RUSSIAN RESIDENCE AND TRAVEL RESTRICTIONS

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Introduction: The Internal Passport and Residence Permit System

A number of laws and bureaucratic practices left over from the Soviet era place severe restrictions on Russian citizens' freedom to choose their place of residence and to travel abroad for a limited time. In particular, laws requiring an exit visa to travel abroad and a "propiska," or permit, to establish residence in most major cities remain in force today as an unfortunate legacy of the Soviet era.

The laws restricting free travel abroad and choice of residence within the Russian Federation constitute an unjustifiable infringement of customary law and international agreements to which the Russian Federation has acceded. Moreover, the laws are unacceptably ambiguous, thus according the state nearly unlimited discretion to apply them in discriminatory and arbitrary ways.

The former Soviet Union is now awash with great numbers of refugees and displaced persons attempting to flee civil violence and open warfare in the newly independent republics. Displaced persons reportedly suffer from discriminatory treatment under the residence-permit law when they attempt to move to Moscow or other cities of the Russian Federation. The existing law should be repealed or at least revised to conform to internationally recognized norms of freedom of movement. A bill currently under consideration would effectively abolish the present permit system.

Aspects of Russian law requiring exit visas for foreign travel are likewise unacceptable insofar as they place an unreasonable burden on Russian citizens' freedom of movement in abrogation of international agreements and customary norms.

Legacy of the Soviet Regime

Practice

Although the roots of the residence-permit system predate the Russian Revolution, the modern Soviet system was instituted in 1932 when internal passports became mandatory for all citizens aged sixteen and older. It was then hoped that the passport system would help stem the tide of impoverished peasants into the better-supplied urban centers. The publicized aim of the system was to facilitate census-taking and planning.

It was not until 1976 that collective farm workers started receiving passports; as late as the mid-eighties most rural dwellers still had not received them. The 1932 law therefore served as a nearly absolute barrier to legal migration from the countryside to the city for perhaps the majority of rural dwellers.

Under this system, there were three categories of population centers: 1) village, 2) unrestricted city, and 3) restricted city. Only those wishing to resettle in restricted cities needed a permit to do so. "Restricted cities" included all republic capitals, nearly all cities with a population of over 500,000, and many smaller towns as well. Restricted cities generally offered greater opportunities for social and professional advancement, as well as a wider range of consumer items and services.

Enforcement of the residence-permit system invoked the services of a wide range of state offices and officials. Schools and universities, for instance, generally required applicants to demonstrate legal residence before they could enroll. Graduates were often placed by their institutions after graduation where the state wanted them; that place then became their place of legal residence. The state would also route incoming migrants to one place or another by offering good jobs or bad.

Most oppressive, however, were the "secret and continuously revised instructions" prohibiting or permitting the issuance of permits.¹ Residence-permit applicants might never learn why their application was denied, and there was no appeal to a higher authority for review. The state could thus apply unfair, discriminatory, and arbitrary criteria with impunity.

This system generally diverted those who wanted to live in the closed cities to open towns and the suburbs of closed cites. The resultant growth of the suburban populations created a tide of commuters who would try to find work in labor-short industries within the closed cities; some managed to find illicit housing in the cities. If these commuters were lucky and enjoyed the support of their superiors, they could sometimes obtain residence permits — and thus gain access to all the collateral benefits of legitimate

¹ Victor Zaslavsky, *The Neo-Stalinist State* (Brighton, Sussex: Harvester Press, 1982), p. 137.

residency — although this process has taken as long as fifteen years in some cases. In the meantime, they would remain on the margins of society, denied such essential services as hospital care and education.

Legislation

At the root of the residence and travel restrictions is a number of overlapping Soviet and Russian laws and ordinances whose validity today remains an open question. That the laws are often applied in discriminatory or arbitrary ways is not disputed by anyone.

• Decree No. 109 of the Council of Ministers of the USSR "On Ratification of the Statute Concerning the Passport System in the USSR" and No. 110 "On Certain Rules for Residence Permits Issued to Citizens" of August 28, 1974.

The 1974 decrees required nearly all citizens over the age of sixteen to have a passport bearing their name, place and date of birth, and nationality. Additional marks were to be made in the passport as the need arose, recording such facts as marriage or divorce, military status, residence and exit permit status, commodity coupon status, and (optionally) blood type and Rh factor. The internal passport thus formed the cornerstone of the state's system of civil identification and control.

Chapter I, article 6 of Decree No. 109 stipulates that "Iclitizens must obtain through the established procedure a residence permit for their place of residence, a residence permit or registration for any place of temporary residence, and an exit permit before leaving one's place of residence." A final clause states that permits and registrations will be issued "in accordance with legislation of the USSR." Unfortunately, no specific guidelines or citations follow.

The decree holds a wide range of public officials responsible for its observation and implementation: housing authorities, hospital officials, heads of children's homes, and other public service officials. Overall supervisory authority is vested in the executive committees of the local councils of workers' deputies and internal affairs authorities (generally the local police).

The decrees require those who have left their place of legal residence for more than one and a half months to obtain a permit. For trips lasting less than one and a half months they must register as indicated. And citizens changing their place of residence for more than one and a half months must also obtain an exit permit unless they are leaving on an official trip, vacation, summer-cottage vacation, or for rest or medical treatment.

Residence and exit permits are issued by internal affairs authorities in the cities, urban settlements, and rural centers that have them; in smaller towns and villages the permits may be obtained from "those authorized to do so by the executive committees of rural and/or settlement councils of workers' deputies." (III:24) Registration is left to "those persons responsible for observation of the regulations of the passport system" as enumerated above. A person arriving at a new location for up to one and a half months must register within three days of arrival. If registration is denied, that person must leave within three days.

Permit duties are levied "in accordance with current legislation." No citations are provided.

Stipulated penalties for infringement of the passport and registration system range from ten rubles for failure to have a proper passport or permit, to fifty rubles for repeated offenses. (IV:34-36)

Certain classes of individuals may obtain residence permits regardless of the amount of space they will be occupying together with the holder of a valid residence permit: spouse with spouse, minor children with parents, etc.

Those not falling into the enumerated categories may receive a permit only if "established norms for living space will not thereby be violated." (110:2) Most notably, the decree further provides that the executive committees of the city and regional councils of workers' deputies may deny permits "under circumstances not foreseen in the present enactment." (110:4)

This last clause undermines whatever minimal procedural guidelines the act seems to provide by permitting the authorities to deny issuing a permit for unstated reasons. At the same time, it is extremely unlikely that the vast majority of would-be newcomers to the cities would not violate the "norms for living space" in light of the severe housing shortage throughout the Russian Federation.

• "On the Uniform Procedure Concerning Residence Permits and Exit Permits of Citizens in Moscow and the Moscow District." February 4, 1992.

This local ordinance in large part recapitulates the above law in somewhat greater detail, enumerating similar eligibility categories, etc.

• USSR Law "On the Procedure Concerning Exit from the USSR and Entrance into the USSR by Citizens of the USSR" of May 20, 1991 (effective 1/1/93).

Signed by Mikhail Gorbachev on May 20, 1991, this law establishes eight grounds for denial of permission to leave the country permanently or temporarily: 1) possession of state secrets; 2) pending criminal indictment; 3) sentence already imposed; 4) remaining court-imposed obligations; 5) false testimony (presumably on exit visa documents); 6) conscription into the armed forces; 7) civil suit; and 8) high risk of recidivism. Grounds one through seven may result in denial of permission to emigrate. Grounds one through five and ground eight may bar temporary travel abroad. In the case of state secrets (1), petition to travel may be denied for no longer than five years.

The exit-visa law is doubly problematic: 1) it poses a tiresome bureaucratic hurdle for those wishing to go abroad, and 2) it is unreasonably vague.

Although the new law is less burdensome than the current practice of requiring an invitation from abroad, the would-be traveller will still face an array of time-consuming and humiliating bureaucratic procedures. The applicant will be subject to the vagaries of the new law's criteria for denying permission to leave the country; such vagueness grants nearly complete discretion to the executive authorities. The term "state secrets," for example, may draw within its scope almost any information the government — in good faith or bad — considers sensitive or embarrassing at the moment. The five-year limit on denial of permission offers little consolation, insofar as an applicant thus denied would presumably be forced to resign from his or her sensitive post before the five-year term would begin to accrue. These restrictions obviously place a heavy burden on anyone wishing to leave the country for even a brief vacation or

business trip abroad.

Post-Soviet Practice

A Disfavored Minority

Although the precise legal force of the laws discussed above is now unclear, they remain on the books and are, if anything, applied more capriciously than in the past. In particular, a number of cases where the residence-permit laws have been used to discriminate against disfavored minorities has recently come to light. In Anglo-American jurisprudence, the term for this kind of application of the law is "selective enforcement."

Today major cities of the Russian Federation are facing much the same kind of massive influx of displaced persons that provided the original impetus for the passport and residence-permit regimes of 1932. This time, however, it is not impoverished peasants but predominantly those fleeing unsettled regions of the former Soviet Union who are moving to the cities.

The Moscow Russian Television Network reported on February 24, 1992, that the Special Purpose Militia (OMON) raided the Zarya Hotel in Moscow, where a number of Chechens had taken up residence. The purpose of the raid was ostensibly a passport and residence-permit check. The OMON forces allegedly beat up a number of Chechens whom they had detained, several requiring hospitalization.

Chechens in Moscow are blamed for a wide range of misfortunes afflicting Moscow, including the rise in organized crime. They are alleged to have borne the brunt of Russian nationalist enmity towards Checheniya's independence movement.

Chairman of the Committee on Law and Order in the Russian parliament, Aslanbek Aslakhanov, has stated that an investigation of the raid is underway, but to date nothing seems to have come of it. Himself a Chechen, Aslakhanov did not know whether the Moscow major's office or the regular city police were involved in the raid. When Helsinki Watch asked him about the residence-permit system in general — the regulations the OMON was supposed to have been enforcing in the raid — Aslakhanov said that it was necessary because "our people aren't as obedient as they are in your country. We check to control crime. Crime is rising dramatically."

It is also unclear whether the OMON units were executing a warrant at the time or were acting on their own initiative. Nor have any criminal charges against the Chechens at the Zarya Hotel come to light. It therefore seems highly likely that the passport check was merely a pretext for the raid and ensuing rough treatment. Aslakhanov intimated that there had been other similar raids that were not reported in the press.

There is no question, however, but that the raid was conducted under color of the Russian passport law and Moscow residence-permit ordinance.

Parochialism

Krasnodar

The Krasnodar region has recently become a magnet for displaced persons escaping ethnic violence in the Caucasus. In 1989, for example, the city experienced a sizable influx of Meskhetian Turks from the Ferghana Valley.

In response to this influx of displaced persons, the regional legislative body adopted a resolution that officially banned issuing new residence permits, with one exception: to people who had been victims of repression and had residence permits for the Krasnodar region when the repression occurred.

Aleksandr Sokolov, a member of the rights group Memorial has indeed confirmed this selective administration of the residence-permit system. There are no written orders, he finds. Instead, the local authorities (the police) make ad hoc decisions, often granting permits in direct conflict with the region's resolution on issuing no new permits.

Meskhetian Turks enjoy severely limited access to basic public services and housing. They may work at short-term employment, and their children may attend school in the Krasnodar region, but they have no legal access to free health care (unlike residents with permits), and may not obtain a passport upon turning sixteen, as required by law. They may not register marriages or receive pensions.

Last year the public prosecutor of Krasnodar lodged a protest against the city's ban on issuing new residence permits. Instituted in 1988, the ban is still in effect.

City authorities indicate that they do not welcome any interference from Moscow in their internal city affairs.

The case of Krasnodar highlights two unfortunate trends in the current implementation of the residence-permit system: 1) parochialism, and 2) discriminatory and/or arbitrary procedure. The region of Krasnodar resolved to stop issuing residence permits altogether, yet the local police have apparently been flouting this decision. Either the police, a purely executive branch of government, is implementing its own policy despite the intent of the local government, or the government itself has tacitly approved this extrajudicial method of exclusion.

An Individual Case

Just how the residence-permit restrictions can be brought to bear on an individual is illustrated in the case of Inessa Finger, a local lawyer in the town of Kurchatov, which lies about six hundred kilometers from Moscow.

Ms. Finger had been a lawyer in Kurchatov for some time when she appeared in court on October 10, 1991, to represent a client in a typical house-sale case. She had appeared before the judge, a Mr. Kraftsov, in other cases, yet this time he insisted that he did not recognize her. When she responded that she had indeed represented clients in that very court before and was duly authorized to appear that day in court, the judge addressed the client, asking whether he was representing himself. Ms. Finger protested, at which point the judge threatened her with contempt of court and called the police to have her removed from the courtroom.

About ten minutes later, a uniformed man accosted her and accused her of running out in the middle of a hearing. She was searched and accused of insulting the judge and interrupting court proceedings. The uniformed man further informed her that "no one respects you in this town." Two days later she received a summons and the police came to her house to fetch her.

In addition, various local officials had suggested that should emigrate to Israel. (Ms. Finger is half Jewish.)

This is most likely a case of small-town politics, a common enough occurrence throughout the world. Ms. Finger is being run out of town. If this had occurred anywhere else, Ms. Finger could pick up and move somewhere else. But because of the residence-permit system in effect in most desirable cities, she cannot legally move from Kurchatov unless she finds someone willing to trade apartments with her — an unlikely event, to say the least.

This experience points out not only the disastrous effect the residence-permit system can have on individuals like Ms. Finger, but also the deleterious economic side effects that result when people and resources are unable to move freely to where they can be of greatest use. Ms. Finger is effectively trapped in a provincial town where she is not wanted and is unable to practice her profession.

Legal and Collateral Human Rights Issues

International Agreements and Norms

Although far from absolute, the right to travel abroad was recognized early in Western Europe as somehow fundamental. The Magna Carta held that a subject might "go out of our kingdom, and return safely and securely by land or by water" without adversely affecting his or her allegiance to the crown. The freedom "to go and come back" was also affirmed as a natural right in the Declaration of the Rights of Man and Citizen.

This right was not, however, unqualified. By the early nineteenth century, most European nations required passports for external and internal travel. As late as 1851, Great Britain recognized no right to leave the country without permission (cf. writ of *ne exeat regne*). Various travel restrictions have also been enforced from time to time in the United States. The State Department in one case was held to have legitimately refused to issue a passport for travel to Cuba.² Restrictions on travel between states and choice of residence, on the other hand, have been routinely struck down.

From this Western experience a consensus emerged, which the majority of nations of the world have codified in a number of international agreements: a state may not infringe a citizen's right to travel abroad or choose a place of residence in the absence of specific and enumerated state interests justifying such interference. Most notably:

• Universal Declaration of Human Rights (1948), article 13:

² Zemel v. Rusk, 381 U.S. 1 (1965).

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

• International Covenant on Civil and Political Rights (1966), article 12:

(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave any country, including his own.

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedom of others, and are consistent with the other rights recognized in the present Covenant.

• International Convention on the Elimination of All Forms of Racial Discrimination (1965), part I, article 5(d) affirms:

(i) The right of freedom of movement and residence within the border of the state.

(ii) The right to leave any country, including one's own, and to return to one's own country.

The Russian visa and residence-permit laws are irreconcilable with the above agreements in two ways. First, the Russian laws on their face place an unjustifiably heavy burden on citizens' right to travel. Second, the laws are so ambiguous or broadly drawn as to accord nearly unlimited discretion to the executive authorities.

Subsection 3 of the 1966 Covenant explicitly recognizes the state's legitimate interest in circumscribing its citizens' right to move about the country and abroad. Yet the Covenant further stipulates that any restriction of that right must be provided by law; that is, limits must be clearly and expressly stated. The ad hoc application of secret criteria for denial of permits and visas — the past and Russian current practice — simply does not rise to the level of law as required by the 1966 Covenant.

In addition, although the visa law's five-year limit on denial to leave the country might accord with the Covenant, the executive authorities may in fact extend the waiting period beyond that limit. Disappointed applicants may appeal, but the utility of the appellate process is doubtful in light of the Russian court's scant experience in adjudicating national security issues.

Internal Discussion

The USSR Constitutional Supervision Committee on October 26, 1990, called for the elimination of residence-permit regulations and the implementation of a less intrusive method of registration in its place. The law remained in force nonetheless.

Roughly one year later, in October 1991, the same Committee on its own initiative decided to review the legitimacy of the 1974 residence-permit decrees once again. The Committee found the decrees incompatible with article 21 of the Declaration of Human Rights and Freedoms,³ article 13 of the Universal Declaration of Human Rights, and article 12 of the International Covenant on Civil and Political Rights. The Committee explicitly held that Soviet legal restrictions on movement were not in accord with article 12(3) of the Covenant, and further that they limited "unjustifiably the freedom of individual movement and preventled1 the exercise by individuals of other rights and freedoms." The Committee went on to cite a number of points where the residence-permit decrees expressly contradicted the Soviet Constitution and gave rise to an array of economic and social ill-effects as well.

The Committee explicitly recognized the state's legitimate interest in verifying citizens' identity and residence. It also acknowledged the possible necessity of special permit restrictions in "established frontier areas [or] places where defense facilities are located." It eschewed any claim of law-making power, deferring to the proper legislative bodies. Nonetheless, the Committee concluded the following:

1) Existing legal restrictions imposed by the residence-permit system are inconsistent with the USSR Constitution, the Declaration on Human Rights and Freedoms, and international acts on human rights.

2) The above conclusion does not exclude the possibility that residence laws may impose some restrictions on freedom of movement "whenever justified by the need to ensure state security, public order, health and morals, respect for the rights and freedoms of individuals." (Note the paraphrase of article 12(3) of the 1966 Covenant.)

3) The residence laws will be invalid as of January 1, 1992.

4) Public prosecutors should combat statutory acts that unjustifiably restrict freedom of movement.

In an interview on October 16, 1991, Moscow's deputy major Yu. Luzhkov rejected this ruling. He cited Moscow's exceptional status as capital of both the Union and Republic, and said the issue of residence permits should rather be resolved by the Law on the Status of Moscow as Capital of the RSFSR, which was then under discussion.

Luzhkov insisted the city would continue to enforce the residence-permit decrees because they protected Muscovites' interests. He feared the massive influx of people from all parts of the Union would gravely upset the already delicate economy of the city and further aggravate the acute housing shortage. He asserted that Moscow would not accept "additional masses of `capital visitors,' the majority of whom, experience shows, will subsequently want to remain permanently in this overcrowded city." Careful analysis of the problem, he said, would precede any move to change the present system.

This open confrontation between the city of Moscow and the Constitutional Committee underscores the confusion surrounding the question of the authority of the Committee's interpretations of

³ A declaration drawn up by the Institute of State and Law of the Academy of Sciences of the USSR. Articles 21 and 22 are substantially similar to the constitutional amendments cited below.

the USSR Constitution. The same degree of confusion has attended proposed amendments to the Constitution of the Russian Federation as well.⁴ Chapter III, article 24 of the draft constitution drawn up by the Constitutional Drafting Commission states:

1) Everyone legitimately on the territory of the Russian Federation has the right to freedom of movement and choice of place of residence and abode within the Russian Federation.

2) Everyone may freely travel outside of the Russian Federation. A citizen of the Russian Federation has the right to return to the Russian Federation without obstruction or hindrance.

3) Qualifications of these rights may be established only by federal law.

Part of the confusion may well derive from the fact that subsection 3 effectively undermines any substantive rights potentially to be derived from the two foregoing subsections. In effect, no standard minimum protection of the right to movement is provided, since the state reserves the right to qualify that protection according to unenumerated criteria. The legislative authorities may modify, perhaps eliminate, the right of movement within the Russian Federation without limitation. This failing impermissibly shifts all discretion to the legislative bodies of the Federation.

A New Bill Under Consideration

On July 4, 1992, the television program "Moscow Telegraph" reported that a bill was nearly complete that would spell the end of the residence-permit system. V. Podoprigor, one of the authors of the bill, said in a July 8 telephone interview with Helsinki Watch that he expected it to reach the Russian Parliament for ratification in the fall. Its chances of success, he said, were good.

Entitled "On the Right of Citizens of the Russian Federation to Freedom of Movement and Choice of Place of Residence within the Russian Federation," the proposed law would require only that citizens register their chosen place of residence with the local police. No longer would Russian citizens have to obtain permission to move to a different location under ordinary circumstances.

According to the bill, the state may limit citizens' right to free choice of residence only within frontier zones and "closed administrative installations" as enumerated by law. This cap on legislative infringement of the right is a great improvement over the existing law.

The bill also expressly stipulates that any rights set forth in a subsequent international agreement to which the Russian Federation is a signatory shall supersede those enumerated in the present bill.

Moreover, infringements of the right to free choice of residence "may be appealed by the citizen to the office or person higher in the organization or to the courts directly."

If enacted, this bill would effectively abolish the residence-permit system and bring Russian law into accord with international agreements and customary laws. It remains only to be seen, however,

⁴ Published in *Argumenty i fakty*No. 12, March 1992, pp. 1-18.

whether city governments now employing some form of residence-permit regime will abide by the proposed law if it is ratified. Moscow's rejection of the Constitutional Committee's conclusions in October of 1991 has not set an encouraging precedent.

Conclusion

The practical difficulties attending any repeal of residence-permit decrees and regulations are daunting. The decrees have probably helped alleviate the overcrowding of Russia's major cities to some extent, even though millions of illicit migrants and immigrants have managed to take up residence in Moscow and other closed cities nonetheless.

That the law has worked some practical benefit for the state, however, does not justify its infringement of civil rights guaranteed in the Constitution. Faithful adherence to almost universally recognized norms of freedom of movement will require a profound shift in Russian jurisprudence away from its past and present obsession with national security. It is time for the legacy of Soviet-style legality to give way to a commitment to individual civil rights whereby national security is but one factor in an equation of reasonableness and justice.

Steps are being taken in that direction, and they should be encouraged. The Supreme Soviet should ratify the bill abolishing the residence-permit system and enforce the rights it provides. The bill is in complete accord with international agreements and the recommendations of the Constitutional Committee. The law it would replace, on the other hand, is fatally flawed and cannot be reconciled with international agreements.

There have also been some encouraging signs of discontent with the current exit-visa requirements. An *Izvestiia* editorial from April 24 of this year strongly criticized the Russian exit-visa requirement, lamenting the resistance to change still encountered in governing circles today: "Not only is Russia still quite far from being a democracy, it even seems to be going in the opposite direction." The editorial cited the fact that Russia is almost alone in the world today in requiring exit visas of its own citizens. The exit visa, said the writer, is a "needless headache" not only for travellers, but for the Ministry of Foreign Affairs as well.

The exit-visa law effective January 1, 1993, should likewise be scrapped or at least modified to comport with international agreements and customary norms.

Finally, the right to freedom of movement, both within the Russian Federation and abroad, deserves to be properly codified in the Constitution. As currently proposed by the Constitutional Supervision Committee, however, chapter III, article 24 should omit section 3 because that qualification effectively transforms the right of free movement into a mere privilege subject to further legislative restriction. Any such restrictions, if in fact there need be any, should be enumerated as specifically as possible. The new bill under consideration sets some fairly specific limits on legislative infringement on the right to choose one's place of residence; it could provide the basis of a more definitive constitutional right. Section 3 of the International Covenant on Civil and Political Rights could also provide an appropriate constitutional paradigm.

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This newsletter was written by William Spiegelberger, an Everett intern for Helsinki Watch.

Helsinki Watch was established in 1978 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. The chair of Helsinki Watch is Jonathan Fanton and the vice chair is Alice Henkin. Jeri Laber is the executive director; Lois Whitman is deputy director; Holly Cartner is staff counsel; Erika Dailey, Rachel Denber and Ivana Nizich are research associates; and Pamela Cox and Christina Derry are associates. Helsinki Watch is a division of Human Rights Watch, which includes Africa Watch, Americas Watch, Asia Watch and Middle East Watch. The chair of Human Rights Watch is Robert L. Bernstein and the vice chair is Adrian W. DeWind. Aryeh Neier is executive director; Kenneth Roth is deputy director; Holly J. Burkhalter is Washington Director; Susan Osnos is Press Director.

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