

**NEGOTIATION AND CAPACITY BUILDING
IN MONTENEGRO**

Florian Bieber

WORKSHOP 2:
FREEDOM OF MOVEMENT,
BUDVA, 25 JANUARY 2002

ECMI Report # 26

March 2002

ECMI Report # 26

European Centre for Minority Issues (ECMI)

Director: Marc Weller

This report was prepared by Florian Bieber, ECMI Regional Representative.

The workshop was financially supported by the United States Institute of Peace.

© Copyright 2002 by the European Centre for Minority Issues (ECMI)

Published in March 2002 by the European Centre for Minority Issues (ECMI)

CONTENTS

I.	Introduction.....	1
II.	Background to the Workshop	2
III.	Aim and Format of the Workshop	4
IV.	Discussions of the Workshop.....	5
	A. Reasons for Lack of Freedom of Movement.....	5
	B. Resolving the Issues	8
V.	Recommendations.....	11
VI.	Follow-up Activities	15
VII.	Annexes.....	17
	A. Programme of the Workshop.....	17
	B. List of Participants	18
VIII.	Background Papers	19
	A. Nebojsa Medojevic, Serbian-Montenegrin Relations and the Freedom of Movement of Goods and People	19
	B. Frantisek Sistek and Bohdana Dimitrovova, Free Movement Between Serbia and Montenegro and its Political Exploitation	28
	C. Ronald von Ooik, Free Movement of Persons and Goods within the European Union: An Example for Serbian-Montenegrin Relations?.....	39

I. Introduction

The ECMI project “Montenegro Negotiation and Capacity Building” was launched with the aim to establish a Track II informal negotiation process providing a forum for interethnic dialogue between the Serbian and Montenegrin communities, which includes minority communities from the Sandzak border region. Through a series of workshops, the project aims to help promote dialogue, identify issues of common concern and assist in delivering concrete benefits as well as building confidence between the communities involved. By focusing the debate on the concrete needs of these communities, the project seeks to facilitate thinking about future interethnic relations in a less charged atmosphere, irrespective of the deeper political questions on the future constitutional arrangements of the two republics.

The project engages political party representatives, government officials and civil society groups (NGOs) in dialogue, while placing particular emphasis on establishing a Track II process with broader civil society involvement across all communities. In this way, the process broadens public debate and can function even when official government-to-government contacts prove difficult or impossible. Through engaging international and local experts, the project also seeks to provide the participants with external guidance on policy options in relation to each of the issues under review.

In a preparatory phase during the summer of 2001, field trips missions to Belgrade and Podgorica were carried out in order to conduct discussions with politicians, scholars and minority representatives to enlist their support and help identify issues of particular concern to all communities. Three issues – Education, Freedom of Movement and Regional Economic Development – were eventually identified to be dealt with in three separate workshops. The project was launched with its first workshop on “Education and Curriculum Development”, which took place 16 November 2002 in Podgorica, Montenegro. The second workshop, on the topic of “Freedom of Movement”, took place 25 January 2002 in Budova, Montenegro.

II. Background to the Workshop

The disintegration of former Yugoslavia saw the emergence of numerous new borders between the newly independent countries. These borders not only the successor states, but also cut across regions which had previously not been divided by physical borders.

In contrast to borders within the European Union, which have seen a gradual weakening in the past decades to their near elimination in the framework of the “Schengen Treaty” and to the convergence of customs and tariffs, the borders between most countries of former Yugoslavia have become major obstacles to the freedom of movement of its citizens. Crossing borders is frequently time-consuming and humiliating for individuals, especially if they belong to the ‘wrong’ national community. In addition to the psychological barriers erected through borders, they also constitute concrete economic hurdles which force those who seek to cross the border to make legal and illegal payments. Finally, the significance of borders extends well beyond the physical border control. Visa and insurance requirements present themselves as additional hurdles in the communication between most of the former Yugoslav republics. The difficulties associated with visas extend into the broad field of difficulties associated with the transfer of entitlements (pensions, health care) and diplomas and degrees (university degrees). These hurdles have severely limited the freedom of movement across the region, impacting those who for professional or family reasons need to cross borders, affecting often minorities in particular. It is nevertheless important to note that borders are not solely a function of discrimination or exaggerated national sovereignty. Rather, borders have acquired key economic and financial functions which render calls for the abolition difficult to implement. As a result of the dysfunctional tax-system in most countries of the region, the customs and tariffs levied at borders have constituted a key source of revenue for the countries’ budgets. Furthermore, customs have prevented the complete collapse of domestic production, which is confronted with cheaper imported goods.

While Serbia and Montenegro still formally share the same country, Yugoslavia, checks at the border between the two republics have followed the trend elsewhere in the region. Border controls and checkpoints between Serbia and Montenegro were ironically not initiated by Montenegro in an attempt to assert its path towards greater

sovereignty and eventually independence. This was rather done by the previous Yugoslav regime of Slobodan Milosevic in 1998, in seeming contradiction to its claim to maintaining the state and opposing the secessionist tendencies in Montenegro. The reasons for the controls were two-fold: On a political level, they sought to exert pressure on Montenegro and its leadership. The function of these checks was specifically aimed at reducing the freedom of movement, rather than this impediment being a secondary result of such controls. The second reason for their introduction was a consequence of the Yugoslav authorities' losing control over the border controls between Montenegro and third countries (Bosnia-Herzegovina, Croatia and Albania, as well as Kosovo after June 1999). This did not only lead to a loss of income, but also to a decrease in political control over the entry of foreigners into the country. After the end of the Kosovo war in particular, the Yugoslav authorities used controls both for raising funds (both legally and illegally) and preventing the entry of foreigners (and indeed arresting them) to Serbia. Foreigners could enter Montenegro without a visa, while visas remained mandatory for the area under control of the Yugoslav authorities.

The fall of the Milosevic regime saw a temporary end to border controls. Controls by the Federal Customs Office were, however, reestablished in February 2001. Again, the reasons for the reestablishment were two-fold: For the Serbian Government and Prime Minister Zoran Djindjic, who requested their reinstatement, the key reasons were largely economic ones. With tariffs and customs being significantly lower in Montenegro (with an average of 3 per cent) than in Serbia (with an average of 10 per cent), imports of products through Montenegro to Serbia would deprive the customs authorities of urgently needed funds and potentially threaten Serbian products, which are protected by higher tariffs. The second reason, which reflects the position of the Yugoslav President Vojislav Kostunica, is based on the Yugoslav Government's stance towards the reconstruction of the relations between the two republics. The Yugoslav and also the Serbian Governments have asserted that future relations between Serbia and Montenegro should be based on a federal model. If, however, Montenegro chooses not to join the federation, it should be treated like other third countries, without specific privileges. While this position seeks to put pressure on the Montenegrin Government's campaign to convince the citizens of the republic to support independence without severing ties with Serbia completely, it is unlikely to be

implemented in the case of independence. The border controls thus sought to emphasize this position of the Yugoslav authorities.

The controls along the border do not constitute a sealed border, but rather a number of checkpoints. In addition to these controls along the land border between the two republics, both republican authorities have instituted passport and identity card controls at the airports for passengers of domestic air travel.

These impediments to the freedom of movement have been affecting particularly minorities (as well as the majority population) in Sandzak, as there are many cross-border family and professional ties and the border area is heavily populated by Bosniaks.

Freedom of movement has been a key issue in the recent discussions between the leaderships of Montenegro, Serbia and Yugoslavia, and the European Union Foreign Policy representative Xavier Solana. In fact, the EU proposal from late February 2002 was criticized by Serbian and Yugoslav authorities for suggesting the establishment of a joint state, without competences which would allow the abolition of checks at the internal border.

III. Aim and Format of the Workshop

The workshop, held in Budva on 25 January 2002, sought to accomplish two tasks: first, it sought to identify the specific problems associated with freedom of movement and its impact on the minority population in particular. As such, the main focus was on the impediments of freedom of movement for individuals. Second, it intended to lead to a number of policy recommendation directed at both Yugoslav/Serbian and Montenegro authorities, which could alleviate some of the problems associated with current and possible future impediments to the freedom of movement.

As the future status of Montenegro remains unclear and as the participants included both supporters and opponents of Montenegrin independence from both republics, the framework in which the workshop took place did not seek to take a position on the final status of Montenegro, as is the case with the project overall.

The workshop was held in a small group (22 participants) with participants from the Montenegrin and Serbian part of the Sandzak, as well as politicians, scholars, and NGO activists from both republics.

IV. Discussions of the Workshop

The discussions held during the workshop were framed and introduced by three background papers examining the question of freedom of movement from different angles. Two papers addressed the situation in Yugoslavia, one of which focusing on the consequences of the impediment to the freedom of movement for citizens, especially in the border region, and the other one on the economic dimension, focusing on goods. The third paper gave the example of EU integration for the establishment of freedom of movement of goods, people and services (see chapter VIII. for the full text of the background papers).

There was a broad consensus that the controls along the border between the two republics (a) constitute a serious impediment to the freedom of movement and that (b) as such they are undesirable, and that irrespective of the outcome of negotiations on the future status of Montenegro, these borders should be abolished. A number of participants also noted that in addition to the physical controls at the border, a number of other impediments exist which limit the movement between the two republics, especially in the sphere of social entitlements and diplomas.

A. Reasons for Lack of Freedom of Movement

Most participants concurred to the opinion voiced in one of the background papers that although economic and security reasons are frequently given to justify the controls at the border, the real reasons lie in the sphere of political pressure and that border controls by federal authorities have been misused to exert political pressure on Montenegro.

The misuse of checkpoints in the process of redefining the relations between the two republics notwithstanding, participants suggested that there are viable reasons for the existence of these controls due to the different paths both republics have taken in

recent years. Two examples in this respect have been voiced repeatedly during the discussions. First, the introduction of different customs and tariffs by Montenegro on the import of goods from third countries has essentially led to the end of the common market of both republics. These steps were taken by Montenegro to reduce its economic dependence on Serbia and to diversify imports. As Montenegro has a considerably more limited domestic production, customs and tariffs do not serve the purpose of protecting its domestic production, as is the case for Serbia. The second reason lies in the fact that Montenegro has abolished visa requirements for travellers entering Montenegro from third countries, while Yugoslavia/Serbia has maintained a more restrictive policy. Here again, the departure of Montenegro from the federal regime is caused by domestic needs, most notably the desire to attract tourists to the resorts along the Adriatic coast in Montenegro. Serbia, in contrast, has been traditionally less reliant on tourism and thus had less incentive to abolish visa requirements, although after the fall of the Milosevic regime the regulations have been loosened considerably.

Another reason given for the continuing existence of border controls was the prevention of illegal inter-republican activities. Participants noted, however, that cross-border crime prevention can hardly be effective through the maintenance of a border regime. Instead, cooperation between the republics and with other neighbouring countries and the European Union was widely identified as a more promising strategy for combating crime in the region.

The Regional Dimension

Some participants, especially members of minorities in Montenegro, noted that the existence of borders impeding the freedom of movement is not merely an issue of concern between Serbia and Montenegro, but that other new and old borders have a severe impact on minorities in particular as well. For Bosniaks, the borders with Bosnia, and the non-recognition of entitlements and diplomas from the Bosniak-Croat Federation in Montenegro, and similarly for Albanians, the borders and other hurdles between Montenegro and Kosovo present a key obstacle in exercising their professional and personal interests.

Human Rights and Borders

Participants from minorities in the border region noted that since the change of regime in Serbia/Yugoslavia, the level of human rights abuses along the inter-republican border have decreased significantly, but that instances of discrimination and unjustified harassment remain a problem. It was furthermore noted by Montenegrin Human Rights activists that the border with Albania has been an example for discrimination against minorities through a border region. Along the border between Montenegro and Albanian, a five-kilometre zone exists which is under special control of the Yugoslav Army (VJ). As a significant share of the Albanian minority in Montenegro lives in this area, this special regime strongly influences this community. One participant, residing in this area, listed a number of severe cases of harassment, threats and other types of discrimination against Albanians in this region by members of the Yugoslav Army. Without having a direct impact on the issue of freedom of movement between Serbia and Montenegro, this case was considered a particular example of borders impacting minorities and leading to human rights violations.

Impact of the Border between Serbia and Montenegro

Communities along the border region are particularly influenced by the controls between the two republics. The impact, especially for minorities, has been assessed by Bosniak participants from the border region to be mainly three-fold: The borders (1) have provided an opportunity for soliciting bribes and other types of corruption and extortion which reduce inter-republican economic activity; (2) disrupt communication by forcing citizens along the border – often with families across the border – to travel vast distances to reach checkpoints and to be delayed at the checkpoints themselves; (3) create discomfort with many citizens belonging to minorities, due to past cases of discrimination and harassment.

The emergence of the border between Serbia and Montenegro had an economic impact on a number of common people, as a participant from local a government in the border area noted. In addition to hurdles in simple cooperation with communes in the other republic, the border results in costs due to the loss of taxes from tax dodging in the border areas. In one particular case, the village of Draga, the checkpoint is in the town, de facto dividing it into two parts and rendering basic services and purchases more difficult for the citizens.

Beyond the Physical Border: Obstacles to the Freedom of Movement

During the discussions, both participants from Serbia and Montenegro noted that the freedom of movement is impeded not only by the physical border, but also by a number of hurdles within each republic. In this context, it was noted with interest that in the case of the European Union, priority was placed on first abolishing these obstacles within the member countries, prior to eliminating the physical controls. In particular participants mentioned difficulties in transferring health insurances and other social entitlements.

In addition to existing hurdles, one participant from Serbia noted the danger of new hurdles emerging in the case of Montenegrin independence. A large number of current citizens of Yugoslavia might be left stateless in the case of Montenegrin independence, due to their having Montenegrin republican citizenship, but residing in Serbia.

Hurdles to Cross Border Cooperation

Bosniak representatives from the Serbian part of Sandzak noted that in addition to the physical border, other obstacles exist in cross-border communication. These participants noted that there is little cooperation between communes across the border. They noted that especially Montenegrin authorities have discouraged cross-border cooperation for fear of undermining the cohesion of Montenegro in its quest for independence.

B. Resolving the Issues

A number of participants wondered how obstacles to freedom of movement can be reduced; there is a danger for increased hurdles for freedom of movement in the case of Montenegrin independence. Although the Montenegrin Government expressed its desire to maintain an open border with Serbia, Serbian and Yugoslav authorities have repeatedly suggested that in the case of Montenegro opting for independence, relations between the two republics would be comparable to those with other countries, including border controls and other limitations to the freedom of movement.

The Physical Border

The participants broadly agreed to the suggestion of a participant from Serbia that a dual approach to the border controls should be taken. First, the long-term approach should be the complete elimination of the border and abolition of any hurdles for freedom of movement between the two republics, irrespective of the outcome of the status issue. Second, if this cannot be achieved in the short- or medium term, regardless of whether the status issue impedes on its resolution or economic reasons prevent its abolition, the border regime should be governed by the rule of law, transparently, and not be a source of discrimination. In addition, the nature of the border should influence the living conditions in the border area, implying that issues such as the absence of close border checkpoints, delays and checkpoints in villages ought to be resolved.

Bosniak participants from Serbian Sandzak emphasized the need to facilitate cross-border cooperation and to realize infrastructural improvements to enhance the cohesion of the Sandzak region. While the participants from the Montenegrin part of Sandzak concurred with the suggestion of an increased cooperation, they emphasized that the priority lies less in the cross-border regional dimension rather than in improving links and cooperation with Podgorica and reducing the peripheral position of northern Montenegro within the republic.

Levels of (Re-)Integration

Despite the broad consensus that border controls ought to be abolished, most Montenegrin participants voiced concern over the nature of harmonization of policies between the two republics, which would accompany this process. The participants noted the more liberal visa regime and the lower customs and tariffs which reflect the economic and political interest of the republic. If harmonization would result in increasing the customs and in re-establishing a more rigid border regime towards third, especially neighbouring, countries, it might constitute a reversal of the reforms undertaken in recent years by the Montenegro Government. As a result, most participants from Montenegro, especially from Human Rights organizations, insist that such a process of harmonization should either preserve the current regime in these areas for Montenegro or extend them to Serbia as well.

Regional Solutions

A majority of the participants, especially of minority representatives, noted repeatedly that resolving the issue of freedom of movement requires a regional approach and cannot be limited to Montenegro and Serbia alone. In addition to family ties across other borders in the region, education and jobs take many citizens of both republics, especially from the border region and minority communities, into other neighbouring countries. The inclusion of Bosnia-Herzegovina, Kosovo and Albania, as well as – although to a less extent – Croatia, has been mentioned as relevant for Montenegro and the Sandzak region by a number of participants for such a regional arrangement. In the course of the discussion, the participants concluded that the regional framework of cooperation could be described as covering the target area of the Stability Pact, i.e. former Yugoslavia without Slovenia, but with Albania.

While most participants supported the idea of regional cooperation to establish a larger space with freedom of movement, a number expressed scepticism towards such forms of regional integration. The range of suggestions by the participants for regional cooperation was broad. On a more modest level, it was suggested to extend the current Bosnian number plates, which do not indicate the town of origin, to the larger region, which would facilitate travel between the different countries and reduce the fear of discrimination or harassment on the basis of origin, easily identifiable through the number plates.

A number of participants, especially from Montenegro, suggested more ambitiously the establishment of a ‘Mini-Schengen’ zone wherein citizens (and goods) could travel freely without border controls. While this idea was broadly welcomed in the discussions, some participants voiced their scepticism over the likelihood of realizing such rather advanced forms of integration. Especially the desire to join the European Union without impediment through such regional obligations was repeatedly offered as a reason to explain why the proposal might not be realistic.

European Integration

There was a broad consensus among the participants that European Integration is a widely accepted process in both republics, and any increase in freedom of movement should be embedded in this integration process. While participants from Western Europe warned that this process would only result in accession to the EU in the long term, a process of voluntary adjustment of laws and regulations in both countries to

EU standards and norms was strongly encouraged. This process would also provide for a possible tool in reintegrating some aspects of the two republics' policies that have resulted in the emergence of the border. It was noted that the process of establishing an internal market with freedom of movement in the EU differed substantially from the current situation between Serbia and Montenegro. But at the same time, this process of a gradual and increasing integration might have a model character for the two republics, especially if they form a part of the two republics' accession strategy.

V. Recommendations

On Reducing the Impact of the Physical Border

Long-Term Strategies

- The border between Montenegro and Serbia needs to remain open and permeable, irrespective of the outcome of the final status of relationship between the two republics.
- Organized crime and smuggling cannot be effectively prevented through semi-permanent borders between Serbia and Montenegro, but rather through closer cooperation of law enforcement agencies, with the support of international organizations, and embedded in a framework of regional cooperation.
- As the border regime between Serbia and Montenegro is, in addition to being the result of political differences between both republics, a consequence of different visa requirements and tariffs in Serbia and Montenegro, these differences need to be addressed to ensure the long-term and permanent removal of the internal border. As such, both republics need to engage in a process of harmonization of visa requirements and tariffs, irrespective of the final status, to allow for a permanent abolition of internal border controls. Such a harmonization needs to take into account the concerns of both republics, including for example a liberal visa regime for the tourism industry in Montenegro.

Short-Term Strategies

- Internal border controls between Serbia and Montenegro have been a source of corruption. As a first step, the controls along the internal border should be governed by law and based on an agreement between the different layers of authority (federal and republican). By the authorities carrying out these controls, measures should be taken to prevent corruption and extortion.
- The border constitutes a particular hurdle in everyday communications in some communes, especially in the town of Draga (Municipality Tutin), where the border cuts across the municipality of Tutin, creating daily problems for its residents. The internal border checks need either to be reduced in such locations or moved away from the border to prevent the continuation of serious impediments on the freedom of movement of some communities. In other locations, the absence of a sufficient number of cross-points led to considerable difficulties, both in terms of time and cost, in conducting regional cross-border traffic of people and especially goods. As long as there is no complete abolition of the border regime, border controls should be established in such a way that no major detours and costs arise from them.
- The nature of the internal border between Serbia and Montenegro should be determined by economic and political criteria set in the rule of law rather than being a tool to exert political pressure.
- Representatives of communities residing in the border area, especially from minorities (i.e. Bosniaks/Muslims), have not been included in the discussions of the future relations between Serbia and Montenegro. Their inclusion would ensure that concerns regarding the future status of Montenegro concerning the freedom of movement would be addressed adequately.
- Border checks towards third countries and at the internal border should be harmonized between both republics and Yugoslav authorities, in order to increase their efficiency and allow for a long-term elimination of internal border controls.

Reducing and Preventing Hurdles Impeding Freedom of Movement

- Establishing partnerships between communes in the border area would help reduce the political distance between communes along the border. These partnerships would focus on practical issues, such as joint facilities and cooperation in the sphere of service provision, sports and culture. These partnerships could be established and facilitated through partnerships with third-party Western European communes.
- In light of the possibility of Montenegro establishing independence in the near future, there is a real danger of a worsening of freedom of movement between the two republics. In order to avoid new hurdles from emerging, bi-lateral agreements between Montenegro and Serbia (with the possible participation of Kosovo) should be concluded on the mutual recognition of degrees and diplomas (both from schools and universities) and social entitlements (pension and health benefits).
- Serbia and Montenegro must resolve the issue of citizenship between the republics in order to avoid a significant number of Yugoslav citizens becoming state-less in the case of Montenegrin independence.

Ending and Preventing Discriminatory Obstacles to Freedom of Movement

- The controls of the border have at times violated the human rights of citizens crossing the border, particularly affecting minorities (i.e. Bosniaks/Muslims). Monitoring mechanisms should thus be implemented to prevent the continuation of HR abuses.
- Discrimination against Montenegrin citizens regarding the issuing of Yugoslav passports has to end, especially in regard to Montenegrin citizens studying abroad.
- A five-kilometre security zone with special competences granted to the Yugoslav Army along the Montenegrin-Albanian border has been a source of discrimination against the mostly Albanian population residing in the border area. This type of border regime sets a negative precedent and constitutes a case of direct discrimination against minorities. The zone should be abolished

and/or reduced to the area of the actual border. This zone should also be monitored by outside observers to ensure that human rights are not systematically violated.

A Regional Approach to Freedom of Movement

- Montenegrin, Serbian, and Yugoslav authorities should commit themselves to a voluntary alignment to EU standards regarding legal standards pertaining to freedom of movement. Such a process would both provide for a set of standards to adopt, and help prepare for eventual membership in the European Union.
- Regional cooperation and the reduction of border controls for people and goods should not be tied to EU membership but form part of a process which helps prepare eventual EU membership and commence well before actual membership negotiations might begin.
- Re-establishment of full freedom of movement between Serbia and Montenegro should not lead to a reduction in freedom of movement between either republic – especially Montenegro – and other neighbouring countries. This pertains in particular to the liberal regime for third nationals visiting Montenegro. The reintroduction of visas for visitors to Montenegro would constitute a threat to the tourist industry in the republic.
- The border regime between Montenegro and Kosovo should be harmonized and simplified at the initiative of both Montenegrin authorities and the Kosovo administration. This is supposed to be achieved in cooperation with the relevant international organizations (i.e. UNMIK) as it presents a major hurdle to the free flow of goods and people between the entities.
- Freedom of movement among all republics has been severely reduced as the result of the disintegration of Yugoslavia. As the hurdles involved affect minorities in particular, a decrease in the border regimes cannot end at the Serbian-Montenegrin border, but must take on a broader perspective. As a long-term strategy, a “Mini-Schengen” zone should be considered between the countries of the Stability Pact target area. While the immediate establishment of open borders is not realistic, multilateral agreements between the countries

in question should slowly decrease the border regime and establish the non-discrimination of citizens of other countries and the recognition of degrees and entitlements. Such a zone should not affect the aspirations of the participating states to join the European Union in the future.

VI. Follow-up Activities

The participants in the workshop expressed the need to continue (a) to monitor obstructions to freedom of movement between the two republics; (b) to develop strategies to reduce obstacles to freedom of movement; and (c) to place this issue on the agenda of the negotiations between the republics on the future status of Montenegro.

Follow-up Workshops

Participants from Sandzak suggested a follow-up seminar in the Sandzak region itself with discussions focusing on more specific aspects (esp. the physical border) of freedom of movement. Such a workshop could be based on a detailed study of the border regime and present concrete policy recommendations on how to reduce the negative aspects of the border and eventually dismantle it completely.

A number of participants noted the need to involve high-ranking representatives of both republics and the federal government in the follow-up activities.

Facilitating Cross-Border Cooperation

Participants from a local government in the border region suggested facilitating cross-border communal partnerships, which would help alleviate some of the hurdles associated with the physical border and the lack of political cross-border communication. One participant suggested that these cooperations could be facilitated by third partner cities/communes in Western Europe or by organizations involved in city-partnerships.

Learning Lessons from Other Cases

One suggestion raised during the discussions was to examine other cases of the impact of borders on minority border communities and derive lessons in (a) maintaining cross-border communication and preventing ‘peripheralization’ on both sides of the border, and (b) reducing the impact of borders for border communities through legal measures, such as exemption from border controls or the recognition of entitlements. Such a ‘lessons learnt’ assessment could be carried out in the form of study visits or trainings for officials and minority leaders from the border regions.

VII. Annex

Annex A: Programme of the Workshop

- 9.00-9.15** **Opening Words and Welcome**
Florian Bieber, ECMI
- 9.15-10.00** **Presentation of the Background Papers**
Frantisek Sisteck, Europe Analyse
Ronald van Ooik, University of Utrecht
- 10.00-10.30** **Introduction and Identifying Needs and Key Issues**
- 10.30-11.00** **Coffee Break**
- 11.00-13.00** **Session 1: Hurdles to Freedom of Movement**
The Physical Border
Other Hurdles
- 13.00-14.30** **Lunch**
- 14.30-16.30** **Session 2: Re-establishing Freedom of Movement**
Freedom of Movement between Serbia and Montenegro
The Regional and European Dimension
- 16.30-17.00** **Coffee Break**
- 17.00-17.30** **Closing Session: Conclusions**
Summary of the Sessions and Recommendations
Planning follow-up events
- 19.00-** **Closing Dinner**

Annex B: List of Participants

	Name	Organization
1	Balota, Adis	Socijaldemokratska Partija (Socialdemocratic Party)
2	Bjekovic, Sinisa	Human Rights Center
3	Camaj, Kole	Montenegrin Helsinki Committee for Human Rights
4	Dzudzevic, Esad	Bošnjačka demokratska stranka, Sandzak (Bosniak Democratic Party, Sandzak)
5	Franovic, Slobodan	Montenegrin Helsinki Committee for Human Rights
6	Gjokaj, Leon	Nansen Dialogue Center
7	Ivanovic, Marko	Nardona Stranka (People's Party)
8	Janjic, Dusan	Forum for Ethnic Relations
9	Komsic, Jovan	Yugoslav Ministry for Ethnic and National Minorities
10	Kucevic, Esad	Mayor, Tutin City Council
11	Lalalic, Lado	UN Office of the HC for Human Rights
12	Mucic, Amra	Center for Regional and Security Studies
13	Numanovic, Amir	Sandžačke Novine (Sandzak News)
14	Ooik, Ronald van	University of Utrecht
15	Omeragic, Bajram	Lista za Sandzak (List for Sandzak)
16	Rutovic, Zeljko	Demokratska Partija Socijalista (Democratic Party of Socialists)
17	Sistek, Frantisek	Europe Analyse
18	Vucinic, Nebojsa	Human Rights Center

ECMI Staff

1	Perry, Valery	Regional Representative, Sarajevo
2	Bieber, Florian	Regional Representative, Belgrade
3	Stojanovic, Ana	Local Project Assistant

VIII. Background Papers

A. Nebojša Medojević¹

SERBIAN—MONTENEGRIN RELATIONS AND THE FREE MOVEMENT OF GOODS AND PEOPLE

1. INTRODUCTION

The Federal Republic of Yugoslavia came into existence as the result of a political agreement between two communist elites, and it has been encumbered from the outset a lack of legitimacy and legality. Bilateral relations between Serbia and Montenegro within the FRY were thus greatly dependent on the political relations between the groups in power, and often even on the personal relationships among leaders from Belgrade and Podgorica. The FRY never existed as a legal state, and the federal institutions were not able to impose their authority and did not function on the basis of the Federal Constitution and the law. Relations within the federation were often impeded by conflicts and crises of varying degrees of intensity, which were generally resolved by mutual agreement among political leaders, largely outside of the system's institutions.

As the relations between the parties in power gradually cooled down, the bilateral relations between the republics progressively worsened, and the crisis escalated in March 1997, when there was an open conflict between officials in Podgorica and Belgrade. The political conflict quickly became an economic, media, intelligence, and cultural war, so that the period between the years 1997 and 2000 may be viewed as a period of open animosity between the two member states of the federation.

This was a time when virtually all trade between the two republics ceased, when the transfer of funds and movement of people became more difficult, and when there were a significant number of incidents relating to ownership of property (confiscation of hard currency from Montenegrobanka at Belgrade airport, confiscation of humanitarian aid by the Yugoslav Army etc.).

¹ Centre for Transition Montenegro

Of course, throughout the period of crisis in Serbian-Montenegrin relations, the relations among the citizens, business people, state-owned companies, sports teams, cultural emissaries, and health institutions remained very good as they were based on long-lasting cooperations in these spheres as well as on strong interpersonal and family relationships, which successfully withstood political pressures.

Regardless of the political arrangement between Serbia and Montenegro, negotiations are needed, and I believe that it is best to begin talks immediately, specifically regarding issues which will remain relevant independently of the final political status and which are of great importance to the lives of ordinary people, i.e. trade, freedom of movement, protection of ownership, employment, education, healthcare, pensions, debts, etc.

2. THE FREE MOVEMENT OF GOODS

The degree to which the status quo in the relations between Serbia and Montenegro is untenable and expensive is best illustrated by an analysis of the trade relations. Namely, according to the Constitution of the FRY, the territory of this virtual federation represents a single economic region with free movement of goods, people, and capital: “The Federal Republic of Yugoslavia is a single trade region and has a single market” (Article 13, The Constitution of the Federal Republic of Yugoslavia).

The federal government, via its Ministry of Trade, is responsible for issuing import permits, and the Federal Customs Office is the only agency which is supposed to charge import taxes, and declarations of import and export should be filed via the People’s Bank of Yugoslavia.

The Federal Republic of Yugoslavia and its agencies set the policy, pass and enforce federal laws, other regulations and general acts, and provide constitutional and legal protection in the areas, i.e. deal with issues of “a single market; the legal position of companies and other trade entities; the monetary, banking, hard currency, foreign trade and customs systems; the systems for credit relations with the international community, the basis of the taxation system” (Article 77, FRY Constitution).

However, a period of serious straining of relations between the two republics began following the presidential elections in October 1997, when Đukanović was elected President of Montenegro and its former President, Momir Bulatović, was appointed as

the Federal Prime Minister, in opposition to the will of the citizens of Montenegro. Aside from political conflicts and continued accusations in the media, the conflict spread to the sphere of economic relations, which were again used by the regime in Belgrade to continue to pressure the leadership of Montenegro.

Following the parliamentary elections in 1998, Montenegro formed a coalition government which, over a period of two years, transferred virtually all powers from the federal level to that of the republic. One of the first measures taken by the new government in the process of restitution of power to the republic was taking over the foreign trade and customs policies and keeping a portion of the earnings intended for the federal budget in the budget of Montenegro. The Montenegrin Government justified retaining the funds by citing a debt from the federal budget to Montenegro's pension and disability insurance fund to be used for pensions and other payments to beneficiaries in Montenegro.

Following the introduction of the German Mark in November 1999, first as a parallel and shortly thereafter as the sole form of payment, the problems in economic relations between Serbia and Montenegro continued to worsen, only to escalate further when the regime in Belgrade imposed a virtually complete embargo on Montenegro so that virtually all trade between Serbia and Montenegro ceased.

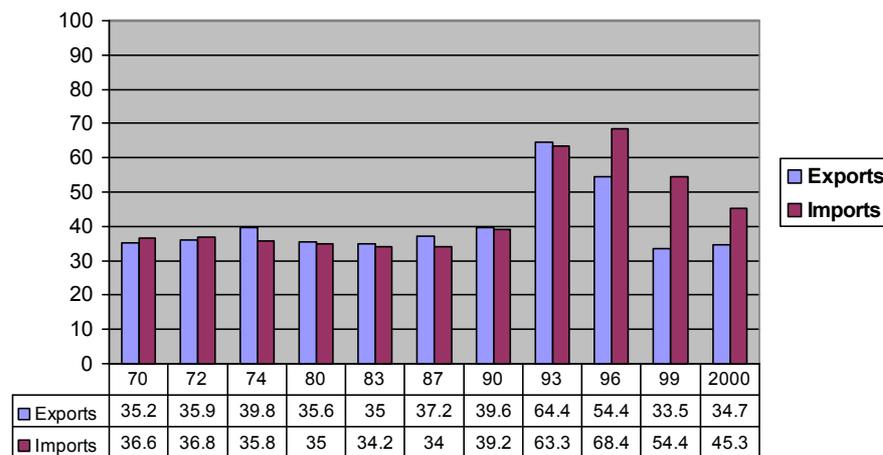
During this period, business partners from Serbia and Montenegro used various intermediaries from other countries (for the most part, neighbouring), through whom they carried out their business transactions.

Following the fall of the regime in Belgrade in October 2000, the political motives for a continued economic blockade of Montenegro disappeared, and economic relations, trade above all, are gradually recovering.

The disappearance of political motives has not eliminated the problems faced by companies with a stake in trade. Namely, a new set of problems, primarily of a legal nature, has arisen as a result of the fact that Serbia and Montenegro actually function as two independent nations although there remain formal and legal restrictions at the federal level. So, the current situation in Serbia is such that customs and the transfer of funds are regulated by the federal government, while the Serbian

Government sets the fiscal policy. On the other hand, the Government of Montenegro has completely taken over the responsibilities of the federal institutions which it

considers illegitimate and whose authority it does not recognize on the territory of Montenegro. It should be underscored here that in Kosovo all authority lies in the hands of the international governing body of UNMIK, so that trade with Kosovo has all the characteristics of foreign trade.



Graph 1: Trade between Montenegro and Serbia 1970 - – 2000 in relation to total trade with the former republics of Yugoslavia²

Graph 1 indicates export and import levels during the period of 1970 through 2000. Export includes all deliveries of goods from Montenegro to Serbia, and import represents all goods brought in to Montenegro from Serbia. The percentages on the graph are in relation to Montenegro's total export and import with the other republics of the SFRY, now independent countries in the region.

During the first seven months of 2001, goods imported from Serbia represented 7 per cent of Montenegro's total imports, and total export of goods to Serbia constituted only 4 per cent³, which clearly indicates that Serbia is no longer Montenegro's main foreign trade partner. This state of trade relations is in large part the result of political barriers and the unresolved national status. It is reasonable to expect that trade relations would improve significantly if mutual relations between Serbia and Montenegro were to be clearly regulated, legally and constitutionally.

² The figures through 1987 are taken from Časlav Očić, *Nomika regionalnog razvoja Jugoslavije* [The Economics of Regional Development of Yugoslavia], (Beograd: Ekonomika, 1998). The export and import figures for 1989-2000 were calculated by the author based on officially released statistical information (Statistički godišnjak 1999, Centralna banka Crne Gore, CEPS/ISSP, *Monet*, No. 7, December 2001.)

³ CEPS/ISSP, *Monet*, No. 7, December 2001.

3. THE FREE MOVEMENT OF PEOPLE

The political confrontation between the governing bodies in Serbia and Montenegro has, fortunately, not had a significant negative impact on people's freedom of movement. While the powers in Belgrade were prepared to use all available means in the conflict with Montenegro, they never significantly restricted freedom of movement between the two republics. As the conflict escalated, the border regime became more strict with the introduction of police and customs checks of all vehicles crossing the previously invisible interstate border, but the border regime for individual citizens was significantly more liberal.

The economic blockade of Montenegro resulted in a significant decrease in business travel in both directions, but the frequency of overall movement of people remained at roughly the same levels. All these years, tourists from Serbia were by far the most numerous group of visitors to the Montenegrin coast, and 2001 was a record-breaking year in the number of tourists from Serbia to visit Montenegro over the past decade.

Maintained freedom of movement between the republics was primarily the result of the good relations between private citizens, business men, and sports and cultural organizations. Moreover, due to their ethnic proximity and good mutual relations, neither Serbs in Montenegro nor Montenegrins in Serbia felt threatened or discriminated against by the majority, formally or in practice.

Such a relationship between Serbs and Montenegrins, which resisted the difficult trials and provocations of the political elite, can form a solid foundation for redefining the political and legal status in an atmosphere of good will and open dialogue. There does not exist any open antagonism between these two peoples, as was the case in Croatia, Bosnia and Hercegovina, Macedonia, and Kosovo.

The minorities in the border region between Serbia and Montenegro (Sandžak) can contribute significantly to the strengthening of bilateral relations and the easing of tensions between the two republics. Namely, the border region is multinational and Muslims-Bosniaks constitute the majority of the population. Their interest is for relations between the two states to develop in a positive direction, thus improving their own position.

The free movement of people also constitutes the basis of developing free trade, and free trade in turn directly effects an increase in production and investment, as well as

a rise in the standard of living, which should be a priority for the authorities in both Belgrade and Podgorica when determining a policy for these economically depressed regions.

With the establishment of a more stable environment as well as the onset of the process of joining the European Union, together with the processes of reform and modernization of the Serbian and Montenegrin economies and societies, the issues of regional cooperation and openness will emerge as priorities and will have to be addressed in accordance with the recommendations and standards of the EU.

Despite the sharp rhetoric and threats expressed by certain nationalistic political circles that a renewal of Montenegrin independence and the definitive dissolution of the FRY would result in the harsher treatment of Montenegrin citizens living and working in Serbia, as well as in the introduction of a firm border and the implementation of a strict border regime (with visas), the processes of regional cooperation and the adoption of EU standards move in a completely different direction. Serbia, if it wants to be part of this integration, must adjust its policies towards its neighbours to meet the recommendations of the EU, which views this as a region of free trade and free movement of people.

From a broader perspective, this entire region is already rather liberal with regard to the free movement of people, and only a small number of countries have introduced a visa regime.

	Slovenia	Croatia	B&H	Macedonia	Montenegro	FRY/Serbia	Hungary	Romania	Bulgaria	Albania
Slovenia		-	+	+	+	+	-	+	+	+
Croatia	-		-	+	+	+	-	-	+	+
B&H	+	-		-	-	-	-	+	+	+
Macedonia	+	-	-		-	-	-	-	+	+
Montenegro	-	-	-	-		-	-	-	-	-
FRY/Serbia	+	+	-	-	-		-	+	+	+
Hungary	-	-	-	-	-	-		-	-	+
Romania	+	-	+	-	+	+	-		-	+
Bulgaria	+	-	+	-	-	-	-	-		+
Albania	+	+	+	+	+	+	+	+	+	+

+ = visa required
 - = visa not required

Table 1: Visa policies in South Eastern Europe

With the end of armed conflicts and the easing of political tensions, the justification for introducing a visa regime among countries in the region is questionable. It can be

expected that, with the further improvement of bilateral relations between neighbours, as well as of multilateral relations among all countries in the region, the need for this type of border control will diminish. At the same time, due to increased problems with international illegal transport of people and goods, as well as the regionalization of all forms of organized crime, a closer cooperation between the agencies in charge of eliminating these dangerous negative phenomena (police, justice department, courts, customs) will become even more important among the nations in the region. The dynamics of regional cooperation with regard to freedom of movement could move in the direction of liberalizing the movement of ordinary citizens on the one hand, and a more intense cooperation among the relevant agencies with the goal of uncovering and preventing all forms of organized crime, especially cross border smuggling, on the other.

4. CONCLUSIONS

Trade relations between Montenegro and Serbia constitute the most obvious example of the absurdity of maintaining the status quo. The evident economic interests which exist among trade partners from Montenegro and Serbia are seriously threatened by restrictions of a political nature, and instead of acting as a strong factor of integration and development for both republics, this issue is continually being exploited for political games, pressures and manipulations on both sides. The introduction of such hybrid, temporary measures in the sphere of trade and fiscal relations bears only negative consequences, as evidenced in the decreased volume of trade between Montenegro and Serbia and in the increased costs of goods and services resulting from the additional administrative costs that every transaction entails. On the other hand, due to the liberalization of prices, Serbian products have become significantly more expensive than during the period when prices were administratively frozen, and Montenegro's demand for them has, as a result, fallen significantly.

The trade embargo imposed in the year 2000 forced Montenegrin companies to import the necessary raw and manufacturing materials, as well as consumer goods, from other countries, which initially led to a rise in consumer prices in Montenegro in 2000. However, this embargo also had positive effects in directing Montenegrin companies to other markets. So, the manufacturer cited in this paper turned to importing manufacturing materials from Italy, which in most cases, according to a

representative of the company, proved to be both more affordable and of a higher quality than the materials previously purchased from Serbia.

The changes that took effect at the end of 2000 had a strong impact on opening the Serbian market to other international companies. The Montenegrin manufacturer now faces strong competition, and in order to sell his products in Serbia must invest more efforts with respect to the price, quality and marketing of his products than he would need to in order to enter any other market. Companies from Serbia and Montenegro enjoy a strong competitive advantage in the form of brand recognition, which is a result of a decades-long monopoly on the market and the resulting entrenched consumer habits. However, this advantage is quickly lost when products are unable to match the competition in quality and especially in price.

The process of openness and adoption of European standards and criteria, as well as the process of privatization of former government- and public-owned companies, will certainly have a direct impact on decreasing the capacity of the government to introduce discriminatory and protectionary economic and political measures in order to favour domestic manufacturers. Consequently, the advantages of the size of the internal market will quickly become irrelevant to improving economic performance, which will in turn raise the issue of wider economic integration among the territories of South Eastern Europe.

Montenegro and Serbia should define their relations in the sphere of economic cooperation in a modern, European spirit, which could then serve as a model for wider integration in this region. Of central concern must be the interests of private citizens and trade entities, which should take precedence over any particular interests of the political elites or those financially close to the centres of power.

A zone of free trade, without internal customs and with coordinated economic policies, free movement of people without a visa regime, protection of private ownership, contracts and investments, and a maximally efficient, simplified and inexpensive system of monetary transfers between Montenegro and Serbia must be the basis for dialogue between the two states.

In addition, until we reach the final resolution of the status issue, a coordinating, technical committee should be formed, to include legitimate representatives of Montenegro and Serbia, whose task it would be to coordinate any activities in the two

republics related to facilitating economic cooperation and dealing with international financial and political organizations and institutions (IMF, World Bank, WTO, European Council, etc.). The tolerance which the international community has shown for the temporary and artificial solutions to the status issue of Serbia and Montenegro is slowly running out, and it must finally be made clear which state and which government will take on the responsibilities resulting from a reintegration into the international community. The federal government and the FRY can no longer do so.

The process of coordination and stabilization which was begun with the EU could also serve as a good moment for the international community to adopt a new approach. Namely, the process of integrating Montenegro and Serbia into the EU should be contingent on the intensification of dialogue between these two states on adopting EU standards and regulating mutual relations. The EU should further insist on a wider regional integration based on the same principles on which the EU itself was founded and developed.

B. Frantisek Sistek¹

Bohdana Dimitrovova²

Free Movement Between Serbia and Montenegro and its Political Exploitation

Introduction

The aim of this analysis is not to praise the idea of free movement between Serbia and Montenegro and argue that it would be beneficial for both republics no matter what their future arrangement will be. There can be no dispute about that. Instead, this paper will try to identify the principal groups which would be most affected by the severance of the free movement between the two republics, the most common threats used by the political forces which exploit the issue in the ongoing debate about the future relations between Serbia and Montenegro and the principal political groups which are responsible for raising the tension. The open border and free movement of citizens between the two republics should be given priority over and should not be conditioned by the final outcome of the current crisis of the federal state. This paper will demonstrate that the issue is principally in the hands of the Serbian and federal political representatives. In order to secure the idea of an open border between Serbia and Montenegro, pressure should be applied primarily on these key political leaders.

Crisis of the Federal State

The Federal Republic of Yugoslavia (FRY) is one state consisting of two federal units, the Republic of Serbia and the Republic of Montenegro. Similarly to other federal states, the inhabitants of each republic have a right to move freely to the other republic, to benefit from the school system and health care in the other federal unit

¹ Analyst, EuropeAnalyse, Czech Republic

² Researcher, East West Institute, Czech Republic

etc. In addition, in a federal state, there should be no obstacles to the commerce between the two republics either. The FRY however, is not a properly functioning federal state. A part of its territory – Kosovo – is under international jurisdiction and beyond all control of the federal or Serbian authorities. The smaller and less populous partner in the federation, the Republic of Montenegro, does not recognize the federal authorities. A struggle between supporters of the reconstruction of the federal state and the supporters of Montenegrin independence has been going on for several years and it is not the purpose of this paper to focus on its details. Several possible outcomes of the crisis exist, from a reconstruction of the federal state to the establishment of two independent states with international recognition. Not surprisingly, both the supporters of independence and the supporters of the federal option claim that they want to join the European Union and accept the principles applied by the EU as soon as possible.

While the stands of the supporters of independence and federalists cannot be easily reconciled, it is clear that Serbia and Montenegro have many things in common and should preserve their non-political ties no matter what the formal outcome will be. The most logical solution to the crisis would therefore be a series of agreements on the key principles of mutual relations, which would remain valid regardless of whether a common state would be preserved or not. For example, it would certainly be beneficial if the representatives of both republics accepted a declaration that the property rights of Serbian citizens in Montenegro and Montenegrins in Serbia will be respected, that students from one republic can freely study at a university in the other republic, that there will be a common health system etc. There were hopes that such a solution could be realized if commissions of experts from the two republics were established in order to discuss the different aspects of their mutual relations. However, due to the lack of political will on both sides, the negotiations of the expert teams failed to define the areas of common interest. Currently, even issues which are beyond any doubt beneficial to both sides, are often applied against the Montenegrin supporters of independence in the service of political pressure.

Political Exploitation of the Free Movement

Important issues such as the right to university education, health care and even the possibility of simply crossing the border in case of a dissolution of the common state serve as important tools of pressure in the hands of some parts of the Belgrade political establishment, the pro-Yugoslav parties in Montenegro, as well as some unionist organizations in both republics. The way in which these issues are exploited is very simple: the federalists emphasize that Montenegrin citizens will be able to enjoy the same rights as Serbian citizens in Serbia only and exclusively if the federal state is preserved. The alternative, the establishment of two formally independent states (even in case of a union of states) would automatically mean the termination of these rights. Such alarmist threats are often accompanied by comparisons with remote foreign countries (for instance, if the federation collapsed, the Montenegrins would not have a better status than the Namibians in Serbia). In addition, threats that Montenegrins would not be allowed to study in Serbia (unless they paid a relatively high fee) or enjoy its health care are often accompanied by claims that Montenegro itself is unable to provide such advantages on a level comparable to that of Serbia, and the “backwardness” as well as limited size of Montenegro are cited.

Another favourite issue is the establishment of a “real border”. Again, in the statements of many federalists, there are only two alternatives: either a federal state or a rigid border with border posts, border guards and controls. Most importantly, Montenegrins would need a passport in order to go to Serbia. The symbolic passport theme is cited repeatedly with the apparent aim of spreading uncertainty and fear (the majority of Montenegrin citizens does not own a passport). The fear that a real border could be established is furthered by examples from the recent past. Due to the fact that the break-up of socialist Yugoslavia was not peaceful and negotiated, but bloody and uncontrolled, the previous experience of most citizens of the FRY seems to confirm that newly established borders are extremely difficult to cross.

The idea that both republics might be formally independent but still retain extensive ties and establish a union of states has also been targeted as impossible by some Serbian politicians. According to such reasoning, the ties between Serbia and Montenegro can be preserved only if the federation survives. In case of some other

outcome, Serbia would have no reason to maintain special ties with Montenegro. There have been statements indicating that an independent Serbia would rather establish closer ties with other neighbouring countries (Macedonia, Bulgaria) than with Montenegro. Such scenarios are definitely not meant as realistic political projects. Instead, they are rather threats directed toward the Montenegrin electorate.

The freedom of movement of individuals between the two republics has therefore become a standard weapon in the pressure against Montenegrin independence. While no one dares to say it explicitly, according to the logic of such statements, reducing this freedom would be more or less Belgrade's punishment for Montenegro's secession. These threats are not isolated, but form rather part of a wider set of dangers which would allegedly face Montenegro if the federal state ceased to exist (economic crisis, escalation of minority demands, in the extreme cases even division of Montenegro by neighbouring states etc.).

Groups Most Affected by the Possible Restriction of Free Movement

The exploitation of the above-mentioned themes for political purposes targets primarily several groups of citizens of Montenegro and Serbia. The same groups would also be most affected by an establishment of a more rigid border and by various limits imposed on the freedom of movement between the republics.

Montenegrins Living in Serbia. A great number of residents of Serbia came from Montenegro. The degree of their identification with Serbia and Montenegro is varied. Despite the lack of precise data, it can be estimated with relative certainty that the majority of them considers themselves ethnically Serb and supports the preservation of the federal state. However, there have been threats that the possible dissolution of the federal state would put the rights of these residents of Serbia into question. There have even appeared alarmist voices indicating that persons of Montenegrin origin would then inevitably become second-class citizens in an independent Serbia or could no longer work in certain positions (especially in administration, a traditional domain of Montenegrin migrants to Serbia). The exploitation of fears of this group of Serbian citizens for political purposes is even more absurd in view of their commitment to the idea of a joint state. Moreover, according to this logic, Montenegrin pro-independence

forces would be guilty for eventual mistreatment of persons of Montenegrin origin by Serbia.

Muslims/Bosniaks of the Sandzak. The fact that the Muslim/Bosniak minority in the region of Sandzak (northern Montenegro, part of south western Serbia) is divided by a border between Serbia and Montenegro has been exploited already by the Milosevic regime. The fear that the links between the two communities, already affected by the existence of the administrative border, would further deteriorate has been usually used in order to discourage the Bosniak population of northern Montenegro from supporting the pro-independence forces in that republic. The exploitation of this theme is also directed to arouse attention of Bosniak political, religious, and cultural leaders in the Serbian part of Sandzak. The fears that the Sandzak would be split by a standard border should motivate these leaders to help convince their fellows across the administrative border to support the federal idea since the only alternative would be a separation of the traditionally linked Bosniak communities in the two parts of the Sandzak.

Pro-Yugoslav Montenegrins. A great deal of the threats is directed at the community of Orthodox Montenegrins. It obviously targets those Montenegrins who believe that Montenegrins and Serbs are traditionally, ethnically, and economically deeply linked. A great number of Montenegrins who feel affinity to the Serbs, as well as those who declare themselves ethnically as Serbs, live in the north of Montenegro. Their case is therefore in many ways similar to that of the Bosniaks in the same region. The establishment of a standard border and restrictions imposed on the free movement and other freedoms which these people so far enjoy in neighbouring Serbia would not only affect their sentimental and symbolical links with Serbia, but would also affect them in practical life, economically etc. This group is arguably the most likely target of exploitation of the border theme since it can be relatively easily mobilized in favour of preserving the federation (preferably through support of the politicians who generate the tension).

Individuals with Professional and Other Links in the Other Republic. There exists a large group of people in both republics (however, it is more important for Montenegro) linked to the other republic by various interests (university students, businessmen, people needing health care, property owners). The possible restriction of freedom of movement, study etc. would deeply affect this heterogeneous group. Last

but not least, to some degree it also includes the immense group of people in both federal units with close family and personal ties in the other republic.

Politicians and Political Subjects Responsible for the Future of Free Movement

The direct as well as indirect threats that the Serbian-Montenegrin border will become more rigid in case of Montenegro's independence and that it will have negative consequences on various rights now enjoyed by citizens of one republic in the other have been raised by many representatives of the pro-federal political forces. Political representatives who use the threat of establishing a standard border as a means of political pressure against the current Montenegrin administration can be found in the top echelons of the federal government, in the Government of Serbia, and among the Montenegrin forces that represent the pro-Yugoslav opposition in that republic.

Yugoslav President Vojislav Kostunica has frequently pointed out that common interests of both republics can be realized only if a federal arrangement will be preserved. Kostunica's view is that Serbia has no interest in a future alliance with Montenegro if that republic decided formally to split from the Yugoslav federation and become independent. "Either you have one country or two countries – nothing else," he summed up his views in January 2001 and continued, "The prevailing mood here/in Serbia/is for a joint state. But if there are any changes, Serbia has no interest in living in some alliance of independent states, in a quasi-state." Last year, it was the Yugoslav President and his followers who most actively spread the message that the issue of free movement was inextricably linked to the preservation of the federal state.

Serbian Prime Minister Zoran Djindjic, a political opponent of President Kostunica often described as pragmatic, has managed to become the dominant personality on the Serbian political scene. Djindjic has repeatedly claimed that he is primarily concerned with Serbia and that the nature of its relations with Montenegro is of limited importance to him. In fact, it was precisely the Serbian Premier who asked the Federal Customs Office (SUC) to re-establish checkpoints on the administrative border between Serbia and Montenegro on 12 February 2001, only 4 months after the same checkpoints erected by the Milosevic regime were abolished by the DOS (the checkpoints of Prijepolje, Brodarevo, Jabuka, Godovo, Mehov Krs and Uzice).

Djindjic justified this action by saying that the move was not a political decision but rather a necessity to protect the market and had no connection to the bad relations between the Serbian and Montenegrin Governments. In fact, Djindjic has also enforced the view that the free movement of people could be guaranteed only in a federal state, though to a somewhat lesser degree than Kostunica and his followers. At several occasions, he clearly indicated that the border between the two republics would be transformed into a standard state border with all consequences involved if the federal state did not survive.

Claims that the dissolution of the federation would necessarily have negative consequences on the rights of Montenegrins in Serbia and that it would automatically mean the establishment of a standard border have also been made by some representatives of the coalition “Together For Yugoslavia”, which unites the Montenegrin pro-Yugoslav forces. The coalition is in the opposition in its home republic, but it participates in power on the federal level (despite the fact that its representatives are often bypassed if their views differ from those of the Serbian Government). In the case of the Montenegrin pro-Yugoslav coalition, exploitation of the issue helps to create the feeling of insecurity within Montenegro and facilitates the mobilization of its political supporters. The influence of Premier Djindjic and his followers and to a lesser degree that of President Kostunica over the future of the ties between the two republics is certainly decisive. However, due to its unique involvement in both Montenegro and on the federal level, the pro-Yugoslav coalition and especially its principal component, the Socialist People’s Party, has a relatively good position which could enable it to pressure the Serbian side into guarantees that the many ties between Montenegro and Serbia will not be influenced by a possible demise of the federation. Unfortunately, the SNP has so far focused on short-term political goals instead of using its position to secure the long-term interests of the majority of Montenegro’s citizens.

The position of the Montenegrin Government is somewhat paradoxical. It attempts to establish an independent and internationally recognized Montenegro. Since it advocates the dissolution of the federal state, it actually opens the discussion on the future nature of mutual ties including the issue of free movement. However, the Montenegrin Government has consistently underlined its belief that the border between the two republics should remain fluid even if the federation was dissolved.

Voices indicating that Montenegro might undertake unilateral moves toward independence that would effectively put into question the free movement of individuals and other rights (at least in the short-term) have been rare. The Montenegrin Government has therefore initiated the debate, but it has been rather passive, a reactive rather than an active participant in the political exploitation of the issue of an open border. Moreover, out of all the political players in the game, it would certainly suffer most from the restrictions of the free movement.

Apart from among the politicians, the threat that Montenegrin citizens would be treated as foreigners in case of another political arrangement between the two republics could also be found in the media. In addition, the issue has been raised by some civil organizations which support the idea of the joint state, both in Serbia and Montenegro. While it is not only politicians who raise such fears, they are the ones who can be blamed for raising the tension. In the highly centralized societies of Serbia and Montenegro, the political representatives in power have definitely more influence over society as a whole than in the West. The political representatives therefore have higher responsibility as well as more means of raising or decreasing tensions. Moreover, a large part of the media as well as many officially non-political organizations are directly or indirectly influenced by the ruling political establishment or other influential political subjects in both Serbia and Montenegro.

Securing the Free Movement Through Pressure on Political Leaders

In order to protect the idea of an open border and free circulation of individuals (including free access to university education, health care, residence, and property ownership in the other republic) between Serbia and Montenegro, it is most important to target those who have most influence on its future. Due to the system of centralized administration inherited from the previous regime, this set of issues is almost entirely in the hands of the most powerful members of the political elites in the two republics. In Montenegro, the supporters of independence agree that the border should certainly remain open and the non-political ties with Serbia preserved. However, it is rather the Serbian/federal political establishment which has been exploiting the threat of limiting the openness of the border if the federal ties between the two republics should

dissolve. These politicians, followers of Prime Minister Zoran Djindjic and President Vojislav Kostunica, are those who have full responsibility for the nature of future non-political ties with Montenegro. Focusing on various aspects of the problem (such as access to university education, confidence building among the Bosniaks and Serbs or Montenegrins on both sides of the border, local cooperation on the regional level etc.) is certainly beneficial. However, no matter how good the partial results of such projects focusing on micro regional issues or practical problems can be, all of them can be smashed by a simple political decision (the rapid return of checkpoints and controls in February 2001 demonstrated this quite clearly). In order to assure that the border between Serbia and Montenegro will remain open and various rights of citizens of both republics will be guaranteed, it is necessary to convince the Serbian leaders that it is the idea of an open border rather than the idea of a federal arrangement at any price which should be inviolable.

The best solution to the problem would be the termination of threats and accepting a political declaration (or a set of laws), regulating the particular issues between Serbia and Montenegro without explicitly mentioning the nature of future relations between the two republics. However, due to political divisions, the domestic powers that would favour such a solution are not strong enough to put similar demands to the political agenda. While the importance of the issue is generally acknowledged in both republics, it does not have a potential to mobilize citizens, NGOs, or political parties which would press the administration to guarantee that the freedom of movement across the border will not be restricted and the existing rights respected. This could be done only if outside pressure (most likely of the EU and the US) was applied. At the moment, however, it is not yet clear whether the EU will commit itself to the solution of practical issues of the relations between Serbia and Montenegro or continue to prefer the maintenance of the formal status quo without paying much attention to the substance of the complex Serbian-Montenegrin relations.

The maintenance of an open border and various rights enjoyed by the citizens of one republic in the other would be beneficial for both republics as well as for the border region (Sandzak) and the communities living in that area. Ensuring that the border, which divides the two parts of the Sandzak remains an administrative line rather than a standard international border is a necessary precondition for the future development of this region, which has greatly suffered from the break-up of Yugoslavia. In order to

create conditions for the future development of the region, it is also important to fully open the communication of the Sandzak in the other directions – with Bosnia-Herzegovina, Kosovo, and Albania. Full openness of the region toward all neighbouring areas would challenge the current state of affairs so that the Sandzak would not simply remain a passive hostage of Serbian-Montenegrin disputes. In the future, it should instead become a veritable crossroad of the Balkans to the benefit of the whole region, that of Serbia and Montenegro, and all of Sandzak's inhabitants.

Conclusions

1. The border between Serbia and Montenegro should remain open, the citizens of one republic should have equal status in the other republic. This principle should be inviolable, unconditional, and irrespective of the future political relations between Serbia and Montenegro.
2. The federalist political forces use the issue in order to put forward their own political agenda. According to them, the rights of Montenegrins in Serbia and the openness of the border can be guaranteed only if the federation is preserved.
3. Such threats deliberately target the groups which would be most affected by the severance of the free movement between the two republics. Spreading fear and leaving doubts about the future of non-political relations is aimed at mobilizing of these groups in favour of the political forces which generate the tension.
4. Due to the high degree of centralization of Serbia and Montenegro, the future of the free movement between the two republics and the rights of their citizens in the other republic is fully in the hands of the Serbian political leaders (primarily Djindjic and Kostunica). All confidence building, regional projects etc. on a smaller level can unfortunately be wrecked by a simple high-level political decision of these leaders.
5. The exploitation of the issue for political purposes should be terminated. In order to achieve this and the guarantee that the free movement between the

two republics will be given priority over the formal political arrangement between Serbia and Montenegro, pressure should be applied primarily on those political leaders who have the power to guarantee it and cease the tension.

6. It is questionable who is able to apply the necessary pressure on the political leaders. The public in the FRY, NGOs, and political subjects favouring the open border without conditions are not strong enough to challenge the political leaders. The outside factors (EU, USA, international organizations) have not yet demonstrated their will to use their influence to guarantee the free movement of individuals and their rights irrespective of the future political arrangement.

C. Ronald von Ooik¹

Free Movement of Persons and Goods within the European Union: An Example for Serbian-Montenegrin Relations?

1. Introduction

This article was written as one of the background papers for the second workshop of the European Centre for Minority Issues (ECMI), held on 25 January 2001 in Budva/Federal Republic of Yugoslavia (FRY), on the issue of free movement of persons and goods between the Republics of Serbia and Montenegro. As coming from one of the Member States of the European Union (EU), the author was asked to discuss the main features and underlying principles of the free movement of goods and persons *within the European Union*. Then, maybe some of the European ‘solutions’ could serve as useful examples for shaping future Serbian/Montenegrin relations.

For its most part, this background paper is therefore concerned with rules and regulations *of the EU* on free movement of goods/products and free movement of (natural) persons. At the end of the paper, however, some (initial) attempts are made to *link* the EU related remarks and discussions to the issue of Serbian/Montenegrin relations. In this last part in particular, many aspects of the interesting discussions during the Budva conference have been integrated.

First, the broader framework in which freedom of movement of goods and persons in Europe operates, is sketched. These freedoms form part and parcel of the establishment and functioning of the *internal market* (paragraph 2). Next, more specific attention is given to the EU rules on free movement of *persons* (paragraph 3) and to free movement of *goods* (paragraph 4). Some threads are brought together in the (tentative) conclusions – there the possible relevance of EU free movement of persons and goods for Serb/Montenegrin relations is dealt with, however mainly in the form of a few questions, theses and ‘free thoughts’ (paragraph 5).

2. The Broader Framework: Establishment of the Internal Market

¹ Lecturer and Researcher, Europa Institute, Faculty of Law, Utrecht University, Netherlands.

According to Article 14(2) of the EC Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. Free movement of goods and free movement of persons are therefore no isolated features, but they are firmly embedded in the broader aim of establishing ‘one big European market’. They constitute two of the four fundamental freedoms of this internal market, on an equal footing with the free movement of capital and the freedom to provide services.²

Under the system of the EC Treaty these freedoms should, in the first place, be realised by the proper functioning of a number of *prohibitions* which are addressed to the Member States and often also to private individuals (citizens and companies). It concerns in particular the prohibition of discrimination on the grounds of nationality, but also, for example, the prohibition to create obstacles to imports of goods from other Member States.³ In this context we usually speak of *negative integration* – the integration of the markets of the Member States (into one big EU market) by means of a series of prohibitions addressed to Member States, citizens and companies.

As these prohibitions are drafted in (relatively) clear and straightforward terms, they are *directly effective*. This means that private individuals have the possibility to enforce their Community law rights (to non-discrimination on the grounds of nationality, the right to have their goods imported free of restrictions, etc.) before the *courts* of the Member States, vis-à-vis the administrative authorities of these Member States or (sometimes) against other individuals. The first relevant case in this regard was *Van Gend & Loos*. The European Court of Justice (ECJ, seated in Luxembourg) ruled that Article 12 of the EEC Treaty, which prohibited the Member States from introducing new custom duties, could be invoked directly by Van Gend & Loos (a private firm) before the Dutch courts.⁴

² Sometimes a fifth fundamental freedom of the internal market is discerned, namely the freedom of *establishment* (Articles 43-48 of the EC Treaty). Others, however, regard the freedom of *payments* (Article 56 EC Treaty) as the fifth freedom of the internal market. Moreover, a European *competition policy* is often also viewed as being an integral part of the concept of the internal market.

³ See also paragraph 3.1 (regarding non-discrimination of migrant EU nationals) and paragraph 4.1 (on the prohibition of import/export restrictions).

⁴ Case 26/62 [1963] *European Court Reports/ECR*, 3. The texts of the judgements, Community acts and Treaty Articles mentioned in this paper are available on the Internet: <http://europa.eu.int/eur-lex/nl/index.html>.

In addition to these ‘negative’ prohibitions, the EC Treaty confers *decision-making powers* on the EU institutions for making freedom of movement easier in practice. This is often referred to as *positive integration* – the integration of the markets by means of positive action on the part of the EU institutions (EU Council of Ministers, European Commission, European Parliament). They adopt Community legislative acts which are intended to improve the functioning of the internal market and/or facilitate freedom of movement of persons, goods, capital and services within the single area.

One of the most important of these competences can be found in Article 95 of the EC Treaty (formerly Article 100 A). This legal basis can be used by the EU institutions to adopt all measures necessary for the approximation of the national provisions of the Member States, which have as their object “the establishment and functioning of the internal market”.⁵

On the basis of the Treaty Article, many hundreds of decisions have been enacted, including numerous directives on technical requirements for goods (safety requirements for elevators, common rules on labelling of tobacco products, etc.). In its White Paper on the Internal Market, the European Commission indicated that bringing about a genuine European market required the adoption of approximately 300 Community measures. Establishing an internal market (with its four/five freedoms) thus certainly does not mean that no legislative action is required. On the contrary: in order to achieve freedom of movement, lots of legislative actions on the part of the central (EU) authorities were (and still are) necessary.

In addition to the general legal basis of Article 95 EC Treaty, most freedoms of the internal market have their ‘own’ specific competences. For example, under Article 40 EC Treaty the European institutions may adopt any measure necessary to bring about freedom of movement of workers.⁶ And according to Article 47 EC Treaty, the Council may adopt directives on the mutual recognition of diplomas “in order to make it easier for persons to take up and pursue activities as self-employed persons”.

⁵ The EU Council of Ministers decides in accordance with the co-decision procedure (of Article 251 EC Treaty) and therefore the European Parliament acts as the fully-fledged *co-legislator*.

⁶ The most important example of these Article 40 EC measures (previously Article 49 EEC) is Regulation 1612/68/EEC on the freedom of movement of workers within the Community (*Official Journal of the European Communities (OJ)* 1968 L 257/1, amended several times).

In its recent *Tobacco Advertising* judgement,⁷ however, the European Court of Justice emphasized that Article 95 measures should really aim at *facilitating* free movement within the internal market. In this case the Court annulled the contested directive which generally prohibited advertisements for tobacco products. In the Court's view, such a general ban had very little to do with the proper functioning of the internal market, nor did the prohibition of advertisements for cigarettes and cigars in any significant way facilitate/improve free movement of goods (or the freedom to provide services). Rather, the contested directive was to be regarded as a public health measure, not as an internal market measure.

All in all, we may conclude that negative and positive integration go hand-in-hand when it comes to make the European internal market function properly and to achieve a *genuine* freedom of movement of persons, goods, capital, and services.

3. Free Movement of Persons

If we now take a closer look at the free movement of persons, it appears that the EC Treaty, in so many words, makes a distinction between free movement of *EU nationals* (paragraph 3.1) and the (lack of) free movement of *third country* nationals (paragraph 3.2).

3.1 The Internal Dimension: Free Movement of Persons between the EU Member States

We often speak of a free movement of persons between the Member States of the EU, without further specifications. It should be noted, however, that the EC Treaty restricts the group of beneficiaries to (natural) persons holding the *nationality* of (at least) one of

⁷ Case C-376/98 *Germany v European Parliament and Council*, judgement of 5 October 2000. On this important judgement, see e.g. T.K. Hervey, "Community and National Competence in Health after *Tobacco Advertising*", *Common Market Law Review* 2001, 1421-1446; K.J.M. Mortelmans and R.H. van Ooik, "Het Europese verbod op tabaksreclame: verbetering van de interne markt of bescherming van de volksgezondheid?", *Ars Aequi* 2001, 114-130.

the Member States. Only these EU nationals – today primarily called “Citizens of the European Union”⁸ – enjoy the right of free movement in Europe.

The EU rules on free movement therefore do not give rights to third country nationals (TCNs), even if they have been legally residing in one of the EU Member States for a very long time. Thus, for example, European Community law does not give the right to work and stay in Germany to a Yugoslav national who has legally resided and worked for many years in the Netherlands. It is (still) up to Germany to decide whether or not this third country national will be given access to its territory and/or to its labour market.

When, on the contrary, the rules of free movement of persons do apply – an EU passport can be shown – these rules usually confer two types of rights on individual persons. First, rights in the sphere of *migration*, such as the right to leave one’s country freely, to travel freely to another Member State (hence no visa requirements are allowed!), and to stay and work there, be it as a worker, a self-employed person or simply as a ‘citizen of the European Union’ (for example university students).

The second category consists of rights of *non-discrimination* on the ground of one’s *nationality*. Such discrimination is prohibited in general terms in Article 12 EC Treaty (“Within the scope of application of this Treaty [...] any discrimination on grounds of nationality shall be prohibited”). The prohibition is worked out in greater detail for each of the various groups of EC migrant persons (workers, self-employed people, students, etc.) in other parts of the Treaty or in secondary legislation. Regarding EU migrant *workers*, for example, the prohibition of non-discrimination is repeated and worked out in Article 39 EC (no discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment) and in Article 7(2) of Regulation 1612/68/EEC (entitlement to the same “social and tax advantages” as the national workers).

As was already pointed out when sketching the broader framework (establishment of the internal market), the EC Treaty confers various decision-making competences on the EU institutions in the field of the free movement of persons. Directives and regulations

⁸ See Case C-184/99, *Grzelczyk*, judgement of 20 September 2000. According to the Court “Union citizenship is destined to be the fundamental status of nationals of the Member States” (at para. 31).

have been adopted containing specific rules on matters like the EEC residence permit, restrictions of free movement for reasons of public order/public security/public health and – not to be forgotten – many directives on the mutual recognition of diplomas (often relating to specific professions like nurses, architects, dentists, etc.).

Another important example is the competence of the EU Council of Ministers to adopt measures for the coordination of the social security systems of the Member States (Article 42 EC). The most important of these measures certainly is Regulation 1408/71/EEC.⁹ It essentially tries to prevent EU migrant workers from falling under two different social security systems or – equally undesirable – from falling under no social security system at all. Regulation 1408/71 therefore *coordinates* the social security systems of the Member States, but it does not *harmonize* them.

Finally, it is noted in this context that in the European Union, we already spoke of a *free* movement of persons (and goods) long before *the controls at the internal borders* were actually abolished. It was only at a later stage, within the framework of the so-called *Schengen Agreement*, that internal border controls of persons were abolished between most Member States. But even today some of these border checks may still be carried out. The United Kingdom and Ireland do not have to get rid of them at all.¹⁰ Moreover, for reasons of public policy/public security, a Member State may temporarily maintain or reintroduce such border checks. One can think of the border checks on persons at the French/Belgian border because of the ‘liberal’ soft drugs policy of the Netherlands.

Apparently, the right to travel freely to another Member State, the right to stay and work there, the prohibition of discrimination on grounds of one’s nationality, as well as the Community legislative acts facilitating free movement of persons (all discussed above), were considered to be more important than the absence of controls on persons at the EU’s internal borders.

⁹ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community. (*OJ* 1971, L 149, 2, amended many times).

¹⁰ According to Protocol No 3 on the application of certain aspects of Article 14 of the EC Treaty [on the definition of the internal market] to the United Kingdom and to Ireland, annexed to the Treaty of Amsterdam (1997).

3.2 The External Dimension: Third Country Nationals and European Union Law

The provisions on free movement of persons merely apply to (natural) persons holding the nationality of at least one of the EU Member States – they do not apply to third country nationals. However, the EU has adopted many rules and regulations which deal with other aspects of the legal position of third country nationals. *Grosso modo* these rules – belonging to EC/EU law and specifically concerning the position of TCNs – can be divided into three categories.

First, European Community law grants certain rights to third country nationals who have a special *link with an EC national*. Probably the most important example is the right of nationals from third countries to migrate to another Member State in order to live their together with an EC worker, as a member of the family of this migrant worker.¹¹

Also ‘Vander Elst situations’ may be mentioned here: where an employer provides a service in another Member State (for example builds a bridge in that other Member State), *all of its employees* – including workers from third countries – may accompany the employer to carry out the work.¹²

Secondly, the European Community – often together with its Member States – has concluded hundreds of *treaties with third countries*. In a number of these international agreements, provisions on the legal position of natural persons can be found. It usually concerns Association Agreements, concluded on the basis of Article 310 of the EC Treaty. In ‘simple’ trade agreements, on the other hand, no such provisions on the legal position of natural persons can be found.

For example, in the agreement between the EEC and Morocco it is said that Moroccan workers should enjoy equal treatment in the field of social security. In its case law, the European Court of Justice has said that this prohibition of discrimination (on grounds of

¹¹ These family reunion rights can be found in Article 10 of Regulation 1612/68/EEC on the freedom of movement of workers: “The following shall, *irrespective of their nationality*, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State: (a) his spouse and their descendants who are under the age of 21 years or are dependants; (b) dependent relatives in the ascending line of the worker and his spouse”.

¹² Case C-43/93 *Vander Elst* [1994] ECR I-3803. Note that in this situation the right of free movement of the third country worker is derived from the employer’s right to provide services. Therefore the *employer* should have EU nationality/should be a European firm (within the meaning of Article 48 EC).

nationality) can be invoked directly before the courts of the Member States.¹³ The agreement between the EC and Turkey, and subsequent decisions of the Association Council EC-Turkey, also contains provisions on rights of (Turkish) workers, for example a right of free access to the labour market of a Member State after having legally worked there for a period of at least four years.¹⁴

Another important example is the right of establishment in the so-called Europe Agreements. These are agreements which have been concluded by the EC (and its Member States) with countries in Central and Eastern Europe in order to prepare them for full membership of the European Union. The rules on establishment, contained in the Europe Agreements, grant a right of equal treatment to self-employed persons in any of the (current) Member States. In its recent case law the European Court of Justice has ruled that this right of national treatment implies the right to a residence permit as well.¹⁵

To my knowledge, there does not exist any relevant treaty between the EC and the FRY. However, talks are now going as to whether a Stabilization and Association Agreement (SAA) should be concluded. This would mean that the right to travel to and to stay in one of the EU Member States, as far as FRY nationals are concerned, is still entirely governed by the *national* laws and regulations of the various EU Member States.¹⁶

Thirdly, since the entry into force of the Treaty of Amsterdam (on 1 May 1999), the EC is competent to adopt measures in the field of asylum policy, visa policy, immigration policy and “other policies related to free movement of persons”. These new competences are laid down in Title IV of the EC Treaty (Articles 61-69 EC).

¹³ See Case C-18/90 *Kziber* [1991] ECR I-199. Thus, this prohibition of discrimination (laid down in Article 41 of the Cooperation Agreement EEC/Morocco) has direct effect.

¹⁴ See Article 6(1) of Decision No 1/80 of the Association Council EEC-Turkey. Also this right of free access to the labour market can be enforced directly by interested persons before the courts of the Member States. See, e.g., Case C-192/89, *Sevince* [1990] ECR, I-3461.

¹⁵ See Case C-63/99, *Gloszczuk*; Case C-235/99, *Kondova*; and Case C-257/99, *Barkoci & Malik*, judgements of the ECJ of 27 September 2001. See also the more recent, but similar, Dutch case *Jany* on self-employed Polish prostitutes in Amsterdam (Case C-268/99, judgement of the ECJ of 20 November 2001). Note that the Europe Agreements merely introduce freedom of establishment for *self-employed* persons, no freedom of movement for (Eastern European) *workers*.

¹⁶ For more information, see in particular the site of the European Commission on South and Eastern Europe: http://europa.eu.int/comm/external_relations/see/index.htm. As for Croatia, a Stabilisation and Association Agreement has now been signed. As for Slovenia, this is one of the ten countries with its own Europe Agreement (*OJ* 1999 L 51/1), which means that the *Gloszczuk/Jany* case law on the freedom of establishment (mentioned above) applies.

In the last couple of years, the Community institutions have started to exercise their competences in these ‘new’ areas of asylum, immigration and visa policy in an impressive manner. This has resulted in measures on, for example, a European refugee fund and in rules on the Member State responsible for dealing with asylum requests (usually the Member State of first entrance of the asylum seeker). Examples of Title IV measures that were/are of particular interest to nationals of the FRY include the Directive on Offering Temporary Protection to Displaced Persons¹⁷ and the Regulation with the list of third countries whose nationals must have a visa when crossing the EU’s external borders.¹⁸

Thus, we see that a truly *common* European asylum and immigration policy is slowly but steadily emerging, although the process certainly had not been completed yet.

4. Free Movement of Goods

Free movement of goods between the Member States of the EU, like free movement of persons, constitutes one of the fundamental freedoms of the European internal market. Such a freedom of movement does not exist in relation to third countries. Within the framework of the Common Commercial Policy (CCP), many hurdles for imports of goods from third countries continue to exist.

We can therefore – as in the case of (free) movement of persons – make a distinction between the internal dimension of this freedom (i.e. free movement of goods between the Member States, paragraph 4.1) and its external dimension (imports of goods from third countries, paragraph 4.2).

4.1 The Internal Dimension: Free Movement of Goods between the EU Member States

¹⁷ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (*OJ* 2001 L 212, 12). The preamble to this Directive explicitly refers to the conflict in former Yugoslavia and to the Kosovo crisis.

¹⁸ Council Regulation 539/2001/EC of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (*OJ* 2001 L 81, 1).

To a very large extent, free movement of goods is secured by ‘negative’ prohibitions that are addressed to the Member States. First, Article 25 of the EC Treaty prohibits the Member States from charging *custom duties* on imports and exports as well as *charges having equivalent effect*.

As custom duties have already been abolished for a long time (at least in intra-Community trade), the prohibition of “charges having an effect equivalent to custom duties” is of more practical importance nowadays. This concept encompasses any *pecuniary* charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the mere fact that they *cross an internal frontier*.¹⁹

Furthermore, the EC Treaty also prohibits *quantitative* restrictions on imports (Article 28) and exports (Article 29 EC) between the Member States. As Member States hardly ever introduce or maintain quantitative restrictions in the strict sense (e.g. “no more than 100 cars from France may be imported each year”), the prohibition of national measures having *equivalent effect* to quantitative restrictions (laid down in the same Articles 28 and 29 EC) is more important today. In the *Dassonville* case, the European Court of Justice (ECJ) gave a very broad interpretation to this concept of measures having an effect equivalent to quantitative restrictions. The term refers to “all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade”.²⁰ Thus, even measures of Member States which might only indirectly hinder the movement of goods fall under the broad *Dassonville* formula. It is therefore no surprise that traders started to invoke Article 28 EC against all kind of national rules which might only very slightly hamper intra-Community trade. One can think of legislation on the closing of shops on Sundays, or restrictions to advertisements for alcohol or tobacco products.

Mainly for this reason, the ECJ gave a more *narrow* interpretation to this concept of measures having equivalent effect in its later case law. In the well-known *Keck* judgement, the Court ruled that national rules on *selling arrangement* no longer fall under the scope of Article 28 EC. Contrary to what had previously been decided, the Court stated that the application of national provisions restricting or prohibiting certain

¹⁹ See e.g., Case C-130/93, *Lamire* [1994] ECR I-3215 and Joined Cases 2/69 and 3/69 *Diamantarbeiders* [1969] ECR 211.

²⁰ Case 8/74, *Gustave Dassonville* [1974] ECR 837.

selling arrangements to products from other Member States is not such as to hinder directly or indirectly, actually or potentially, trade between Member States within the meaning of the Dassonville judgment, as long as those provisions apply to all relevant traders operating within the national territory and as long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.²¹

Apart from not falling under the Article 28 prohibition (on import restrictions) in the first place, there is another way to ‘save’ measures of Member States which form an obstacle to the free movement of goods. According to Article 30 of the EC Treaty, restrictions on imports and exports may be justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.²² In addition to these Article 30 exceptions, the ECJ has accepted other exceptions to the principle of free trade as well: restrictions on imports of goods may be justified by public-interest objectives (‘mandatory requirements’) such as the protection of consumers or the protection of the environment. These additional exceptions, accepted in the Court’s case law (but not explicitly laid down in Article 30 of the Treaty), are known as the *Rule of Reason* exceptions.²³

4.2 The External Dimension: Import Restrictions under the Common Commercial Policy

The fact that *within* the European Union free movement of goods exists certainly does not mean that a similar liberal regime has been introduced in relation to imports of goods from *third countries*. At the outside borders of Europe many hurdles continue to

²¹ Joined cases C-267/91 and C-268/91, *Keck and Mithouard* [1993] ECR I-6097, at para. 16.

²² Provided that these restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

²³ See in particular, Case 120/78, *Rewe-Zentral* [1979] ECR 649, better known as the *Cassis de Dijon* judgement. The Court ruled that obstacles to movement of goods within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy *mandatory requirements* relating in particular (but not exclusively) to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer (at para. 8).

exist, mainly in the form of custom duties and quantitative restrictions, and in particular regarding the imports of *agricultural* goods from many third countries.

However, the specific conditions for imports from third countries have been harmonized within the framework of the Common Commercial Policy (CCP) – the Member States have completely lost their competences in this area of external trade.²⁴ It is therefore the Community alone, usually acting under Article 133 of the EC Treaty, that decides on the specific modalities regarding custom duties and quantitative restrictions. It did so by concluding trade *agreements* with individual third states (containing certain trade preferences), and also by adopting numerous *unilateral* trade measures, including the regulations on the Common Customs Tariff (CCT). A recent example of such a unilateral trade measure, relevant to the FRY, is the Regulation of 18 September 2000 containing, inter alia, specific conditions for the import of wine from Montenegro and certain industrial products from Serbia.²⁵

Economic sanctions of the EU, involving the movement of goods, were initially also implemented within the framework of the CCP.²⁶ The Treaty of Maastricht (1992), however, introduced specific provisions on the issue. Henceforth the (political) decision that economic sanctions should be imposed is adopted under the so-called Second Pillar of the EU (on the Common Foreign and Security Policy, CFSP). The economic implementation of that political decision takes place within the framework of the EC Treaty (under Articles 60 and 301 EC). Many times this ‘dual’ sanction mechanism was set in motion against the former Milosevic regime.²⁷

The EU – and formerly also the EC and the EEC – therefore forms, as far as the movement of goods is concerned, a *customs union* (free movement of goods within and

²⁴ According to consistent case law of the ECJ, see for example its judgement in Case 41/76 *Donckerwolcke* [1976] ECR 1921.

²⁵ See Articles 1 and 4 of Regulation 2007/2000 introducing exceptional trade measures for countries and territories participating in or linked to the European Union’s Stabilization and Association Process (*OJ* 2000 L 240, 1).

²⁶ Cf. Case C-162/96, *Racke*, judgement of 16 June 1998, where the suspension of trade concessions provided for by the former Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia was at stake.

²⁷ See, for example, Decision 99/318/CFSP and Regulation 2151/99/EC, both on a ban of flights to and from Serbia (*OJ* 1999 L 264). After the events of October 2000, all sanction measures of the EU were repealed, because of the “democratic election of Mr. V. Kostunica”. See, with regard to the ban on flights, Council Regulation 2227/2000/EC of 9 October 2000 *repealing* Regulation 2151/1999/EC imposing a ban on flights between the territories of the Community and the Federal

a common policy towards the outside world) and it is therefore more than just a ‘simple’ free trade zone (no obstacles between the participating states, but no common customs tariff in relation to third countries).

Being a customs union also means that once all formalities at the external borders have been complied with, including the payment of all customs duties, goods from third countries come into free circulation within the EU. From that moment on, these goods must be treated in the same way as goods originating from other EU Member States.²⁸

5. Some tentative conclusions, questions, theses and free thoughts

5.1. Free movement and internal border checks

In the European Union we already spoke of a *free* movement of persons and goods long before checks by custom authorities at the internal borders were actually abolished. It was only later, within the framework of the Schengen cooperation, that most internal border controls were abolished. But even today some internal border checks on persons may still be carried out (UK, Ireland, problematic French/Dutch relations).²⁹

Seen from this point of view, one could argue that abolition of checks on persons and goods at the internal Serbian/Montenegrin (administrative) border does not need to be the very first political priority. Common rules on the freedom of *migration* and the right of *non-discrimination* might be more important in the shorter run than the lifting of internal border checks. The EU as well has always placed the emphasis on the freedom to travel and to stay abroad, and to be treated equally in other Member States.³⁰

On the other hand, one could also convincingly argue that abolition of physical checks at the internal Serbian/Montenegrin border *should* be an extremely high political priority – simply because the situation cannot be compared to that of the European Union/Communities in its early days. After the Second World War, Western Europe was divided into clearly separated units/states. Starting from this ‘disintegrated’

Republic of Yugoslavia other than the Republic of Montenegro or the Province of Kosovo (*OJ* 2000 L 261, 3).

²⁸ See Articles 24 and 25 of the EC Treaty (“Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with”).

²⁹ Cf. paragraph 3.1.

³⁰ Cf. paragraph 3.1.

situation, they slowly moved towards each other. In his Declaration of 9 May 1950, French foreign minister Robert Schumann therefore wisely stated: “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.”³¹

Throughout the years, European integration has indeed proved to be a *gradual* process, starting with integration between the Member States in ‘low politics’ areas such as coal and steel,³² and only during a later stage resulting in intensive cooperation/integration in ‘high politics’ areas such as monetary policy (the euro as the new currency for most EU Member States – and also for Montenegro!), foreign policy (CFSP, a ‘European army’) and the sensitive field of police/justice cooperation (for example the establishment of Europol and Eurojust in The Hague).

The current Serbian/Montenegrin situation, however, seems to be quite different. Serbia and Montenegro formed and (still) form part of one and the same country but are – it seems – moving farther and farther away from each other. The issue of open borders – i.e. the abolition of the recently reintroduced border checks in the Sandzak region, in places like Brodarevo and Godovo – should therefore be given much higher political priority than the open borders issue in EU context.

The Workshop Recommendations clearly go into this second direction: they emphasize the need to re-establish open borders between Serbia and Montenegro, regardless of the statehood discussions. Not only are the checks a source of serious inconvenience in every day life (for example in the town of Draga, which was in fact split into two parts), but the internal border controls have also proved to be a source of corruption and even of human rights violations.³³

It is in any case clear that the free movement/open border issue can be separated from the more general question as to whether the federal structure should be retained or – the

³¹ The text of the whole declaration is available at:

http://europa.eu.int/abc/symbols/9-may/decl_en.htm

³² However, it must be said that the Coal and Steel Community had a very strong political background. In fact, it was a confidence building measure between France and Germany, shortly after the end of WWII.

³³ See, in particular, the recommendations on reducing the impact of the physical border, long-term strategies (e.g.: “The border between Montenegro and Serbia needs to remain open and permeable, irrespective of the outcome of the final status of relationship between the two republics”).

opposite – whether the federation should be split into two independent states. After all, in the European Union we already have open internal borders (apart from the exceptions discussed earlier), but it is only very recently that we started to think about the ‘final status’ of the EU. And the outcome of this so-called post-Nice/Laken debate (running from 2001 until 2004), with its central question “What kind of Europe do we want?”, cannot be predicted yet.

5.2. *Harmonization of the Laws of the two Republics?*

In addition to a number of ‘negative’ prohibitions, the EC Treaty confers decision-making competences on the EU institutions for making freedom of movement of persons and goods easier in practice. Many Community acts thus aim at facilitating free movement, e.g. rules on mutual recognition of diplomas and common safety standards for all kind of goods.³⁴

Likewise, it might be necessary to *harmonize the laws* of the Republics of Serbia and Montenegro insofar as this would be necessary to make free movement of persons and goods easier. One could think, in particular, of rules on the recognition of diplomas, certificates and other evidence of formal qualifications, common rules for the coordination of social security systems, and harmonization of technical requirements for certain kinds of goods.

Several of the Workshop Recommendations relate to this issue: they stress that harmonization of Serbian/Montenegrin rules in the field of free movement of persons is really necessary, not only in the interest of the citizens directly involved, but also because harmonization of the rules of the two Republics in this area can be seen as an important confidence building measure.³⁵

5.3. *Full membership of the European Union for the FRY/Serbia/Montenegro?*

During the conference it became very clear (once again) that *accession* to the European Union is a desirable aim for the FRY/Serbia/Montenegro, regardless of the outcome of the ‘final status’ debate. It therefore only remains to be seen what kind of entity wants

³⁴ Cf. paragraphs 2 and 3.1.

³⁵ See the Recommendations on the need of harmonizing visa requirements and tariffs, on harmonisation of the external border checks regime, and of the issue of mutual recognition of degrees and diplomas (on the basis of bilateral agreements between Serbia and Montenegro).

to accede to the EU, somewhere in the future: a federation, a confederation, or will the European Commission have to negotiate with both Belgrade and Podgorica?

It is clear that the FRY/Serbia/Montenegro still has a long way to go on the road which eventually must lead to full membership of the European Union. A period of some twenty years is in my view not such a wild guess. The way to accession usually begins with concluding a 'simple' trade agreement, later followed by more 'mature' Association/Stabilisation Agreements. And then, during the final stage, the so-called *Copenhagen criteria* seriously come into play. These are that membership of the European Union requires (1) that the candidate state has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities (the *political* criteria); (2) the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union (the *economic* criteria), and (3) the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. The third criterion embraces the obligation for the candidate to transpose, apply, and supervise the entire body of EU law and is therefore sometimes referred to as the *legal* condition for EU membership.³⁶ These days this body of European rules consists of some 85.000 pages *acquis*.

During the Budva conference I emphasized that the FRY/Serbia/Montenegro should at the very least be *aware* of these many conditions for EU membership – it is not just a matter of getting new rights and receiving money from the EU's structural funds, but EU accession is also a matter of taking up many new obligations. Nevertheless, in the shorter run, Serbia and Montenegro should start to check in a systematic manner whether their draft laws are in conformity with EU standards. The purpose of this system of voluntary alignment would be to avoid, as far as possible, any conflict with the EU rules in force.

³⁶ Conclusion European Council Copenhagen, *Bulletin of the EC* (1993/6), 12 (point I.13). See also D.M. Curtin and R.H. van Ooik, *Revamping the European Union's Enforcement Systems with a View to Eastern Enlargement* (The Hague, WRR Working Documents no. W 110, October 2000).