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## Partners Again? The European Union and the Post-Yugoslav Citizens

The final chapter in the story of one hundred years of citizenship in and after Yugoslavia brings to the scene another powerful player whose influence in shaping the post-Yugoslav citizenship regimes and influencing the lives of their citizens is far from insignificant. The EU has been the most powerful political and economic agent in this region that has effectively divided it into the EU members and the potential candidates for membership. The former Yugoslav space overlaps with the so-called Western Balkans, a changing geopolitical construct forged in Brussels, composed of those former Yugoslav republics that have not joined the EU so far *plus* Albania. The ‘Western Balkans’ approach as an umbrella term for the countries outside the EU but completely encircled by the EU, though the Schengen border moves much slower, hides the fact that, regardless of the EU membership, Slovenia is still deeply involved with its southern neighbours and Croatia remains one of the most important actors in the former Yugoslav space. One could say that ‘Yugoslavia’ in this respect has disappeared as a political entity but not as a geopolitical space.

The EU does not only directly influence its members (Slovenia and Croatia), supervises the Western Balkan candidates – ‘negotiations’ being a euphemism for a one-way communication amounting to the huge translation operation of the *acquis communautaire* – but it actually maintains there two semi-protectorates (Bosnia and Kosovo). It has developed varied approaches: bilaterally negotiating membership (Croatia before 2013, Serbia, Montenegro and Albania), punishing and rewarding (Serbia, Bosnia, Kosovo and Albania), managing (Bosnia), governing (Kosovo) and, finally, ignoring (Macedonia blocked in the name dispute with Greece). The EU in the Balkans is therefore not only a club that tests its candidates. It is an active player in transforming them, politically, socially and economically. David Chandler concludes that ‘the EU’s discourse of governance enables it to exercise a regulatory power over the

candidate member states of Southeastern Europe while evading any reflection on the EU's own management processes, which are depoliticized in the framing of the technocratic or administrative conditions of enlargement' (2010: 69). If the EU basically builds future or potential member states, then we have to ask how the EU manages both citizenship regimes of the post-Yugoslav states and their citizens.

### The EU's direct and limited influences

The EU's role in influencing, shaping, defining and re-defining the citizenship regimes in the post-Yugoslav region often, alongside obvious improvements, appear problematic, counterproductive or fruitless. It must first be noted that the EU frequently acts in this region in cooperation with or in parallel to other international organizations such as the UN or OSCE (Organization for Security and Co-operation in Europe). There is also a myriad of international norms (conventions, adopted or not, and regulations) and bodies that influence citizenship regimes in these countries such as the Council of Europe and its Venice Commission, and, quite significantly, the European Court of Human Rights (see Shaw 2010). In this respect, 'Europeanisation' of the citizenship regimes in place cannot be identified only with the 'EU-isation' of the region, even though the two are generally conflated. Nonetheless, the actual membership of some states and the overall orientation of the Western Balkans towards political, legal and economic integration into the EU give the Union the major role in actively transforming not just these countries as such but also their citizenship regimes and the political communities these regimes define.

After stating that it does exercise a considerable influence, we have to ask if the EU has a coherent policy or a particular norm in the vital domain of citizenship, which is, clearly, crucial for the functioning of 'new democracies'. It appears, however, that there is no consistent citizenship policy towards actual or future members. This comes as no surprise since the previous enlargements showed limited EU influence on national citizenship regimes of the candidate countries, as exemplified by the EU's tolerance of statelessness in the Baltic countries and the case of the 'erased' in Slovenia. And yet, in sharp contrast to Central and Eastern Europe, the EU appears to be quite actively involved in managing post-Yugoslav citizens.

Broadly speaking, the EU's influence on citizenship regimes in the post-Yugoslav region could be defined as either *direct* or *limited*. When it comes to *direct* influence this is doubtless strongest in Kosovo, strong in Bosnia and, finally, significant in Macedonia. Those are the countries where the EU actually intervened militarily and administratively (in Kosovo and Bosnia) or where it influenced considerably constitutional and political changes that directly affected citizenship regimes as well (as in Macedonia after the 2001 conflict and the EU-sponsored Ohrid Framework Agreement). In these countries, the citizenship legislation was either proposed to local actors or imposed ready-made by the internationals themselves (with the EU in the driver's seat) or else changes in legislation affecting citizenship were introduced according to the EU's stated preferences (as in Macedonia).

In contrast, the EU's *limited* influence can be observed in Montenegro, Croatia and Slovenia. In Montenegro the governing structures are keen to please the EU but are also very careful to preserve, via the country's citizenship regime, fragile ethnic (and therefore electoral) balances. The case of Croatia surely deserves a different kind of attention for being the first post-socialist, post-partition and post-conflict country to enter the EU with a legacy of war (not experienced by Slovenia) that significantly complicated its accession process. Finally, both Croatia and Slovenia as EU member states need special treatment, since joining a new supranational union also entailed introducing another supranational layer to their citizenships.

Serbia seems to stand between the direct influence group and the limited influence group depending on how one perceives the EU's role in the territory of that country, i.e. how one perceives what *is* actually its territory. On the one hand, the EU has a limited influence on Serbia's citizenship legislation and practices, mostly through the visa liberalization process, but, on the other, the EU's role in Kosovo, where a new separate citizenship regime has been created with the direct assistance of the EU (and also other international bodies), could be equally seen as having a direct and major influence on the Serbian citizenship regime and the Serbian citizenry as a whole.

In the previous chapter, I concentrated on how the political elites in the new states (mis)manage their citizenship regimes. This final chapter focuses on what I see as five major ways whereby the EU itself (mis)manages these citizenship regimes and their citizens: (a) direct intervention and supervision; (b) the visa liberalization process; (c) the pre-accession influence; (d) the post-accession influence and, finally, (e) the influence exerted by individual EU member states.

## Five ways to (mis)manage the post-Yugoslav citizenship regimes

### Direct intervention and supervision

The EU's actions with regard to citizenship are, as underlined above, most direct in Kosovo. After the North Atlantic Treaty Organization (NATO) bombings in 1999 Kosovo was turned into a *de facto* protectorate under the UN mission (UNMIK, UN Interim Administration Mission) and with a heavy NATO and EU presence. The EU took complete control when EU Rule of Law Mission (EULEX) replaced UNMIK in 2008. However, in spite of the complete separation from Serbia, Kosovans remained *de jure* citizens of Serbia and the Federal Republic of Yugoslavia (FRY) and, between 2003 and 2006, citizens of the State Union of Serbia and Montenegro. After the disintegration of the State Union in 2006, Kosovans were technically transformed into citizens of the Republic of Serbia exclusively. Following Kosovo's declaration of independence in February 2008, a new Constitution based on the Ahtisaari plan was adopted defining Kosovo as 'a state of its citizens'. On the same date, the new law on Kosovo citizenship came into effect as well. The main aim was to establish the body of Kosovo citizens by using a highly inclusive and liberal 'new state' model that grants citizenship to all permanent residents on the territory of the new state (in this case, the former FRY citizens residing in Kosovo back in 1998 and/or holders of UNMIK documents).<sup>1</sup> Although the first Kosovo passports were issued in summer 2008, the Serb-majority municipalities, especially in northern Kosovo around the town of Mitrovica, refused to accept the jurisdiction of the Kosovan authorities. In the context of Serbia's EU bid, the situation in the North changed in 2013. Both Serbia and Kosovo have been awarded (one with the candidate status and the other with the Stabilisation and Association Agreement) for reaching a 'deal' which foresees progressive inclusion of the North into the Kosovo institutions with a certain degree of autonomy and political position between two states (for Serbia between itself and its province) confirmed by dual citizenship. The international bodies also induced a redrawing of Kosovo's internal map and the creation of new autonomous Serb municipalities.

As with the Constitution itself, the Kosovo citizenship law was drafted by the international bodies supervising Kosovo, namely the International Civilian Mission whose head was also the EU representative. The local politicians promptly accepted the documents with little local debate or initiative. State

building in Kosovo is thus designed and supervised by the international community and, since the EULEX mission started to operate, directly by the EU itself. This oxymoronic 'supervised independence', as it was known until 2013, amounts to a neocolonial situation without a clear roadmap towards total local control and EU membership. Conflicting signals therefore have been sent out: the EU is heavily present in Kosovo but the country's eventual EU accession process is not expected to start anytime soon. At the same time, the EU mostly runs the place but cannot speak or act unanimously since five EU member states still refused to recognize an independent Kosovo. Without a clear prospect of joining the EU, which in itself would have to result from an EU-led effort, without a prospect of breaking the visa deadlock, and without solving some of the pressing issues between Kosovo and Serbia (such as economic normalization, border issues and management of the Mitrovica region), the Kosovan citizenship regime remains highly unstable.

Another state under direct EU intervention is Bosnia-Herzegovina. It has been a theatre of major EU external involvement for two decades. As in Kosovo, a gradual transfer of competences from the international bodies towards the EU has taken place. The Office of High Representative (OHR), endowed by the extensive so-called Bonn powers with the authority to basically rule Bosnia, was headed since the beginning by EU member state politicians and since 2002 the High Representative also serves as the EU Special Representative. Since the Dayton Peace Agreement and an ensuing peacekeeping operation in which both the United States and the EU played a major role, Bosnia has been under direct supervision, making it effectively a semi-protectorate. The new Dayton law on citizenship was introduced, or rather imposed, much later in 1997 by the High Representative.

If the citizenship situation was quite chaotic during the war, the citizenship landscape after the war remained highly complex. The 'Dayton' Constitution of Bosnia and Herzegovina (annex IV of the Peace treaty) defined citizenship of the country, similarly to socialist Yugoslav citizenship, as *dual* or two tiered. Citizens thus possess both state citizenship and citizenship of one of the two entities. There is also the curious case of citizens from the self-governing district of Brčko (under international supervision until 2012), functioning *de facto* as Bosnia's third entity. Brčko is 'shared' by the entities, although under direct state-level sovereignty, and its citizens may choose which entity citizenship they wish to have. Bosnia's citizenship could be defined as *multiethnic* insofar as almost all political participation of citizens is based on their ethnic affiliation. Bosnia's Dayton-enshrined *ethnopolitics* not only

consolidated ethnic division and led to permanent institutional paralysis but also provoked widespread discrimination against so-called others, i.e. those not belonging to any of the three ethnic groups or not wishing to state their ethnic background (Mujkić 2007; Sarajlić 2013; Štiks 2011). Due to this apparent discrimination among citizens, the European Court of Human Rights in the Finci–Sejdić case ordered Bosnia-Herzegovina in December 2009 to change the laws forbidding anyone who do not belong to three constitutive peoples (Serbs, Bosniaks and Croats) to run for the state presidency and the House of Peoples of the Parliament. In other words, if you are Jewish or Roma, as Mr Finci and Mr Sejdić happen to be, or if you simply decline to declare your ethnicity, you cannot enjoy full political rights in the country. Even four years after the ruling, the political elites failed to implement this binding decision that would remove discriminatory provisions of the Dayton peace constitution.

The reason that Macedonia ranks among the group of countries where the EU has a direct influence is the aftermath of the short-lived conflict between the Macedonian government and Albanian rebels in 2001. The EU backed the Ohrid Framework Agreement and sent a military and police mission to the country. The agreement transformed Macedonia from a nation-state dominated by its ethnic majority into a state functioning on consociational principles designed to guarantee a balance between the Macedonian majority and the 25 per cent-strong Albanian minority. The EU played a major part in these constitutional transformations that directly affected the Macedonian citizenship regime (Spaskovska 2013). Albanian demands for a reform of both the Constitution and, subsequently, the citizenship law were met as well. The agreement also included the country's decentralization, administrative reorganization and a change of linguistic policies. Although Macedonia is not a country under EU supervision like Bosnia or Kosovo, its relationship to the EU is seen as crucial for the country's future. However, the EU's intervention in order to ensure stability and Greece's blocking of Macedonia's accession, despite the fact that it has been officially recognized as a candidate for EU membership since 2005, provoked even further instability. The inter-ethnic balance as defined by the Ohrid Agreement (the subject of a lot of grievances on both sides) is seen as fragile, the relationship between the two communities, without any unifying supraethnic political platform, is far from perfect, and the perspective of EU accession, regarded as the only guarantor of future peace and the country's consolidation, remains unclear.

## **The visa liberalization process**

The EU successfully applied visa liberalization as a tool of legal and administrative engineering in Serbia, Montenegro, Macedonia, Bosnia and Albania (see Kacarska 2012). Not only was visa liberalization used to consolidate civic registers and to introduce new security measures via biometric passports, but was also used to alter existing legal provisions related to criminal law and the functioning of the police, customs and border control. However, the process itself was followed by many unintended political and practical consequences.

It could be said that the visa liberalization process constitutes the most visible and tangible example of the EU's influence for citizens of the Western Balkans, unlike a distant membership prospect offered in return for an undertaking to implement often painful reforms. The EU used the visa liberalization process as a way of applying leverage. To fulfil the conditions, the countries on the Schengen 'blacklist' (to which they could be relegated again) had to revise parts of their legislation concerning their citizenship regimes (laws on foreigners and asylum), including the penal code in some cases, as well as to implement significant police and administrative reforms. The process itself, especially the evaluation of the benchmarks as well as the decision to allow visa-free travel to holders of Macedonian, Serbian and Montenegrin passports at the end of 2009 – but not to citizens and residents of Kosovo, even those possessing Serbian citizenship and passports! – or Albanian and Bosnian citizens included at the end of 2010, became mired in controversy and reinforced the bitter sense of isolation among those who were left behind.

Not only is Kosovo excluded from visa liberalization but, furthermore, at the EU's insistence, Serbia agreed to exclude from the benefits of visa liberalization those Serbian citizens, regardless of ethnicity, who reside on the territory of Kosovo. Serbia was thus forced by the EU to discriminate against one group of its citizens (not only Serbs but many Albanians still have Serbian identity documents and passports). One of the stated reasons is that since 1999 Serbia has not exerted control over the territory and individuals in Kosovo. Regardless of this fact, the policy breaches the right of every citizen to possess valid travel documents of his or her state and to be treated equally by that state – the right that Serbia, under EU pressure, denied to people it claims are its citizens in its own province. It seems, however, that the EU was primarily concerned with a possible influx of asylum seekers or illegal migrants from impoverished Kosovo and the readmission process.<sup>2</sup> In addition, Kosovans were left with no alternative,

thus further devaluing the attractiveness of Kosovo citizenship (especially for Kosovo Serbs) and rendering Kosovo's new symbols of independence (such as the Kosovan passport) practically useless. In sum, the EU attempts to reinforce Kosovo statehood and to win the allegiance of Kosovo minorities (namely, the Serbs) to the new state and its institutions on the one hand and, on the other, undertakes initiatives that undermine these efforts and, in addition, effectively force people to search for less legitimate ways to acquire useful travel documents.<sup>3</sup>

It was not until November 2010 that the EU Council of Ministers gave the green light for visa liberalization for Bosnia and Albania after they had completed all necessary reforms. The visa liberalization strategy proved to be highly effective in forcing local politicians to adopt certain administrative reforms following their dismay when in December 2009 Bosnia was left out of the visa liberalization scheme. The majority of the Bosniaks were hit hardest by this decision. Croatian passports already permitted those (almost all ethnic Croats but some members of other groups too) holding these documents to travel without visas and it was assumed that many Serbs either already possessed or would try to acquire visa-free Serbian passports. Again the EU's bureaucratic insensitivity proved problematic on the ground and created even deeper divisions in Bosnia. On the other hand, during the election year, Bosnian politicians were ready to accept also the reforms that were not necessarily related to citizenship issues or administrative practices. The EU thus pressed for effective police coordination, harmonization of the criminal codes in both entities and in Brčko district with the state criminal code as well as for additional measures in fighting corruption and organized crime.

Montenegro also readily satisfied all the conditions for visa-free travel, including amending its law on foreigners. Here again it was clear that the EU's policies could lead to some problematic outcomes. Insistence on satisfying strict criteria for visa liberalization in the context of recent conflict and disintegration and the restrictive citizenship policies such as those in Montenegro resulted in the marginalization of the Roma refugees from Kosovo and their *de facto* statelessness. With their FRY documents invalidated and with no financial and practical means of acquiring new Serbian or rather travel-restrictive Kosovo identity documents, with no prospects of returning home and in a situation where they cannot hope to acquire Montenegrin citizenship (due to the criterion of ten-year permanent residence that the majority of them do not have or cannot prove), they linger in an administrative limbo, which results in complete socio-economic marginalization and, in many cases, extreme poverty (Džankić 2010).

Although the majority of post-Yugoslav citizens cannot afford to travel to the Schengen zone, having a visa-free passport, similar to the visa-free Yugoslav 'red passport', has a strong symbolic resonance. The bottom-up pressure thus had certain results. However, some EU member states are worried about the asylum seekers whose numbers, especially those from impoverished parts of Bosnia, Serbia and Macedonia, have sharply risen. To combat false asylum seekers the EU pressured the states not only to sign readmission agreements but also to engage in control of their exiting citizens. Besides checking return tickets and sufficient funds, this also includes a practice of ethnic profiling focused on the Roma mainly. This example shows that security concerns not only top a long-term political investment in the Balkans but also human rights issues as well (Kacarska 2012). The visa liberalization process demonstrates how the EU has influence on the value of someone's citizenship. A hierarchy of citizenship in the Balkans necessarily designs some passports as 'better' than the others and naturally induces people to try to belong to more beneficial citizenship regime. The political consequences of widespread dual and multiple citizenships are yet to be seen, but one thing is clear: a 'useless' passport disengages citizens from their already weak states, a trend that can be clearly observed in Bosnia and Kosovo.

### **The pre-accession and post-accession influence**

The general pre-accession influence of the EU on the candidate countries, when the EU dictates the tone of negotiations, is obvious. So far only Slovenia and Croatia have gone through the whole process. Macedonia is still blocked; Serbia, Montenegro and Albania are at the early stages of negotiations, whereas Bosnia and Kosovo are still not official candidates. It remains to be seen if the negotiation process will bring further changes to the citizenship regimes of these countries. However, the experience shows that the EU's influence on the candidate countries' citizenship regimes, although indeed potentially considerable, does not necessarily result in profound reforms being initiated. Two Baltic states, Latvia and Estonia, managed to enter the EU despite the widespread statelessness of their substantial Russophone minority populations. Slovenia also practised human rights abuses and social and political discrimination and exclusion, though on a much smaller scale than in the Baltics. It did not solve the issue of 'the erased' before entering the EU but only after the decision of the ECHR (European Court of Human Rights). On the other hand, during the accession period Croatia showed much more inclusiveness, both administrative

and political, towards the Serb minority. It also showed that the EU influence was acceptable but not in all areas (keeping its 1991 citizenship law mostly intact and not adopting the European Convention on Nationality) and that there was more willingness to change legislation in politically less sensitive areas (e.g. the asylum law). Nonetheless, this administrative and political inclusiveness, constituting perhaps one of the EU's most important legacies in the context of the Croatian accession process, did not alter the ethnocentric character of the state and its citizenship regime (ethnic preference has been 'moderated' by minority inclusion). The 'EU-isation' of Croatian citizenship demonstrated how candidate countries could 'satisfy' general EU criteria without actually reforming the fundamental substance of their polities.

Regardless of the changes in citizenship laws that remain under the sovereign jurisdiction of member states, joining the EU itself entails a significant change in the new member's citizenship regime. It automatically introduces another, supranational level to state citizenship with rights and duties attached to the institution of European citizenship. Slovenia and Croatia as the two post-Yugoslav states that joined the EU have therefore a similar two-tier citizenship regime to that which operated in socialist Yugoslavia. The advent of European citizenship in Slovenia and Croatia introduced changes when it comes to EU citizens residing in the country with regard to their participation in local (involving also third-country nationals) and European elections, rights that are also shared by Slovenian and Croatian citizens residing in other EU countries. It is interesting to notice in this context that Croatia used a linguistic opportunity, namely the distinction between citizenship as *državljanstvo* and citizenship as *građanstvo*, to introduce a significant difference and accentuate the primacy of national citizenship: Croatian citizenship is thus *državljanstvo* (something related to state, *država*), whereas European citizenship is *građanstvo* (something related to citizens, *građani*, and their activities but not necessarily to a state).

On the other hand, both Slovenia and Croatia demonstrate that EU membership does not seriously call into question the ethnocentric conception of citizenship and, moreover, that the EU has failed to convince its members to adopt more inclusive citizenship policies, if indeed it ever seriously tried to do so. It is hard to expect the other Western Balkan states to act differently and to re-define their citizenship policies allowing for ever-greater inclusiveness and non-discrimination on an ethnic basis unless there is a targeted pre-accession pressure (as in the case of Croatia) or some form of direct intervention.

## **The EU member states' influence**

The picture of how the EU (mis)manages the post-Yugoslav citizenship regimes and citizens would be incomplete without describing a rather new phenomenon. Some EU member states have recently started, unilaterally, to influence these citizenship regimes by offering citizenship to 'co-ethnics' in the near abroad. Bulgaria interferes directly with the Macedonian citizenship regime by granting Bulgarian citizenship to those claiming 'Bulgarian descent' (at least 40,000 people in Macedonia have acquired Bulgarian citizenship in this way so far, probably much more).<sup>4</sup> A new Hungarian law on citizenship has already provoked fierce reactions (especially in Slovakia) but the real effects are felt in Serbia. It is already expected that up to 100,000 Serbian citizens of Magyar descent have acquired Hungarian citizenship.<sup>5</sup>

However, Croatian accession to the EU has had a major impact on its surroundings. If it is true to say that the EU's influence has certainly been felt in pre-accession Croatia, it is equally certain that two decades of Croatia's citizenship policies will affect the EU itself. At the moment of its adhesion Croatia brought to the EU a great number of EU citizens living in the neighbouring post-Yugoslav but non-EU countries such as Bosnia (estimates put the number of people actually having Croatian citizenship and living in Bosnia at around 500,000), Serbia and Montenegro combined (around 100,000), but also thousands in Macedonia and Kosovo. Is having a European passport in a non-EU state only a matter of additional security for these individuals or might its advantages be effectively used, i.e. by moving within the EU itself? Only time will tell.

## **Partners, or just neighbours?**

From a larger historical perspective, it is interesting to see how citizens of a former multinational federation with a two-level citizenship regime become part of another multinational union of states with a similar citizenship structure that will, once in place, restore to them some of the basic privileges they enjoyed during the Yugoslav era. Moreover, many of those that were united by the bonds of Yugoslav federal citizenship – including those who wanted to break them – found or will find each other united again in another, though different, supranational citizenship regime. It is hard to miss here a certain historical irony.

However, whatever is generally seen as ironic is often tragic on the ground. The long process of more than two decades took the form of numerous partitions, secessions, social fragmentations and widespread political and material violence that turned the citizenship status of many former Yugoslav citizens into a highly complex and in some instances nightmarish one. The results of economic devastation, war and general insecurity sent millions into exile. Today, the process of gradually turning the former Yugoslav citizens into European citizens is clearly under way. Slovenians have been EU citizens since 2004; with Croatia's entry another 4.5 million people together with those living abroad will follow suit; tens of thousands possess already Bulgarian and Hungarian passports. Mention should also be made here of refugees and economic migrants living today within the EU member states and enjoying EU citizenship. Some of them returned to the Balkans and some are circulating between their EU residence and their places of origin. The EU will thus continue to shape the destiny of many post-Yugoslav citizens and their seven citizenship regimes currently existing, where in 1991 there was only one. It remains to be seen if turning all former Yugoslavs into tomorrow's Europeans will turn today's neighbours into partners one more time.

Could European citizenship serve as a tool of new cooperation among post-Yugoslav states? Notwithstanding some additional rights it provides, European citizenship is not federal and it has been cautiously defined – it is derived from the national citizenship of the member states and does not replace it – in order to displace any discussion on primacy. However, one is tempted to ask what the practice of European citizenship would be in the countries that constituted the former Yugoslavia. Above all, this additional citizenship layer would provide the right to circulate freely and to settle in other member states. In spite of the negative experiences of the recent past, we should not neglect the importance of the shared language and of personal and family ties for future migration within the region. It is hard to predict the scale of such migrations, but the fact is that today – following the general democratization of citizenship policies that favour more inclusive civic solidarity but also the existing ethnocentrism of many citizenship laws favouring ethnic solidarity – many individuals hold the citizenships of two and, in some rare instances, three post-Yugoslav states, a fact that has already had a certain political and social impact.

Furthermore, European citizenship would provide important economic, social and political rights. Participation and eligibility at the local and the European level (the national level will, for the time being, remain

inaccessible for non-nationals in almost every state across the world) will certainly add new dynamic elements to the relations between the former Yugoslav states. Doubtless, the supranational roof of the EU, if it stretches far enough to embrace all former Yugoslavs, would indeed provide a new legal and political framework for yet another experiment in the Balkan laboratory of citizenship.

