually established competing political/identity camps of almost equal size. Hence, minority votes were pivotal for the governing coalition to reach the required threshold of votes.

4. See section 2 for more details.

5. Montenegro was a member state in the State Union of Serbia and Montenegro until 3 June 2006.

6. The Decision on the Temporary Retention of the Status and Rights of Displaced and Internally Displaced Persons in the Republic of Montenegro of 20 June 2006 stipulates that ‘displaced persons from the former Yugoslav republics whose status was determined on the basis of the Decree on the Care of Displaced Persons (Official Gazette of the Republic of Montenegro 37/92), and internally displaced persons from Kosovo for whom status was determined by the Commissariat for Displaced Persons of the Republic of Montenegro will temporarily retain the status and rights in the Republic of Montenegro that they had on 03 June 2006’ (Article 1). By 2012, only one person had been recognized as a refugee in Montenegro, but subsequently lost that status. The status of ‘displaced person’, ‘internally displaced person’ or ‘refugee’ has implications on the person’s naturalization prospects (see Džankić, 2010).

7. The RAE population in Montenegro is divided into two groups: domicile RAE and RAE IDPs. The domicile RAE have been living in Montenegro for generations (Zeković and Delić, 2006; Delić, 2008). They have Montenegrin citizenship, and thus the status of minority in Montenegro. By contrast, RAE IDPs came to Montenegro during the Kosovo crisis in 1998 and 1999. They are not citizens of Montenegro, and thus are not covered by the definition of minority. Although the government’s data presented above indicate a much lower number of RAE IDPs (3,106), according to UNHCR (2010), the exact numbers of the RAE population are difficult to determine, but estimates range from between 10,000 and 16,000.

8. According to the most recent Population Census (Monstat, 2011), the major group in Montenegro are Montenegrins (44.98%), followed by Serbs (28.73%), Bosniaks (8.65%), Albanians (4.91%), Muslims (3.31%), Croats (0.97%), and Roma and Egyptians (1.34%).

9. See the following section for more details on minority representation.

10. Some Montenegrins also supported the unionist camp. However, it is unlikely that the Serb voters would have voted for Đukanović’s camp, or for non-Christian Orthodox minority parties. Before 2006, the term minority referred to the non-Christian Orthodox population of Montenegro because at that time Serb and Montenegrin identities were closely intertwined (Šístek and Dimitrovová 2003).

11. SNP was established in 1998, after the split of DPS the year before. It became the major opposition player in the period from 1998 to 2006. SNS was established in 1998, as a right-wing faction of the NS (Narodna Stranka). Until 2006 SNS was only a minor political player in Montenegro.

12. As of 1968, the term ‘Muslim’ was used in Yugoslavia as a national category.

13. The term Bosniak was coined during the conflict in Bosnia and Herzegovina to designate Muslims. As the term did not contain a religious reference, it was seen to avoid the confusion between religious and national identity.

14. Dependence of socioeconomic rights on the social and political context is common (see reservations on ICESCR).

15. When Montenegro was a republic in the SFRY, the language was denominated as ‘Serbo-Croatian’. After the disintegration of the SFRY, and until the adoption of the 2007 Constitution, the language was denominated as ‘Serbian’ in Serbia and in

Montenegro. According to the 2011 Population Census (Monstat, 2011), 42.88% of the people in Montenegro spoke Serbian, and 36.87% spoke 'Montenegrin'. The Montenegrin language was only codified in 2009. The Montenegrin alphabet after 2009 contains two additional letters.

16. The standardization of the Romani language is also an issue, as there is no common orthographic norm, apart from the attempts of Marcel Courthiade and Gheorghe Sarău. These efforts, however, are not widely accepted and recognized among the RAE population in general.

17. For instance, the Constitutional Court's abolition of Articles 23 and 24 of the 2006 Law on Minority Rights and Freedoms was initiated by a political actor on the grounds of the lack of a constitutional provision that would allow affirmative action.

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