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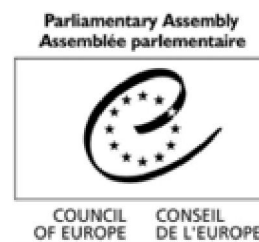
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**Doc. 9262**

12 October 2001

**The *propiska* system applied to migrants, asylum seekers and refugees in Council of Europe member states: effects and remedies**

Report

Committee on Migration, Refugees and Demography

Rapporteur: Mr Boriss Cilevičs, Latvia, Socialist Group

*Summary*

Freedom of movement and choice of place of residence within a country constitute the basic human rights guaranteed in a number of international legal instruments. The implementation of these rights is particularly important in countries in which massive population movements, often involuntary, take place. In this respect, the situation in the countries which have emerged from the former Soviet Union, raises specific concern because of their traditional use of an obligatory residence permit, *propiska*.

*Propiska* has formally been outlawed in most of these countries. However, its vestiges remain in some of them causing undue hardship to the displaced population, in particular to forced migrants and refugees.

The Rapporteur makes a number of recommendations in order to remedy this situation, in particular to provide the countries concerned with expertise and specific financial and technical assistance with a view to accelerating the comprehensive reform of the system of registration of residence and developing the necessary new information systems and data bases.

**I. Draft recommendation**

1. The Assembly reiterates that freedom of movement and choice of place of residence within a country constitute the basic human rights guaranteed in a number of international legal instruments, in particular in the Universal Declaration of Human Rights and the European Convention on Human Rights.

2. The Assembly notes with concern that the implementation of this right raises specific problems in the countries that have emerged from the former Soviet Union and which have inherited the old system of control over population movements by means of the *propiska* – obligatory residence permit.

3. Furthermore, these countries are particularly affected by massive population displacements. Forced migrants as well as asylum seekers and refugees are more than other groups of the population suffering from the vestiges of *propiska* in different areas of life.

4. The Assembly notes with satisfaction that most countries concerned have made considerable progress on the way to abolish the remains of the old *propiska* system and to replace it by a residence registration based on simple notification. However, much has still to be done as many elements of the old system are present in numerous legal regulations and administrative practices.

5. In a number of cases, the absence of residence registration in practice has led to

deprivation of migrants', asylum seekers' and refugees' social, economic and political rights. In extreme cases, the very access to the status determination procedure may be dependent on the presence of *propiska*.

6. The Assembly is aware that full replacement of the old system of *propiska* is a very difficult process and calls for international cooperation and assistance in this field.

7. The Assembly recommends that the Committee of Ministers:

i. draw up guidelines on the principles relative to the registration of residence to be addressed to member states;

ii. provide the countries emerged from the former Soviet Union, members of the Council of Europe, with expertise and specific technical and financial assistance with a view to accelerating the comprehensive reform of the system of registration of residence and developing the necessary new information systems and data bases;

iii. develop specific awareness-raising and information programmes for the countries concerned aiming at the abolition of the vestiges of *propiska* system;

iv. instruct its appropriate steering committee to organise exchanges of experience and information between Council of Europe member states on possible solutions in this area in different countries, with the participation of the appropriate governmental agencies and non-governmental organisations, including refugees' associations;

v. step up the monitoring of member states' compliance with international legal instruments with reference to freedom of movement and choice of place of residence within the internal borders of state;

vi. encourage non-governmental human rights and refugee organisations active in this field to report any irregularities in the implementation of the relevant laws and to cooperate with the authorities concerned at different levels with a view to remedying the situation;

vii. urge the member states concerned:

a. to undertake a thorough review of national laws and policies with a view to eliminating any provisions which might impede the right to freedom of movement and choice of place of residence within internal borders;

b. to refrain from applying and legitimising regulations and practices which might hinder fair implementation of the above mentioned right;

c. to ensure that law enforcement agencies act more effectively in this field;

d. to accelerate the implementation of new residence registration systems which would serve only information purposes without restricting freedom of movement, as well as without unnecessary disclosing information of private nature, in particular, private address;

e. to establish specific awareness-raising and information programmes for national, regional and local administrations with a view to the full observance of the international obligations in this field;

f. to foster specialised training of civil servants in public administration in order to make them more aware of the problem;

g. to ensure that in no case access to status determination procedure and benefits linked to a refugee status be dependent on the presence or lack of residence registration in the region, as well as to ensure that under no circumstances can a person's rights be infringed or limited on the basis of the residence registration, in particular in the following areas:

1. acquiring of citizenship

2. access to education

3. access to health care

4. right to pensions and social allowances

5. access to employment

6. equal opportunities for benefits regarding privatisation and indiscriminate access to property rights

7. right to vote

h. to solicit the support of non-governmental organisations active in this area and in particular to fully cooperate with them in identifying all vestiges of

the *propiska* system in the laws and regulations in force, as well as in administrative practices.

## **II. Explanatory memorandum by Mr Čilevičs**

### **1. Introduction**

1. Freedom of movement and choice of place of residence within one country constitute one of the basic human rights guaranteed in a number of international legal instruments, in particular in the Universal Declaration of Human Rights and the European Convention on Human Rights.

2. The right to freedom of movement and choice of place of residence raises specific concern in the countries emerged from the former Soviet Union particularly affected by massive displacements of population. Since early 1990s in the CIS region population movements have resulted in the displacement, mostly involuntary, of some 9 million people<sup>1</sup> many of whom have still not been resettled. The observation and full implementation of the right to freedom of movement and choice of place of residence seems to be particularly important in the case of internally displaced persons (IDPs), asylum seekers and refugees seeking protection on the territory of a given country. This group of population is particularly vulnerable, it has specific needs and at the same time it is very likely to move from one place to another.

3. CIS countries have inherited from the Soviet Union the old system of control over population movements. In the USSR, freedom of movement and choice of place of residence have been strictly monitored and restricted by the State by means of the *propiska* – obligatory residence permit, notified by a stamp in an internal passport and governing numerous areas of everyday life.

4. *Propiska* was an efficient legal device to regulate the movements and residence of citizens. Originally it has had two major objectives: firstly to prevent rural inhabitants from leaving villages, and secondly to control and regulate migration flows to the main cities, in particular Moscow. Acquiring *propiska* was a necessary precondition for obtaining job, pensions, housing, medical care and other social services including schooling for children. Even obtaining marriage was conditioned by proper residence permit. In fact, the lack of *propiska* made one's passport useless for most of practical purposes.

5. The general principles relating to *propiska* were contained in the Regulations on the Passport System in the USSR and Resolution of the USSR Council of Ministers No. 678 "On some rules of citizens' *propiska*". One had to apply for *propiska* which could be granted or refused depending on a number of objective and arbitrary criteria. Obtaining of residence was linked to certain requirements including the size of a residence.

6. In 1991, the USSR Committee for Constitutional Control (predecessor of the Constitutional Court) issued Conclusion No. 11 which proclaimed *propiska* as an unconstitutional measure violating international commitments of the USSR. The Committee's conclusion was that individuals should be free to move and chose their place of residence, their only obligation being to inform state officials of their choice. Otherwise the question of *propiska* has not been resolved in the USSR before its collapse, and passed to the countries emerged from it as a legal heritage of the communist system.

7. The present report is based on a number of sources:

- documentation and information received from various national and international governmental and non-governmental organisations including information gathered during the Rapporteur's unofficial meetings with representatives of relevant organisations on the occasion of his missions, not related to the preparation of the present report, to the countries concerned;

- findings of the fact-finding visit by the Rapporteur to Moscow (13-14 June 2001) (see Appendix I).

- replies to the questionnaire sent to the relevant authorities of the countries concerned (see Appendix II)<sup>2</sup>.

### **2. The *propiska* system in the light of international obligations**

8. The principle of freedom of movement and choice of place of residence within the internal borders of a state stems from a number of international human rights instruments. The Universal Declaration of Human Rights (1948), Article 13 paragraph 1 states: "Everyone has the right to freedom of movement and residence within the borders of each state". Furthermore, the Universal Declaration, Article 29, paragraph 2 guarantees: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic

society."

9. The International Covenant on Civil and Political Rights of 1966 states in Article 12: "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". All Council of Europe member States are parties to this instrument.

10. Protocol 4 to the European Convention on Human Rights (1963, entry into force: 2 May 1968) in Article 2 states that "[...] 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".

11. Furthermore, Article 8 of the European Convention on Human Rights guarantees the right to respect for private and family life whereas *propiska* (a notice and a stamp in the passport) reveals some private information (home address).

### **3. Relevant domestic legislation and its application in countries concerned**

#### ***The Russian Federation***

12. In the Russian Federation (RF), the question of freedom of movement and residence is crucial due to the establishment of new borders. Moreover military conflicts, which have broken out in some parts of the former Soviet Union, have resulted in a great number of forced migrants.

13. The Constitution was amended in 1992 so as to establish the right of citizens of the RF to freedom of movement and choice of place of residence within their own country. The new Constitution adopted in 1993, in its Article 27, provides for the right of every person legally staying within the borders to move freely and choose his/her place of sojourn or residence.

14. In 1993, the State Duma adopted a Law "On the right of citizens of the RF to freedom of movement and choice of their place of sojourn or residence within the RF". The Law provided a procedure for choosing the place of residence within the RF based upon simple notification to the authorities, rather than the authorities' permission.

15. The Law did not contain any restrictions on the terms of sojourn. However, at a later stage, the Government has introduced two types of registration: at the place of sojourn, when the time of stay does not exceed 6 months, and at the place of residence. Moreover, a person can have only one place of residence; therefore it is necessary to de-register before getting a new registration. This provision concerns the sojourn over 6 months. The bodies responsible for registration are the local departments of the Federal Ministry of Interior, namely its Passport and Visa Service (PVS).

16. In April 1995, the Constitutional Court of the RF passed the first of a number of rulings on cases related to registration/*propiska*. The case of Mrs Sitalova challenged the constitutionality of the Housing Code which obliged tenants to comply with the *propiska* regulations. By judging the relevant Code's articles as not complying with the Constitution, the Court indirectly ruled out the *propiska* regulations.

17. The ruling of the Constitutional Court has once again placed the issue of *propiska* high on the agenda. It became obvious that the provisions of the Constitution and the 1993 Law on the freedom of movement required additional legal enactment for their implementation, as local executive bodies were still guided in their work by the regulations on *propiska*.

18. In July 1995, the Government of the RF passed Resolution N.713 "On approval of the Rules on registration and cancellation of registration of citizens of the RF at places of their sojourn or residence within the Russian Federation and the list of officials in charge of registration". The Rules provided a detailed clarification of the provisions of the 1993 Law on freedom of movement. However, they also introduced a number of restrictions and conditions not foreseen by the Law itself. These restrictions included the aforementioned restrictions on the terms of stay (so called temporary sojourn and permanent residence), requirement to de-register and living space limits.

19. The constituent parts of the Russian Federation suffering considerable migrant inflows – in particular urban centres and economically developed regions – have chosen to preserve old administrative regulations on registration. This has resulted in a situation where restrictive measures on registration, contradictory to the 1993 law, have shifted to the regional level, and sometimes even to the level of local self-government, introducing ever tougher and tougher restrictions on reception of migrants. According to estimates, in 1996 in more than 30 regions various illegal restrictions on registration were in force.

20. In April 1996 the Constitutional Court declared unconstitutional several restrictions introduced at a regional and municipal level in Moscow, Stavropol and Voronezh, which either linked registration to the payment of a large sum of money and to the obtaining of a permission by the administration or introduced residence

quotas (e.g. in Mineralny Vody in Stavropol Region).

21. In its ruling of 2 July 1997, the Constitutional Court declared unconstitutional certain provisions of the Law of the Moscow region "On the fee to cover the cost of expenses from the municipal budget for the development of the city's infrastructure and provision of social and every-day services to citizens arriving in Moscow for residence". These provisions were often used as a basis for refusal of registration.

22. A further step towards dismantling of the *propiska* system can be noted in 1998 when the Constitutional Court declared invalid a number of provisions of the Government Regulations N.713 regulating registration of Russian citizens (as well as former USSR citizens) at their place of residence and temporary stay. In its ruling, the Court stressed that registration has a purely informative character and neither the Law, nor the Constitution, allow the bodies of the Ministry of Interior to refuse a person's registration. In particular, the Court declared unconstitutional those provisions of the Regulations, which limited the time of the temporary registration to six months.

23. The Court further ruled that the right to freedom of movement and choice of place of residence can only be limited on the basis of grounds stated in the Constitution (emergency, national disaster, etc.) and that all other restrictive provisions under the Regulations, the provisions of the Civil Code or the Housing Code (e.g. required size of a residence and other conditions concerning its standard, written agreement from the owner of the apartment etc) are invalid. The Court stressed that the nature of the registration is purely informative and it aims only at providing the State with knowledge on the whereabouts of the citizens.

24. Under the Joint Instructions of November 1998 from the General Prosecutor's Office and the Ministry of Interior, on the "Elimination of the violation of the legislation on freedom of movement", a review of regional legal acts and their conformity with the federal legislation has been undertaken. As a result a number of local regulations including those in Adygeya Republic, Kabardino-Balkaria, Krasnodar Krai, Stavropol Krai, Rostov-on-Don, St. Petersburg, Moscow City, Moscow Region, North Ossetia - Alania have been declared illegal and abolished.

25. However, numerous regional legal acts and local regulations still do not comply with the federal legislation. For example Law No. 9-KZ of 1995 "On the Procedure of Registration of Stay and Residence on the Territory of Krasnodar Krai" does not allow for the registration of persons who have no close relatives living in the area for at least 10 years.

26. Regulation No. 241-28 of the Government of Moscow and of Moscow Oblast of March 30, 1999 on "The Rules of Registration and Striking off the Register of RF Citizens at the Place of Stay or Residence in Moscow and in Moscow Oblast" allow for the registration of refugees and involuntarily displaced persons only at residential premises of their relatives, and not just any citizens who agreed to give them shelter. Standard housing area of residential premises per one family member has been introduced again. This Regulation was issued after Resolution No. 4P of the Constitutional Court of 1998 recognising all the above limitations as unconstitutional. This Regulation has been filed in the Court; in the meantime it is in force.

27. Since 1999, The Government of Moscow and its Mayor have issued at least three other illegal resolutions relating to registration: Mayor's Resolution No. 1007-RM of September 13, 1999 "On urgent measures to enforce the rules of registration of citizens temporarily arriving in Moscow", Resolution No. 875 of the Moscow Government of September 21, 1999 "On temporary procedure of relocation of persons, deliberately violating the rule of registration, beyond the boundaries of the city of Moscow to the place of their permanent residence" and Mayor's Resolution No. 1057-RM of September 28, 1999 "On temporary measures to organize work with refugees and involuntarily displaced persons, as well as with applicants for the status arriving in Moscow". The first one imposed immediate re-registration (with a three-day deadline) on all visitors, the second one authorised the interior ministry agencies to deport (relocate) visitors from Moscow to places of their permanent residence. They are both filed in the Court.

28. Regulation No. 1057 is still in effect and its highly discriminatory character causes a lot of harm to forced migrants. It stipulates that only those displaced persons who are registered at the place of residence in Moscow for at least 6 months can be registered by the Moscow Migration Service as involuntarily displaced persons. In other words, they have first to obtain *propiska* to be registered as migrants.

29. Stavropol Krai (SK), until recently, had its own effective Immigration Code adopted by the Legislative Assembly of Stavropol Krai on December 6, 1996 that touched upon the situation of migrants. The Code was written in such a manner as if Stavropol Krai were a sovereign state. It was abundant with such expressions as "reasons for entry into the territory of SK", "transit movement through the territory of SK", "period of stay on the territory of SK". The latter was limited to one year for foreigners. The Immigration Code had a negative impact on the situation of migrants. Only on 13 July 2000, it was abolished. It is still too early to judge on practical

changes in the situation of migrants in the region.

30. In St. Petersburg many Chechen displaced persons have been refused registration on the grounds that there is no information exchange between the District Department of Internal Affairs (OVD) of the Chechen republic and other areas of the RF, including St. Petersburg and Leningrad Oblast and, therefore, it is impossible to strike citizens off the register in Chechnya and register them in a new place. Such reasons are obviously legally invalid but this clearly illustrates the local authorities' tendency to overcome the federal law.

31. Despite these negative examples, it should be noted that considerable progress has been achieved through the efforts of the federal structures to abolish the remains of the old *propiska* system. In particular, in the beginning of 2001, following an instruction by the President of the Russian Federation, a thorough revision of the legislation of the Federation entities has been undertaken with a view to eliminating laws which do not comply with federal legislation. According to information received from the Ministry of Justice, this work will be completed by the end of 2001. Furthermore, a mechanism of control for future legislation was established on 1 January 2001: all local and departmental legal acts passed after that date must be registered by the Ministry of Justice before they take effect.

### **Estonia**

32. The institution of *propiska* was proclaimed anti-democratic and abolished by the Supreme Council's decree of the Estonian Soviet Republic in 1989.

33. The Constitution, adopted in 1992, provides for the freedom of movement and choice of residence.

34. Between 1992 and 2000 there were no legislative acts regulating the internal registration procedures and some elements of *propiska* remained in different legal and administrative acts. After the collapse of the Soviet Union, non-citizens were allowed to reside in Estonia only if they had *propiska* of the former Estonian Soviet Socialist Republic issued before 1 June 1990. The absence of *propiska* could lead to a refusal to issue the residence permit. An unemployed person who had no *propiska* could not register at the unemployment office. In privatisation of real estate priority was given to the persons registered in their living premises.

35. The present registration procedures are stipulated in the Population Register Act adopted in 2000. The registration implies simple notification, provided the owner's of residence consent. There is no mandatory record of registration in passports or identity cards. There are no sanctions for having settled down without notification, however, the lack of registration deprives an individual from some social benefits including social allowances. Residence registration is not a precondition for having access to legal employment and health care. Also access to primary education is not linked with registration.

36. Asylum seekers and refugees are registered in the register of the Citizenship and Migration Board and they are free to choose their place of residence.

37. Registration of the residence is a mandatory precondition for obtaining permanent residence permit, and its lack may result in withdrawal of this permit.

### **Latvia**

38. The Constitution provides for the right of free movement and the choice of residence. Other relevant legislation includes Government Decision No.76 (1993) *On population registering and checking out* as amended by Decision No 186 (1993), and Government Regulations No 123(1995) and 263(2000).

39. Following the large-scale restitution and privatisation of real estate including housing, the state's functions in the application of the regulations on *propiska* have been limited to housing owned by the state or by municipalities. Persons residing in such housing are still obliged, in a number of cases, to apply for *propiska* to special commissions established in certain municipalities or relevant governmental institutions. Registration is confirmed by a seal in a passport.

40. Latvian authorities have done thorough preparatory work in replacing the *propiska* system by a registration system that serves informational functions for the state without restricting freedom of movement of permanent residents. Still in 1995, the abolition of *propiska* was included in the governmental plan of action, and in 1998 and 2001, working groups were established in order to elaborate specific solutions concerning the Population Register.

41. This process has begun by identifying the link between *propiska* and different legal areas and state policies including social policies, state security (in particular military conscription), education, law enforcement, voter registration, taxation, and local budgets. During this work around 200 normative acts referring to *propiska* were identified. Latvia has prepared the legal framework for the abolition of *propiska* and is

developing a system of registration corresponding to international legal standards. In 2000, the package of laws aiming at the complete abolition of *propiska* was passed in the Parliament in the first reading.

42. However, the final adoption of the new legislation is considerably delayed, and implementation of its main principles appears very complicated. Approximately 25-30% of Latvian residents reside in a different place than that indicated by their *propiska*.<sup>3</sup> and approximately 80 000 residents have no *propiska* at all<sup>4</sup>. Yet *propiska* still remains a necessary precondition for access to several important rights, for example to participate in municipal elections. According to some estimates, approximately 6% of the Latvian citizens could not vote in the municipal elections which were held in March 2001 because they had no *propiska*.<sup>5</sup> Moreover, access to social allowances is also dependent on *propiska*. Consequently, homeless people expelled from their housing for rent debts have additional difficulties in obtaining their social allowances.

### **Lithuania**

43. The Constitution, adopted in 1992, guarantees the right of the citizens to move and to choose their place of residence in Lithuania freely (art.32).

44. Lithuania has been working on the legal reform of the *propiska* system. Relevant legislation was passed in July 1998 and came into force in July 1999. The Government Resolution Nr 967 on the "*Procedure of record of data on a citizen's permanent residence place*" adopted on 25 August 2000, replaced the previous Resolution Nr 461 of 1991 "*On the record of a person's permanent residence place in the citizen's passport and the registration order*".

45. According to the legislation, citizens must simply notify their local authorities about the change of their residence. The new Resolution has abolished all previous restrictions on the registration such as, for example, living space. There is no obligatory registration stamp in the passport (it may be stamped if requested by a passport holder).

46. However, some elements of the social security system are still linked to the registration/*propiska*.

### **Ukraine**

47. Ukraine is concerned with the resettlement of approximately 260 000 Crimean Tatars who have been returning to Crimea after over 50 years of exile in Central Asia since 1944.<sup>6</sup>

48. The Constitution in its article 33 provides for the freedom of movement within the country.

49. The ongoing reform is aiming at the replacement of a mandatory registration by an informational residence register.

50. For the time being, however, regulations impose a nationwide requirement for registration at the workplace and place of residence. Residence without registration may be persecuted under the administrative code [stamp in the passport; requirements for registration].

51. Access to many social services, health care, housing, as well as participation in elections, are still linked with *propiska*. As for positive developments it should be noted that private employers are not any longer penalised for employing people without *propiska*.

52. It should also be stressed that, the Crimean Tatars returning to their ancestral homelands are granted *propiska*. By 1998 Ukraine had granted a *propiska* (residence permit) to some 100,000 returning Crimean Tatars.

### **Moldova**

53. Moldova is concerned with internally displaced persons, the victims of military conflict with Dniester Moldavian Republic (DMR).

54. The Constitution adopted in 1994 provides for the freedom of movement.

55. The government decision No. 375 of 6 June 1995 stipulated that internal passports had to include stamp on both permanent and temporary places of residence [requirements for registration]. Only persons properly registered in a specific municipality have a number of rights, including social rights, medical care, the right to work and vote.

56. On 19 May 1997, the Constitutional Court of Moldova held that this system, and in particular, notification in identity documents, contradicted the principle of free choice of residence reflected in the Moldavian Constitution.

57. Moldova has launched the process of replacing the internal passports with identity cards, which do not have place of residence shown on them. This measure, along with compiling a population register, aims at meeting international standards of freedom of movement and choice of one's residence.

### **Georgia**

58. The conflicts in the South Caucasus have resulted in a number of displaced persons and refugees in Georgia estimated at up to 300 000 persons.<sup>7</sup>

59. *Propiska* was outlawed in Georgia in 1996, simultaneously with the introduction of new IDs. A number of laws have been amended accordingly. Current procedure of registration of an individual's place of residence is determined by the legislation adopted in October 1998.

60. Old Soviet passports bearing *propiska* (proof of legal residence in a particular locality) were accepted as proof of identity to exercise the right to vote during the elections, as new passports and identity cards are expensive and as all citizens do not have them. According to the decision of the Supreme Court, the presence of *propiska* was recognized as a necessary prerequisite for voting at the local elections, as a result, many IDPs (particularly, from Abkhazia) were deprived of the right to vote.

61. The registration of residents is mandatory. A resident must simply notify the corresponding office of the Ministry of Interior about his/her chosen place of residence. Neither cases requiring authorities' permission nor any regional restrictions are envisaged by law. However, some cases of bureaucratic abuse have been reported. In particular, a few Meskhetian repatriates who tried to settle and obtain residence registration in Meskhetia were refused due to various excuses. On another occasion, a Meskhetian who had bought a house in Akhaltsikhe could not achieve legal certification of his property rights, because his application was refused on the pretext that formally he was registered in a different region.<sup>8</sup>

62. Record of residence registration in passports is not mandatory, however, it is usually recorded in internal IDs. So far no sanctions for living without registration are envisaged by law, but these sanctions (administrative fines) are expected to be introduced soon.

**63. However, in certain areas of public life the old *propiska* regulations are de facto still in force. Thus, the residence registration is a precondition for legal employment, access to social benefits and health care.**

64. The requirements of the residence registration appear particularly oppressive for refugees, IDPs, migrants and repatriates. Many IDPs and refugees (particularly children under age) who reside in adaptation centres have no registration. Registration is a necessary precondition for application for citizenship. The state usually bears no responsibility for providing permanent housing to these groups, in the meantime. Without permanent housing, a person faces serious difficulties in obtaining residence registration. For example, some Meskhetian repatriates in Tbilisi had to negotiate fictitious registration with private housing owners in order to claim their old-age pensions which otherwise were not paid to them.<sup>9</sup>

### **Armenia**

65. The conflicts in the region have resulted in approximately 300 000 refugees and displaced persons in Armenia.

66. The Constitution provides for the freedom of movement within the country.

67. The *propiska* system has officially been abolished, however, no new law on registration has been adopted. The issue is currently regulated by the Statute on issuing passports issued by the government in 1998.

68. Passport desks subordinated to the Ministry of Interior are the agencies responsible for implementation of these regulations. In this respect, the OSCE recommended "de-militarisation" of the procedure, i.e. the shift of the corresponding authority and functions to municipalities.<sup>10</sup>

69. Current regulations envisage three types of residence registration: permanent (when a person occupies his/her housing on the basis of ownership or permanent tenancy contract or an owner's consent), temporary (in the case of a temporary tenancy contract or an owner's consent), and factual (applicable for persons who have no permanent or temporary tenancy contract). The latter option is used to identify location of a person who have no permanent address.

70. No cases when a permission must be required are foreseen by law, merely agreement between an owner of the housing and a tenant is the basis for registration. Timely registration is an obligation of every resident, and administrative punishment is envisaged for living without registration.



71. In practice, some elements of the *propiska* system are still in force. For example, the place of residence must be confirmed by a stamp in the passport, and it is a necessary condition to be legally employed and to obtain certain social services.

72. According to local non-governmental organisations, law enforcement agencies in some areas of the country act as if the *propiska* system was never abolished. According to the U.S. State Department's 1997 Human Rights report, in order to register changes of place of residence, citizens must negotiate with a corrupt and inefficient bureaucracy. During the elections, many voters were registered on the basis of addresses stated in stamps in passports rather than on factual place of residence.

73. No specific regulations exist for refugees and migrants, all general regulations are applicable also to these categories of residents. Often this puts an additional burden on these vulnerable groups.

74. Currently, the OSCE office in Yerevan jointly with the OSCE/ODIHR is implementing a project entitled "Registration of the permanent residence in Armenia". Within the framework of this project, a package of laws has been drafted to change the current registration system aiming at completely abolishing the *propiska* system in Armenia, including the draft Law on National Register, draft Law on Personal Data and on Personal Identity Number.

### **Azerbaijan**

75. The military conflicts in the region have resulted in nearly one million refugees and internally displaced persons in Azerbaijan.

76. The Constitution of 1995 provides for the right to free movement and choice of residence.

77. In 1996, the Parliament adopted a new Law on Registration According to Permanent Residence and Sojourn. It was followed by a Government Order on the implementation of the Law on Registration.

78. However, the new legislation still gives the law enforcement agencies the right to deny registration for a variety of reasons, which makes the new registration system very similar to *propiska*. In particular, *propiska* has been *de facto* maintained in its original form in Baku. Access to social rights and employment is to a large extent preconditioned by registration. Moreover, the registration stamp is entered into the identification card which has replaced former passports.

79. Internally displaced persons from occupied areas of Azerbaijan have difficulties in choosing their place of residence since they can only obtain humanitarian assistance in a camp or settlement where they are registered.

### **4. The effects of the vestiges of *propiska* system on migrants, refugees and internally displaced persons**

80. The following chapter examines the consequences of *propiska* for the situation of migrants in the Russian Federation which, among the countries emerged from the former Soviet Union hosts the biggest number of refugees and displaced persons. However, similar effects may be observed, in variable degree, in other countries concerned.

#### **Status determination procedure**

81. According to the law, persons applying for refugee or forced migrant status are entitled to obtain registration (*propiska*) for the period of consideration of their application (ie up to three months for forced migrants and six months for refugees). This should mean that any person arriving in the region whose application for refugee or forced migrant status has been considered admissible by the relevant migration service, should automatically obtain residence registration (*propiska*). However, in a number of regions, including Moscow and St.Petersburg, the letters of attestation issued by migration service are not considered as a valid ground for registration.

82. Similarly, there is no requirement in the 1997 Law on Refugees and asylum seekers to have a registration before applying for refugee status. However, such a requirement exists in some regions. The migration services would not accept applications for refugee or forced migrants status *before* the person gets at least a temporary registration with the local ministry of interior. In some regions this practice is applied without any legal grounds, while in others local authorities have provided legal basis. For example, in Moscow, a Mayor's Decree adopted in November 1994 stipulated that only those who have a registration at the place of residence in Moscow can apply for refugee status, and only those who have close relatives in Moscow (spouse, children, parents) can apply for forced migrant status. Similar restrictions were also introduced in St. Petersburg, Krasnodar, Voronezh, Rostov-on-Don, and others.<sup>11</sup>

83. Asylum seekers often find themselves in a vicious circle – in order to have

access to status determination procedure they needed a registration and in order to obtain a registration, they needed legal status. By now, the situation has considerably improved for refugees. Lack of registration is not anymore an obstacle to get access to refugee status determination procedure. In particular, a regulation from 15 November 1999 from the Moscow City Government eliminated for asylum seekers the registration requirement as being a pre-condition for submitting a refugee claim. Moreover, since the beginning of 2001, asylum seekers have been receiving an *asylum seekers certificate*, which is considered as valid basis for *propiska* by the organs of the Ministry of the Interior. However, this pre-condition still applies for persons wishing to apply for forced migrant status (internally displaced persons).

### **Refugee status**

84. There have been reported cases of losing refugee status following the registration of a refugee at his or her place of residence. Some migration agencies consider that registration at the place of residence ensures the right to permanently reside in the RF, and withdraw benefits linked to refugee status. Unfortunately, in 1996, the RF Supreme Court supported such an approach of migration agencies, in particular in the case of Anna Borisovna Korabelnikova, a refugee from Azerbaijan.

### **Acquiring citizenship**

85. According to the law "On the RF Citizenship" one of the preconditions for obtaining Russian citizenship is the proof of the permanent residence permit (*propiska*) on the territory of Russia. According to the President's Decree N.386 of 1992, persons who have received refugee status can apply for citizenship only after their place of residence in the RF has been determined. This requirement has prevented many recognised refugees, residing in dormitories in Moscow, from applying for citizenship. Similarly, the victims of ethnic purges that took place before the break-up of the USSR, who arrived in Russia, found themselves deprived of the Russian citizenship. This primarily refers to the Meskhetian Turks who arrived in 1989 on the territory of Krasnodar Krai after purges in Uzbekistan and the Armenians and Russians from Azerbaijan who arrived in 1989-1990. Internal affairs agencies refuse to accept applications for RF citizenship from Afghan refugees residing on the territory of Russia for 15 years without *propiska*.

86. Numerous applications to court over many years with complaints against refusals of internal affairs agencies to issue passports as Russian citizens to the residents of Azerbaijan have failed to succeed. The courts have either refused to recognise applicants as citizens or, to go around the issue, postponed the decision to issue them documents granting the RF citizenship until the applicants register at the place of residence. The only positive decision to issue former Baku residents' documents to be inserted in their passports that confirm their citizenship was taken on November 17, 1999. The court ruled that recognition of the RF citizenship does not relate to absence or availability of registration at the place of residence and directed the PVS Department of GUVD of Moscow Oblast to issue them documents to be inserted in their passports that confirm their RF citizenship. However, this judgement has not been implemented.

### **Social and economic rights**

87. Absence of registration leads in practice to deprivation of most social and economic rights. People would not be admitted to public services, such as medical service, education, pensions, unemployment benefits, etc., unless they have a registration in the region. Moreover, in regions where the "passport control measures" are implemented strictly, i.e., in Moscow, St. Petersburg, Krasnodar, and a few others, people without registration can be subject to constant harassment by the police during documents checks in the streets and at homes. Art. 179 of the Administrative Code of the RF provides for a fine up to one tenth of the minimal monthly wage for violation of *propiska* rules. Art. 184 of the Code provides for fines up to one monthly minimal wage if the rules on registration by foreigners are violated. If the violation is grave or repetitious, the foreigner may be subject to deportation. The Code also lists as administrative violations employment of persons without registration and allowing persons without registration to live in one's living quarters.

### **Education**

88. Although the Constitution of Russia guarantees everyone (specifically, everyone, and not just citizens of Russia) "the accessibility and free availability of pre-school, general secondary and vocational secondary education in public and municipal educational institutions and enterprises", many children of migrants find themselves out of the system of education only because their parents are not registered with internal affairs bodies.

89. Children of forced migrants are, as a rule, not admitted to either children's homes or boarding schools, where they can stay while their parents look for temporary housing and job.

90. Order of the Moscow Committee on Education No. 567 of September 9, 1999

"On strengthening safety in educational institutions", Sub-item 1.1 of which says: "Children from outside Moscow are admitted to schools and boarding schools only if registered". This Order was issued the next day after military actions started in Chechnya.

91. The ministry of education as well as the General Prosecutor's Office on many occasions have confirmed that actions of local authorities are illegal.

#### **Health care**

92. In most areas in Russia, only migrants registered at the place of residence have access to local health care. Moreover, in Moscow, for example, access to health care is provided for those who are registered at the place of stay for over 6 months, while the local authorities systematically refuse to register applicants for periods over 6 month. The majority of displaced persons from Chechnya residing in Moscow have no free medical assistance.

#### **Pensions, social allowances**

93. The Law "On State Pensions in the RF" does not link the right of citizens to pensions with their registration. However, in practice, agencies of social security in charge of pensions assign pensions only to those who are registered in the area at the place of residence. That unjust requirement leaves an important number of forced migrants without a pension or social benefits to which they are entitled.

#### **Access to employment**

94. Access to employment is strictly dependent on the registration. This practice is secured in Moscow and Moscow Oblast by the Rules of Registration that contain a clause that establishes high penalties for heads of enterprises, institutions and organizations of all types of ownership for employing citizens who are not registered. This clause is a direct violation of Article 16 of the Labour Code that prohibits limitation of rights of citizens to employment due to circumstances that are not connected with professional qualities of workers, including their place of residence. Still, this clause, which was included in the Rules of Registration adopted in 1995, stayed unchanged in the Rules of Registration approved in May 1999.

95. All this leads to a situation where refugees who find job are employed illegally, without due processing of all their documents. This means that they are deprived of all social and legal benefits linked to the job.

96. Absence of registration at the place of residence deprives forced migrants of the possibilities guaranteed by the Laws "On Refugees" and "On Involuntarily Displaced Persons" to receive unemployment allowance, to get free professional training and additional training improving their chances for employment. Employment agencies deny them in the above referring to the fact that the Law "On Employment" provides for making decision on registration of a citizen as unemployed at the place of his residence, which is traditionally treated as registration at the place of residence. The RF Ministry of Labour and Social Development is of the same opinion. Attempts of public organisations to achieve realisation of the right of unemployed refugees and forced migrants to obtain state support give no results as yet. As a rule, courts of justice also share the opinion of administrative agencies. There is only one case known that, after a court ruling, they managed to register a forced migrant as unemployed and provide him with respective allowance.

97. However, in the new regulations issued by the Moscow government, the registration of residence is not mentioned as a precondition for legal employment. Thus, the problem of access to employment for asylum-seekers might be fixed in Moscow. Since the regulations are very recent, it still remains to be seen how their provisions will be implemented in practice. UNHCR office in Moscow concluded agreements with some enterprises which are ready to employ refugees. These agreements have been approved by the Moscow government. This programme is expected to begin in 2001.

#### **Privatisation and property rights**

98. Human rights of persons belonging to vulnerable groups, such as internally displaced persons, are of particular concern. Often these people have had to flee their homes, lose their *propiska* and forfeit the opportunity to privatise the property on which they resided, since privatisation was closely linked to *propiska* in most of the countries emerged from the former Soviet Union.

#### **Right to vote**

99. The states must pay special attention to the linkages between freedom of choosing one's permanent residence and political rights, in particular, the right to vote. The fact is that those violating the *propiska* regulations often have no opportunity to vote.

### **5. Conclusion**

100. The restrictions on the freedom of movement and choice of one's place of residence in Council of Europe member States still applying some form of the *propiska* system are contrary to their international obligations, and in most cases contrary to their Constitution and internal legislation.

101. In particular, in the Russian Federation there are no grounds that could have supported such restrictions on the federal legislative level. However, a number of regions keep enforcing the restrictions of their own, trying to cope with migration influxes from the conflict zones and economically less developed areas. The most successful instrument in combating these restrictions so far has been the Russian Constitutional Court. In a number of decisions it has demonstrated its will to abolish the restrictions on the freedom of movement as a legacy of the Soviet past. However, the regions often enact new legislation in place of invalidated, containing similar restrictions.

102. The official status of refugees or forced migrants, as well as the exercise of rights and freedoms, is often linked to the presence or lack of registration in the region. So, these instruments are to be of particular concern.

103. There is an urgent need for exchange of knowledge and strengthening of expertise about registration systems that correspond to international standards in the area of freedom of movement so as to elaborate new systems, based on adaptation and/or adoption of relevant legislation. The experience of those States that have practically completed the reform of the residence registration system (Estonia, Lithuania) and are in the process of replacing the *propiska* system (Georgia, Latvia, Armenia), as well as established registration systems in Western countries, has to be shared, taking into account local specificities and concerns. Specific technical and financial assistance aimed at the development of information systems and databases for the countries abolishing the *propiska* system should be recommended.

## **APPENDIX I**

### **Programme of the visit of Mr Cilevičs to Moscow, 13- 14 June 2001**

#### **Wednesday, 13 June 2001**

9.25 Arrival in Moscow

11.30–12.00 Meeting with J. Kavaglieri, Head of Legal Department, and J. Bortnikov, Programme Officer, UNHCR Regional branch in Moscow

12.15–13.15 Meeting with J. Demin, First Deputy Minister of Justice of the Russian Federation

13.45–14.30 Lunch

15.00–16.00 Meeting with A. Blokhin, Minister on the Federation Affairs, National and Migration Policies

16.30–17.30 Meeting with O. Mironov, the Human Rights Plenipotentiary of the Russian Federation

18.30–21.00 Meeting with NGOs: A. Ossipov and O. Cherepova ("Memorial" Human Rights Center), V. Gefter (Executive Director of Institute of Human Rights), L. Grafova (Co-Chairperson of the Forum of Resettlers' Organisations), G. Dzhuraeva (President of the "Tajikistan" Foundation), D. Gorelishvili (Moscow Helsinki Group)

#### **Thursday, 14 June 2001**

9.30–10.30 Meeting with V. Igrunov, Deputy Chairman of the Committee on the CIS Affairs and Relations with Compatriots of the State Duma

11.00–12.00 Meeting with S. Smidovich, Chairman of the Committee on Migration Affairs of the Moscow City Government

13.00–14.00 Working lunch with N. Shakhlein, Deputy Chairman of the Committee on State Building of the State Duma, and D. Rogozin, Chairman of the Committee on International Affairs of the State Duma

15.00–15.45 Meeting with J. Birjukov, First Deputy General Prosecutor of the Russian Federation, and I. Kostoev, Head of the International Law Board of the General Prosecutor's Office of the Russian Federation

16.30–17.30 Meeting with N. Smorodin, Acting Head of the Passport and Visa Board of the Ministry of Interior of the Russian Federation

19.10 Departure from Moscow

## **APPENDIX II**

## **QUESTIONNAIRE**

### **A. INTRODUCTION**

The Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe is currently preparing a report on the «propiska system» applied to migrants, asylum seekers and refugees in Council of Europe member states: effects and remedies (Rapporteur: Mr Boriss CILEVIČS, Latvia, Socialist Group) to be presented to the Parliamentary Assembly in due course.

The report is being prepared pursuant to the enclosed Outline.

In order to gather relevant information, the Rapporteur wishes to address the attached questionnaire to the relevant authorities of the member states of the Council of Europe concerned, namely Armenia, Azerbaijan, Estonia, Georgia, Latvia, Lithuania, Moldova, Russia, Ukraine. Your country's reply to the questionnaire would be of great value and importance for the elaboration of the report.

Replies should be sent by 15 March 2001, to Mrs Agnieszka NACHILO, Co-Secretary of the Committee on Migration, Refugees and Demography (Tel: + 33 388 41 29 05, Fax: +33 388 41 27 97, Email: [bozena.nachilo@coe.int](mailto:bozena.nachilo@coe.int))

### **B. QUESTIONS**

1. What is the current legislation governing the registration of residence in your country? (please enumerate relevant laws and regulations referring to this issue and summarise its provisions)

2. Are there any specific regional regulations concerning system of registration in your country?

3. What are the major differences (if any) in comparison to the relevant law in force before 1990?

4. In particular,

- does the registration of residence imply simple notification or is any permission required?
- if a permission is required, does it concern all applicants or only specific cases? (please explain in detail)
- are there any sanctions for having settled down without notification/permission (please give details)?
- is there any record of registration in passports?

5. Is residence registration a precondition for having access to:

- legal employment
- social services including social allowances
- health care
- education

6. In which way may the law in question affect migrants, asylum seekers and refugees?

7. In particular:

- are there any specific provisions referring to this category of population?
- are there any specific institutions dealing with these persons?

8. Please provide any relevant documentation.

9. Name and contact/address numbers of the person who replied to this questionnaire.

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Reporting committee: Committee on Migration, Refugees and Demography.

Reference to committee: [Doc. 8566](#) and Reference n° 2451 of 4 November 1999.

Draft recommendation unanimously adopted by the committee on 26 September 2001.

Members of the committee: Mr *Iwiński* (Chairperson), Mrs *Vermot-Mangold* (1<sup>st</sup> Vice-Chairperson), Mrs *Bušić* (2<sup>nd</sup> Vice-Chairperson), Mr *Einarsson* (3<sup>rd</sup> Vice-Chairperson), Mrs *Aguiar*, MM. *Akhvlediani*, *Aliiev*, *Aliyev G.*, Mrs van Ardenne-van der Hoeven, Mr de Arístegui (Alternate: Mrs *Torrado*), Mrs Arnold (Alternate: Mr *Soendergaard*), MM. *Arzilli*, *Begaj*, *Bernik*, Mrs *Björnemalm*, MM. *Van den Brande*, *Branger* (Alternate: *Le Guen*), *Brinزان (Tudose)*, *Brunhart*, Mrs *Burataeva*, MM. *Christodoulides*, *Cilevičs*, *Connor*, *Danieli*, *Debarga*, *Díaz de Mera*, *Dmitrijevas* (Alternate: Mrs *Burbiene*), Mrs *Dumont* (Alternate: Mr *Legendre*), Mr *Ehrmann*, Mrs *Err*, Mrs *Fehr*, Mrs *Frimannsdóttir*, MM. *Hordies* (Alternate: *Annemans*), *Hovhannisyan*, *Ilaşcu*, *Ivanov*, *Jařab*, Lord *Judd*, MM. *Karpov*, *Kirilov*, *Kolb*, *Koulouris*, *Kozlowski* (Alternate: Mrs *Krzyzanowska*), *Laakso*, *Liapis*, *Libicki*, Mrs *Lörcher*, MM. *Loutfi*, *Luís* (Alternate: *Cesário*), Mrs *Markovska*, MM. *Mutman*, *Naro*, *Nessa*, *Norvoll*, *Oliynyk*, Mrs *Onur*, MM. *Ouzký*, *Popa*, *Pulicino Orlando*, *Rogozin*, *Rusu*, *Saglam*, von *Schmude*, *Schweitzer*, Mrs *Shakhtakhtinskaya*, Mr *Slutsky*, Mrs *Smith* (Alternate: Mr *Hancock*), Mrs *Stoisits*, MM. *Szinyei*, *Tabajdi*, *Telek*, *Tkáč*, *Udoenko*, *Wilkinson*, *Wray* (Alternate: *Prosser*), *Yáñez Barnuevo*, Mrs *de Zulueta*, Mrs *Zwerver*.

*N.B. The names of those members present at the meeting are printed in italics.*

Secretaries of the committee: Mr *Lervik*, Mrs *Nachilo*, Ms *Sirtori*.

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<sup>1</sup> See report on refugees, asylum seekers and displaced persons in the Commonwealth of Independent States (CIS) ([Doc.7829](#)), Rapporteur: Mr *Filimonov*.

<sup>2</sup> Out of 9 countries to which the questionnaire has been sent only Azerbaijan, Estonia, Latvia, Lithuania, Ukraine have replied.

<sup>3</sup> "Chas", 7 March 2001.

<sup>4</sup> "Diena", 7 March 2001.

<sup>5</sup> *ibidem*.

<sup>6</sup> See the report on the repatriation and integration of the Tatars of Crimea ([Doc 8655](#)), Rapporteur Lord *Ponsonby* (United Kingdom, SOC).

<sup>7</sup> See [Doc. 7837](#) on the refugees and displaced persons in Transcaucasia.

<sup>8</sup> Interview with *Marat Baratashvili*, president of the Union of Georgian Repatriates, Tbilisi, 8 May 2001

<sup>9</sup> Interview with *Guram Mamulia*, former head of the Repatriation Service of Georgia, Tbilisi, 8 May 2001

<sup>10</sup> Interview with *Theresa Khorozyan*, adviser to Human Rights and Democratisation Section, OSCE Office in Yerevan. Tbilisi, 7 May, 2001

<sup>11</sup> These regulations have been declared unconstitutional under the Joint Instructions from the General Prosecutor and the Ministry of the Interior in 1998, and they have been abolished but similar regulations still exist in some regions.