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Master's Essay

Exit Permit Requirement as an Impediment to Freedom of Movement

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"Everyone shall be free to leave any country, including his own…no restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security…for the protection of the rights and freedoms of others." *(P4(2) of the European Convention of Human Rights)*[1]

I. Introduction

The purpose of this paper is to evaluate the necessity and effectiveness of the existing mandatory procedure of issuance of exit permits to Armenian citizens who have received legal resident status (immigrant visa) abroad. Citizens who have been granted immigrant status by a foreign diplomatic mission (embassy or consulate) and who prepare to leave Armenia to establish permanent residence in the respective country cannot exit Armenia unless their passports bear an exit permit.

The permit issued by the Department of Passports and Visas (hereafter OVIR as transliterated from Russian) of the Armenian Police is meant to classify the recipient as a legitimate emigrant – prior to the issuance of which, the citizen needs to deregister, i.e. abandon the registration at the place of residence. Failure to obtain a permit usually results in interception of the otherwise *bona fide* emigrant by the border police and prevention of his/her passage through passport control at the port of exit. This causes inconvenience and frustration, and incurs time and financial losses to the traveler.

Citizens who have obtained legal permanent resident status during their stay abroad and have therefore avoided the existing domestic procedure, will face the same problem once they decide to pay a visit to Armenia. They will simply find themselves trapped at the airport as they try to return to their country of residence, and will be required to follow the

[1] Armenia ratified the European Convention of Human Rights and Fundamental Freedoms (ECHR) on April 26, 2002.

established legal procedure prior to leaving Armenia. Consequences of such unpleasant experience range from excessive hardship to travelers, decrease in the number of potential returnees, hindrance of country's economic development and creation of favorable ground for corruption.

In order to objectively assess the *pros* and *cons* of the abovementioned procedure this paper will try to analyze all the steps the procedure entails and the underlying policy it purports to achieve. One of the components of the objective evaluation of the necessity and adequateness of the transaction is to study the impact that deprivation of registration at the place of residence may have on further enforcement of citizen's constitutional rights, such as the right to free movement, right to vote and stand for elections, right to employment, right to own property, access to education and medical care, etc. Some of the listed rights are heavily dependent on person's residence registration, while others have no bearing at all. In considering that the above-mentioned rights are not absolute and the States are permitted by international law to interfere and effectively limit those rights, the question arises as to **what is the permissible limit of interference and limitations imposed by State in order to strike fair balance between the conflicting rights of an individual with the community.** It will also attempt to determine whether the described procedure and the established practice are in compliance with domestic laws and, in particular, with international human rights principles. In this context, the survey is structured under to following five-fold test widely used by universal and regional human rights bodies:

i) whether the right is protected by the international human rights instruments;

ii) whether the procedure in question constitutes an interference to the given right,

iii) is the interference "prescribed by law",

iv) is there a legitimate aim(s) followed by State interference in the given right,

v) is the interference "necessary in a democratic society". The term "necessary" is

interpreted to mean

a) whether there was a "pressing social need" for the interference;

b) whether the measures used were "sufficient and relevant";

c) whether the measures used were "proportional" to the legitimate aim sought.

The above standards are not cumulative. Rather, the violation of any of the principles under (ii) to (v) above constitutes violation of the human rights under International Covenant on Civil and Political Rights (ICCPR) and ECHR. There is a significant body of case law developed by the UN Human Rights Committee and the European Court of Human Rights interpreting the above principles.[2] The assessment of the procedure in question will be done on the basis of the mentioned case law, including other sources of formal interpretation of the articles of the relevant human rights instruments.

II. Armenian Legal Framework

The main legislative act governing the transaction in question is a Soviet-era "internal" statute of the Soviet Ministry of Interior that remains in force to date. Head of the OVIR Department of Exit Documentation explains that, due to the "closed" (secret) nature of the statute, it cannot be released to public. Meanwhile, the 2002 "Law of the RA on Legal Acts" stipulates that *"the normative legal acts that are neither promulgated, nor have entered into force by the procedure established under this law do not have juridical force".*[3] *"The normative legal acts that restrict the rights or freedoms of the legal or physical persons or define liability or increase liability...enter into force on the tenth day that follows the date of their official promulgation..."*[4] It further holds that *"the person shall not be obligated to*

[2] Armenia accepted the compulsory jurisdiction of the European Court of Human Rights by ratifying the European Convention on April 26, 2002.
[3] RA Law No. HO-320, "On Legal Acts" adopted 3 April 2002, as amended 25 December 2006, Chapter 6, Article 46(3).
[4] Id. 46 (2)

perform the requirements of the legal act not promulgated or not entered into force by the procedure defined by this law. The person may not be subject to liability for the violation of the requirements of the legal act not promulgated".[5]

The following provision of the Armenian Declaration of Independence adopted on August 23, 1990, reads: "*The [Armenian Soviet Socialist Republic] is renamed as the Republic of Armenia...*" and "*... Only the Constitution and laws of the Republic of Armenia are valid on the ... territory of the Republic of Armenia"*[6]

In addition to the referenced "secret" statute, the following legislative acts and Government regulations, including the Constitution of Armenia, contain provisions directly or indirectly relating to the issue of population registration by place of permanent or temporary residence (Russian term *propiska* has been substituted by term "registration", which is free of the negative connotation inherited from the communist past):

1) Article 25 of Section of the Constitution of Armenia provides that, *"everyone shall have a right to leave the Republic of Armenia. Every citizen and everyone legally residing in the Republic of Armenia shall have the right to return to the Republic of Armenia*."

2) RA Government resolution of December 25, 1998, "On Establishment of Regulation of RA Passport System and Description of the Passport of the RA Citizen" stipulates that *"registration of RA citizens is carried out in accordance with the place of permanent or temporary residence and only at one address (location)."*[7] It further defines the "place of permanent residence" as a *"...place where RA citizen resides permanently or predominantly"*.[8] Article 44 of the same

[5] Id. Chapter 7, article 68(3).
[6] *Mkrtchyan v. Armenia*, (Application no. 6562/03) Strasbourg 11 January 2007, where the Court found application of the Soviet statute groundless.
[7] Government Resolution No. 821 adopted 25 December 1998, Section 3, Article 21.
[8] Id. Article 23.

law lays down conditions that may serve as basis for citizen's deregistration, which, among other things, include *"...a) change of permanent residence, and b) submission by an RA citizen of application to deregister..."* The same article maintains that *"register authorities, based on the presented documents, should, within a 3-day time, deregister the citizen from his/her permanent residence, about which a relevant notation in the passport should be made".*

3) RA Law "On Population State Register" adopted on September 24, 2002, provides that *"when changing permanent residence or domicile person shall present a written notice to the local division of the State Register of his/her new domicile seven days in advance. Persons may be registered at one location only."*[9]

4) According to the RA "Law on Consular Service", *"the head of the consular department carries out registration of citizens of the Republic of Armenia residing in his/her consular district permanently and temporarily"; "the head of the Consular department in accordance with the procedure established by law…makes changes/amendments in the passports of RA citizens."*[10] It further holds that *"...the head of the consular department receives applications from Armenian citizens permanently or temporarily residing abroad to change, amend or supplement vital statistical records, or reinstate expired registration records, and relays the information to relevant RA authorities."*[11]

History of Propiska

In order to gain a clearer understanding of the procedure in question and relevance of its application, it is important to trace the roots of the term *propiska*, its original designation and further transformation. The term *propiska* was introduced into the Russian vocabulary

[9] RA Law No. 419 N "On Population State Register" adopted 24 September 2002, Art. 7, Paragraph 1.
[10] RA Law No. HO-61 "On Consular Service" adopted 29 May 1996, as amended 27 December 1997, Section 2, chapter 9, article 37.
[11] Id. Chapter 11, article 40.

with the adoption on December 27, 1932, of the Sovnarkom decree "About the Establishment of a Unified Passport System within the USSR and Obligatory Propiska of Passports"[12]. The term stood for the stringent process of granting residence permit to citizens by the state that restricted citizens' right to choose his/her place of residence (each person was allowed to have only one place of permanent residence throughout the USSR). The process of registration was accompanied by the establishment of a unified passport system (passport would bear a stamp with citizen's permanent address). The concept was developed originally to stem the flow of rural dwellers into urban centers and to track the whereabouts of residents, ostensibly for law-enforcement purposes[13]. In conditions where no one was allowed to own property (all property belonged to the State) *propiska* **was the only vehicle to obtain access to housing, it was also a precondition for the realization of civil rights and benefits, including employment, education, voting, access to medical care, etc**[14]. Failure to have a *propiska* could entail criminal proceedings. In later years of the Communist rule the system of *propiska* became a strong monitoring tool in the hands of the Soviet authorities, which allowed them to easily exercise thorough control over internal and external migrants, primarily pursuing political and national security goals: the state used it to restrict emigration and punish "the unfaithful" who dared lean toward the bourgeois West. In 1991, however, the USSR Constitution Oversight Committee declared the institute of *propiska* unconstitutional, based on which on July 25, 1993 Russia adopted a federal law "On RF citizens' right to free movement, choice of domicile and residence within the territory of the RF"[15]. This was a clear attempt to demonstrate adherence to the universally dominating concept of "freedom of movement" which has become a criterion of democracy and respect

[12] "Passport system in the Soviet Union", Wikipedia, the free encyclopedia, 4 July 2007, 00:34
[13] Human Rights Watch *Russian Federation: Ethnic Discrimination in Southern Russia*, August 1998, (D1008)..
[14] Höjdestrand, Tova *The Soviet-Russian production of homelessness*, , Department of Social Anthropology, University of Stockholm, 2003, http://www.anthrobase.com/txt/H/Hoejdestrand_T_01.htm
[15] "Влияние института прописки на нарушения прав человека", журнал *Правозащитник*, N4, январь-март 1998 г.)

for human rights. It has become a fundamental human right affixed in the ECHR as well as EU legislation.[16]

It is noteworthy that with the gradual transformation from a totalitarian regime to market economy a number of Soviet concepts, including *propiska,* grew obsolete. In particular, granting citizens the right to own real property eliminated the need of *propiska*. Further liberalization and transformation produced similar effect in a number of other areas: access to employment, banking service, medical care and education is no longer linked to possession of *propiska*, but is open to the choice of citizens. At the same time, permanent or temporary residence registration is a must for obtaining vehicle registration and driver's license. But even in this case common practice demonstrates that this requirement is a pure formality and can be easily overcome by applying to the Republican Department of Police to conclude the registration procedure. The only aspect which continues to be significantly impacted by the address registration requirement is citizens' rights to vote and stand in national elections (permanent or temporary registration is required for voter's inclusion in vote registers)[17]. Most importantly, registration at place of residence remains a solid basis for tracking male citizens of pre-conscript age and helps government implement draft to mandatory army service.

Case Study

Responding to a telephone inquiry regarding the legal basis/regulating statute for the procedure in question, Head of the Exit Documentation Department of OVIR Mr. Muradkhanyan stated that the statute is an interagency legal act which cannot be released to public. He stated that, a new law regulating entry to and exit from the Republic of Armenia

[16] "Freedom of Movement", Wikipedia, the free encyclopedia, 10 June 2007, 18:44.
[17] RA Election Code HO-284, adopted 5 February 1999, as amended February 26, 2007, Article 11.

is pending adoption, but could not provide an approximate time line for adoption.[18] According to him, he had no authority to grant anyone access to the "secret" provision regardless of reason. Officials of the International Relations Department of the Police, however, explained that any official request or inquiry should be streamed through the head or deputy head of the Police.

The incumbent Head of the Americas Department of the RA Ministry of Foreign Affairs, Armen Yeganian, who served as Counselor/Consul in the Armenian Embassy Washington D.C. from 2003-2006, shed some light on the actual procedure of Armenian citizens registration abroad. He described it as totally voluntary and non-obligatory, mainly aimed at providing government with an estimate of the number of expatriate citizens residing abroad, as well as secure communication with citizens in case of emergency. As to the deregistration and exit permit requirement, he confirmed that the current procedure is solely based on the outdated Soviet statute still in force, which conflicts with the internationally accepted legal norms. According to him, a new draft law regulating entry to and exit from Armenia which has been copied from a similar Russian law[19], is pending adoption. One of the functions of Armenian Consular officers abroad, in this particular case in the United States, is to assist expats who have obtained Legal Permanent Resident (LPR) Status in the United States procure exit permits without returning to Armenia, thus saving them potential complications should they want to travel to their motherland. During Mr. Yeganian's term as Counselor/Consul, the official fee for performing the transaction from overseas amounted to USD 250, upon payment of which the package of applicant's documents would be sent to OVIR for final execution.[20] However, Mr. Yeganian's experience in 2003-2006 proved that

[18] RA Draft Law "On RA Citizen's exit from and entry to the Republic of Armenia", http://www.dmr.am/ORENSD%7E1/STEXTS%7E1/mutqielqior.htm

[19] 114-ФЗ *О порядке выезда из Российской Федерации и въезда в Российскую Федерацию*, 15 августа 1996 года.

[20] RA Law No. HO-186 "On State Duties" adopted 27 December 1997, as amended 9 April 2007, Article 14,

citizens whose applications were mailed to OVIR, but who had no relative/proxy on the ground in Yerevan to follow up on them were deemed to failure.[21] In the absence of such proxy, OVIR would simply stall the proceedings without providing either the consular officers or the applicant abroad any sort of official feedback.

Step by Step Analysis

According to the governing "law", the deregistration procedure of *bona fide* applicants takes up to 40 calendar days. The first step includes filling out an application for exit permit by the citizen and presentation of supporting documents including immigrant visa, place of residence registration, employment record and military book (for male applicants only). Based on these documents a background check is conducted which in the ideal situation takes up to 20 days. If the applicant's record proves to be "clean" he will receive a checklist of additional papers to be submitted, which includes proof of no outstanding debts or unpaid loans, compliance with military service obligation (for male applicants only), etc..[22] Exit permit may be issued upon presentation of all of the required paperwork and payment of a state duty in the amount of AMD 15,000.[23] It represents a stamp affixed to the 4th page of the passport. Failure to comply with one of the requirement results in protraction of the process or denial of exit permit issuance. It should be noted that the only way for a citizen to obtain information about the legal requirements that he/she has to meet is to visit the Department of Exit Documentation of OVIR in person to get verbal instructions from the officer-in-charge. Permission to get acquainted with the text of the statute, as mentioned in

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Paragraph 10.

[21] Though not expressly mentioned by Mr. Yeganian, feedback from applicants who have undergone the described procedure suggests that having a relative/proxy frequently involves under-the-counter financial dealings.

[22] Note: submission of the listed documents is connected with extra runaround to procure them at relevant government offices. Male applicants of pre-conscript or conscript age who have obtained legal immigrant status in a foreign country are seen as evaders from military service and, therefore, encounter more serious impediments and eventually pay bigger bribes to military draft authorities.

[23] RA Law No. HO-186 "On State Duties" adopted 27 December 1997, as amended 9 April 2007, Article 15, Paragraph 2.

the "Case Study" chapter above, is granted on a case-by-case basis upon submission of a well substantiated written request to the head or deputy head of the Armenian Police who use wide discretion to grant or deny it.[24] A system of phone inquiries or appointments is non-existent. This frequently results in applicants making multiple trips to the OVIR office which is extremely onerous and costly, especially for residents of remote areas. Uncertainty about the duration of the process and waiting period, as well as lack of flexibility and expedited processing in urgent cases renders the transaction unpredictable and arbitrary, and creates favorable grounds for extortion of unofficial payments, frequently resulting in corrupt practices. Besides, being guided solely by verbal instructions and orders of OVIR officials and having no accessible legal basis, law-abiding citizens are deprived of effective remedyshould violation of their rights or an arbitrary decision occur.[25]

Convention Rights at Stake

The right to "free movement", though not absolute, is a convention right covered by Protocol 4 of the ECHR. Article 2 of the Protocol 4 provides the following:

> ***Article 2 . Freedom of movement***
>
> *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. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance*

[24] Our written request to get acquainted with the laws regulating entry/exit to Armenia for research purposes was forwarded by Deputy Head of Police to Head of OVIR for action, who in her response letter to us made a reference to the laws which are open ("non-secret"), but which are not the main legal basis for the actual procedure in question. The response letter failed to mention about the governing "secret" law.

[25] ECHR, Article 13.

of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

The above analysis leads to the conclusion that the transaction in question constitutes interference with the rights of individuals by the State. In the absence of relevant domestic case law, we will use the January 11, 2007, judgment of the European Court of Human Rights on *Mkrtchyan v. Armenia*, which became binding for Armenia. Assessing the legal basis of interference with the applicant's convention rights, the Court held.

"The expression "prescribed by law".... not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" (Mkrtchyan v. Armenia, paragraph 39).

Besides conflicting with local legislation[26], the fact of secrecy of a normative legal act for its end-users in itself constitutes a major restriction of freedom of individuals, contradicting the doctrine of "forseeability" and "legal certainty" which are the cornerstones of international law. Inaccessibility of the governing statute conflicts with the local Armenian legislation[27] and casts shadow on the transparency and credibility of the entire transaction. "This rule [of accessibility] is intended to act as a brake on the exercise of

[26] See beginning of this chapter.
[27] See RA Law "On Legal Acts".

arbitrary power by providing that a restriction cannon be justified, even if it is authorized in domestic law unless the applicable law or rule is published in a form accessible to those affected".[28] Such situation, among other things, gives way to selective application of law, without providing adequate remedies to potential victims. As to the applicability of the USSR law, the Court found in *Mrktchyan* that "there is no domestic provision which clearly stated whether the former USSR laws remained or did not remain in force on the territory of Armenia."[29]

Legitimate Aim of the Government

The text of the Article 2 of Protocol 4 of the European Convention provides that limits can be placed on the freedom of movement within the areas of national security; public safety; the prevention of crime and the protection of the rights of others. Further, under the European Convention on Human Rights, the States enjoy a certain margin of appreciation in pursuing their legitimate aim(s). To this end, the Armenian government has numerous arguments to justify the alleged interference:

a) the government needs to monitor in- and outflow of citizens to maintain accurate statistics;

b) registration/deregistration procedure is a leverage to prevent dodgers from dodging mandatory military service;

c) the procedure aims at preventing unsanctioned travel of persons who possess knowledge of state secrets and pose a risk of information leakage; it also aims at preventing criminals from absconding and debtors from escaping creditors; lastly,

d) in the absence of new legislation, the old statute cannot be repealed as it could lead to chaos and legal crisis.

[28] Starmer, Keir. *European Human Rights Law*, page 167, Legal Action Group 1999.
[29] *Mkrtchyan*, Paragraph 42.

Maintenance of accurate statistics on internal and external migrants is key, since they furnish the government with an up-to-date picture of processes and trends dominating in the country. This data is extremely valuable as it helps the government better allocate resources by designing robust political, economic and social policies, national security strategy, as well as assess budgetary and military needs. Precise count of Armenian citizens living abroad is needed for the state to develop sound foreign policy and build relations with countries having large diasporan communities and provide additional leverages to be used should rights of any Armenian citizen be at stake. Deterrence of evaders from the obligatory military service is crucial in the atmosphere of regional instability and unresolved (though currently frozen) armed conflict with neighboring Azerbaijan. As one can see, all of the listed arguments pursue national security, public safety and regional stability goals and seem to fall within the permitted "margin of appreciation and suffice the "legitimate aim" test.[30]

Despite the seeming soundness (validity) of the above arguments, it is, nevertheless, very hard to admit the justification for using the exit permit as a tool to curb military service evasion. In fact, such use frequently produces an opposite effect: it generates a vast group of evaders, who are ready to bribe their way out or find influential patrons to bypass this legal obligation. Moreover, increased strictness of the draft administration acts as a driver of the size of unofficial payments, resulting in a vicious circle. This kind of inequitable treatment not only represents an impediment to enforcement of the free movement right, but also constitutes infringement of citizens' constitutional rights and is contrary to the rule of law doctrine.

The excessively burdensome and time consuming procedure of exit permit issuance causes citizens to seek illicit alternatives to circumvent it. An example of such alternative is

[30] ICCPR, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December, 1966, Part 2, Article 11(3).

that instead of heading to their country of new residence directly, citizens who experience time pressure are *de facto* forced to travel to a third country with no entry requirements for Armenian citizens (e.g. Russia or Georgia), from where they proceed on to their final destination. This phenomenon is equally harmful to both the Armenian state as it causes distortion of migration statistics, and citizens, as it amounts to deterrence of potential travelers to Armenia, which, in its turn, has a negative impact on country's economy and mars its reputation in the international arena.

The government's argument regarding the fear of "legal crisis" may have been acceptable at the dawn of Armenian statehood in 1991 and for the following reasonable transition period; however its validity and relevancy fades as the country enters the 16th year of independence and continues to display signs of sustained economic growth. "...the Court does not agree with the Government that Armenia would have faced a legal crisis if the former USSR laws were no longer applied after its independence, since it is clear from Articles 1 and 2 of Armenia's Declaration of Independence that all the legal acts of the former ASSR, which included a constitution and all the vital codes, were transformed into legal acts of the newly independent Republic of Armenia."[31] Armenia's accession to the international human rights instruments without reservations[32] leaves little, if any, room for speculation regarding the necessity of the procedure in question, which is nothing, but a remnant of the totalitarian past. The disputed transaction cannot be deemed necessary in a democratic society, as it is implemented contrary to the norms of democratic governance and fundamental human rights enshrined both in the Armenian Constitution and other internationally accepted human rights instruments to which Armenia acceded long ago. As to the principle of proportionality, which is one of the crucial parameters to determine the

[31] *Mkrtchyan,* Paragraph 42.
[32] Universal Declaration of Human Rights, art. 13(2), ICCPR Art.12(1), (2), ECHR Protocol 4, Article 2.

"necessity" of the state interference, "…a restriction is unlikely to be considered proportionate where a less restrictive, but equally effective, alternative exists."[33] "On several occasions the European Court has held that restrictions on Convention rights must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired."[34] The following chapter aims at providing examples of existing international practice in tackling the issue of deregistration and exit requirements; it also attempts at finding fair balance between the interests of the State and individuals.

III. International Best Practice

Practice in Western Europe vs. post-Soviet States

"In relation to foreigners, State attaches priority to the regulation of their entry and the management of their stay… In relation to citizens, protection of their rights while abroad requires that pre-departure arrangements be monitored."[35] Following the cited UN Recommendations of 1998 as well as other legislative provisions, countries, including EU member states, have an established a practice of citizens registration/deregistration. To this effect many collect data on residents, non-residents, as well as temporary migrants and asylees to compile population registers.

The following examples illustrate the practice of citizens' registration as implemented in the Western European states. In Sweden, the population register is administered by the Tax Agency. Citizens are to report moving to a new address within one week to the Tax Agency, for which they need to fill out the relevant form electronically and submit to the given address. The information from the population register is distributed to various public agencies by means of a special system.[36] According to Finnish legislation, citizens must

[33] Starmer, page 173.
[34] Id, 175.
[35] Department of Economic and Social Affairs Statistics Division, United Nations. *Recommendations on Statistics of International Migration, Revision 1,* New York, 1998.
[36] Swedish Tax Agency *Population Registration in Sweden*, SKV 717B Edition 3,

submit a notification of move no later than within a week of their move. Notification can be submitted online.[37] Dutch law stipulates that all new residents need to register within five days if they know that they will reside in the Netherlands longer than four months. When moving, Dutch citizens are obliged to deregister from the resident administration ("bevolkingsregister") of the municipalities in the Netherlands. (De)registration is done in person at the city hall of the municipality in which you live(d).[38] Belgian central population register ("registre national") is maintained by the Ministry of Interior. Every person having his/her usual residence in the country must be registered, just as emigrants intending to leave the country for more than three months have to declare their absence. It is noteworthy that the Belgian law also stipulates that a person may keep his place of residence in Belgium if he or she has a stronger connection to Belgium than to his/her new country of residence.[39] Swiss citizens who intend to change their place of residence shall undergo the registration/deregistration procedures, according to address.[40]

Russian citizens who do not possess a *propiska*, cannot legally obtain a "foreign passport" necessary for travel abroad. A citizen may apply for and receive such a passport only in the city where he or she is legally registered. The law does not provide for alternative arrangements in circumstances that make such a procedure impossible, and this results in violations of the citizen's constitutional rights. The exercise of this right is dependent on registration of residence and, it logically follows, on the citizen's possession of housing recognized as his temporary or permanent residence. Citizens who permanently reside abroad, forced migrants, persons without a residence and homeless persons find it practically

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http://www.skatteverket.se/download/18.b7f2d0103e5e9ecb08000127/717b03.pdf

[37] Population Register Center, www.vaestorekisterikeskus.fi/vrk/home.nsf/en/move.

[38] The Royal Netherlands Embassy, Washington, D.C. *Living in the Hague* http://www.denhaag.com/smartsite.dws?id=2251&ep=241&ver=; www.netherlands-embassy.org/article.asp?articleref=AR00000138EN

[39] Perrin, Nicolas and Poulain, Michel. *THESIM country report-Belgium,* 2004-2005. http://www.uclouvain.be/cps/ucl/doc/sped/documents/THESIM_Belgium_Countryreport.pdf

[40] *Implementation of the Revised UN Recommendations on Statistics of International Migration*, Working paper No. 2/Add.17, 4 May 2001.

impossible to obtain a foreign passport.[41] A foreign passport is issued for a 5-year term by the local department of the Ministry of Interior, in accordance with proof of residence registration or place of stay. Duration of procedure of passport issuance at the place of residence should not exceed one month, and place of stay – four months under law. Application for passport requires, among other things, information about applicant's employment for the past 10 years (including certification of employment record by current employer), as well as proof of eligibility under the Federal legislation (note that officers of the Migration Service enjoy wide discretion to request additional documents verifying employment).[42] Ordinance 1010 of July 26, 2001, of the Government of Kazakhstan, establishes a set of regulations for citizens' travel outside the Republic. Kazakh emigrants need to obtain permit from the Ministry of Interior, prior to departure, which entails runaround similar to that in Armenia.

The given examples showcase a contrast between the two polar perceptions of state power and control exercised by the developed countries versus the post-Soviet space. If in the first set of examples (involving Western European countries) the procedure, which is of purely administrative nature, is aimed at promotion of free movement and is largely based on the EU legislation and free movement doctrine,[43] the second one (including Russia and Kazakhstan) exhibits States' reluctance to loosen grip on their subjects as they continue to see stringent control as guarantee for successful governance and powerful statehood.

IV. Conclusion/Recommended changes

The existing exit permit procedure in Armenia is outdated. It doesn't meet the new challenges of the 21st century, i.e. wider democracy, universally recognized human rights

[41] Тушканов Владимир. "Где и как гражданин России может получить заграничный паспорт", *Правозашитник*, No. 4, 1999.
[42] Federal Migration Agency of Russia, Moscow branch administration (Управление Федеральной миграционной службы России по городу Москве) www.fmsmoscow.ru/zagranpasport_text.php?nid=49&,
[43] Directive 2004/38/EC of the European Parliament and of the Council.

principles, growing cooperation among countries for fight against organized crime and terrorism. In considering the existing practice in the developed European countries and the obligations of Armenia as a member state of the Council of Europe, the current system must be abolished and replaced by a more flexible system, which will ensure proper balance between the interests of the State and individuals.

The new system must be based on human rights norms developed by institutions of the Council of Europe and the UN, but the specifics of the economic, social and political conditions of Armenia must be considered strongly. In addition, the new system must ensure transparency of the process and accountability of its officers. It must also provide effective remedies against abuse. In order to reach these goals, the following measures must be taken:

a) The new draft law, which is pending adoption, must be posted in an open forum for public discussion before it is submitted to the Parliament. Human rights NGOs, civil society activists, legal professionals, etc. must be given a chance to comment on the draft and provide their recommendations. This practice was used by the Ministry of Justice (MOJ) for the Draft Judicial Code when it posted the draft in its official web page for many months seeking comments from the citizens. In addition, the MOJ and NGOs initiated round table discussions and TV talk shows to ensure involvement of wide public in the process of adoption.
b) The drafters of the law should seek expert opinion from the Council of Europe, through forums like the Venice Commission, before sending a draft law to the Parliament.
c) The Government must ensure access of public to all statutes, decisions and regulations regulating the entry and exit procedures. They have to be published in the Official Bulletin of Armenia and in the Internet page of the main regulatory body which is the OVIR.

d) All statutory laws, decisions and regulations of public bodies regulating this sphere must provide the following minimum rights and guarantees:

   a. The right of access to public records

   b. The right of appeal against the decisions of administrative bodies to courts

   c. Administrative bodies must explain their decisions and refrain from the practice of making template decisions.

e) In addition to the above, the statutory law must include the new concept developed by UN recommendations[44] that defines a long-term migrant as a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months).

f) The reforms of immigration laws must be accompanied by amendments and changes of many other legislative acts concerning the registration of citizens and entry and exit procedures. For example, necessary changes have to be made in the Election Law, in the Law on Compulsory Military Service, the Law on Police etc. Therefore, the Government has to exercise a complex approach to the reforms of immigration laws.

g) Special attention must be given to the use of modern technologies. The e-visa system used by MFA since 2004 is a good example about effectiveness and sustainability of the use of high technologies by immigration authorities and Police in Armenia.[45]

h) Any reform in any given area is impossible without carrying out a wide public outreach campaign. This should be carried out in cooperation with media entities (involving broadcasting, print and on-line media outlets) and non-governmental organizations.

This paper has demonstrated that the Soviet-era exit permit requirement is clearly out

[44] Department of Economic and Social Affairs Statistics Division, United Nations. *Recommendations on Statistics of International Migration, Revision 1*, New York, 1998.
[45] See www.armenianforeignministry.am for details on the e-visa system.

of step with Armenia's manifested commitment to democratization and sustainable economic development. It cannot exist amid the irreversible reform process on which Armenia has embarked by joining all of the referenced international conventions and treaties. Reform and gradual approximation of a number of national laws to ensure compliance with international legal principles and norms proves that the procedure in question cannot remain unchanged, and adoption of the new legislation, which will allow striking a fair balance between the interests of the State and individuals, is only a matter of time.

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