

## “New Nation-Building” or What?: Serbian and Kosovan laws on expatriates

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### Abstract

Special legal provisions on preferential treatment of expatriates introduced during last decade by the kin-states are oftentimes construed by the scholars as visible signs and effective tools of new, post-territorial nation-building in Eastern Europe. However, the analysis of Serbian and Kosovan laws on citizenship and diaspora shows that the picture is more complex, whereas the situation varies across countries of the region. Despite the rising concerns with the issues of the co-ethnics since late 2000 the Serbian government for some years has been reluctant to introduce the exclusive preferential treatment for the Serbs in the realm of citizenship. Only the law passed in 2009 overtly showed that the executives and legislators of the Republic of Serbia now are on the way of creating post-territorial Serb national community. Contrariwise the political establishment of Kosovo equally pushing forward special laws on “diaspora” in 2008 and 2011 was rather concerned with forming and reasserting of as well as tightening its grip over post-territorial citizenry because of notable social and economic problems. In contrast to Eastern European status laws, trans-border “ethnic relatives” of the Kosovan majority are effectively excluded by the documents from the membership in the “diaspora,” while the representatives of ethnic minorities from the territory of the country legally qualify for being Kosovo diasporans.

*Key words: Politics of Diaspora, External Citizenship, Nation-Building, Kosovo, Serbia*

### **Introduction**

The last decade witnessed the adoption in a number of Eastern European countries of special laws on preferential treatment of expatriates and out-of-country nationals enabling them eased access to social benefits and citizenship. Some scholars of these recent legal developments speak of certain regional “syndrome,” and remark clearly visible tendency of the advent of a “new,” “post-territorial” nation-building, which is going to undermine the sovereignty of the existing East European states over their citizenry. In their eyes, a novel masked form of state nationalism will negatively affect Eastern Europe, or even the whole “Eurasian mega-area,” in the next decades.

The problem with this approach, in my view, is that the time has not come yet to make definite predictions. It seems too hasty to pick up some cases from the region, and the Hungarian one in the first place, and then to generalize expanding the findings onto the giant political geography. Propheying the unstoppable process of new nation-building, because of a political and social “syndrome” means to bring water on the old argument about a specific, aggressive, malicious and parochial, Eastern nationalism, which can not be eradicated from the deviant area of “Slavic Eurasia.”

Drawing on the analysis of recent legal developments in the field of diaspora and citizenship in Serbia and Kosovo, I will show in the present paper that even though one can theorize on post-territorial nation-building in Eastern Europe, the process is neither one-ended nor universal here. First of all, the laws on expatriates are not always used as the ways of building a nation. Secondly, even if the later is the case, the launch of “new nation-building” is highly dependent on political and social circumstances, i.e. party politics, international position of political entity, and economic situation etc. It thus can be changed. Thirdly, being located in Eastern Europe does not automatically mean being conducive to the pursuit of post-territorial nationalist policies via laws on expatriates residing abroad.

#### **1.1. “Status law syndrome”: a background**

The unanimous adoption of the Status law by the Hungarian Parliament in June 2001 stirred up the sensitivities of the neighboring countries concerned with the issues of state sovereignty, territorial integrity and social cohesion. The controversial legal initiative taken by the Hungarian political establishment as well as its ensuing intention to introduce the non-residual citizenship for the Hungarians living abroad, as Szabolcs Pogonyi argues, because of the historical context have been construed by many in Romania and Slovakia as a visible sign of revival of Hungarian revisionist politics (Pogonyi 2011: 697). Opposing these attempts of the kin-state to revise the belonging of the Hungarian minorities in

adjacent foreign lands, the Romanian government resorted to legal means offered by the Council of Europe and on 21 June 2001 appealed to the European Commission for Democracy for the later to examine if the Hungarian law could be considered as compatible with European norms. In response on 2 July the Hungarian government asked the Commission to investigate the conformity of all status laws, in addition to Hungarian one (Osamu 2004: 41-42). The report compiled by the Venice Commission in October 2001 revealed the existence of a quite elaborated legislation on the "expatriate 'co-nationals'" and/or "compatriots" in Austria, Bulgaria, Greece, Italy, Romania, Russian Federation, Slovakia and Slovenia (The Venice Commission 2001: 8-9). Moreover, it was also noticed that Poland was about to establish her own status law, whereas some "old" European states, such as Germany, Italy, Britain, Portugal, and Spain, widely practiced the preferential treatment of the emigrants easing acquisition of citizenship for the persons of corresponding ethnic descent (Kovacs 2005: 66-67).

The Hungarian status law in line with the common practice prompted by its analogues in another European countries was designed to establish "a form of state membership, or "Hungarian status" for trans-border Hungarians" expressed in the form of a special Identity Card (Kovacs 2005: 53-54, 56; Joppke 2003: 442-454). Although the document allowed more or less inclusive definition of a Hungarian, including self-declaration as one, after the Hungarian Standing Conference held in October 2001 the authorities in charge of issuing the certificates were supposed to follow much clearer criteria: mastering the Hungarian language, membership in a registered Hungarian organization, designation as Hungarian in church documents or treatment as Hungarian by the country of citizenship. The later features of the definition of Hungarianness brought about by the status law as well as in-country debates around the law itself and foreseen dual non-resident citizenship fostered Ieda Osamu and Maria Kovacs to maintain that the provisions had an ethno-nationalist underpinning (Osamu 2004: 54-56; Kovacs 2005: 60-61).

Given the spread of the legal mechanisms directed to national minorities in Eastern Europe Ieda Osamu assumes that the "status law syndrome" marked the advent of "a 'new nation-building', one which differed decisively from the previous one in requiring no territorial changes" (Osamu 2004: 5). This allegedly appears to be particularly characteristic in the Eastern European region, or even in "the Slavic Eurasian mega-area," where among the others "the largest kin-minority in post-communist Europe, 'the Russian diaspora', is a sleeping volcano for almost all other CIS countries" (Osamu 2004: 57).

Francesco Ragazzi and Kristina Balalovska, whose paper assesses the situation with the "diaspora" and dual citizenship politics in the region of my current concern - South-Eastern Europe - employ the same approach: "After

one of the most brutal civil wars on European soil – a war focused on the acquisition and ethnic cleansing of territories, the importance of this key feature of the Westphalian nation-state is, paradoxically, vanishing. Soon after the independence of Croatia, and during the past decade in the cases of Serbia and Macedonia, these states began building a conception of national belonging that is increasingly disconnected from the people's presence on the national territory: citizenship is largely distributed amongst the "diaspora," ministries and governmental agencies are dedicated to the relation with the co-ethnics abroad..., and citizens abroad are increasingly included in votes for parliamentary and presidential elections" (Ragazzi and Balalovska 2011: 1). The scholars then claim that the understanding of the nation in the Balkans remains ethnic, even if is being reframed: "[R]ather than traditional contradiction between 'ethnic' and 'civic' conceptions of political communities, we suggest that what is at stake in the post-Yugoslav space is a struggle between two forms of 'ethnic' political programs of community: a territorial one and a post-territorial one" (Ragazzi and Balalovska 2011: 2).

In my view to regard the laws on the expatriates ("diaspora", national minorities, co-nationals, compatriots), which emerged in the recent decades as mere tools of a "new", post-territorial nation-building, means to oversimplify current legal developments. Indeed, Maria Kovacs notices that in the realm of dual citizenship there are some sound distinctions between West European and East European preferential legal policies *vis-à-vis* co-ethnics and co-nationals: "Within Europe, such policies are pursued by a number of countries including Portugal, Spain, Italy and Greece. More recently, several countries in the East Central European region, among them, Croatia and Romania have introduced similar legislation. However, while such reforms in Western and East-Central Europe may look similar in terms of the legal techniques involved, they are intended to address different concerns and thus carry different political and social implications" (Kovacs 2005: 53). While Western Europe citizenship reforms pertaining to the preferential treatment of ethnic relatives abroad have predominantly emerged in the context of migration and have been directed to potential overseas citizens, the demand for dual citizenship in Hungary and many other states of the region mainly concerned trans-border national minorities" (Kovacs 2005: 53, 71). Here, I will argue that even the laws on expatriates enacted in East European countries can be construed more diversely, and sometimes have little to do with any nation building.

### 1.2 The Serbian Legislation on the Expatriates

The Serbian governmental concerns with the issue of expatriates, as Francesco Ragazzi and Kristina Balalovska cogently argue, represent a relatively belated phenomenon. Under Slobodan Milosevic, Serbian officials

were reluctant to acknowledge any preferential treatment to co-nationals. The Serbian trans-border political field was perceived to be more favorable to the parties at the right of Milosevic or at the center. Only the removal of Milosevic from power in 2000 marked a decisive shift in the politics of citizenship and belonging in Serbia. The later years witnessed an increasing preoccupation of the Serbian political establishment with "diaspora" issues (Ragazzi and Balalovska 2011: 12-14). In 2003 the special Ministry for Diaspora (Serb. *Ministarstvo za dijasporu*) was established in order to ensure the status of citizens residing abroad and enhance the relationship of the expatriates and persons of Serbian origin with the Republic of Serbia. In subsequent years the institution was renamed Ministry of Religion and Diaspora (Serb. *Ministarstvo vera i dijaspora*), which now revealed clear ethno-cultural understanding of the Serbianness expressed in common descent, shared history, language and religious affiliation with the Serbian Orthodox Church. The Sector for enhancement of the conditions for churches and religious communities, religious education and teaching was, among other things, vested with the task to ensure the affirmation of religious foundations and components of the Serbian national identity, the cooperation of the state with the Serbian Orthodox Church abroad in the field of sustaining and developing the spiritual, national and cultural uniqueness of the Serb people outside of the Republic of Serbia (*Ministarstvo vera i dijaspora*). The ethnic interpretation of the Serb nationness resonated with one that has been elaborated since the dawn of Serb nationalism (see: Belov 2007).

One of the first legal documents touching upon the issue and establishing the preferential stance of the government *vis-à-vis* Serbian expatriates was the Law on Citizenship of the Republic of Serbia passed in 2004 under the impulse of "diaspora" organizations and the Ministry for Diaspora (Ministry of Interior 2008). Article 18 foresaw an eased procedure of the acquisition of Serbian citizenship for the emigrants and their descendants: "An emigrant and his descendant can be admitted to citizenship of the Republic of Serbia if they are 18 and if they are not deprived of working capacity and if they submit a written statement that they consider the Republic of Serbia their own state". This provision from the legal point of view had little to do with Serb ethno-cultural nation-building, since the persons concerned rather were to be granted citizenship on the basis of *jus sanguinis* irrespectively of their ethnic background. For them even the requirement of mastering Serbian was lifted. Neither article 23 could be seen as an apparent nation-building force, because it welcomed all ethnic groups from Serbia (even though the Serbs in the first place) to apply for citizenship: "A member of Serbian or another nation or ethnic group from the territory of the Republic of Serbia, who is not residing in the territory of the Republic of Serbia, can be admitted to citizenship of the

Republic of Serbia if he is 18 years old and if he is not deprived of working capacity and if he submits a written statement considering the Republic of Serbia his own state". According to the law no proof of language skills and no declaration of belonging to a nation were required.

By 2009, when the parliament established the Law on Diaspora and the Serbs in the Region (Ministarstvo vera i dijaspora 2009), Serbian politicians went further on the path of ethno-cultural nation-building. The document clearly defined "who is who". Despite it included into "diaspora" all the Serbian citizens residing abroad, a non-citizen might be considered as diasporan or out-of-country Serb, only if s/he belonged to the Serb people/nation (in terms of ethnic group - *srpski narod*), who emigrated from Serbia or the region, or was the descendant of such person. The Serbs in the region meant those constituents of the Serb people who lived in Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia, Romania, Albania and Hungary (Article 3).

The law aimed at maintenance, strengthening and creating ties between kin-state, diaspora and the Serbs in the region stipulated that all points could and should be carried out through the conclusion of respective bilateral and multilateral international agreements, increasing funding secured by the kin-state, and economic cooperation between kin-state and diaspora. Particular attention should be also paid to "the use, preservation and enhancement of *Serbian language and Cyrillic script*, maintenance and fostering of *the Serb cultural, ethnic, linguistic and religious identity*". The special national rewards for "sound contribution to the maintenance and strengthening of the ties between the kin-state and the diaspora, as well as between the kin-state and the Serbs in the region" were established (Article 4, emphasis added). All of the later receive the names of ethnic Serb historical figures (except for the most prestigious "Mother Serbia," which, however, is even more outspoken) (Article 42). The rights of diasporans to learn Serbian and Cyrillic script deserved specific provisions (Article 37). The law determined to mark the Day of Diaspora on 28 June each year (*Vidovdan*), thus appealing to famous events that occurred in the Kosovo field in 1389, whose interpretations have been so crucial for Serb Orthodox legends and later for (ethno)national mythology (Article 13). The document foresaw financial mechanisms (Article 5, 6), created the Diaspora Assembly (Articles 16-22) and three councils to assist it: The Economic Council, The Status Council, The Council for Culture, Education, Science and Sport (Articles 24-26). The Republic of Serbia, on her part, formed the Council for the Relations with the Serbs in the Region (Articles 27-33) and the Budgetary Fund for Diaspora and the Serbs in the Region (Articles 34-36).

Given that the notion of the Serb nation was profoundly ingrained into the Law on Diaspora and the Serbs in the region, it definitely deserves to be

characterized as a tool of new, post-territorial nation-building. Even though despite the rising concerns with the issues of the co-ethnics since late 2000 the Serbian government for some years has been reluctant to introduce the exclusive preferential treatment for the Serbs in the realm of citizenship, the law passed in 2009 overtly showed that the executives and legislators of the Republic of Serbia now are on the way of creating a post-territorial Serb national community.

### **1.3. Kosovans residing abroad in legislation of the Republic of Kosovo**

The Law on Kosovo Citizenship became one of the first legal documents both to appear right after the Declaration of independence (passed on 20 February 2008) and to define the status of the diaspora of the newly-proclaimed state (Kuvendi i Republikës së Kosovës 2008). It considered as a member of the diaspora "any person, who permanently and legally resides outside the Republic of Kosovo, but proves that s/he was born on the territory of the Republic of Kosovo and maintains close economic and family ties in [to] the Republic of Kosovo." Otherwise s/he should be an offspring of the mentioned person in the first generation in order to qualify. The law stipulated an eased procedure of the naturalization for the diasporans: no reach of the majority age, regular residence for 5 years, financial self-sufficiency and knowledge of one of the official languages (e.g. Albanian or Serbian) were required, and mere acceptance of the republican constitutional and legal order was enough (Article 13).

In May 2011 the Kosovo prime-minister Hashim Thaçi announced the establishment of the Ministry of Diaspora. Later on, in the summer of the same year the government drafted the law on the diaspora, which, however, has not yet been approved by the Assembly (Qeveria e Republikës së Kosovës 2011). Its main objective is "to influence the maintenance and cultivation of linguistic, cultural and educational [sic!] identity of the members of the diaspora" (Article 1) and applies to various states, where the Kosovan diaspora lives" (Article 2). By the member of the diaspora the draft understands "any person, who resides outside Kosovo and has family origins from the Republic of Kosovo" (Article 2). The Ministry of Diaspora and the Kosovo cultural centers for diaspora are considered the main institutions for pursuit of policies in the interest of the diaspora members (Article 4). Among other things, the ministry is supposed to work on and help fostering the consciousness of the diaspora, as well as to assist in the promotion of cultural, linguistic and educational (sic!) identity of the Republic of Kosovo in the states where the diaspora lives (Article 6). The law foresees financial mechanisms to secure the operation of the cultural centers (Article 11), outlines the ways of enhancing the learning and teaching of official and semi-official languages of Kosovo (Article 12), promotion of culture, historical legacy and spurring of full-scale cooperation between the state and

the diaspora (Articles 13–15). Thus, from the legal standpoint, both the law on citizenship and that on diaspora conceive of Kosovo expatriates (diasporans) as emigrants from Kosovo independently of their ethnic background, whereas the membership in the diaspora accrues on the basis of both the *jus soli* and *jus sanguinis* principles. However, even in the later case what is transmitted across generations is the belonging to the territorially bounded collectivity.

In view of such legal provisions, one finds it difficult to interpret recent concerns of the Kosovo politicians with Kosovans living abroad as new, post territorial nation-building. The fact of the matter is that Kosovo neither legally nor ideologically, nor even notionally represents a nation-state. The constitution portrays the partially recognized polity as “a homeland to all of its citizens” (Preamble) and “a multi-ethnic society consisting of Albanian [not Kosovar, Kosovar Albanian or something of this sort] and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions” (Article 3). Likewise in the case with the local Serbs, the Albanians from Kosovo, who make about 90 % of the population, constitute an integral part of the broader Albanian nation traditionally understood as a community of descent, shared history, language and customs, i.e. ethno-culturally or even racially (Skendi 1967). The recent debates among the Albanian intellectuals and politicians from Kosovo, Albania and Macedonia over the particular “Kosovar” (sub)national identity of the Kosovan Albanians as well as the propositions to bring changes into the standard Albanian/Kosovar language in the country drawing partially on local dialects have not yet changed much in this respect (Kush asht kosovar? 2005; Novik 2008). Therefore, there is currently no nation, which all the diasporans (expatriates) as understood under the Kosovo law could belong to or constitute a part of.

Naturally, some might claim that what finds the expression in the laws on Kosovo citizenship and on diaspora is new Albanian nation-building. Indeed, the Ministry of Diaspora predominantly operates in the field of strengthening ties between the state and the Kosovar Albanians abroad, both in neighboring countries and beyond, as well as clearly engages in the promotion of Albanian language and culture (Ministria e diaspores). One indicative fact is that the ministry congratulates diasporans on both Muslim and Catholic feasts. The telegram sent by the minister Ibrahim Makolli on 3 April 2012 and addressed to the Catholic expatriates on the occasion of the Easter celebrations, was not followed by one directed to the Orthodox (Makolli 2012). Although there are more Orthodox Kosovans (6% of the population) than Catholics (3%), the Orthodox faith is not spread among Kosovar Albanians. Ibrahim Makolli himself is occasionally presented in the diasporic press as minister of Albanian diaspora (Dibrani 2011). However, even that constituency, which is targeted by



the activities of the Ministry of Diaspora of the Republic of Kosovo, is territorially bounded and does not include all the trans-border Albanians in Albania, Greece, Italy, Macedonia, Montenegro, and Serbia proper or overseas. There is no doubt that some ethnic Albanian emigrants from or citizens of the countries adjacent to Kosovo occasionally attend meetings, cultural events and conventions of the Kosovan diaspora, but these happenings are foreseen neither by official practice nor by legal provisions. In other words, the operational field of the ministry does not cover all Albanian nationals. Less the ministry fosters and strengthens the ties across the whole Albanian trans-nation.

In my view, apparently what is at stake, when one conceives of the recent laws on Kosovo citizenship and diaspora, is rather the obsession of the government with the issues of reassertion and formation of both territorial and post-territorial, real and alleged or possible citizenry, which can contribute to the development of the half-fledged political entity demographically and/or economically. Such initiatives can be accounted for specific social, economic and political conditions, under which the country has been placed in the last decade. Since the beginning of 1990s it has suffered a large-scale emigration. The estimations are that during the war (1997–1999) more than 850,000 Kosovar Albanians fled or were deported (Ragazzi and Balalovska 2011: 13; Judah 2008: XVII). After Serbia lost control of Kosovo, some 230, 000 (officially recognized figure), mostly Serbs, but also Roma, abandoned the province. The Albanians generally returned, but the number of Serbian returnees was scarce (ca. 18, 000). The governmental bodies of Kosovo starting from the beginning of the 2000s were forced by both current needs and the international community to work on ensuring the return of the expellees and emigrants (Judah 2008: 14, 19, 100–103). The importance of the diaspora issue is also caused by the fact that the share of remittances in the country's overall GDP currently amounts to 11%, whereas about 20% of the Kosovan households receive money from relatives abroad (UNDP Kosovo 2010: 9).

### **Conclusion**

Writing the article I was showing that some scholarly interpretations of recent legal developments, namely the introduction by kin-states of special provisions (e.g. status laws, diaspora laws, new laws on citizenship and voting rights) on preferential treatment of their expatriates (e.g. diasporans, compatriots, co-nationals, co-ethnics, kin-minorities), are neither well-grounded nor complete. While a number of scholars construe the said laws as visible signs and effective tools of new, post-territorial nation-building in Eastern Europe, drawing on an analysis of Serbian and Kosovan legal documents I think that the picture is more complex, whereas the situation

varies across the countries of the region. Thus, Serbian politicians and legislators in 2009 finally embarked on the road of post-territorial nation-building by means of the law on expatriates. Contrariwise the political establishment of Kosovo equally pushing forward special laws on “diaspora” was rather concerned with *forming and reasserting of as well as tightening its grip over post-territorial citizenry* because of notable social and economic problems. Interestingly enough in sharp contrast to Eastern European status laws, trans-border ethnic relatives of the Kosovan majority are effectively excluded by the documents from the membership in the “diaspora,” while the representatives of ethnic minorities from the territory of the country legally qualify for being Kosovo diasporans”.

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