

**LAW:
STUDIES BY SOVIET
SCHOLARS**

**THE STATUS
OF FOREIGNERS
IN
THE USSR**

**"SOCIAL SCIENCES TODAY" EDITORIAL BOARD
USSR ACADEMY OF SCIENCES**

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FOREWORD

The present publication prepared by research workers of the Institute of State and Law, USSR Academy of Sciences, deals with the legal status of foreign citizens in the USSR, as laid down in the new law adopted by the USSR Supreme Soviet in 1981.

The adoption of this law in modern conditions is necessitated by the broad development of economic, scientific, technical, cultural and other relations between the Soviet Union and other states. Over recent years the implementation of the Leninist peace-loving foreign policy has led to a considerable expansion of Soviet international relations at every level, and the number of foreign citizens in the country is steadily growing. This in turn explains the growing number of legal relations in which foreign citizens are involved. The interests of international cooperation and also the need to strengthen socialist legality and law and order call for the further improvement of the legal regulation of the status of foreign citizens in the USSR.

The provisions of the 1981 Law are closely linked to the constitutional principles of Soviet foreign policy and reflect the truly democratic nature of the socialist system and the humanism of Soviet legislation.

The victory of the socialist system in the Soviet Union not only proclaimed but also guaranteed, for the first time in history, the rights of working people of any nationality. The Soviet society of developed socialism ensures respect for civil, economic, social, cultural and other rights and provides for the free access of all members of society to labour, education, science and culture.

The legal status of the individual, his basic rights and freedoms, are the object of both intra-state and international legal regulation. These questions are dealt with by a number of important international agreements, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, to which the USSR is a signatory. These questions also occupy pride of place in such an important international document as the Final Act of the Conference on Security and Cooperation in Europe. Moreover, the legal status of foreign citizens is regulated by such bilateral international legal

documents as legal aid treaties, consular conventions, agreements on social security, agreements on mutual visa-free travel, etc.

The fulfilment in good faith by the USSR of obligations assumed in accord with universally recognised principles and norms of international law and international treaties is a major constitutional principle of Soviet foreign policy. The Soviet Union unswervingly and honestly fulfils its international obligations, including those that relate to the right of foreign citizens. This principle is also recorded in the 1981 Law on the Legal Status of Foreign Citizens in the USSR, which fact is a further guarantee that the Soviet state will observe all those obligations that follow from international legal instruments.

The present book consists of two sections. The first section contains articles by Soviet international legal experts M. Boguslavsky and V. Gridin, which were published in **The Soviet Yearbook of International Law for 1982**. These authors review the history of the regulation of foreigners' rights in the USSR, outline the new Law, analyse the democratic rights and freedoms of foreign citizens in the USSR in respect to property, labour, family, procedural and other rights and look at the terms of the exercise of these rights. When defining the rights and duties of foreigners in the USSR the authors consider the interaction of the norms of internal legislation and international treaties and the correspondence of these internal norms to international covenants on human rights. They analyse the provisions of the new Soviet Law and of the international covenants on human rights.

The second section (Appendix) contains the Law on the Legal Status of Foreign Citizens in the USSR and an annotated review of the basic provisions of current Soviet legislation on the legal status of foreigners in the Soviet Union. This section is of practical value and will help the foreign reader to find answers to his questions concerning Soviet law.

Grigori Tunkin,

Corresponding Member, USSR Academy of Sciences,
President of the Soviet Association of International Law

THE NEW SOVIET LAW ON THE LEGAL STATUS OF FOREIGN CITIZENS IN THE USSR

Mark **BOGUSLAVSKY**, D. Sc. (Law)

The adoption of the Law of the Union of Soviet Socialist Republics on the Legal Status of Foreign Citizens in the USSR¹ by the USSR Supreme Soviet on June 24, 1981 is closely connected with the implementation of the Peace Programme for the 1980s, adopted by the 26th Congress of the CPSU. As the international situation deteriorates still further, the Soviet Union is continuing its struggle for peace and international security, for mutually advantageous cooperation among the nations. The Law on the Legal Status of Foreign Citizens in the USSR was adopted at the same session of the USSR Supreme Soviet which adopted the Appeal to the Parliaments and Peoples of the World. This appeal declares that peace was and remains the supreme goal of Soviet foreign policy.

The peaceable Leninist foreign policy pursued by the Soviet Union has led in recent years to the further expansion of economic, scientific, technical and cultural ties between the USSR and other states. Soviet cooperation with the fraternal socialist countries has become particularly stable and diverse, and this explains the increasing number of foreign citizens staying on Soviet territory. Many specialists and workers from the CMEA countries come to the Soviet Union to work on joint industrial projects and to study in educational institutions. An international team of 15,000 workers was formed in the USSR to construct Europe's largest gas and chemical complex, and the main gas pipe-line "Soyuz". In accordance with the Programme of Socialist Economic Integration, the USSR is constructing a series of industrial complexes, and this requires the participation of specialists from other countries.

Ties between the Soviet Union and other states in the sphere of tourism and sport, science and culture, economy and trade are developing on a wide scale, and this is also causing the number of foreigners in USSR to increase. Over five years (1976-1980), 25 million foreign citizens visited the USSR, the annual increase being eight to ten per cent.

The adoption of the new Law was due to several factors of an internal and international nature. It was drafted in accordance with an extensive programme of legislation which provides for the further development and improvement of Soviet legislation on the basis of

the Constitution of the USSR and the publication of the Soviet Law Code. This legislative act is necessitated by practical needs. So far there was no single law regulating the legal status of foreigners. The rights and duties of foreigners were determined by numerous individual legislative acts which had been adopted in different times and had never been systematised.² Certain provisions in these acts are now outdated and do not meet modern conditions. There are also certain gaps in current legislation. All of this has created difficulties in the practical application of the laws governing foreigners' rights and duties both for the Soviet organs concerned and for foreign citizens resident in the USSR.³

The Development of Soviet Legislation on Foreigners

Foreigners staying on the territory of the Soviet Union are under its authority, or speaking in legal terms, are under its jurisdiction.

Throughout its existence the Soviet Government has paid considerable attention to the regulation of the legal status of foreigners and has issued a number of legislative acts in this sphere. The status of foreigners is regulated not only by specific legislation, but also by many international treaties concluded by the Soviet Union.

Throughout the different stages of the Soviet state's development, the legislation on foreigners has undergone many changes corresponding to the changes that have taken place in the economy and the class structure of Soviet society and in the international position of the socialist state.

The development of Soviet legislation on foreigners from the October Revolution of 1917 up to the adoption of the Constitution in 1977 can be divided into three stages. In the first stage—from October 1917 to the formation of the USSR in December 1922—the legal status of foreigners was determined by the legislative acts of individual Soviet Republics. After the formation of the USSR, the status of foreigners was regulated primarily by all-Union legislation, with certain republican legislative acts remaining in force.

The legislative acts of the first period included the 1918 Constitution of the RSFSR and also certain decrees, such as the Decree of the All-Russia Central Executive Committee of March 28 (15), 1918 on the Right of Asylum, which later became part of Art. 21 of the 1918 Constitution of the RSFSR, and also the Decree of the Council of People's Commissars of October 20, 1921 on the Entry of Foreigners into the RSFSR and the Decree of May 10, 1922, passed by the same Council on the Departure Abroad of RSFSR Citizens and Foreigners. On August 29, 1921 the Soviet Government adopted the Decree on the Procedure for Expelling Foreigners from the RSFSR, which declared: The RSFSR may expel from its territory any

foreigner whose way of life, activity and conduct are incompatible with the principles and mode of life of the Soviet state.⁴

The first Constitution of the RSFSR expressed the attitude of the young Soviet state towards foreigners. Pyotr Stučka, an outstanding Soviet jurist, wrote in this connection: "Arts. 118 and 120 of the French Constitution of 1793 solemnly declared that the French nation is the friend and natural ally of free nations. It provides asylum to foreigners who have been expelled from their country for taking part in the struggle for freedom. It refuses asylum to tyrants. Arts. 20 and 21 of the Soviet Constitution go much further."⁵

The granting of political rights to foreign working people was a specific feature of Soviet legislation on foreigners in the first years of the Soviet state. This provision was proclaimed in Art. 20 of the 1918 Constitution of the RSFSR, which said: "Proceeding from the solidarity of the working people of all nations, the RSFSR grants full political and civil rights to foreigners resident on the territory of the Russian Republic and belonging to the working class or to the peasantry who do not employ the labour of others." This article was drafted parallel to the elaboration of the first Soviet international treaty—the treaty concluded between Soviet Russia and Finland in 1918—in which Lenin, the founder of the Soviet state, took an active part.

In the course of the negotiations, the Soviet side drafted an article on the legal status of Finnish citizens in Soviet Russia and the Finnish side drafted an article on the legal status of citizens of the Russian Federation in Finland.⁶ The draft article (§ 13 of the treaty of March 1, 1918) provided for the enjoyment of political rights by citizens of Finland in Russia if they "belong to the working class or to the peasantry who do not employ the labour of others".

In his draft of Point 20 in the second section of the 1918 Constitution of the RSFSR, Lenin wrote the following in early July 1918: "The RSFSR recognises the full civil and political equality between citizens of Russia and working foreigners engaged in productive labour on the territory of the Republic."⁷

This concept formulated by Lenin was used in the text of the first Soviet Constitution: the Soviet section of § 13 in the Soviet-Finnish Treaty was incorporated into the draft Constitution as Article 20, referred to above. A similar article was also included in the first Constitutions of the Ukrainian Soviet Republic and the Azerbaijan Soviet Republic and, in a slightly different form, in the Constitution of the Armenian Soviet Republic. According to the Constitution of the Georgian Soviet Republic, electoral rights were granted to foreigners on the decision of the republican state authorities.

The fact that electoral rights were granted to foreigners in accord with the class principle was determined in that period by the general principles of Soviet constitutional law, which was operating in a situation of class struggle within Soviet society and on the basis of the state of proletarian dictatorship.

The democratic nature of the Soviet state, its genuine internationalism, was reflected in the adoption, on March 28, 1918, of the decision on the right of asylum. According to this decision any foreigner who is persecuted in his own country for political or religious activities may enjoy the right of asylum in the RSFSR.

The Russian Federation adopted decrees on the status of foreigners working or studying in Soviet Russia. For example, the 1921 decree stipulated that foreigners studying in Soviet higher educational establishments could not receive Soviet government grants unless they undertook to place themselves at the disposal of RSFSR economic bodies after their graduation from these establishments and to work in accord with their qualifications for a period equalling that covered by their grant.

A number of similar decrees were promulgated in Soviet Georgia, Armenia, the Ukraine and Byelorussia. On August 8, 1921, Georgia adopted a decree on foreigners in which it proclaimed the principle of equality between foreigners and local citizens. Armenia adopted a special act on the rights and duties of foreigners.⁸ On March 28, 1922, the Ukraine replaced a series of decrees by a special Statute on Foreigners in the Ukrainian Soviet Socialist Republic, and on the Acquisition and Forfeiture of Ukrainian Citizenship. A similar Statute on Foreigners was adopted by the Byelorussian Republic on August 4, 1922.

These statutes regulated in detail a number of aspects of the legal status of foreigners. The Ukrainian Statute on Foreigners stipulated the following: foreigners were subject to the laws and state authorities of the Ukraine; they enjoyed the same rights and duties as Ukrainian citizens with some statutory exceptions; they had the right to apply to government bodies and courts of law; they enjoyed government protection for their personal and property rights and interests; they bore responsibility for criminal and political offences, etc. This Statute contained a legal definition of the term "foreigner", specified the property, inheritance and other rights of foreigners, regulated questions related to marriages between foreigners contracted in the Ukraine and between foreigners and Ukrainian citizens, and determined the procedure of entering and leaving the Republic, the procedure for expulsion from the Republic, for naturalisation, etc.

The Russian Federation and the Transcaucasian Federation did not adopt such comprehensive legislation, but issued separate decisions on different aspects of the legal status of aliens. Their status in civil law was determined in the republican civil codes. The passive capacity of aliens under civil law was dealt with in Art. 8 of the Introductory Law of the Civil Code of the RSFSR (as formulated on November 23, 1922) and in similar articles in the introductory laws of the codes of other Union Republics. On April 5, 1923, the Transcaucasian Federation adopted a law on the rights of aliens and foreign legal persons which was essentially similar to these articles.

Art. 8 of the Introductory Law of the Civil Code of the RSFSR, which defined the passive capacity of foreigners, was linked in substance to Art. 5 of the same Code, which listed the rights granted to Soviet citizens. This list included the right of free movement, the right to choose a profession, the right to acquire and dispose of property, the right to conclude agreements, the right to assume obligations, the right to set up industrial and trading enterprises provided that all decisions regulating industrial activity and business and protecting employed labour are observed. This list of rights mirrored the fact that the Code was adopted in the first years of the New Economic Policy (NEP) pursued by the Soviet Republic. At that time the decisions of the 10th Party Congress allowed private enterprise on a limited scale and under state control.

Art. 8 placed foreigners and Soviet citizens on an equal footing. At the same time it stipulated that Soviet central bodies may restrict the right of movement of foreigners, their right to choose a profession, their right to open up and acquire commercial and industrial enterprises and their property rights as regards buildings and land plots.

Legislation on aliens underwent no basic change at the second stage of its development, that is from the formation of the Soviet Union in 1922 and the adoption in 1924 of the first Constitution of the USSR up to the adoption of the second Constitution of the USSR in 1936.

A government resolution of June 26, 1925, granted to working aliens (on a par with Soviet citizens) the right to land use without employing others. Certain categories of aliens received the right to join consumer, housing and producers' cooperatives. Aliens who met some additional conditions could become members of cooperatives, and enjoy their rights, but could not elect cooperative management and control bodies of cooperatives nor be elected to them.

This same period saw the adoption of other all-Union enactments on certain aspects of the status of aliens. On September 3, 1926, the Central Executive Committee and the Council of People's Commissars of the USSR issued a special resolution. This resolution entitled "On Aliens with Temporary or Permanent Residence in the USSR", divided all aliens on Soviet territory into two categories: a) those who were staying in the country on a temporary basis; b) those who resided permanently in the USSR.

The latter category included persons who were lawfully residing in the USSR and were engaged on Soviet territory in any lawful sphere of activity for not less than 18 months. All other aliens were deemed to be staying in the USSR on a temporary basis. In 1930, the Central Executive Committee and the Council of People's Commissars of the USSR adopted a resolution on alien membership of consumer cooperatives.

Art. 8 of the Introductory Law of the RSFSR Civil Code still remained in force, with the sole exception of the right to open

commercial and industrial enterprises, since, after the first few years of NEP this right was also withdrawn from Soviet citizens. The complete liquidation of the private sector of the economy in the USSR led to a change in the civil rights of aliens.

Attention must also be drawn to the changes in Soviet legislation governing economic activity by aliens on Soviet territory. Special decisions regarding concessions and the operation of mixed societies, which were issued at the start of NEP, subsequently lost their importance and were repealed. Changes also occurred in the laws allowing foreign firms to conduct commercial operations in the USSR. The licensing procedure introduced by a resolution of April 12, 1923, was also retained in the resolution issued by the Central Executive Committee and the Council of People's Commissars on March 11, 1931. However, the latter reflected the decrease in direct economic activity by foreign firms on Soviet territory. Soviet organisations began to conclude foreign trade transactions with the representatives of firms who arrived in the USSR for this purpose and who did not stay here permanently. The 1931 resolution stipulated that representatives of foreign firms who came to the Soviet Union to conclude trade deals need not receive special permits and need not be specially registered.

The third stage — from the adoption of the 1936 Constitution of the USSR to the adoption of 1977 Constitution of the USSR — was marked by such important events in the life of the Soviet state, as the victory in the Great Patriotic War (1941-1945), the rehabilitation of the national economy, the building of a society of developed socialism, and the development of the socialist state of proletarian dictatorship into the socialist state of the whole people.

The 1936 Constitution of the USSR reflected the deep changes that had taken place in the life of Soviet society, in its economy and class structure. The socialist sector became dominant in all spheres of the national economy. The victory of socialism resulted in the liquidation of the last exploiting classes in town and country (merchants and kulaks) and in the emergence of the moral and political unity of the Soviet people.

Soviet legislation on the civil rights of aliens did not undergo any change. Foreigners enjoyed in principle the same rights that were accorded to Soviet citizens. However, this stage of the Soviet state saw changes in the content of the rights of Soviet citizens, and hence of the rights of aliens. The full victory of socialism, the spectacular successes of the Soviet economy, resulted in the complete abolition of the existing forms of economic activity by capitalist entrepreneurs on Soviet territory. According to the USSR Constitution of 1936, the adoption of legislation on the rights of aliens came under all-Union jurisdiction (Art. 14, Point 20). However, no Union laws on foreigners were passed in that period.

The provisions covering foreigners were contained in such all-Union laws as the 1938 Law of Citizenship, Government resolutions