

THE CITIZENSHIP LAW OF THE USSR

by

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TO HERTA

FOREWORD

In 1968, the predecessor of this volume was published as Number 15 of the *Law in Eastern Europe* series, under the title "Soviet Citizenship Law". The decision to put out a new version of that study was prompted by the enactment in 1978 of the current Law on the Citizenship of the USSR and the various changes in Soviet practice in this domain which occurred in the intervening decade. I have drawn on the earlier work for background material and in order to make comparisons between the previous record here and the substance of the latest statute. However, the present monograph is not a second edition in the sense of being an expanded and updated revision of the original, but stands as an independent piece of research and analysis. Thus, three of the chapters (out of a total of six) featured in the 1968 volume — citizenship and state succession, state succession and option of nationality, and refugees and displaced persons — have now been omitted for the simple reason that the situation in these areas has remained virtually static during the past ten years so that the initial treatment requires no significant alteration. On the other hand, fresh problems have meantime arisen — such as, for instance, the connection between citizenship and emigration, and the relationship between citizenship status and the international protection of human rights — which called for attention and are dealt with in this book. In short, for complete coverage, both monographs should be consulted: the first one providing additional historical perspective, its successor focusing more on today's issues.

I gratefully acknowledge my indebtedness to the National Endowment for the Humanities for an award to pursue research on the development of Soviet constitutional and administrative institutions after Stalin of which the present study is a by-product, and to the FASP Grants Committee of Rutgers University for financial assistance that allowed this project to be completed. Special thanks are also due to Henn-Juri Uibopuu, Ger P. van den Berg and William B. Simons for supplying me with the texts of several pieces of recent local legislation and thus sparing me some embarrassing lapses.

G.G.

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This monograph is the culmination of an enduring research interest in various aspects of Soviet policy on citizenship law. In order not to overload the bibliography, I have decided to list separately my previous publications on the subject and, in that context, to express my gratitude to all people concerned for permission to draw on these materials in the preparation of the present work.

"The Soviet Union and the Problem of Refugees and Displaced Persons, 1917–1956", *American Journal of International Law*, 1957, No.2, pp.325–361.

"Option of Nationality in Soviet Treaty Practice, 1917–1924", *American Journal of International Law*, 1961 No.1, pp.53–75.

"Option of Nationality in Soviet Treaty Law: The War–Time and Post–War Record", *Iowa Law Review*, 1964, No.4, pp.1130–1176.

"Soviet Citizenship Legislation and Statelessness as a Consequence of the Conflict of Nationality Laws", *International and Comparative Law Quarterly*, 1966, No.1, pp.1–54.

Soviet Citizenship Law (No.15 in *Law in Eastern Europe* series, ed. by Z. Szirmai), Leyden: Sijthoff, 1968, 270pp.

"Nationality and State Succession in Soviet Theory and Practice: The Experience of the Baltic States", in A. Sprudz & A. Ruis, eds., *Res Baltica*, Leyden: Sijthoff, 1968, pp.160–190.

"Soviet Law and the Acquisition of Citizenship At Birth", *University of Toronto Law Journal*, 1970, No.1, pp.71–80.

"The Soviet Union and International Cooperation in Legal Matters: Criminal Law — The Current Scene", *International and Comparative Law Quarterly*, 1970, No.4, pp.626–670.

"Soviet Citizenship Law: New Light on Administrative Procedure", *Osteuropa-Recht*, 1971, No.1, pp.1–6.

"Soviet Law and the Emigration of Soviet Jews", *Soviet Jewish Affairs*, 1973, No.1, pp.3–19.

"The Citizenship Status of Koreans in Pre–Revolutionary Russia and the Early Years of the Soviet Regime", *Journal of Korean Affairs*, 1975, No.2, pp.1–19.

"The Citizenship Status of Koreans in the USSR: Post–World War II Developments", *Journal of Korean Affairs*, 1976, No.1, pp.1–16.

- “Current Legal Problems of Jewish Emigration from the USSR”, *Soviet Jewish Affairs*, 1976, No.2, pp.3–13.
- “The Citizenship Status of Soviet Koreans, 1945–1975”, in L. Lipson & V. Chalidze, eds., *Papers on Soviet Law*, New York, 1977, No.1, pp.143–166.
- “Emigratsiia koreitsev iz SSSR”, *Khronika zashchity prav v SSSR*, 1977, vyp.25, pp.65–71.
- “Citizenship Questions in Postwar Sino–Soviet Relations”, *A Chronicle of Human Rights in the USSR*, 1977, No.26, pp.67–75;
- “Problema grazhdanstva v poslevoennykh kitaisko–sovetskikh otnosheniiakh”, *Khronika zashchity prav v SSSR*, 1977, vyp.26, pp.66–72.
- “The New Soviet Citizenship Law and the Universal Declaration of Human Rights”, *A Chronicle of Human Rights in the USSR*, 1979, No.33, pp.47–53;
- “Novyi Sovetskii zakon o grazhdanstve i Vseobshchaia Deklaratsiia Prav Cheloveka”, *Khronika zashchity prav v SSSR*, 1979, vyp.33, pp.62–71.
- “Substantive Aspects of the 1978 Law on Soviet Citizenship: First Impressions”, *Review of Socialist Law*, 1979, No.4, pp.381–407.

TABLE OF CONTENTS

FOREWORD	X
ACKNOWLEDGMENTS	XI
 I. INTRODUCTION	 1
1. Constitutional Basis	1
2. Historical Background	6
Notes	16
 II. SOURCES. FEDERAL CITIZENSHIP AND REPUBLICAN CITIZENSHIP	 19
1. Sources	19
2. Federal Citizenship and Republican Citizenship	29
Notes	40
 III. LEGISLATIVE BASIS. RECOGNITION. MARRIAGE. RESIDENCE ABROAD. EXTRADITION	 45
1. Legislative Basis	45
2. Recognition	46
3. Citizenship and Marriage	52
4. Residence Abroad	60
5. Extradition	66
Notes	67
 IV. DUAL NATIONALITY	 71
I. General Principles	71
II. Conflicts-in-Law Portfolio	82
1. At Birth	82
A. Jus Sanguinis	82
B. Jus Soli Versus Jus Sanguinis	83
C. Agreement of the Parents Versus Jus Sanguinis and Jus Soli	83
2. Naturalization	85
A. Primary Naturalization	85
B. Derivative Naturalization	88
3. Marriage	89
4. Minors	91
A. Adoption	91
B. Legitimation and Quasi-Legitimation	92
Notes	95

V. DUAL NATIONALITY AND SOVIET DIPLOMATIC AND TREATY PRACTICE	99
Notes	131
VI. STATELESSNESS AS A CONSEQUENCE OF THE CONFLICT OF NATIONALITY LAWS (Part I)	137
I. Conflicts-in-Law Varietals of Statelessness	138
1. Failure to Acquire Nationality at Birth	138
A. Jus Soli Versus Jus Sanguinis	138
B. Child of Stateless Parents	140
C. Foundlings	142
D. Illegitimate Children	143
a. Paternity	144
b. Legitimation	148
2. Stateless Minors	151
A. Change of Nationality of Parents	151
B. Adoption	155
Notes	161
VII. STATELESSNESS AS A CONSEQUENCE OF THE CONFLICT OF NATIONALITY LAWS (Part II)	164
Statelessness as a Result of Marriage	164
A. At the Time of Marriage	164
B. During and at the Dissolution of Marriage	167
II. Legislative and Diplomatic Practice	172
Notes	188
VIII. ACQUISITION OF USSR CITIZENSHIP	193
1. Grounds for Acquiring USSR Citizenship	193
2. Acquisition of USSR Citizenship by Birth	194
3. Acquisition of USSR Citizenship by Children of Stateless Persons	210
4. Foundlings	212
5. Admission to the Citizenship of the USSR	214
Notes	223
IX. LOSS AND RESTORATION OF SOVIET CITIZENSHIP	228
1. Grounds for Losing USSR Citizenship	228
2. Exit from Soviet Citizenship	230
3. Deprivation of USSR Citizenship	238
4. Restoration of USSR Citizenship	246
Notes	253

X. STATUS OF MINORS	258
1. When Both Parents Change Citizenship	258
2. When One Parent Acquires USSR Citizenship	259
3. When One Parent Leaves USSR Citizenship	263
4. Adoption and Acquisition of USSR Citizenship	266
5. Adoption of Soviet Children by Foreign Citizens	269
Notes	274
XI. PROCEDURAL FORMAT	278
1. Background	278
2. Current Legislation	285
A. Certification of Soviet Citizenship	285
B. Admission, Renunciation, Restoration and Deprivation	288
Notes	299
XII. EMIGRATION AND IMMIGRATION	301
A. The Chinese Case	309
B. The Korean Question	316
C. The Jewish Problem	326
a. Restrictions on Emigration	326
b. Possibility of Appeal	329
c. Nationality Criterion	332
d. Family Reunion Principle	332
e. Character Reference and Family Permission	333
f. Reimbursement for Higher Education	335
g. Renunciation of Citizenship	337
h. Returning to the USSR	339
i. Detente and Emigration	340
j. Helsinki and After	342
Notes	349
XIII. THE NEW SOVIET CITIZENSHIP LAW AND HUMAN RIGHTS	357
1. Universal Declaration of Human Rights	357
2. International Covenant on Civil and Political Rights	364
3. Convention on the Nationality of Married Women	366
4. Convention on the Reduction of Statelessness	368
5. Final Act of the Helsinki Conference	370
Notes	373

SELECTIVE BIBLIOGRAPHY	379
A. Books	379
B. Articles	385
INDEX	391

INTRODUCTION

1. Constitutional Basis

Like its predecessor, the 1977 Constitution of the USSR contains several provisions dealing with citizenship questions. An innovation of the latest Fundamental Law is the inclusion of the item "USSR Citizenship" in the title of chapter 6 (along with "Equality of Citizens") which, in turn, appears in the section devoted to the theme of "The State and the Individual". These stylistic changes have some interesting implications. In the 1936 federal charter, the main reference to the topic of citizenship — Article 21 — was featured in the chapter on the "State Structure" of the USSR. The location left no doubt that citizenship was then considered the exclusive affair of the state, whereas the present formulation tends instead to emphasize the relationship between the state and the individual in this connection. Or, as a Soviet author prefers to put it,

"the prescriptions on Soviet citizenship in the aforecited constitutions [i.e., those belonging to the 1936 generation] figured in the sections on the state structure of the USSR and union republics. Thereby, citizenship as an institution defining the legal ties between the individual and the state ended up isolated from the fundamental rights and duties of citizens which formed the basis of their legal status.

In the 1978 BSSR Constitution, just as in the 1977 USSR Constitution, the seminal prescriptions on Soviet citizenship are set forth in the same section as the fundamental rights, freedoms and duties of citizens. In this manner, there has been achieved a comprehensive enunciation of the bases of the legal status of the citizens of the Belorussian SSR."¹

Such portrayal of the individual as a partner in the matter fits, of course, the regime's current desire to project a more "democratic" image of the workings of the Soviet system and to advertise the Soviet state's "abiding respect" for the position of the person. The mention of "USSR Citizenship" in a chapter heading also amounts to a technical promotion in that the step serves officially to elevate the artifact to constitutional rank. In terms of these kinds of "symbols", the previous Constitution had treated the business of citizenship in much more modest fashion.

The 1977 Constitution's substantive precepts regarding citizenship are set forth in Article 33, according to which:

"A single union citizenship is established in the USSR. Every citizen of a union republic is a citizen of the USSR.

The grounds and the procedure for acquiring and losing Soviet citizenship are defined by the Law on Citizenship of the USSR.

Citizens of the USSR abroad enjoy the defense and protection of the Soviet state."

Since these postulates are reproduced virtually verbatim in the body of the 1978 statute on USSR citizenship, their concrete meaning will be fully analyzed in that latter context as the occasion arises. Here, a few general observations will suffice, aimed primarily at spotting elements of difference and similarity between the language of this passage and that of its earlier counterpart.

Although the first sentence of Article 33 closely resembles its opposite in Article 21 of the 1936 charter, the wording has been slightly altered and the change, one gathers, is intentional. The former version read: "A single union citizenship shall be established for the citizens of the USSR". For many years, the phrasing attracted no attention, but toward the end of the sixties and in the beginning of the seventies some Soviet scholars were at last moved to account for the apparent tautological quality of that clause which, taken literally, seemed to be saying that "for citizens of the USSR is established citizenship of the USSR". The explanation that was offered was to look at the expression "single" not as the equivalent of "common", but as evoking instead the concept of "united", i.e., in the sense of "unified" in lieu of "singular", which suggests a spiritual rather than a quantitative yardstick.²

This line of reasoning relies on the following points. Reference was made, for example, to the fact that the corresponding entry in the 1924 federal Constitution had directed that "for citizens of the union republics there shall be established a single citizenship". The 1936 revision which here skipped mention of the union republics and replaced "single citizenship" with "single union citizenship" consequently pursued a dual objective: 1) to ratify the existence of a separate phenomenon of "union citizenship"; and, 2) to recognize the principle of "union citizenship", but not draw any connection with the union republics. The shift presumably marked the achievement of a new synthesis in this area, with the institution of "union citizenship" incarnating the superior communion now attained by Soviet society. Or, to let a Soviet commentator articulate the thought in his own way, "the unity of socialist nations and peoples within the framework of the Soviet federation and autonomy thus also lies at the root of unity of Soviet citizenship".³ Notwithstanding how intellectually fuzzy the argument might sound, the practical message is quite clear, namely, that the USSR had by then reached a stage of historical development where the level of internal cohesion required a country-wide citizenship to match the progress already registered by the community en route to final unification. Such a scenario summoned the vision of further expansion of federal powers in this sphere, meaning that the union republics might ultimately find themselves stripped of what little authority they were still officially endowed with in these affairs.

That prospect may, indeed, explain why these views did not go entirely unchallenged, since the criticism revolved essentially around how jurisdiction over these matters should be apportioned between the central and republican apparatus. Strong objection was voiced to the claim that "in the USSR there is a single union

citizenship and that citizens of the USSR possess this citizenship” and the contrary thesis was propounded maintaining that there ought not to be citizens of the USSR in “pure” form, independent of the citizenship of a particular union republic (even though conceding that such a situation could in fact arise under current legislation). On that note, preference was expressed for the “more felicitous” formula featured in the 1924 Constitution on the grounds that speaking of “the principle of unity of Soviet citizenship does not reflect the presence of republican citizenship” and that the designation of that principle must reflect “the federative elements in Soviet citizenship”.⁴

Enthusiasm for the cause of the union republics has since faded and, while the terminology of the applicable provision in the 1977 charter does manage to cure the semantic tautology that afflicted its predecessor, the union republics have not recovered their pre-1936 role in handling citizenship questions. The proposed roll-back of the federal government’s precedence in this domain and simultaneous restoration of a fair equilibrium between the center and the republics in dealing with these items did not occur.

Formally, of course, the first paragraph of Article 33 in the latest federal Constitution strives to perpetuate the concept of the duality of citizenship in the USSR predicated on the concurrent existence of federal and republican citizenships. We will return to this topic later in discussing the relationship between citizenship status and the USSR’s federal structure and look at the record in greater detail. Nevertheless, inasmuch as the new federal and republican charters also shed light on the subject, a preliminary survey of the relevant terrain as mapped in those documents may be warranted at this juncture.

No matter how much the Soviet regime would like to cultivate the image of a two-tier citizenship operating in the conditions of the USSR, the actual evidence leaves no doubt that federal citizenship figures far ahead in the pecking order. The substance of the next paragraph confirms that impression. The clause has no analogue in the 1936 version (or its subsequent republican replicas). Thus, the importance of the fact that the authors of the 1977 edition now chose to spell out that the grounds and procedure for acquiring and losing Soviet citizenship are defined by the Law on Citizenship of the USSR resides not in the tenor of the message (which is predictable), but in the underlying decision to grant express constitutional imprimatur to said statute. The move lends an aura of prominence to the legislation concerning USSR citizenship that further eclipses whatever meaning still attaches to any corresponding republican regulations and, coincidentally, the phenomenon of republican citizenship itself.

The tone of the republican constitutions strikes the same key.⁵ For example, the 1978 Fundamental Law of the RSFSR (just as its 1937 antecedent) echoes the proposition that every citizen of the RSFSR is a citizen of the USSR and, revealingly, adds the federal Constitution’s latest pronouncement that the grounds and procedure for acquiring and losing Soviet citizenship shall be defined by the Law on Citizenship of the USSR. Observe that the supreme law of the USSR’s principal republic relies on the federal statute pertaining to citizenship questions, but never ventures to sanction the enactment of similar legislation on the local level to outline the mechanics of entry into RSFSR citizenship, even while publicizing such an

identity. The RSFSR charter likewise indicates (thereby continuing a well-established tradition) that the citizens of the associated union republics enjoy on the territory of the RSFSR equal rights with citizens of the RSFSR. What this signifies is that a citizen of a sister-republic is not an alien or foreigner under the provisions of RSFSR law and his or her possession of another republican citizenship makes no difference in terms of capacity to exercise the ensemble of political, social, and economic rights vested in RSFSR citizens by dint of either federal or republican legislation. Hence, with rare and marginal exceptions (arising out of special circumstances of sojourn abroad), the individual's life is in no material sense affected by the republican citizenship he/she happens to hold.

In short, one is fairly safe in concluding that, as in the recent past, the role of the republics in this area will be limited to the performance of certain ancillary administrative chores involving the ad hoc implementation of germane federal directives. The arrangement has the advantage of fulfilling the regime's cosmetic exigencies for improving the looks of the Soviet federal model, while leaving real power to run this department in the hands of the central government.

The last paragraph of Article 33 (RSFSR, Article 31) which commits the competent authorities to the protection of USSR (RSFSR) citizens abroad enunciates a stock rule, but, once again, elevates it to the grade of a constitutional norm. Since the statement recurs in the 1978 citizenship act, its relevance to the technical aspects of citizenship will be analyzed in that context.

The second article to mention the subject of citizenship (USSR 59; RSFSR 57) does so in proclaiming the duty of every USSR (RSFSR) citizen to "bear with dignity the high calling of citizen of the USSR" (Soviet citizen). At first blush, the pitch sounds as a familiar sample of rhetorical bombast. However, to the extent that the formula suggests that a Soviet citizen may be called upon to meet certain standards of "moral excellence" in order to "deserve" full membership in Soviet society, failure to "pass the test" is apt to have adverse repercussions and, as the record shows, in fact is often cited as the official rationale for decreeing the "misfit's" exclusion from the community. The mere incident of the clause being so vaguely worded that it cannot possibly afford intelligent guidance on the manner of its prospective interpretation and enforcement in all likelihood only enhances the scheme's attractiveness in the eyes of the local officialdom. At any rate, Soviet legal spokesmen do not seem in the least troubled by such details and frankly invoke the language of Article 59 to justify the position that "acts discrediting the high calling of Soviet citizen, incompatible with it, can serve as reason for adopting a decision to deprive a person of Soviet citizenship".⁶

Several changes may also be noted on the organizational front. For instance, Article 14 of the 1936 federal Constitution which listed the items that fell within the jurisdiction of the USSR, as represented by its highest organs of state power and organs of state administration, numbered among them the adoption of "legislation on union citizenship". The phrase is missing from the corresponding rubric in the 1977 USSR Constitution (Article 73), perhaps because the authors of the document felt that it would be redundant given the earlier reference to the Law on Citizenship of the USSR in Article 33 (which, as previously indicated, is not encountered in the 1936 federal charter). Thus, they may just have assumed that such an express man-