

6 Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships

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A member of the European Union since January 2007, Romania has brought a rich historical experience into the union that goes all the way back to long-lasting Byzantine and Ottoman imperial legacies and to the more recent successive waves of Western- and Soviet-style modernisation. Given Romania's multiple historical legacies, which combine pan-European trends with Central and Southeast European regional features, the history of Romanian citizenship legislation challenges the clear-cut and neatly defined analytical dichotomies, such as 'old' versus 'new' states and 'civic' versus 'ethnic' or 'inclusive' vs. 'exclusive' citizenship doctrines, which are erroneously regarded as corresponding to 'Western' vs. 'Eastern' historical experiences (for a critique of such views, see Iordachi 2006).

This chapter focuses on the interplay of historical legacies in the evolution of Romanian citizenship, underlining continuities and ruptures in the transition from communist to post-communist policies of national membership. Methodologically, I distinguish between two institutional dimensions of citizenship: the legal category of nationality that defines membership in a state understood as a territorial and national organisation; and citizenship as rights and duties stemming from membership and participation in a political community. The first dimension encompasses the construction of legal and political borders between state citizens and aliens. The second dimension refers to the civil, political and social entitlements of citizenship (Marshall 1950).¹

Like the other contributions in this book, this chapter focuses on the first legal dimension of nationality, which is regulated mainly by constitutions and citizenship laws. Particular attention is devoted to the most contested component of post-communist Romania's nationality policy: the right to reacquisition of nationality by former citizens and their descendants living outside the state's (post-1945) borders. This policy resulted in the massive (re-)naturalisation of Moldovan and Ukrainian citizens stripped of their Romanian nationality following the 1940-1941/1944 Soviet occupation of Bessarabia and Northern Bukovina. I argue that Romania's policy regarding the restoration of national-

ity should be placed in the political and analytical context of post-communist *restitution*. Restitution in its various forms has been an important component of legal systems since ancient times, referring to the return of a person to his or her original status and of restoration of his or her rights or property, prior to a loss, injury or abuse. In post-communist Central and Eastern Europe, the concept took on a peculiar legal meaning because it denoted the process of undoing communist legal and political abuses and dispossessions. Restitution was central to post-communist legal and political transformation, which was aimed at the restoration of the *status-quo ante* (before the communist takeover). From this perspective, the legal ‘revolutions’ initiated in 1989, which led to the dismantling of the communist regimes, should be understood more in the original meaning of the term ‘revolution’, that is, as a movement of rotation, which returns to an original position.

In post-communist East Central Europe, practices of restitution have been applied to a wide range of societal domains. Yet, to date, research has focused almost exclusively on the reconstruction of individual and communal property rights. An important but largely understudied aspect is the restitution of nationality to former de-naturalised citizens. In the context of post-communist nationalist upsurge, this practice was not simply a necessary legal reparation for past injustices; it was also seen as a means of recreating the pre-communist citizenry and national community and as a means for the restoration of national identity, allegedly lost under communist rule, which was defined as a regime of Soviet occupation. The gap between political visions of recreating the inter-war national ‘imagined community’ and the far-reaching practical complications this project generated led to a multitude of political, legal-procedural and diplomatic crises, with wide domestic and international implications. These complications and the debates surrounding them account for the numerous shifts and turns of Romania’s policy regarding the restitution of nationality, which culminated in the temporary suspensions of the process of restitution during the period from 2001 to 2007.

6.1 History of Romanian nationality

6.1.1 *The making of Romanian nationality: Pre-communist legacies*

Modern Romania was established in 1859 through the state union of the principalities of Moldova and Wallachia. After their establishment in the fourteenth century, the two principalities were part of the Byzantine political tradition and Eastern Orthodox religious commonwealth. They fell under Ottoman domination in the fifteenth century and were subject to Ottoman suzerainty until 1878; and thereafter experienced

major stages of nation- and state-building during the 'long nineteenth century', with such landmarks as the Congress of Paris (1856), the Congress of Berlin (1879), and the Versailles Peace Treaties (1919-1920), all part of successive geo-political reorganisations of Southeast Europe by the great European powers. One can identify several historical periods in the development of Romanian citizenship, corresponding to major stages in the process of nation-building and state-building: 1859-1918, 1918-1937, 1937-1944, 1944-1989 and 1989 to the present.

The legal bases of the modern Romanian nationality were set by the 1865 Civil Code, which emulated the French legal system put forward in the 1804 *Code Civil*, based on the *ius sanguinis* principle in ascribing nationality at birth, and a selective policy of naturalisation of aliens, favouring those born and raised in the country. The French model was nevertheless amended in several respects: the Romanian Civil Code, soon supplemented but also partially (and restrictively) modified by a modern Constitution adopted in 1866, introduced Christian religion and Romanian ethnicity as criteria for naturalisation, both absent in the *Code Civil*. Firstly, until 1879, Jews were excluded from Romanian nationality, on the basis of their religion, even if born and raised in the country for generations; on this basis, they were deprived of substantial civil, social and political rights. In 1879, under pressure from the international community, Jews were granted access to naturalisation; however, instead of a fast and collective citizenship emancipation, Jews were only allowed to apply for individual naturalisation that could be granted by parliament by means of a special law adopted for each individual case. This lengthy and highly bureaucratic practice explains the small number of naturalisations before the First World War, the great majority of Jews remaining non-citizen permanent residents. Secondly, the Romanian state pursued an active national policy: ethnic Romanians from neighbouring countries immigrating to the 'mother country' were granted privileged access to nationality, without a naturalisation stage, i.e. without the necessity of having lived in the country for a period of ten years. (They could prove their ethnic origin by means of witness accounts or certificates of ethnicity issued by Romanian communities abroad and further corroborated by their knowledge of the Romanian language.) This practice, euphemistically called 'recognition' of citizenship, was justified by the incomplete ethnic boundaries of the Romanian nation-state and legitimised an irredentist policy of incorporating Romanians from Austria-Hungary, Russia and the Balkans. This legal model functioned until the First World War, with only minor modifications necessitated by the annexation of Northern and Southern Dobrogea/Dobrudja from the Ottoman Empire and from Bulgaria in 1878 and in 1913, respectively (Iordachi 2002).

The socio-political upheaval of the Great War brought significant changes to the Romanian citizenry. Firstly, interwar 'Greater Romania' almost doubled in size and population compared to the pre-war 'Old Kingdom' by incorporating the province of Bessarabia (situated between the rivers Prut and Dniestr and annexed by Russia in 1812) and territories that had been previously part of Austria-Hungary – namely Bukovina, Transylvania, the Banat, Maramureş and the Partium. For the first time in their modern history, ethnic Romanians thus lived in a single 'national and unitary state', as Greater Romania was defined by the 1923 Constitution. Although dominated by Romanians, the new state also included a high ratio of ethnic and religious minorities: 28.1 per cent of the total population in 1930, including Hungarians (7.9 per cent), Germans (4.1 per cent), Jews (4.0 per cent), Ruthenians (3.2 per cent), Russians (2.3 per cent), Bulgarians (2.0 per cent), Gypsies (1.5 per cent), Turks (0.9 per cent) and Tartars (0.1 per cent) (Institutul Central de Statistică 1940: 44-45). Secondly, the events of the war generated an unprecedented liberalisation of access to citizenship. Under international pressure, Romania took final steps towards the full civil and political emancipation of Jews. Adopted in February 1924, the new law on nationality granted citizenship to all legal inhabitants of the Old Kingdom and the annexed territories. It also preserved the main features of Romanian citizenship doctrine by stipulating three main ways of acquiring nationality: (1) by descent, according to the principle of *ius sanguinis*; (2) by marrying a Romanian man; and (3) by naturalisation, after having fulfilled a residence requirement of ten years following the declaration of intent to naturalise. Foreigners born and raised in Romania were exempt from the mandatory residential stage, provided they requested naturalisation upon reaching maturity. Thirdly, the liberalisation of access to citizenship was accompanied by major socio-political reorganisations of the country. Comprehensive reforms such as universal male suffrage (1918), massive land redistribution (1921) and the new liberal Constitution (1923) remodelled the country into a multi-party parliamentary monarchy.

While the new liberal regime remained largely unconsolidated and marred by major regional and socio-political cleavages, it is important to note that political pluralism was preserved almost throughout the entire interwar period, free parliamentary elections being held as late as 1937, at a time when the European continent was mostly dominated by authoritarian political regimes. Ironically, the 1937 parliamentary elections turned out to be Romania's last free elections before 1990.

The Romanian citizenship doctrine suffered significant changes just prior to and during the Second World War, with long-term legal consequences. Firstly, under the joint pressure of right-wing organisations from below and the authoritarian tendencies of King Carol II (1930-

1940) from above, in 1938, the multiparty parliamentary regime collapsed, being replaced by a (short-lived) regime of royal dictatorship (1938-1940). The new political changes were also reflected in a new law on citizenship, adopted in 1939 at King Carol's initiative. The law did not alter the main principles of ascribing citizenship, but introduced numerous changes in the procedure of naturalisation, placed under the control of the Ministry of Justice. The most important change was that naturalised citizens were granted full political rights only six years after the act of naturalisation. The law served as a basis of Romania's nationality policy until 1947/1952, when it was amended and then fully abolished by the new communist regime; however, in the post-communist period, many of its provisions have been reinstated. Secondly, the political accession of the extreme right led to the massive de-naturalisation of Romanian Jews, their deprivation of substantive political and civil rights during the royal dictatorship of King Carol II and their partial deportation and extermination during the dictatorial regime of Ion Antonescu (1940-1944). Thirdly, during the Second World War, Greater Romania suffered major territorial losses. In 1940 – under the new political conditions created by Nazi Germany's military domination in Europe – Romania was forced to cede North-Western Transylvania to Hungary and Southern Dobrogea to Bulgaria. Following the 1939 'Ribbentrop-Molotov' Non-Aggression Pact, which divided the spheres of influence between Nazi Germany and the USSR, on 28 June 1940 the Soviet army occupied the provinces of Bessarabia and Northern Bukovina. Romania ceded these provinces without resistance, but in June 1941, it joined Nazi Germany's anti-Soviet war and managed to temporarily liberate the occupied territories (1941-1944).

In 1944, a coalition of communists and democratic parties ousted Antonescu from power, reinstated the 1923 Constitution, abolished all anti-Semitic discriminatory laws and restored citizenship to all denaturalised inhabitants. The new democratic Romania also joined the anti-fascist military coalition and restored its control over Northwestern Transylvania. The *return* to the legal and territorial order of interwar Greater Romania was nevertheless hampered by several factors: firstly, in 1944, the Soviets reoccupied Bessarabia, which became the Moldavian Soviet Socialist Republic (MSSR) and included also the Transnistria region (a long conundrum situated across the river Dniestr) and Northern Bukovina, which was granted to the Ukraine (together with the southern part of Bessarabia, detached from the MSSR). Secondly, the Soviets intervened in the political process by installing the tiny Communist Party in power and initiating the forceful Sovietisation of Romania. The understanding of the communist legacy is essential to

our effort to grasp the main features of citizenship policies in the post-communist period.

6.1.2 *A new legal beginning: Nationality under the communist regime*

The communist regime implemented radical changes to Romania's legal and political system (1945-1989). Through three consecutive constitutions (1948, 1952, 1965), major changes to the civil code and an all-encompassing set of laws regulating every sphere of activity, the new political regime broke with the past and redefined the nature of the state by emulating the Soviet model of development. As a legal boundary defining membership in the national and social-political community, citizenship legislation was an essential dimension of the communist political transformation and was therefore subject to many revisions in 1947, 1948, 1952, 1954, 1956 and 1971, reflecting the shifts and turns of the political regime.

The communist regime redefined the conditions of acquisition and loss of nationality. With the stroke of a pen, Decree No. 33/1952 abolished all existing laws on citizenship (art. 10); instead, in two pages and ten articles, it set new rules for the acquisition of Romanian nationality, defining the legal boundaries of the socialist nation. Romanian nationality was ascribed at birth *iure sanguinis* to children of *at least one* Romanian parent. In a major departure from the legal tradition of the country, the decree thus allowed the transmission of nationality on the paternal as well as on the *maternal line* in mixed families, provided that at least one parent lived in Romania. This transmission could not result in dual citizenship: upon adulthood, children born into mixed marriages had to choose between the nationality of the mother or the father, by parental accord. Combined with Decree No. 130/1949 (which allowed official investigations of the paternity of children, thus eliminating 'illegitimacy' as an accepted legal category), these stipulations contributed to the formal legal equality of women, since they were legally enabled to transmit their own nationality to their children.

The decree discontinued the traditional *ius soli* policy of naturalisation of aliens born in the country and the privileged naturalisation of ethnic Romanians living abroad. Decisions on the naturalisations of aliens, as well as on the renunciations or withdrawals of nationality were taken by the Presidium of the Grand National Assembly, established in 1947 after the abolition of the monarchy and the proclamation of the republic.

After 1958, political divergences with Moscow and the move of the Romanian leaders towards political autonomy and a 'national' path to building socialism led to significant changes in the official socialist ideology. With the retreat of the Red Army (1958), Romanian leaders

renounced external sources of legitimisation and recuperated traditional themes of nationalist ideology in an attempt to gain broader domestic support (Shafir 1985). Initiated under the last years of Gheorghe Gheorghiu-Dej's rule, the nationalist turn of the regime, which was intensified during the rule of Nicolae Ceaușescu (1965-1989), resulted in a syncretism between nationalism and a 'decayed Marxism,' best described by the concept of 'national-communism' (Verdery 1991).

The new nationalist orientation of the regime was also reflected in the definition given to the legal principle governing the ascription of nationality at birth. Adopted in 1971, the new Law on Romanian citizenship reconfirmed the principle of *ius sanguinis* as the very foundation of a homogeneous national community and imbued it with nationalist connotations. Art. 5 of the law read:

As an expression of the relationship between *parents and children*, of the *uninterrupted continuity of the fatherland of previous generations* that fought for social and national freedom, children born of Romanian parents on the *territory* of the Socialist Republic of Romania are Romanian citizens. (emphasis added)²

This definition linked the application of the *ius sanguinis* principle to birth on the territory and uninterrupted continuity of the nation in its 'fatherland'. It made reference not only to parents and children in the transmission of nationality, but also to generations. Other articles of the law made evident that this link operated only at symbolic-ideological level, the principle of *ius sanguinis* being in fact also applied to children of citizens born outside the country. The argument was nevertheless meant to emphasise the 'autochthonous' roots of the Romanian people and the historical 'symbiosis' between the nation, its territory and the new socialist citizenry, thus alluding to the idea of organic nationalism elaborated by Romantic nationalist thinkers in the first half of the nineteenth century and brought to political prominence by right-wing organisations in the interwar period.

In addition to ascription through *ius sanguinis* at birth, Romanian nationality could also be acquired by naturalisation, by adoption and by repatriation. Naturalisation was granted at adulthood by the Council of State (a leading organ of the republic created in 1961) to persons who: a) were born in Romania and lived there at the time of their request; b) were born abroad but had lived uninterruptedly in Romania for at least five years; c) were married to a Romanian citizen and had lived in the country for at least three years. In addition to the residence condition, aliens were required to:

1. prove, through their behaviour and attitude, attachment to the Romanian state and the Romanian people;

2. be eighteen years of age or above;
3. undertake socially useful work or prove sufficient material means of subsistence;
4. renounce their foreign nationality or any commitment of loyalty to a foreign power and swear allegiance to Socialist Romania.

The Romanian state reserved its right to unilaterally withdraw the nationality of those individuals who 'broke with the fatherland by crossing the border clandestinely or, after relocating their domicile abroad, assumed a foreign nationality, worked against the interests of the country or enrolled in a foreign army' (art. 19). Access to nationality was firmly controlled by the executive power; Ceaușescu alone, as the president of the Council of State (from December 1967 to December 1989), could grant or withdraw Romanian nationality.

6.2 Democratic transformation: Current regulations on ascription, acquisition and loss of nationality

The 1989 collapse of the communist regime and the gradual democratisation of the political system had a powerful impact on Romanian citizenship legislation, resulting in the redefinition of the legal criteria of membership in the national community. Without significant dissident or reformist movements during the communist period on which to build the process of democratisation, post-communist Romania modelled its legal and political systems on the interwar political regime: the restitution of urban and land property, the recreation of political parties and parliament's structure and organisation were all shaped by its pre-communist tradition. Yet, in many ways, the communist legacy deeply affected the society and could not be written off as a simple 'parenthesis' in the country's development.

Citizenship legislation is a relevant example in this respect. Adopted in March 1991, the new Law on Romanian Citizenship was modelled on the 1939 Law, abrogated by the communist regime in 1952; yet it also preserved many provisions of the 1971 Law, resulting in a novel synthesis. The 1991 Law specified four main ways of acquiring nationality by different categories of inhabitants:

1. ascription at birth, through transmission *iure sanguinis* to descendants of citizens, provided at least one of the child's parents holds Romanian nationality at the time of the child's birth;
2. adoption of an alien child by a Romanian citizen;
3. by the act of repatriation of former citizens; and
4. upon request, by naturalisation of aliens born in Romania or who have lived there for a certain period of time.

6.2.1 *Acquisition at birth*

The ascription of Romanian nationality at birth is governed solely by the principle of *ius sanguinis*, being granted to children who are: 1) born within the territory of the country to two Romanian citizen parents; 2) born within the territory of the country in mixed marriages with only one Romanian citizen; and 3) born abroad to at least one Romanian parent. That the principle of *ius soli* is of no relevance in the ascription of nationality at birth is made evident by the provisions concerning the nationality of newly-born children of unknown parents; they are granted citizenship not on the basis of their birth on Romania's territory, but under the assumption that their parents held Romanian nationality (art. 5). Evidence to the contrary results in loss of nationality, followed by the obligation of naturalisation (art. 30). In order to make it clear that this procedure does *not* constitute an *ius soli* ascription of nationality, a 2003 amendment to the citizenship law rephrased art. 5 to read that the child found on Romanian territory 'is *considered* to be [instead of 'is...'] a Romanian citizen' (art. 5, 3/1; emphasis added).

6.2.2 *Naturalisation*

The 1991 Law granted naturalisation, upon request, to adult aliens and their minor children, who were: a) born in Romania and lived there at the time of their request; b) born abroad but had lived uninterruptedly in Romania for at least *five years*; c) married to a Romanian citizen and had lived in the country for at least *three years*. In addition to the residence requirement, applicants also had to:

1. prove, through their behaviour and attitude, their attachment to the Romanian state and people;
2. be eighteen years of age or above;
3. prove they possess sufficient material means of existence;
4. have a clean criminal record; and
5. have 'sufficient knowledge of the Romanian language' in order to be able to integrate into society.

Although the naturalisation requirements have been amended several times since 1991 (see next section), the procedure of naturalisation, which is patterned on the 1939 Law, has remained the same. Applications have to be filed personally or through authorised attorneys to a Commission of Citizenship set up by the Ministry of Justice and made up of five judges of the Bucharest Court, appointed for four years by the president of the court. Upon their registration, requests for naturalisation are published in the *Official Monitor of Romania*, Part III, and

are subsequently examined by the Commission. Decisions on naturalisation are taken by the Romanian government upon the recommendation of the commission and are published in the *Official Monitor of Romania*, Part I. Naturalisation becomes effective upon the would-be citizens taking the oath of loyalty in front of the Ministry of Justice, a sub-secretary of state, or the chief of diplomatic missions abroad.

Romanian citizenship legislation underwent substantial amendments, additions and modifications in 1999, 2002, 2003 and 2008 which were necessitated by the process of European integration and the intensification of immigration and emigration. As a reaction to growing migration tides, coupled with EU pressure to strictly control external acquisitions of Romanian citizenship, requirements for naturalisation have been tightened. The mandatory residence period for the naturalisation of foreigners was increased from five to seven years in 1999, and to eight years in 2003 (albeit reduced to five years for foreigners married to Romanian citizens). In order to eliminate cases of fraud, a 1999 amendment demands a 'continuous, stable and legal' residence, while a 2003 amendment requires foreigners applying for naturalisation to effectively relocate to Romania, spend at least six months per year in the country and pay taxes there.³ In 1999, the residency requirement was reduced to half for persons of international reputation, a privilege granted since 2003 also to those who have invested more than 500,000 euros in Romania. In 2008, this sum was increased to 5 million euros and the shorter residency requirement was extended also to refugees and to citizens of EU Member States.

Moreover, besides the longer residency requirement, a 1999 amendment to art. 9 of the law introduced additional conditions for naturalisation, such as sufficient knowledge of the Romanian language, of 'elementary notions of Romanian culture and civilisation,' of the Constitution and, since 2003, of the national anthem. Applicants for naturalisation also need to sign a declaration of loyalty to the Romanian state. Persons suspected of terrorism and those who present potential threats to national security are ineligible for naturalisation.

6.2.3 *Loss of nationality*

According to the 1991 Law, Romanian nationality can be forfeited: 1) as a result of the unilateral withdrawal by the state; 2) through voluntary individual renunciation by citizens; 3) or in other special cases, such as the adoption of children by foreign citizens (art. 24). Firstly, the Romanian state could terminate the nationality of those individuals who had obtained their naturalisation by fraud, who worked abroad against the interests of the country or who enrolled in an enemy army (art. 25). Secondly, the Law allowed Romanian citizens to renounce their nation-

ality 'for solid reasons' according to a special procedure and pending of official approval, provided they are not under trial and have no debts to private or public parties (art. 27).

Since 2001, in particular, Romania has become a major source country of labour migration, especially to Italy and Spain; taking advantage of the freedom of movement, an estimated two to two and a half million Romanian citizens currently live and work abroad either temporarily or permanently. The most recent stipulations on the loss of Romanian nationality express the Romanian state's concern to preserve legal ties with its citizens living abroad and to reduce the number of external renunciations of nationality. To this end, in 2003, the Romanian state waived its right to unilaterally terminate the nationality of 'natural citizens' who had obtained it at birth (art. 24.d). In addition, in 2007, the procedure for the individual renunciation of citizenship became even more complex, costly and bureaucratic. These stipulations, combined with the fact that the principle of *ius sanguinis* operates externally without generational limits (so that Romanian nationality can be passed on indefinitely to subsequent generations born abroad even in cases of acquisition of a new nationality as long as parents do not renounce their nationality of origin), account for the fact that the number of individual renunciations or losses of Romanian nationality has been rather small – varying from 12,594 persons in 1999 to 10,938 persons in 2005 (National Institute of Statistics 2006: 81-83) – especially when compared to the massive number of Romanian citizens living abroad on a temporary or even permanent basis.

6.2.4 *Restitution of nationality and multiple memberships*

The most debated provision of the post-communist citizenship legislation was the right to restitution of nationality to former citizens. A traditional feature of the Romanian modern legal system, the right to renaturalisation survived in various forms under the communist regime as well. Although the Socialist Republic conceived of itself as a new state and granted citizenship to all inhabitants living in the country, it also (partially) employed the principle of restitution in order to reconstruct Romania's interwar citizenry on new political bases. Thus, a law passed in 1947 restored Romanian nationality to all those denaturalised during the Second World War under discriminatory legislation or foreign occupation. The 1952 decree granted Romanian nationality to all inhabitants who had settled in the country by 1920 (the ratification of the Peace Treaty with Austria) but who had failed to qualify for citizenship under previous laws. Another decree passed in 1954 reconfirmed Romanian nationality for all those who had held this legal status as of 28 June 1940 and had resided in Romania ever since. Under Soviet

pressure, the deadline for restitution was chosen specifically to exclude from this right the inhabitants of Soviet-occupied Bessarabia and Northern Bukovina, a clear indication of the limits of the communists' policy on nationality restitution.

The communist regime also permitted the re-naturalisation of former citizens, but granted this right according to strict political criteria. Art. 1.c of the 1952 Decree and art. 7 of the 1971 Law allowed former citizens to reacquire their nationality upon request on the basis of a special authorisation issued by the Presidium of the National Assembly or, after 1969, by the Council of State. Re-naturalisation was conditional on the renunciation of the claimant's foreign nationality, repatriation and 'integration into the socialist society' (i.e. integration into the workforce) as well as an attachment to the communist political regime, to be affirmed by an oath of loyalty. In exceptional cases, the Council of State authorised former citizens applying for re-naturalisation to maintain their domicile abroad, but they were expressly required to renounce 'in an authentic form' their foreign nationality or – in case they did not hold a foreign nationality – 'any commitment, obligation of fidelity or oath of loyalty to a foreign state' (1971 Law, art. 10 and art. 11). Due to massive violations of human rights and the deterioration of the standard of living, few former citizens applied for repatriation; on the contrary, in the late 1980s, numerous Romanian citizens fled abroad in order to escape political persecution and material hardship.

Upon the collapse of the communist regime, the repatriation of previously persecuted persons and the restitution of nationality to former citizens were the major concerns of the new revolutionary power, which was eager to resume ties with the Romanian Diaspora and kin-minorities abroad. On 31 December 1989, the National Salvation Front guaranteed the right of repatriation to all Romanian citizens residing abroad (Decree No. 7). In addition to the repatriation of *Romanian citizens in exile*, the decree also facilitated the reacquisition of nationality by *former Romanian citizens* living abroad (art. 2), by request, through the act of repatriation. Unlike the 1971 Law, the new decree did not require former citizens re-naturalised in Romania to renounce their foreign nationality, thus implicitly opening a gate to *dual nationality*.

In May 1990, a new decree passed by the provisional government enlarged the rights to *reacquisition of nationality by former citizens*. While the 1989 Decree made re-naturalisation conditional on repatriation, the 1990 Decree granted former citizens the right to retrieve their Romanian nationality, upon request, 'even if they hold another nationality and they do not establish their domicile in Romania.'⁴ In doing so, the decree *explicitly* allowed certain categories of citizens to hold dual nationality for the first time in Romania's legal history.

The provisions on repatriation and reacquisition of nationality were reconfirmed and enlarged by the 1991 Law on Citizenship. The law stipulated three modalities for the reacquisition of Romanian nationality: (1) by repatriation (art. 8); (2) re-naturalisation by request without repatriation (art. 11); and (3) 'restoration' of nationality to former Romanian citizens (art. 35) living in the lost territories of the interwar Greater Romania. Firstly, the law guaranteed former citizens the right to *re-naturalisation through repatriation*: 'The person who has lost Romanian citizenship can re-acquire it through repatriation, if he or she expresses a manifest desire to do so' (art. 8). Secondly, in line with the 1990 Decree, the 1991 Law allowed reacquisition of nationality by former Romanian citizens even *without repatriation*: '[f]ormer Romanian citizens who, before 22 December 1989, have lost their Romanian citizenship for different reasons,' can reacquire Romanian citizenship by request even if they retain their foreign citizenship and their domicile abroad (art. 37; emphasis added). Thirdly, and most importantly, the 1991 Law introduced a new form of access to Romanian nationality that can be generically called 'restoration' or 'restitution.' An additional paragraph to art. 37 stipulated that the right to reacquisition of nationality is also granted to all those who 'were stripped of Romanian citizenship *against their will or for reasons beyond their control*, and their descendants' (emphasis added).

Due to the imprecise and ambiguous wording of the law, at first glance, the difference between the second and third forms of re-naturalisation is not evident: the second referred to those who had lost Romanian citizenship 'for various reasons', while the third referred to those who had lost citizenship 'against their will or for reasons beyond their control'. The official interpretation of the law, however, made it evident that the first paragraph referred to those who had lost nationality as a result of individual actions that unilaterally breached their citizenship contract with the Romanian state, while the second concerned those citizens denaturalised *en masse* as a result of territorial changes. In so doing, the additional paragraph to art. 37 introduced several major innovations into Romanian citizenship legislation:

Firstly, the right to reacquisition of nationality was not restricted only to those persons who had emigrated due to political persecution or were stripped of citizenship by the communist regime; it was also granted to 'all former citizens *and their descendants*' regardless of when or under what conditions they had lost Romanian nationality. Although not specifically mentioned in the text of the law, the main beneficiaries of the policy of restoration of nationality have been the inhabitants of the former Soviet Socialist Republic of Moldova, and those of the provinces of Northern Bukovina and Southern Bessarabia in the Ukraine. Following the Soviet wartime occupation, the inhabitants of these pro-

vines were forcefully stripped of their Romanian nationality; the 1991 Law has enabled them to retrieve that legal status. (Equally eligible were the inhabitants of Southern Dobrudja ceded by Romania to Bulgaria in 1940, yet no claims to Romanian citizenship were reported from this province).

Secondly, in a departure from the established legal tradition of the country that had prohibited dual nationality, the law allowed re-naturalised former Romanian citizens to retain their foreign nationality as well as their domicile abroad. In doing so, the law generated a novel category of *non-resident dual citizens* living in neighbouring countries.

Thirdly, compared to regular naturalisations, the restitution of nationality was subject to a simpler procedure: re-naturalisation requests could be sent by post or by third-party intermediaries to the Romanian embassies or consulates abroad. Applicants were exempt from consular taxes and the major conditions of naturalisation required of 'regular' aliens. Moreover, the process of re-naturalisation did not necessitate an official interview and the personal presence of the claimant in Bucharest, as the oath of loyalty could be taken at Romania's diplomatic representations abroad. It was thus technically possible for a descendant of a former citizen living abroad to 'reacquire' Romanian citizenship without ever travelling to the country.

Overall, the legislation on the reacquisition of Romanian nationality was highly expansive, albeit legally ambiguous. It combined the right to re-naturalisation of expatriates and their repatriation with the principle of restoration of nationality to former citizens and their descendants living in former historical provinces of interwar Greater Romania, including their right to hold dual nationality. How can one account for these multiple forms of nationality restitution? According to the legislators, the motivations behind these provisions were democratic, as they were meant to redress communist injustice by allowing anti-communist political dissidents or expatriates to reacquire, upon request, their lost rights. Adopted in anticipation of the imminent dismemberment of the USSR, the March 1991 Law was also animated by implicit nationalist motivations, which aimed to symbolically undo the effects of the Soviet occupation of Bessarabia and Northern Bukovina and to reconstruct the interwar national community. Seen in a historical retrospective, the law thus completed the process of restoration of the citizenship body of interwar Greater Romania. Initiated in the post-1944 period (see above the laws adopted in 1947, 1952 and 1954), this process had, under Soviet pressure, left out the inhabitants of Bessarabia and Northern Bukovina.

6.3 Current political debates

The new policy on the restitution of nationality has triggered numerous domestic and international political debates. Far from concentrating on legal technicalities, these debates were linked to major political issues such as the communist legacy, the ethnic-cultural boundaries of the nation, issues of state sovereignty and territoriality, diplomatic relations with neighbouring countries and the compatibility of this policy with the European standard on nationality laws and minority protection.

6.3.1 *Dual nationality*

A first set of political debates concerned the right to dual nationality. Was dual nationality permitted only for former citizens reacquiring Romanian nationality or was it open to all Romanian citizens? Although the 1991 Law on Romanian Citizenship allowed re-naturalised Romanian citizens to hold dual nationality, this provision did not imply a generalised acceptance of dual nationality, but only a tolerance of *dual membership of re-naturalised citizens*. For other modes of naturalisation, the 1991 Law explicitly eliminated the tolerance of dual nationality. For example, children adopted by aliens lost their Romanian nationality upon acquiring the nationality of their adoptive parents (art. 29). Yet, as noted above, the law did not contain provisions referring to the legal status of Romanian citizens residing abroad who acquired another nationality, and did not expressly oblige them to renounce their Romanian nationality if the receiving state tolerated dual nationality in naturalisations, thus de facto allowing for dual membership.

The most debated issue was *the right of Romania's ethnic Hungarians to hold dual nationality*, mostly in connection with campaigns by political forces in Hungary for their access to Hungarian nationality (for details on these campaigns, see Kovács & Tóth in this volume). The Romanian-Hungarian post-communist debate over dual nationality was linked to a wider ideological controversy between the two countries over contrasting but also overlapping definitions of the nation (Iordachi 2004: 257-260). These debates originated in the separation of the citizenries of the two countries following the collapse of Austro-Hungary after the First World War, and led to numerous diplomatic and territorial conflicts. During the communist period, Hungary abandoned the idea of recovering lost territories but focused instead on the issue of kin-minority protection, legitimised by an *ethno-cultural* definition of the nation. To Hungary's policy of treating its kin minorities abroad as an integral part of the Hungarian nation and its pretence of monitoring their treatment in neighbouring countries, Romania answered with

a *statist* definition of the nation according to which all inhabitants of the country – irrespective of their ethnicity – were Romanian citizens and full members of the socialist nation, ethnic Hungarians included. The Romanian-Hungarian political-diplomatic conflict over the status of ethnic Hungarians in Romania reached a peak in the late 1980s, as became manifest, for example, during the meetings of the Conference for Security and Cooperation in Europe that took place in Vienna (1986-1989); it also continued in the post-communist period, even if at a lower intensity. Leading Romanian politicians criticised the stipulations of the 2001 Hungarian Status Law pertaining to Romanian citizens of Hungarian origin, agreeing to its implementation only after Hungary granted access to its labour market to all Romanian citizens, irrespective of their ethnicity; they also declared their opposition to the granting of dual nationality to Romania's ethnic Hungarians. With the liberalisation of the status of dual citizens in Romania in 2003 (see next paragraph), on the one hand, and the failure of the 2004 national referendum in Hungary over granting dual nationality to ethnic Hungarians living abroad, on the other hand, the debates over the issue faded away from the public agenda, with dual citizenship ceasing to be a matter of political contestation. In retrospect, it is important to note that, while rejecting the right to dual nationality for Romania's ethnic Hungarians, Romanian policymakers defended this right in the case of Moldovan citizens opting for Romanian nationality. This contradiction can be explained by the fact that Romania acted simultaneously in a double role: as a 'nationalising state' in regard to the Hungarian minority in Transylvania and as an 'external homeland' in relation to ethnic Romanians in Bessarabia and Bukovina (Iordachi 2004: 32; for a conceptualisation of these roles, see Brubaker 1996).

A second set of debates concerned the legal status of dual citizens. The 1991 Constitution restricted the political rights of dual citizens, granting access to 'public office or dignity, civil or military,' only to persons 'whose citizenship is *only and exclusively Romanian*, and whose domicile is in Romania' (art. 16.3; emphasis added). Gradually, the great increase in the number of dual citizens led to a 'normalisation' of their status. In 2003, as part of numerous amendments to the Constitution, the restrictions on the political participation of dual citizens were lifted. Currently, the only condition of eligibility to public office, including the parliament and the presidency, is 'Romanian citizenship and domicile in the country.'

The restoration of Romanian nationality to Moldovan and Ukrainian citizens has generated a new category of *non-resident dual citizens*. What is the legal status of these absentee citizens? According to the Romanian legislation, non-resident dual citizens acquired automatic access to full social and political rights, except for the rights and obligations

that are temporarily discontinued for citizens residing abroad, such as the obligation to pay taxes and perform one's military service (also discontinued for resident citizens since 2006), and – until 2003 – eligibility for public offices and awards (restricted for dual citizens; see above paragraph). It is intriguing to note, however, that the public debates over the restoration of Romanian nationality and the right to dual nationality focused on the national and geo-political effects of this policy, mostly in connection to Romania's relation to the Republic of Moldova and, to a lesser extent, the Ukraine. The debates did not address the question of the new citizens' potential socio-political integration into Romanian society or the devaluation of citizenship implied by the policy of granting nationality to persons who have not proven their knowledge of the country's legislation and might not have even visited Romania.

The massive numbers of restitutions of Romanian citizenship to Moldovan and Ukrainian citizens also generated international debates regarding issues of overlapping citizenries and the loyalty of dual citizens. Firstly, Romania's policy on the restitution of nationality contradicted the internal legislation of two neighbouring states, since neither Moldova (until 2000) nor the Ukraine allowed their citizens to hold dual nationality. Secondly, Moldovan and Ukrainian policymakers accused Romania of using dual nationality as a strategy of increasing its political influence in the region, with the final aim of reacquiring its lost territories. Romania's citizenship policy was thus perceived as adding to regional instability rather than to retroactive justice and integration.

Diplomatic debates concentrated mainly on Romania's relationship to the Republic of Moldova. With the establishment of the new state in 1991, Romania was trapped in 'the dilemma of the Romanian-Romanian relations' (Cojocaru 2001). In the early 1990s, the diplomatic relations between the two countries seemed to proceed in tune with the strategy of the 'two Romanian states', put forward by the Moldovan Popular Front and shared by numerous politicians in Romania, according to which Moldova's independence represented the first step toward a gradual and negotiated process of political unification between the two countries. To this end, Romania inaugurated a policy of special partnership with Moldova, introduced visa-free and passport-free travel between the two countries, set up special educational programmes for Moldovan students and built a comprehensive network of inter-ministerial consultations. However, at the political-diplomatic level, the two countries soon drifted further apart. That was mostly because the Republic of Moldavia was tormented by internal inter-ethnic conflicts and secessionist movements, tacitly or openly supported by Moscow, which degenerated into a civil war in 1992 in the multiethnic province of

Transnistria (also known as the Trans-Dniestr region). Fearing that ethnic strife would lead to disintegration, Moldovan leaders decided to consolidate the statehood of the new republic by relying on the Soviet version of local identity, i.e. on *Moldovenism* rather than on the pan-Romanian national identity. This change in Moldova's internal policy affected its relations to Romania. At the official level, the formula of the 'two Romanian states' was gradually abandoned, with Romania and Moldova defining themselves as 'two brotherly states' and then more neutrally as 'two neighbouring states'. After the electoral victory of the Communist Party in 2001, the diplomatic relations between Romania and the Republic of Moldova worsened considerably. The new Moldovan President Vladimir Voronin launched aggressive cultural policies meant to strengthen the Moldovan identity, to marginalise Greater Romanian unionist forces and to forcefully reduce Romania's political influence in the republic. Moreover, blaming Romania's *irredenta* policies, Voronin put forward his own plans for a Greater Moldova, raising territorial claims to Romania's province of Moldova.⁵ This obstructionist policy led to an almost complete deadlock in the diplomatic relations between the two countries.

6.3.2 *The restoration of nationality in practice: Domestic and international constraints*

From 1991 to 2001, the policy of restoration of Romanian nationality was applied without major convulsions, resulting in massive (re-)naturalisations of Moldovan citizens. Since 2001, however, Romania has considerably slowed down the process of restitution for two main reasons. Firstly, the number of applications from Moldova has increased dramatically since January 2001, when Romanian citizens were granted visa-free travel in the Schengen space, effectively clogging the bureaucratic process of restoration of nationality. Secondly, although the European Commission repeatedly stated that the policy of restitution of citizenship is an internal matter for Romania, several EU agencies voiced concerns that, upon Romania's accession in January 2007, the country's policy on restitution of nationality could become an uncontrollable gate of access to the Schengen space of non-EU citizens, bypassing restrictive immigration policies. These combined challenges generated a series of crises in the process of restitution, leading to its intermittent suspension from December 2001 to September 2007.

According to official figures, between August and December 2001 alone the Commission for Citizenship received approximately 300 demands for nationality per day, or an aggregate of 19,000 in six months.⁶ Confronted with this massive influx of requests, the government temporarily suspended the provisions on the restoration of na-

tionality by emergency ordinances valid for two periods of six months each, from December 2001 to June 2002, and then again from November 2002 to May 2003, subsequently approved by parliament. In justifying the approval of the second ordinance, a parliamentary report in April 2003 pointed out that the 'explosive increase in the number of demands' blocked the work of the commission, which was composed of only five magistrates. It also blamed the fact that, according to official statistics, most of the re-naturalisation demands were opportunistic, being made 'in the new context created by the elimination of visa requirements for Romanian citizens who travel in the Schengen space, as well as in view of Romania's prospective integration into the North Atlantic structures.' Pointing out that 'the reparatory character taken into account at the time of elaboration of the Law on Citizenship is present in fewer and fewer cases,' the parliament asked the government to identify a legal solution 'to eliminate re-acquisitions of nationality for a purpose alien to the original intention of the law.'⁷

At the end of each period of suspension of the restoration of nationality, the government implemented major alterations of the citizenship law by two emergency ordinances passed in June 2002 and April 2003. The first ordinance unified the provisions on the reacquisition of nationality with those on the restoration of nationality in a single article (art. 10) placed in the section dealing with naturalisation, thus implying that the restoration of nationality to former citizens was a privileged naturalisation granted by the Romanian state and not an automatic entitlement to nationality. The restoration of nationality continued to be exempted from consular taxes (art. 36, para. 2); in addition, claimants were given the right to contest the decision of the Commission of Citizenship during an interval of fifteen days.

These new provisions did not offer an efficient solution to the flood of naturalisation demands, so that in November 2002 – just four months after its reinstatement – the government yet again suspended the restoration of nationality process for six months. In May 2003, upon the expiry of the new deadline, the law on citizenship was altered once more by a governmental ordinance approved by parliament with minor modifications in October 2003. The new ordinance reinstated the suspended provisions on the restoration of nationality as two additions to art.10 dealing with the reacquisition of nationality (classified as art. 10¹ and 10²), but introduced ample amendments to their implementation: Firstly, applicants to the restoration of nationality became subject to almost all of the conditions for naturalisation demanded of aliens; the only condition waived for former citizens was the obligation to relocate to Romania and reside there for a mandatory period. Secondly, the requests for nationality had to be handed in *personally* to the Commission of Citizenship *in Bucharest* and only 'in thoroughly justi-

fied cases' by attorneys or third parties. Until 2003, the requests for re-acquisition of Romanian nationality could be filed not only personally but also 'by third parties', either at the Ministry of Justice in Bucharest or at Romania's consulates abroad. According to media reports, this procedure led to the creation of clientelist networks in Moldova for the collection of dossiers and their transport in huge packages to Bucharest. In order to eliminate these practices, the new ordinance obliged applicants to travel personally to Bucharest, sometimes for undetermined periods of time necessitated by the new bureaucratic procedures, thus increasing the costs of naturalisation. Thirdly, the ordinance introduced a new form of re-naturalisation of former citizens and their descendants: a new article 10² allowed persons eligible for the restoration of nationality to apply for naturalisation directly at the Ministry of Justice after four years of continuous residence in Romania. This provision was another indication that Romanian authorities intended to transform the restoration of nationality into a privileged form of naturalisation of former citizens relocating to Romania. Fourthly, in order to eliminate opportunistic reacquisitions of nationality, the new amendments stripped new citizens of some of the most immediate advantages of Romanian nationality: art. 37 stated that former citizens who reacquire nationality and effectively live in Romania 'cannot exercise their right to free movement of persons', i.e. they are forbidden to travel abroad with a Romanian passport during the first four years after their naturalisation. Exceptions to this rule were allowed only in emergency situations, such as periods of study abroad, family unification, medical treatment abroad, etc. This overt form of discrimination against a certain category of Romanian citizens because of the manner of their naturalisation was abolished in September 2007.

These substantial amendments to the citizenship law revealed the government's intention to discontinue the restitution of nationality to former citizens living in Moldova and the Ukraine, transforming it instead into a selective and privileged naturalisation of alien *ethnic Romanians* relocating to Romania, after a residence of four years. Thus, while former citizens living abroad were required to fulfil additional conditions that made their naturalisation very lengthy and difficult, former citizens working, studying or living in Romania were granted access to direct naturalisation after a residence period of four years, by means of a special procedure. In addition, by requiring applicants to possess 'knowledge of the Romanian language and elementary notions of Romanian culture and civilisation',⁸ the government made it more difficult for non-ethnic Romanian applicants to recover their lost nationality, fuelling suspicion that the new conditions were specifically meant as an obstacle to their re-naturalisation.

6.3.3 *The restoration of nationality reloaded*

Predictably, the May 2003 amendments to the citizenship law led to an almost complete deadlock in the process of re-naturalisation, at a time when the number of applications was soaring. The restrictive policy of the government triggered incendiary reactions from the pro-Moldovan interest groups in Romania, who conducted media campaigns against the governmental policy and – with the help of naturalised Moldovans elected in the Romanian parliament – initiated bills for amending the citizenship law. The most contested provision was the applicants' obligation to travel to Bucharest and file their dossiers in person. Following street protests in Bucharest of Moldovan citizens applying for naturalisation, this condition was finally abrogated by parliament in June 2003.

In March and April 2006, two open letters signed by 25 non-governmental organisations from Romania and Moldova urged the government to unblock the process of nationality restitution. The petitioners argued that the bureaucratic blockage was 'premeditated,' with the Ministry of Justice deliberately creating obstacles to the restoration of nationality. In their view, the restoration of nationality was a 'legitimate right' of the Moldovans and its denial by the Romanian government violated basic human rights and established principles of international law. The petitioners also denounced the restrictions on free movement imposed on new citizens, arguing that this provision discriminated among Romanian citizens according to their place of residence and the manner of their naturalisation, in direct violation of the Constitution which stated that all citizens are equal before the law.

In two consecutive responses, the Ministry of Justice pointed out that the restoration of nationality is not an automatic entitlement of former citizens but a right granted by the Romanian state under certain conditions. Acknowledging that the Commission for Citizenship was overwhelmed by the large number of applications, the Ministry pledged to consider potential solutions to the problem.⁹

In 2006, two parliamentary bills attempted to provide a legal solution to the issue. In order to speed up the restoration of nationality process, they proposed simplifying the procedure, shortening the processing time, allocating more magistrates to the task and making the Commission of Citizenship responsible for the resolution of demands within 'reasonable administrative deadlines.'¹⁰ The senate nevertheless rejected both bills on the grounds that they contradicted Romania's obligations under the EU treaty of accession, and that they would lead to potential conflicts with the Commission of the European Union.¹¹

More recently, however, mounting public and political pressure has convinced the government to again modify its citizenship laws. In September 2007, a new governmental ordinance facilitated the restoration

of nationality by means of major procedural amendments. Firstly, the Commission of Citizenship now consists of five specially appointed juridical councillors on a full-time basis, who replace the regular part time judges. Applications for nationality can be sent by post as well; incomplete files are not automatically rejected, with later additions also being permitted. Secondly, in order to speed up the process of naturalisation, the decisions are now also taken by the Minister of Justice and not solely by the entire Council of Ministers. Rejections can be appealed by applicants in local courts, not only in Bucharest; new requests for nationality can also be filed one year after a rejection. The ordinance also obliges naturalised citizens to take the oath of allegiance no later than three months after the decision to naturalise instead of within one year as previously requested. It is expected that these amendments will speed up the process of naturalisation and will increase the number of Moldovan citizens acquiring Romanian nationality.

6.4 Statistics on the restitution of nationality

Since there are no general official statistics available, the number of former citizens and their descendants re-naturalised to Romanian nationality is highly contested. Official sources acknowledge a number of 102,000 Moldovan and Ukrainian citizens naturalised until 2001; no general figures have been released for the period since then. According to alternative unofficial estimates, the Romanian government granted nationality to at least 300,000 Moldovan citizens belonging to various ethnic groups between 1991 and 2000 alone.¹² The number of 'restitutions' of nationality to Moldovan and Ukrainian citizens dropped to insignificant levels in the period 2000 to 2003. Although the process of

Table 6.1 *Naturalisations in Romania, 16 June 2000-29 October 2008*

<i>Year</i>	<i>Total number naturalisations</i>	<i>Moldovan citizens</i>	<i>Ukrainian citizens</i>
2008	4,961	3,605	165
2007	1,150	615	51
2006	740	487	3
2005	1,789	1,592	13
2004	751	258	6
2003	281	8	0
2002	318	1	3
2001	348	1	1
2000	357	1	0
Total 2000-2008	10,695	6,568	242

Source: Monitorul Oficial al României, Part I; calculated from official sources made available by Constantin Dolghier, available at <http://cetatenie.info.tm>

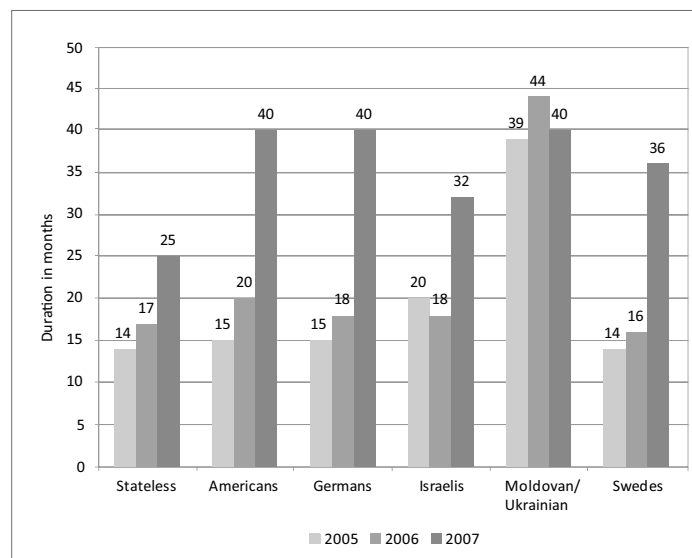
restitution of nationality was resumed in 2004, the annual number of (re-)naturalisations remains relatively low.

Since there was neither a drop in the number of demands nor an increase in the number of rejections during this period, the low number of restitutions of nationality was clearly due to the considerable slowdown in the bureaucratic processing of applications. According to various unofficial estimates, the number of accumulated applications for restoration of nationality filed by Moldovan citizens is currently between 500,000 and 900,000.¹³ Among these, in the period 2001 to 2007, Romanian authorities officially registered only 31,764 requests (by publishing them in the *Official Monitor*), among which 29,276 originated in the Republic of Moldova and 838 in Ukraine. Overall, between 16 June 2000 and 28 October 2008, the Romanian government awarded 10,695 naturalisations, of which 6,568 were awarded to Moldovan citizens and 242 to Ukrainian citizens.¹⁴

Although Moldovan citizens continue to dominate the number of persons acquiring Romanian nationality, their proportion within the total number of naturalisations is much lower than the share of Moldovans among all applicants.

As shown in Figure 6.1, this gap is due to the fact that since 2000 the procedure of restitution of Romanian nationality to Moldovan and Ukrainian applicants has been slower than that of the naturalisation of aliens.

Figure 6.1 Duration in months of the process of naturalisation in Romania, by original nationality of applicants accepted in 2005, 2006 and 2007



Source: Data compiled from official sources by Constantin Dolghier, available at <http://cetatenie.info.tm>

On average, applicants from the Republic of Moldova and the Ukraine naturalised in 2005 (included in the graph under the label 'Moldovan/Ukrainian') had to wait 39 months between the official registration of their requests and the decision regarding naturalisation; those naturalised in 2006 had to wait 44 months between the two stages. At the same time, other categories of aliens only waited, on average, between fourteen and eighteen months. Since the procedure for the naturalisation of aliens, according to the law, is in fact more complicated than that of the restitution of nationality, it becomes apparent that the length of the re-naturalisation process was not simply due to the record number of demands but also to a conscious political decision to halt the process by administrative means.

The amendments to the nationality law enacted in September 2007 made possible a massive increase in the number of naturalisations. As a consequence, the duration of the naturalisation process for all categories of applicants began to converge: while aliens had to wait longer (40 months at maximum), the waiting period for nationality restitution slightly decreased from 44 to 40 months (see Figure 6.1). Overall, between 16 June 2000 and 14 September 2007, the Romanian government awarded 5,062 naturalisations, of which 2,664 were restitutions of nationality to Moldovan citizens and 58 to Ukrainian citizens.¹⁵ Since the adoption of the new amendments to the nationality law on 14 September 2007, the Romanian government awarded a record number of 5,633 naturalisations (higher than the sum of 5,062 naturalisations granted in the previous seven years); of this number, 672 were granted in the last quarter of 2007 and 4,961 in 2008 (until October 2008). Out of this total number of new citizens, there were 1,826 naturalisations of aliens and 3,807 'restitutions' of nationality. Among the latter, 318 restitutions were registered between 14 September and 31 December 2007, 299 to Moldovan citizens and nineteen to Ukrainian citizens. A record number of 3,770 restitutions of nationality occurred during the period 1 January to 28 October 2008, among which were 3,605 to Moldovan citizens and 165 to Ukrainian citizens. These figures prove that, after the de facto suspension during the period 2000-2007, the process of restitution of Romanian citizenship to former citizens from Moldova and the Ukraine has been resumed under the new 2007 provisions of the nationality law.

6.5 (Re)constructing nationality in post-communist Romania: Comparative perspectives

The collapse of the communist regimes led to the reorganisation of nationality policies in Central and Eastern Europe. One can distinguish

two main clusters of nationality policies, in direct relation to patterns of nation-building and state-building in these regions: nationality policies in successor states in former multi-ethnic federal states such as Czechoslovakia, Yugoslavia and the USSR; and in post-communist nation-states such as Albania, Poland, Romania, Bulgaria and Hungary.

The dismantling of the former federal systems generated numerous legal, political and territorial conflicts, most notably in Yugoslavia and the USSR (the 'velvet divorce' between Slovakia and the Czech Republic was smoother, although it was not free of legal conflicts, see Liebich, Warner and Dragovic 1995). In his analysis of 'citizenship struggle' in the successor states of the former USSR, Rogers Brubaker differentiated between a 'new state' model of legislation on nationality and a 'restored-state' model (1992: 275-276). The former was enacted in Soviet republics that lacked a statehood tradition. Without a history of distinctive citizenry, these republics, such as the Republic of Moldova, had to create their citizenship body by conferring rights on all of their residents, on an inclusive basis. The latter, 'restored-state' type, was applied in republics that relied on a pre-Soviet statehood tradition, such as the Baltic states. Motivated by the fear that their nation would 'die out', these states revived their pre-Second World War nationality laws in order to restore the citizenry that had existed prior to the Soviet conquest and to initially exclude from citizenship all residents who immigrated to these countries in the post-1945 period. To these, I would add a third, hybrid category, represented by 'new states' that have also assumed a 'restored' state-dimension, such as the Ukraine. The Ukrainian legislation granted citizenship to all inhabitants residing within the republic's territory, on a very inclusive basis. At the same time, it also granted access to Ukrainian citizenship to former citizens *and their descendants* born or permanently residing within any territories which formed a part of the historical states of the Ukrainian People's Republic, the Western Ukrainian People's Republic, the Ukrainian State, the Ukrainian Socialistic Soviet Republic, Trans-Carpathian Ukraine and Ukrainian Soviet Socialistic Republic (URSR), *on the express condition that they renounce their foreign citizenship*.¹⁶

A different category of nationality policies can be found in post-communist nation-states. Although these states did not suffer territorial changes or a massive influx of population after 1989, they have all revised their nationality laws in order to reflect the new political transformations.¹⁷ New nationality laws in these states encompassed an important national dimension, repressed under the regime of Soviet domination; after decades of political isolation from their kin-populations abroad, most of these states have resumed policies of 'positive discrimination' towards their co-ethnics.

Romania's post-communist nationality policy belongs to the second cluster mentioned above; yet, due to the country's geo-political position and its territorial disputes with the Soviet Union during the Second World War, the Romanian policy combines elements characteristic of policies in East-Central European and former Soviet countries. The most important concept that dominated Romania's post-communist citizenship policy was that of the restoration of nationality in order to undo the effects of the territorial changes that took place during and after the Second World War, an issue declared taboo during the period of Soviet domination. Romania granted the right to re-naturalisation to all former citizens and their descendants, *irrespective of their ethnic origin*, their form of de-naturalisation and the period of their attachment to the Romanian state. In doing so, Romanian legislation went beyond regular laws on repatriation, of the kind post-communist Poland passed in relation to former citizens of Polish ethnic origin deported to the Soviet Union at the end of the Second World War. It also went beyond forms of privileged naturalisation of kin population abroad, as is the case with Hungary's policy towards *former citizens of Hungarian ethnic origin relocating to the kin-state*. To a certain extent, Romanian legislation resembles the policy of the restoration of citizenship to former citizens and their descendants implemented by the Ukraine, with the notable difference that, unlike the Ukraine, Romania allowed new citizens to hold *dual citizenship and retain their domicile abroad*. Most closely, Romanian citizenship legislation resembles the 'restored-state' policies of the Baltic states. This similarity is not surprising: Greater Romania's provinces of Bessarabia and Bukovina as well as the Baltic states were occupied by the Soviet Union in June 1940 as a direct consequence of the 1939 Ribbentrop-Molotov Pact. In the post-Soviet period, Romania and the Baltic states officially denounced the 'infamous pact' and tried to undo its legal consequences by applying the principle of restitution of pre-Soviet nationality. The major difference in the application of this principle was that in Romania its provisions were not meant to discriminate against 'internal foreigners' as in the Baltic states, but to include former citizens living abroad.

Due to the legacy of territorial conflicts and competing projects of nation-building and state-building in post-communist East-Central Europe, Romania's policy on the restoration of nationality generated interstate tensions, most evident in its relation to the Republic of Moldova. Given the complex and multifarious nature of this relationship, Romanian policymakers have been unable to put forward a coherent policy toward Moldova, oscillating between 'sentimentalism' and 'pragmatism'. On the one hand, Romanian politicians regard Moldova as Romania's former province, occupied as a result of the 1939 Ribbentrop-Molotov Pact, and reserve the country's right to unilaterally restore Ro-

manian nationality to Moldovan citizens. On the other hand, Romania was the first country to recognise the independence of the new Republic of Moldova upon its proclamation in August 1991. Unlike the Federal Republic of Germany, in relation to the former GDR, or Greece, in relation to the Former Yugoslav Republic of Macedonia, Romania contested neither the statehood nor the name of the new republic. It has treated Moldova as an independent and sovereign state, thus implicitly recognising its legitimate right to establish its own version of national identity and citizenship legislation. The failure of the policy of special partnership inaugurated between the two countries in the early 1990s and the forceful suspension of the process of restitution of nationality following pressure from the EU (2001-2007), widened the gap between these two policy lines.

What are the prospects of Romanian-Moldovan relations? Currently, both countries try to adapt their bilateral relations to the new realities created by Romania's EU membership. On the one hand, Romania has reiterated its historical rights to Bessarabia. In June 1991, the Romanian parliament officially condemned the 1939 Ribbentrop-Molotov Pact as illegal, *ab initio null* and void of consequences for Romania; in September 2007, President Traian Băsescu announced his intention to officially condemn (yet again) the pact in order 'to give political force' to this declaration.¹⁸ Moreover, in September 2007 Romania relaunched its policy of restitution of nationality. Facing criticism from various EU agencies,¹⁹ Romanian authorities presented this policy as part of the EU's program of integration with neighbouring countries, arguing that it would enable the EU to boost its influence in the former Soviet space, as well as to import a qualified Moldovan workforce in order to reduce its labour shortages. On the other hand, Moldova's communist leadership, backed by Russia, took advantage of the securitisation of the EU border between Romania and Moldova and the imposition of travel visas to Moldovan citizens travelling to Romania in 2007 in order to discontinue socio-economic and cultural relations between the two countries. Moreover, a new Law on the Status of the Public Functionary, adopted in 2007, excludes all Moldovan citizens, who hold dual citizenship or have their domicile abroad, from public office; this effectively stripped a large part of the population of important political rights. Officially justified by the need to reduce the number of naturalisations abroad, to eliminate conflicts of interest with other states and to consolidate Moldova's statehood, this controversial Law primarily targets Romanian-Moldovan dual citizens with a view toward weakening political opposition to the ruling Communist party and to countering Romania's political influence in the republic. At a diplomatic level, Moldova has also tried to bypass Romania as a mediator in its relations with the EU (see the decision to prevent the opening

of new Romanian consulates in Moldova and to instead use Hungary's embassy for granting of EU Schengen visas to Moldovan citizens). Although the effects of Romania's policy on the restitution of nationality and the response to it by the neighbouring states (mostly Moldova) should not be unduly exaggerated, it is likely that the interaction of citizenship policies in East Central Europe will continue to challenge inter-state relations in the region.

Chronological list of citizenship related laws in Romania

Date	Document	Content	Source
1947	Law No. 162 for the Modification of arts. 9, 18, 25, 26, 28, 29, 30, 31, and 34 of the Law Concerning the Acquisition and Loss of Romanian Nationality of 19 January 1939	Restores citizenship to all those who were domiciled in Romania on 26 September 1920 (the ratification of the Treaty with Austria), Jews denaturalised in the period 1937-1944 and inhabitants of Bessarabia who immigrated to Romania proper after the Soviet occupation (28 June 1940)	www.cdep.ro (in Romanian)
1950	Decree No. 145 Concerning the Abrogation of Law No. 162 of 30 May 1947 for the Settlement of the Citizenship of Certain Categories of Inhabitants	Abrogates Law No. 162; punishes false declarations under that law with long-term imprisonment	www.cdep.ro (in Romanian)
1952	Decree No. 33 Concerning Citizenship in the Popular Republic of Romania	Abolishes previous laws on state citizenship; redefines conditions of access and loss of Romanian citizenship based exclusively on the <i>ius sanguinis</i> principle; serves as a legal basis for communist citizenship doctrine	www.cdep.ro (in Romanian)
1954	Decree No. 80 for the Reacquisition of Citizenship by Certain Categories of Persons	Restores citizenship to all those denaturalised under previous special laws	www.cdep.ro (in Romanian)
1954	Decree No. 296 for the Modification of art. 1 of the Decree No. 33 of 24 January 1952, Concerning Citizenship in the Popular Republic of Romania	Modifies art. 1 of the 1952 Law; reconfirms Romanian citizenship to all those who held this status on 28 June 1940 and have resided in Romania since that date; excludes from Romanian	www.cdep.ro (in Romanian)

Date	Document	Content	Source
		citizenship the inhabitants of Soviet-occupied Bessarabia	
1956	Decree No. 63 on the Citizenship of Certain Categories of Persons	Regulates the legal status of certain categories of persons	www.cdep.ro (in Romanian)
1971	Law No. 24 Concerning Romanian Citizenship	Redefines conditions of naturalisation, ascription and reacquisition of Romanian citizenship	www.cdep.ro (in Romanian)
1989	Decree-Law No. 7 Concerning the Repatriation of Romanian Citizens and of Former Romanian Citizens	Guarantees the right to repatriation of Romanian citizens living abroad; allows them duty-free transfer of goods and priority acquisition of state-owned real estate	www.cdep.ro (in Romanian)
1990	Decree-Law No. 137 of 11 May 1990 Concerning certain Provisions Pertaining to Romanian Citizenship	Allows reacquisition of Romanian citizenship by former citizens without renunciation of foreign citizenship and relocation to Romania	www.cdep.ro (in Romanian)
1991	Law on Romanian Citizenship	Redefines conditions of naturalisation, ascription and reacquisition of Romanian citizenship; introduces the right of restoration of citizenship to former citizens of interwar Greater Romania according to a simple procedure without renunciation of foreign citizenship and relocation to Romania	www.cdep.ro (in Romanian); www.legislationline.org (in French)
1998	Law No. 146 for the Abrogation of Decree-Law No. 7/1989	Abrogates facilities granted upon the repatriation of citizens living abroad	www.cdep.ro (in Romanian)
1999	Law No. 192 for the Modification and Additions to the Law on Romanian Citizenship No. 21/1991	Denies the state the right to withdraw state citizenship from those who acquired it at birth; abolishes repatriation as a mode of reacquisition of citizenship; transforms the reacquisition of citizenship into a simplified procedure of naturalisation; increases requirements for naturalisation (continuous	www.cdep.ro (in Romanian)

Date	Document	Content	Source
		residential stage of seven years, knowledge of the country's language and legislation)	
2001	GEO* No. 167 Concerning the Suspension of Certain Provisions Concerning the Implementation of the Law on Romanian Citizenship No. 21/1991	Suspends art. 35 on the restoration of citizenship for a period of six months	www.cdep.ro (in Romanian)
2002	Law No. 225 Concerning the Approval of the GEO no 167/2001	Approves the suspension of the right to restoration of citizenship for six months	www.cdep.ro (in Romanian)
2002	GEO No. 68 for the Modification and Additions to the Law on Romanian Citizenship No. 21/1991	Unifies the provisions on the reacquisition of citizenship with those on the restoration of citizenship	www.cdep.ro (in Romanian)
2002	Law No. 542 Concerning the Approval of the GEO No. 68 of 13 June 2002	Approves the modification with minor amendments	www.cdep.ro (in Romanian)
2002	GEO No. 160 Concerning the Suspension of Certain Provisions Concerning the Implementation of the Law on Romanian Citizenship No. 21/1991	Suspends art. 35 on the restoration of citizenship for a period of six months	www.cdep.ro (in Romanian)
2003	Law No. 165 Concerning the Approval of the GEO No. 160	Approves the suspension of the right to restoration of citizenship for six months	www.cdep.ro (in Romanian)
2003	GEO No. 43 for the Modification and Additions to the Law on Romanian Citizenship No. 21/1991	Introduces new conditions for naturalisation of former citizens; demands that applicants submit their requests personally in Bucharest; introduces a new form of re-naturalisation of former citizens living in Romania after four years of continuous residence; denies former citizens re-naturalised in Romania the right to travel abroad for four years	www.cdep.ro (in Romanian)
2003	Law No. 405 Concerning the Approval of the GEO No. 43/2003	Approves the modifications with minor amendments	www.cdep.ro (in Romanian)
2007	GEO No. 87 for the	Streamlines the procedure	www.cdep.ro

Date	Document	Content	Source
	Modification of the Law on Romanian Citizenship No. 21/1991	of naturalisation now granted by the Ministry of Justice and not the Council of Ministers; reorganises the Commission of Citizenship under the leadership of the Ministry of Justice; enlarges the Commission to four members, but allows it to work with a quorum of at least three members	(in Romanian)

* GEO: Governmental Emergency Ordinance

Notes

- 1 This distinction also necessitates a terminological clarification: in Romania, the modern legal vocabulary of citizenship emulated the French legal terminology, employing *naționalitate* (nationality) in the sense of state citizenship. The semantic distinction between the terms ‘citizenship’ (meaning state membership) and ‘nationality’ (meaning ‘ethnic origin’) was only introduced in the official legal vocabulary after the Second World War, as part of the Soviet-style institutionalisation of ethnicity. On the one hand, due to its discriminatory use in the Second World War, the expression ‘ethnic origin’ (*originea etnică*) was purged from the communist political vocabulary. On the other hand, in order to continue to acknowledge the legal existence and legitimate collective rights of various ethnic groups living in the country side by side with the dominant ethnic group, the communist legislation employed the term ‘nationality’ to denote the *ethnic origin of a person* and not his or her state citizenship, as had previously been the case. To differentiate the new denotation of the term from its previous legal meaning (state citizenship), ‘nationality’ was employed in the communist political language mostly in plural, as ‘co-inhabiting nationalities.’ In the post-communist period, Romanian legislation employs the term *naționalitate* alongside the expression ‘*origine etnică*’ (ethnic origin), and refers to ethnic groups mostly as *minorități naționale* (national minorities). The term ‘citizenship’ (*cetățenie*) is employed to refer to both the legal and participatory dimensions of this institution. This chapter uses the term ‘nationality’ to refer to state membership in line with the legal vocabulary employed in the current volume, irrespective of the previous or current understandings of the term ‘*naționalitate*’ in Romanian.
- 2 All translations of legal texts are the author’s, if not otherwise indicated.
- 3 See the parliamentary debates at www.cdep.ro.
- 4 *Monitorul Oficial* 75, 21 May 1990.
- 5 ‘Voronin: ‘În România sunt 10 milioane de moldoveni’, 24 February 2007, www.bbc.co.uk.
- 6 ‘Expunere de motive pentru aprobarea Ordonanței de urgență a Guvernului nr. 160/2002’, 1, www.cdep.ro.
- 7 ‘Expunere de motive la Legea pentru aprobarea Ordonanței de urgență a Guvernului nr. 160/2002,’ www.cdep.ro.
- 8 *Monitorul Oficial*, Partea I, 399, 9 June 2003.
- 9 The petitions and the official answers are available on the site www.curaj.net.

- 10 Ilie Ilașcu, Session of the Senate, 19 March 2007, www.parlament.ro. A former Moldovan citizen imprisoned in Transnistria for his opposition to the secessionist leadership of the region during the civil war, Ilașcu was later elected in the Moldovan and Romanian parliaments *in absentia*. Following international pressure, Ilașcu was released from prison in 2001 and migrated to Romania, where he agitates for dual citizenship for all Moldovans, in his capacity as a member of the Romanian parliament. On the case of Ilașcu, see Iordachi (2004: 249-252)
- 11 Petre Străchinariu, Session of the Chamber of Deputies, 28 June 2007, www.parlament.ro.
- 12 Estimation by former Moldovan Prime Minister Mircea Druc, *Evenimentul Zilei*, 20 May 2000. See Iordachi (2004: 248).
- 13 For this estimation, see http://en.wikipedia.org/wiki/Traian_Basescu.
- 14 Data calculated after the *Official Monitory of Romania*, processed and made available online by Constantin Dolghier at www.cetatenie.info.tm.
- 15 Data calculated after the *Official Monitory of Romania*, processed and made available online by Constantin Dolghier at www.cetatenie.info.tm.
- 16 See art. 8 of the 2001 Law on Citizenship of Ukraine, available at www.mfa.gov.ua.
- 17 This claim is valid for Poland, as well. Although the 1962 Polish Nationality Act has not been replaced by a new post-communist law, it was nevertheless amended in important points, while numerous procedural changes have also been implemented. See Górny & Pudzianowska in this volume.
- 18 'Traian Băseșcu va denunța Pactul Ribbentrop-Molotov', 21 December 2007, www.bbc.co.uk.
- 19 On 25 September 2007, President Băseșcu asked the government 'to simplify to the maximum' the naturalisation conditions for Moldovan citizens. His statement was criticised by Marianne Mikko, the President of the European Parliament Committee for the Cooperation between the EU and the Republic of Moldova, as lacking 'political wisdom'. See 'EP official: Basescu's statements about citizenship for Moldovans "not wise"', *Nine O'Clock* 4029, 28 September 2007, www.nineoclock.ro. In July 2007, Kalman Mizsei, the director of the EU representative office to Moldova, called on Romania to cancel its policy of nationality restitution for Moldovans as it contradicts the EU charter. See: 'Romania asked to cancel easy citizenship for Moldovans', *New Europe: The European Weekly*, 14 July 2007, www.neurope.eu.

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