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# Residence Registration as a Condition for the Implementation of Human Rights and Freedoms: International Legal Aspect

**Abstract.** *The article provides an overview of the legal issues related to residence registration, both in the former Soviet Union and in Europe. In the former Soviet Union, the issues of residence registration are associated with the remnants of the propiska system in the legal systems of individual states, as well as with the imperfection of modern population registration systems. In the European context, such problems are related mainly to the issue of irregular migrants. The author systematizes the recommendations of international human rights bodies in relation to the optimization of the residence registration system. She uses examples of legislative solutions found by Scandinavian countries. International law provides us with a large amount of political, socio-economic and cultural rights. However, most of the rights are provided only if a person has official documents and registration. Residence registration is one of the necessary conditions for fundamental human rights.*

**Keywords:** *political rights, exercising fundamental rights, registration of the population, residency permit, principles of OSCE, European Council, European Court of Justice, foreign experience, illegal migrants.*

## 1. Residence Registration: General Characteristics

**T**he registration system “can be a means towards achieving the implementation of fundamental commitments and international standards in three distinct areas: rule of law, the right to vote and the right to freedom of movement (particularly with respect to the choice of a place of residence).”<sup>[1]</sup> However, in contrast to birth registration, the registration of citizens at their place of residence

is not provided for by specific obligations arising from the underlying sources of international law.

According to the OSCE Guidelines on Population Registration (hereinafter — the Guidelines), systemic interpretation of the provisions of the International Covenant on Civil and Political Rights allows us to conclude that this document highlights the need for the registration of populations in order to execute civil and political rights. In particular, when proving that international

law contains references to the compulsory registration of citizens, the Guidelines rely upon the provisions of the Preamble to the Covenant on Civil and Political Rights. Particularly, the Preamble provides that "... the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his/her civil and political rights, as well as his/her economic, social and cultural rights..." [2] At the same time, the Guidelines consider the provision of population registration as one of the components needed to create the conditions for the proper implementation of human rights. Confirmation of this conclusion can be found in General Comment 25 to the International Covenant on Civil and Political Rights [3]. General Comment 25 is devoted to the interpretation of Art. 25 of the International Covenant on Civil and Political Rights, which enshrines the right to participate in the implementation of public affairs, including through voting and participation in elections. These comments also mention that states have to take measures for the implementation of citizens' rights [4]. Moreover, the document says that "states must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed." As we can see, the UN Human Rights Committee adheres to an opinion that the registration of voters, at least, is one of the conditions for the exercise of civil and political rights.

Currently, the international human rights treaties have no explicit references to the need for the registration of citizens at their place of residence. When trying to prove that residence registration should be compulsory in terms of the need to exercise political rights, we must not forget that the implementation of political rights

depends on the choice of an individual citizen. Everyone decides on his/her own whether to take part in elections or not. The state is only obliged to provide an opportunity for the implementation of political rights. Therefore, compulsory registration of citizens at their place of residence may be an interference with personal freedoms if a citizen chooses not to exercise his rights. From this point of view, the provisions of the current Russian legislation providing for administrative fines for living without residence registration are in conflict with the principle of voluntary implementation of human rights. By comparison, the legislation in Scandinavian countries does not contain sanctions for staying in the country legally without registration. Moreover, Finnish law requires that house management committees in apartment buildings must register each dweller at the authorized bodies. The case of living in Scandinavia without residence registration is more of a theoretical nature because registration is required only to obtain a passport, open a bank account or use public services.

## 2. Propiska System

The propiska system used in the Soviet Union requires mandatory and compulsory registration of citizens at their place of residence. Propiska was a mandatory element of the civil legal status required in order to use all public services in health and education. On the one hand, the rational side of the propiska system is hard to dispute. In terms of public administration efficiency, the compulsory residence registration allows public authorities to trace the movement of citizens, as well as to plan budget allocations in order to provide citizens with the necessary health services, education services, etc. For example, as stated by the representatives of Uzbekistan in the Report on the Implementation of the

UN Convention on the Elimination of All Forms of Racial Discrimination, propiska is a legal and statistical proof of the fact that a person lives in a particular place and without such registration it is much more difficult to calculate population data <sup>[5]</sup>. On the other hand, in terms of basic human rights and freedoms, propiska means nothing more than the “obligation to seek permission to travel within a particular state” — this is how this public-law institute was defined by the UN Human Rights Committee in the Concluding Observations on Moldova. <sup>[6]</sup>

### **3. Legal and Actual Limitations Associated with the Propiska System: Past Russian Practices**

#### **a. Limitation of the Right to Use Public Services and Exercise Political Rights**

In a situation where the vast majority of hospitals, clinics, schools and institutions were governed by public authorities, citizens who did not have their propiska could not visit a doctor (except in emergencies), receive social benefits, or send their children to school. Without a relevant stamp in the passport it was impossible for a citizen to exercise their political rights to participate in elections and referendums.

#### **b. Difficulties in Obtaining Propiska**

Difficulties in obtaining propiska were related to its legal implementation, which was a long bureaucratic process. However, for the majority of citizens, difficulties in obtaining propiska were related to the lack of space for living. During the Soviet era, most of the apartments were publicly owned. Citizens rented apartments under long-term lease agreements. Before getting an apartment from the government, young families or migrants from rural areas to cities waited for a long period of time. Later, with the advent of housing cooperatives, citizens got the

opportunity to register apartments under their ownership. However, not all citizens had the opportunity to buy an apartment. Moreover, according to Soviet legislation, citizens had no right to rent their apartments to anybody without the registration stamp in their passport.

#### **c. Engagement of Unskilled Labor under the “Propiska Quota”**

During the Soviet era, the mandatory registration (propiska) led to the emergence of the phenomenon of engaging unskilled labor under the “propiska quota (limit).” “Limitchik” was an abusive nickname for migrants who moved from small towns and villages to large cities of the Soviet Union. Despite the discriminatory and abusive nature of this term, the word “limitchik” can be found even in modern literature. Since such migrants had to reside legally in the cities, employers could take advantage of their vulnerable situation and pay a smaller fee for their work. “Limitchiks” were provided with accommodation in hostels, where they were registered.

It is obvious that in terms of human rights, the practice of engaging labor under the propiska quota created a number of negative consequences:

First, because of the marginalization of people living in hostels, “limitchiks” often had problems with law and order. However, later workers gained the right to receive public or municipal housing on a permanent basis.

Second, “limitchiks”, especially women, who were not able to get a more prestigious job, often entered into hasty marriages in order to obtain propiska.

Third, savings on engaging employees with professional qualifications resulted in a decrease in quality of goods and services.

Finally, such practice constituted a discriminatory attitude towards citizens, on the basis of their origin.

#### 4. Replacement of Propiska with Residence Registration

Since the dependence on propiska was actually a limitation of the smooth implementation of the whole range of human rights and freedoms, international human rights bodies expressed their concern to the Russian government about the presence of propiska in the Russian legal system. In 1993, Russia adopted the law on the right of citizens of the Russian Federation to freedom of movement and freedom to choose their place of residence within the boundaries of the Russian Federation, which confirmed the notification procedure for registration at the place of residence <sup>[8]</sup>. According to this law, citizens are obliged to report the place of their temporary stay or permanent residence to law enforcement authorities. Technically, the adoption of this law meant the abandonment of the propiska system. However, the Code of Administrative Offences 2001 provides for administrative liability for living without residence registration <sup>[9]</sup>.

#### 5. Remnants of the Propiska System in the Modern Legal Order

Both Russia and most states of the former Soviet Union abolished the propiska system and officially deny its existence. However, international human rights bodies still express their concern about the remnants of this institute in the legal systems of modern states. For example, in 2010 the OSCE Office for Democratic Institutions and Human Rights noted that in some participating states, “remnants of the Soviet population-registration system known as the propiska still remain, creating a number of legal and administrative barriers that hinder freedom of movement and free choice of place of residence.” <sup>[10]</sup>

When summarizing difficulties associated with the remnants of the propiska system in the former Soviet Union, we can single out several categories of these difficulties:

##### a. Housing

This problem is perhaps the most common barrier to registration of citizens and foreigners legally staying in the territory of a particular state. To register at the place of residence, you must have a suitable accommodation. If a person does not have his own dwelling, he must obtain the consent of the dwelling’s owner to live there. In rural areas, citizens often actually live in self-built buildings that are not registered as living quarters. In this case, they cannot register at the place of residence.

##### b. Shadow Administrative Practices

The consequences of the propiska system that existed in the Soviet Union can even manifest themselves today, in the form of shadow administrative practices. An example of these practices can be found in a recent document of the OSCE Human Dimension Meeting, provided by the delegation of Georgia on September 25, 2012. According to this document, the fact that the Russian law-enforcement bodies spontaneously check passports and registration of migrant workers actually means a return to the propiska system. <sup>[11]</sup>

##### c. Need to Modernize the Population Residence Registration System

Despite the clear progress achieved by the OSCE participating states in the field of abandoning the propiska system in the former Soviet Union, OSCE is still concerned about particular shortcomings of the current population registration systems. In a number of cases, the population registration systems that exist today in the former Soviet Union do not meet international human rights standards and do not provide freedom of movement. The shortcomings of the population registration systems include the absence of a single centralized population registry and lack of communications between all existing state

registries, due to which people need to apply to different departments for different certificates, etc. <sup>[12]</sup>

According to the OSCE Guidelines on Population Registration 2009, “in many other states this system has served as one of the cornerstones of modern administration, facilitating democratic governance and the upholding of fundamental civil and political rights.” <sup>[13]</sup> As a comparison, in Scandinavia, for example, there is a single centralized population registry, which records information about the date of birth and sex of a citizen, marital status, presence of children, information about parents, and place of residence. In Norway, these registries are kept by the Tax Service <sup>[14]</sup>, and in Finland by magistrates.

## 6. Problems Related to the Registration of Populations in European Countries

The issue of residence registration in European countries is also connected with so-called irregular migrants, i.e. foreign citizens who do not meet the requirements of immigration legislation when staying in the country. <sup>[15]</sup> Such persons stay in the territory of particular states pending a decision on their legal residence in the country, or without any legal grounds at all. Often in social and political literature such persons are referred to as “illegal migrants.” Nevertheless, in terms of international human rights that term is incorrect, because every human life is a supreme value, which in itself suggests that no person can be “illegal.” Therefore, the European academic literature on migration uses the term “irregular migrants’ in relation to such persons. <sup>[16]</sup>

The researcher E. Guild summarizes the grounds on which a person can stay in the country with unresolved status:

a) Staying in the country without any valid documents and/or visa: for example, when these documents expire.

b) Illegal (underground) penetration in the country.

c) Working without a job permit or in case of any other violations of labor law. <sup>[17]</sup>

For example, in 2011 more than 3,000 persons with undetermined status were detected in Finland. According to information from the Ministry of Internal Affairs of Finland, the majority of people found in this country that are staying there without any legitimate reason apply for their humanitarian protection or political asylum immediately after they are identified. <sup>[18]</sup> Such persons may stay in the territory of Finland from the day when they file the application up to the day when the resolution on their case is adopted. According to statistics, in 2011 the Finnish authorities received 3,088 applications for political asylum and only 1,271 of them were granted. <sup>[19]</sup>

As our analysis shows, despite the fact that most countries have abandoned the propiska system, the echoes of this system and other difficulties associated with the registration of population are still present in the legal systems of Europe and the former Soviet Union. The analysis of measures taken by the international human rights bodies to address these issues is given in the next section.

## 7. Efforts of International Organizations Aimed at Modernization of Population Registration Systems

### 7.1 UN Bodies

The UN bodies that monitor the implementation of the core international human rights treaties also work to abolish the remnants of the propiska system in those legal systems where they still exist.

The following UN bodies have paid attention to the propiska issues when examining reports from Member States:

- The UN Human Rights Committee that monitors the implementation of the

International Covenant on Civil and Political Rights; [20]

- The UN Committee on the Elimination of Racial Discrimination that monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; [21]
- The UN Committee on the Rights of the Child that monitors the implementation of the UN Convention on the Rights of the Child. [22]

In their concluding observations on the various states that reported to these committees on the propiska system, these bodies systematically expressed their disapproval of the existence of this system. Of course, disapproval expressed by the UN committees is a measure of diplomatic pressure on the countries and it has no coercive power. Nevertheless, the states listen to the recommendations of the UN bodies in order to improve practices related to the implementation of a specific international treaty.

## 7.2 OSCE's Work Aimed at Modernization of Population Registration Systems

The Organization for Security and Cooperation in Europe (OSCE) works systematically to implement international standards in the field of population registration. The OSCE field missions provide assistance to participating states in matters relating to the registration of voters and population accounting. The ODIHR renders the OSCE participating states assistance and recommendations in connection with the modernization of population registration systems, particularly in the framework of the observation mission's recommendations for elections concerning the improvement of voter registration.

In response to requests of the participating states for expert assistance in population registration, the OSCE

developed the Guidelines on Population Registration. The Guidelines are based on examples of best practices that the ODIHR has collected all over the OSCE region. The Guidelines are not designed to set standards and should not be interpreted as the ODIHR confirmation of the benefits of any particular model of population registration or population registration as such. Their main purpose is to provide the OSCE participating states with recommendations by explaining the basic principles, in accordance with which the establishment and maintenance of effective models of population registration is implemented in democratic countries. [23]

As a first step towards the implementation of these principles, in December 2009 a seminar on the reform of population registration systems was held in Almaty. In the framework of the seminar, the need to share best practices in the field of population registration systems existing in the OSCE participating States was underlined. [24]

## 7.3 Council of Europe

Special attention was paid to the issues of propiska at the level of the Council of Europe. For example, in 2002 the Parliamentary Assembly of the Council of Europe issued Resolution 1277 (2002) in respect of the obligations of the Russian Federation, mentioning that despite the progress made in the field of propiska cancellation the rules of citizens' registration are still too strict and discriminatory against ethnic minorities. The Assembly called on Russia to review legislation and practice of its application in order to exclude provisions that could limit freedom of movement and choice of residence. [25]

The European Court of Human Rights considered a number of complaints against such countries as Latvia and Russia, and stated that the propiska sys-

tem is a violation of the right to freedom of movement. Violations were found, for example, in the case of an applicant named Tatishvili, a citizen of Georgia, who complained against Russia's unlawful refusal to register her place of residence on the grounds that she was not a member of the family that owned the dwelling premises where she lived. The European Court unanimously recognized the violation by Russia, whose competent authorities denied the applicant residence registration on these grounds. <sup>[26]</sup>

In the case of *Slivenko vs Latvia*, the applicant appealed against the illegal deportation of his family from Latvia, where the applicant performed military service. Among many reasons given for the illegal deportation, the applicant referred to the fact that his wife and child, citizens of Russia, joined him for the purpose of living together and were recorded as citizens of the former Soviet Union. According to the legislation of Latvia, they could not be included in the Latvian population register with this status. The situation in the applicant's family was complicated by the fact that according to the Latvian authorities' opinion, (contested by the Court) the applicant's wife and child posed risks for Latvia as foreign members of the military servant's family. The European Court recognized, *inter alia*, that such registration rules violated the applicant's right to family life, enshrined in Art. 8 of the European Convention on Human Rights. <sup>[27]</sup>

### References (transliterated)

1. OSCE. Office for Democratic Institutions and Human Rights. *Guidelines on Population Registration* (Warsaw: OSCE ODIHR, 2009).
2. The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by Resolution 2200A (XXI) of the UN General Assembly on December 16, 1966; entered into legal force on March 23, 1976 in accordance with Art. 49.
3. General Comments represent the official interpretation of the provisions of the Covenants published by the bodies that are authorized to exercise control over the execution of the Covenants.

### 8. Means of Solving Problems Related to Residence Registration

By summarizing recommendations aimed at optimizing population registration systems made by such international human rights bodies as the OSCE and the Council of Europe, the following conclusion can be made:

a) It is necessary to continue work on the modernization of population registration systems, taking into account the best practices of the OSCE participating states, summarized in the *Guidelines on Population Registration*; <sup>[28]</sup>

b) Consider the possibility of sharing the data of population registration systems by public authorities;

c) Develop rules providing for the registration of persons who have no permanent place of residence or legally recognized address;

d) Introduce rules permitting the register of people at their place of actual residence. In this case, registrants must provide an address (e.g., a PO box) at which they can be reached;

e) Establish liability for violations in the conduct of population registration systems.

In conclusion, it is worth noting that despite the fact that the *Guidelines on Population Registration* support the recommendation to enshrine in law a general obligation to register at the place of residence, the author of the study holds an opinion that such an obligation should not be accompanied by a fine in case of its violation.

4. According to the Comments, “whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”
5. The CERD Committee, Follow-up: State Reporting on Uzbekistan, UN Doc. CERD, A/62/18 (2007), par. 16.
6. UN Human Rights Committee, Concluding Observations on Moldova, UN Doc. CCPR A/57/40 vol. I (2002), par. 5.
7. The definition of the word “limitchik” can be found, for example, in M. Ivanov’s explanatory dictionary of modern Russian language: M. V. Ivanov, *Survival Russian* (USA: Russian Information Services Inc., 2007), p. 110. For “limitchik” see, for example, P. F. Grishanin, *Issues of Criminal Liability for Violating the Passport Regime* /P.F. Grishanin; High School of the Ministry of Internal Affairs of the USSR Department of Criminal Law and Procedure.— M., 1960.—40 p.
8. Law of the Russian Federation of 25.06.1993 No. 5242–1 with subsequent amendments and additions; the last modified date is 30.12.2012, “On the right of citizens of the Russian Federation to freedom of movement and freedom to choose their place of residence within the boundaries of the Russian Federation,” *Gazette of the Congress of People’s Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation*, 12.08.1993, No. 32 Art. 1227.
9. According to Art. 19.15 of the Code of Administrative Offences of the Russian Federation, “living at the place of residence or stay of the citizen of the Russian Federation... without the “registration” at the place of stay or residence — will result in an administrative fine of one thousand five hundred to two thousand five hundred rubles’ (as revised by the Federal Laws of 25.10.2004 No.126-FZ and of 22.06.2007 No.116-FZ). The Russian Federation, Code of Administrative Offences of the Russian Federation of 30.12.2001 No. 195-FZ (as revised 07.02.2013), *Collection of Legislative Acts of the Russian Federation*, 07.01.2002, No. 1 (Part 1), Art. 1.
10. OSCE, Office for Democratic Institutions and Human Rights, *Annual Report 2009*, April 29, 2010. The text of the document (in English) is available on the OSCE official website at: <http://www.osce.org/odihr/67854?download=true>.
11. OSCE, Human Dimension Meeting, 2012. Warsaw, September 25, 2012, Statement by the Delegation of Georgia. Working Session 2: Freedom of Movement, HDIM.DEL/0043/12. The text of the document (in English) is available on the OSCE official website at: <http://www.osce.org/odihr/94082>.
12. See, for example, OSCE, Office for Democratic Institutions and Human Rights, *Annual Report 2009*, April 29, 2010. The text of the document (in English) is available on the OSCE official website at: <http://www.osce.org/odihr/67854?download=true>; OSCE. Office for Democratic Institutions and Human Rights. *Guidelines on Population Registration* (Warsaw: OSCE ODIHR, 2009).
13. OSCE. Office for Democratic Institutions and Human Rights. *Guidelines on Population Registration* (Warsaw: OSCE ODIHR, 2009), Foreword.
14. T. Lyngstad & T. Skardhamar, “Nordic Register Data and their Untapped Potential for Criminological Knowledge,” in: *40 Crime and Justice* (2011).
15. Sylvie Da Lomba, Irregular migrants and the human right to health care: a case-study of health-care provision for irregular migrants in France and the UK, in: *7 (3) International Journal of Law in Context* (2011), p. 357.



16. See, for example: Barbara Bogusz, Ryszard Cholewinski, Adam Cygan, and Erika Szyszczak (eds.) (2004) *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*. Leiden and Boston: Martinus Nijhoff Publishers; Centre for European Policy Studies (October 2010) "Assessing EU Policy on Irregular Immigration under the Stockholm Programme". Available at: [www.ceps.eu/book/assessing-eupolicy-irregular-immigration-under-stockholm-programme](http://www.ceps.eu/book/assessing-eupolicy-irregular-immigration-under-stockholm-programme) (accessed 29 March 2011); E. Guild, "Who is an Irregular Migrant?", 3–28, in Barbara Bogusz, Ryszard Cholewinski, Adam Cygan and Erika Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*. (Leiden and Boston: Martinus Nijhoff Publishers, 2004); Dora Kostakopoulou (2004) "Irregular Migration and Migration Theory: Making State Authorisation Less Relevant", in Barbara Bogusz, Ryszard Cholewinski, Adam Cygan and Erika Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*. Leiden and Boston: Martinus Nijhoff Publishers, 41–57; Sylvie Da Lomba, Irregular migrants and the human right to health care: a case-study of health-care provision for irregular migrants in France and the UK, in: 7 (3) *International Journal of Law in Context* (2011); Douglas W. Macpherson and Brian D. Gushulak (2004) "Irregular Migration and Health", *Global Commission on International Migration (GCIM), Global Migration Perspectives*, No. 7, October. Available at: [www.gcim.org/gmp/Global"Migration"Perspectives"No"7.pdf](http://www.gcim.org/gmp/Global%20Migration%20Perspectives%20No%207.pdf) (accessed 29 March 2011).
17. E. Guild, "Who is an Irregular Migrant?", 3–28, in Barbara Bogusz, Ryszard Cholewinski, Adam Cygan and Erika Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*. (Leiden and Boston: Martinus Nijhoff Publishers, 2004), p. 3.
18. The official website of the Ministry of Internal Affairs of Finland is available at: [http://www.intermin.fi/en/migration/fight\\_against\\_illegal\\_immigration](http://www.intermin.fi/en/migration/fight_against_illegal_immigration).
19. Ministry of Internal Affairs of Finland. ANNUAL REPORT ON IMMIGRATION 2011, available at: [http://www.intermin.fi/download/35733\\_maahanmuutto\\_eng3107lr.pdf?1561759e7b52d088](http://www.intermin.fi/download/35733_maahanmuutto_eng3107lr.pdf?1561759e7b52d088).
20. See, for example, UN Human Rights Committee, Concluding Observations: The Republic of Moldova, UN Doc. CCPR A/57/40 vol. I (2002), paragraph 5.
21. See, for example, UN Committee on the Elimination of Racial Discrimination, Follow-up: State Reporting on Uzbekistan, UN Doc. CERD, A/62/18 (2007), paragraph 16.
22. See, for example, UN Committee on the Rights of the Child, List of Issues: Kyrgyzstan. 18/02/2000, UN Doc. CRC/C/Q/KYR/1. (List of Issues), paragraph 5.
23. OSCE. Office for Democratic Institutions and Human Rights. *Guidelines on Population Registration* (Warsaw: OSCE ODIHR, 2009)
24. OSCE, Office for Democratic Institutions and Human Rights, Annual Report 2009, April 29, 2010. The text of the document (in English) is available on the OSCE official website at: <http://www.osce.org/odihr/67854?download=true>.
25. The Council of Europe, Parliamentary Assembly, Resolution 1277 (2002) on the Honoring of Obligations and Commitments by the Russian Federation of April 23, 2002. The text of the document (in English) is available on the OSCE official website at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERES1277.htm>.
26. The European Court of Human Rights, *Tatishvili vs the Russian Federation*, Application No. 1509/02, Judgment of February 22, 2007.

27. The European Court of Human Rights, *Slivenko vs Latvia*, Application No. 48321/99, Judgment of October 9, 2003.
28. OSCE, Office for Democratic Institutions and Human Rights, *Guidelines on Population Registration* (Warsaw: OSCE/ODIHR, 2009).