

**Freedom**

**of Movement:**



# **1. The CIS Migration Conference: Implementation of the Programme of Action of the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States**

## **2. The Issue of Internal Registration (Propiska)**

**OSCE Human Dimension  
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Background Paper 2**

This report is one of a series of papers prepared under the auspices of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe for the benefit of participants at the 1998 Implementation Meeting on Human Dimension Issues. Every effort has been taken to ensure that the information contained in this report is accurate and impartial. We are grateful to a number of experts for their valuable contributions to this series.

These papers are intended to highlight key issues and to promote constructive discussion; the opinions and information they contain do not necessarily reflect the policy and position of the Office for Democratic Institutions and Human Rights or of the Organization for Security and Co-operation in Europe. Any comments or suggestions should be addressed to the ODIHR.

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# 1. THE ISSUE OF INTERNAL REGISTRATION (*PROPISKA*)

## EXECUTIVE SUMMARY

The report examines one aspect of the issue of freedom of movement – freedom of movement and choice of place of residence *within* states. The report focuses on the system of restrictions on freedom of movement and choice of place of residence in the former Soviet Union known as *propiska* and the ways in which it contradicts OSCE commitments and other international human rights standards. The report also explains how the *propiska* system especially adversely affects vulnerable groups, in particular migrants of all categories.

The report goes on to examine the extent to which the *propiska* system has been reformed in the Newly Independent States. The report finds large differences in the progress made in the process of reforming the *propiska* system. While some States have made significant progress towards abolition of this system, others have not even acknowledged it as a human dimension problem. In yet another group of States the national *propiska* system has been abolished, while regional *propiska*-like systems, aimed at making migrants unwelcome, have emerged.

Finally, the report offers recommendations to the OSCE as well as to the participating States concerned. The OSCE is encouraged, through its Missions and institutions, to provide expert advice and make available information on the experience of other States, taking into account the interests of states envisaged in OSCE commitments. The development of new legislation is only a small part of the task. Assuring implementation is far more important. Making the public aware of new regulations is another component of the work.

The 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 privatize the property on which they resided, since privatization was closely linked to *propiska* in most of the Newly Independent States. Working on solutions to overcome the legacy of *propiska* for these persons requires the OSCE's special attention in the field.

There is a need for exchange of knowledge and strengthening of expertise about registration systems which correspond better 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 are in the process of replacing the *propiska* system (Georgia, Latvia, Moldova, Ukraine), as well as established registration systems in Western countries, has to be shared, taking into account local specificities and concerns. The OSCE, through the ODIHR, can play a vital part in disseminating this information as well as in stimulating discussions aimed at breaking down the stereotypes of the supposed benefits of the *propiska* system.

The participating States concerned are encouraged to consider replacing *propiska* by a different form of registration system, which could perform the useful "information" functions of the *propiska*, while discontinuing those which relate to "control" of the population. Identification of the functions which should and should not be served by any new system is key.

In a democratic society, any system will also need to address individual data protection issues (i.e. confidentiality/sharing information and access to information). In this context, the need for a civil body (such as the Ministry of Justice) to undertake the task of such information gathering, rather than a police body is suggested.

In addition, courts and national human rights institutions could consider dealing with complaints on violations of the right to freedom of movement and choice of residence as a matter of top priority.

## 1. INTRODUCTION

There are many aspects of freedom of movement. This paper is limited in scope in both the thematic and geographic senses. The paper will deal only with freedom of movement and choice of place of residence *within* states rather than between states. The paper will address only the Newly Independent States for a number of reasons. First, these states share the common heritage of legal and administrative restrictions on freedom of movement and choice of place of residence that existed in the former Soviet Union. While similar restrictions existed in some Central European states, they were not as integral a part of the entire social system as they were in the former USSR, where they came into effect in the 1930s. This is evidenced by the fact that only the Newly Independent States were criticized for these kinds of restrictions at the 1997 Implementation Meeting on Human Dimension Issues. This is the second reason for limiting the geographical scope of this report, which aims to serve as a tool for assisting the participating States in assessing the progress achieved since the 1997 Implementation Meeting. Another goal of this report is to offer recommendations to overcome the legacy of restriction of freedom of movement and choice of place of residence.

The former Soviet state openly and directly manipulated patterns of individual choice of place of residence. This was done, most notably, through an internal passport system and limits on central city registration. Valid internal passports contained a so-called '*propiska* stamp' which reflected the passport holder's address. Residing at an address different from one shown on the *propiska* stamp, as well as obtaining social services, getting married, and even receiving funeral services, was illegal. By preventing migrants from integrating themselves into distributional networks in restricted cities, the passport and *propiska* system generated a situation in which potential migrants either acquired *propiskas* through semi-legal avenues, denied themselves access to distributional networks or elected not to migrate.

As migration flows have increased dramatically in the former Soviet states, the enduring *propiska* system poses a barrier to finding durable solutions for migration problems in the Newly Independent States and to meeting international standards in the area of freedom of movement.

## 2. OSCE COMMITMENTS AND OTHER INTERNATIONAL STANDARDS

The principle of freedom of movement and choice of place of residence is reflected in OSCE commitments.

The Concluding Document of Vienna Meeting, January 1989, paragraph 20 states:

"The participating States will respect fully the right of everyone to freedom of movement and residence within the borders of each State."

In the Document of the Copenhagen Meeting on the Human Dimension of the CSCE, June 1990, the participating States affirm that freedom of movement is important in the context of protection and promotion of human rights and fundamental freedoms.

In the Charter of Paris for a New Europe, November 1990, the OSCE participating States affirm that every individual has the right to freedom of movement.

The clearest commitment to this principle is contained in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, October 1991, which states in Chapter 3, paragraph 33: "The participating States will remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners, and with respect to residence for those entitled to permanent residence, except those restrictions which may be necessary and officially declared for military, safety, ecological or other legitimate government interests, in accordance with their national laws, consistent with CSCE commitments and international human rights obligations. The participating States undertake to keep such restrictions to a minimum."

The principle of freedom of movement and choice of place of residence within the internal borders of a state stems from a number of internationally accepted human rights instruments, in addition to OSCE commitments. 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."

Article 1 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1963, entry into force: 2 May 1968) guarantees that: "no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation." Article 2 further states that "[...]. 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of "ordre public", for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Finally, Principle 14.1 of the Guiding Principles on Internal Displacement, adopted by the UN Commission on Human Rights in 1998 states that: "Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence."

### **3. HISTORICAL DEVELOPMENTS<sup>1</sup>**

#### **3.1. The Early Years**

Although many believe that the *propiska* has its origins in Stalin's society, the Russian Empire employed an internal passport system and administrative limits on primary city growth as early as the sixteenth century. The Soviet state interpreted the imperial legacy of migration restrictions in several ways. After a brief attempt to maintain the tsarist passport system in the early years of Bolshevik power, the general upheaval and ensuing civil war made attempts at restricting population migration futile and the passport system was abandoned.

During the 1920s the New Economic Policy led to an increase in entrepreneurial activities. Rural co-operatives grew in number and prosperity, perhaps lessening the desire for rural out-migration, while massive urban unemployment reduced potential returns to such migration. As the civil war ended, a more stable political situation emerged; people migrated to the cities in large numbers, both as returnees and as initial migrants. Apartments were assigned and job opportunities distributed. As limited services and amenities appeared, cities began to again achieve the relatively advantaged position that they had held prior to the revolution.

By the 1920s, with the shift towards five-year plans and collectivization underway, the emphasis on the expansion of industry and the collectivization of agriculture gave both a pull and a push to potential rural out-migrants. Still publicly committed to its promise of housing and employment for all citizens, the state began keeping registries of city and village inhabitants. There was as yet no overt attempt to control migration into central cities or out of villages. In subsequent years, rapid urban in-migration, coupled with the strains of

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<sup>1</sup> These parts build on Cynthia Buckley, *The Myth of Managed Migration*, *Slavic Review*, Volume 54, Number 4, Winter 1995, as well as on background materials prepared for the experts meeting sponsored by UNHCR, the Council of Europe, and OSCE/ODIHR, Kiev, December 1997.

fulfilling the promises of the revolution, increased the difficulties associated with the distribution of social services. Overcrowded cities presented serious social and political problems for the Soviets. Urban in-migration quickly outstripped the existing capacities of urban infrastructure: the Bolsheviks had come into power with a strong socialist agenda, a social contract under which citizens were encouraged to view housing, employment and food as rights, not needs. In 1931, decrees limiting in-migration and new construction in Moscow and Leningrad were announced in the hope of alleviating part of the stress placed on these two cities and encouraging the development of other urban areas.

Strict and far-reaching measures to regulate migration in general and to curb potential rural out-migration were taken in late 1932 with the establishment of the Soviet passport system. The new Soviet passport was decreed the main document of all citizens and was to contain all relevant information for identification, as well as information regarding marriage and children. Most importantly, passports were to include a stamp of a residence permit, or *propiska*, for each person over the age of sixteen, stating the specific address of the holder. It became illegal to reside at an address other than that listed on the *propiska*. Clear in the language of the decree, the intended role for passports and residence permits in regulating population was twofold: to keep account of the population (purportedly for planning purposes) and to regulate the movement of "undesirables" such as criminals and *kulaks*.

The passport and *propiska* were presented rhetorically as an expansion of government protection and a simplification of identification documents, not as an encroachment on individual freedoms; but the first article of section 517 of the passport law casts suspicion upon the simple ideals of registration and protection. All citizens living in a city or a workers' settlement, working in a transport area or on a state farm were to be included in the passport system. But collective farmers, the vast majority of rural inhabitants, were not given access to the documents required to legally change residence; migration into central cities from emerging collective farms was not viewed as in keeping with the best interests of the state. People changing residence within a region were required to register within 24 hours of arrival. Those found without passports or proper documents were fined and charged with a criminal offence. It was illegal to harbour a guest without proper registration in your home or to employ a person without proper registration. Internal passports and the *propiska* system rendered migration subject to official approval, both at the point of departure and at the point of destination. While the statute made the process seem a mere formality, it provided opportunities for the administrative restriction of choice of residence.

After World War II, the largest urban areas with some level of administrative importance tended to be covered by some sort of restriction. Under the system of differential allocation, these were among the best supplied cities in the former Soviet Union. Nevertheless, restricted cities did continue to grow, even after *propiska* limitations were adopted. As long as motivations for migration persisted, methods for circumventing administrative restrictions could be found. Although variations on schemes of circumvention were endless, they generally fall into two broad categories: inclusive methods, through which *propiskas* were obtained through semi-legal and illegal means; and exclusive methods, by which migrants without official documentation resided where they chose. Observational data indicated widespread corruption and fraud at passport offices in the mid-1980s. Marriages in name only, between restricted city residents and potential migrants, were one often-cited means of acquiring a *propiska*. Bribes to officials in passport offices presented another popular path. Rural men often found it best to migrate immediately after completion of their military service, while they still possessed military papers that substituted for passports. Individual influence and personal links to officials could often yield a *propiska* even during the most limiting of times. *Propiska* for their city of destination enabled migrants to integrate themselves into distributional networks; if they did not reside at the address listed on their *propiska*, their existence was sometimes shadowy. Nonetheless, they were able to avoid many of the long-term costs of circumventing controls on migration. The inability to monitor the population constantly, high labour demand for low prestige jobs and the prevalence of a shadow economy all increased the opportunities for migration without official registration. Motivated migrants doubled up with relatives, rented apartments from "legal" residents and in extreme cases resided in train stations and public buildings. Lack of official registration in most cases prevented them from accessing urban distributional networks such as polyclinics, schools and ration coupons. Thus, their illegal status kept them marginalized. Regulations erected screens for migrants which enabled some to pass and sentenced others to remain outside. So long as motivations for migration persisted, even the strictest passport regime did not help, and could not

help. Those motivated to migrate into restricted cities would employ active methods of circumvention in acquiring *propiska* when able, or risked exclusion from distributional networks when they were unable to obtain *propiskas*. The sum effect was that the *propiska* system was one of the sources of corruption in the law enforcement agencies. In addition, it was one of the motivating factors for circumvention of the law by a large part of the population.

### 3.2. The Post-Soviet Period

Following the break-up of the Soviet Union, each of the fifteen successor states currently finds itself attempting to address the legacy of the Soviet passport and *propiska* system. In recent years, as a guarantee of entitlement, the *propiska* system has played an important role in the transition to a market economy. Benefits, such as newly instituted unemployment insurance, are distributed locally and require proof of residence. *Propiskas* have been used for privatization programs in rural and urban areas in order to distribute the means of production equitably into private hands. As the governments of the Soviet successor states continue to experience difficulty in maintaining power, both financially and politically, local and regional structures have become more important. Proofs of regional residence and the duration of that residence have tended to become more significant. Thus a number of trends have emerged. In a number of states the *propiska* system was fully retained or changed to registration in name only, while in others, regions have kept the *propiska* system even though central governments have abolished it on the national level. It should be noted that some states have embarked on a course of systemic change with varying degrees of success.

In addition to ordinary citizens, one group that suffers in particular from the *propiska*-related restrictions on freedom of movement are migrants of all categories. Since the break-up of the Soviet Union, an estimated 9 million people moved to and within the borders of its successor states. *Propiska* serves as a “filter” that restricts the newcomers’ access to employment, to social benefits, and to privatization. According to recent research, many of the displaced persons are denied political rights due to the absence of appropriate *propiska*. Not only refugees (i.e. citizens of other states) suffer because of restrictions on choice of residence, but also citizens displaced internally due to conflicts or economic and environmental disasters. The *propiska* system complicates the reintegration of internally displaced citizens in the society. Since most internally displaced persons, a large share of whom are women, find themselves in a vulnerable situation as a result of human rights violations in the first place, restrictions on choice of residence is another link in the chain of human rights violations. These individuals often have to rely on international humanitarian assistance, instead of having an opportunity to attempt making a living on their own.

In a number of states where the central governments have made an effort to abolish the *propiska*, regional officials have often been reluctant to do away with the system as a result of the unwillingness to see migrants settle in their jurisdictions. Some regions that have been able to attract a large share of investment have used *propiska* to become “oases” of prosperity. In the long run, this strategy is not only not sustainable, as prospering cities will attract migrants regardless of any administrative restrictions, but it is first of all also counterproductive and threatening to the rule of law. As long as laws are seen as unjust and as long as there are serious incentives to circumvent them, the pattern of ignoring laws will continue. In addition, as in the past, there will be incentives to bribe officials responsible for registration, thus giving an impulse to corruption. Second, persons residing “illegally” in various regions may become a powerful voice of discontent. Third, *propiska* applied on city and regional levels could lead to tensions between various regions and between the central and regional governments. Lastly, there is a risk that various regional registration (*de facto propiska*) schemes could be set up in a form which fuels chauvinist and extremist feelings, if these schemes are used to refuse registration on ethnic, religious, cultural or other grounds. The risks of arbitrarily restricting choice of residence for groups of citizens can result in internal unrest and threaten public order if these groups feel they have no other recourse. Timely reform of the *propiska* system, therefore, could be seen as a valuable tool for conflict prevention.

In a number of states the lack of progress on the removal of the *propiska* system stems from a lack of knowledge about registration systems that do not restrict citizens’ freedom of movement, such as the ones used in Western Europe. Another obstacle is the absence of a concept that would take into account the concerns of all national players, especially those that require accurate records of population (such as the need

to conduct military conscription or to carry out criminal investigations). To begin the process of overcoming these obstacles, the ODIHR, jointly with the High Commissioner for Refugees and the Council of Europe, organized an experts meeting that was held in Kyiv in December 1997. Follow-up projects are envisaged for Armenia, Azerbaijan, and Georgia.

#### **4. REGIONAL ANALYSIS**

##### **Armenia**

While the *propiska* system has officially been abolished, some elements of it remain, such as a stamp in citizens' passports. There is no registration system that replaced *propiska* or the legal basis for it. According to local non-governmental organizations, there are some contradictions between laws on issues related to freedom of movement. Some NGOs also claim that 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 based on addresses stated in stamps in passports rather than on factual place of residence.

##### **Azerbaijan**

Azerbaijan enacted a new Law on Registration According to Permanent Residence and Soujorn. However, this Law 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*. Employment of *propiska*-less individuals depends upon the employer, due to lack of clarity in regulations. *De facto propiska* has been maintained in its original form in Baku. Internally displaced persons from occupied areas of Azerbaijan also have difficulties choosing their place of residence since they can only obtain humanitarian assistance in a camp or settlement where they are registered.

##### **Belarus**

Belarus has made no progress in abolition of the *propiska* system, despite the constitutionally guaranteed right to freedom of movement and the publicly declared (in 1995-96) intention to embark on the path of reform of the system. A number of articles appeared in the press depicting the shortcomings of the system. For example in order to change *propiska*, a citizen must already have employment in the new location. However, to be employed in a particular location, one must already have a *propiska* there. These conflicting requirements limit citizens' freedom of movement.

##### **Estonia**

The institution of *propiska* was proclaimed anti-democratic and abolished by the Supreme Council's decree of the Estonian Soviet Republic in 1989. However, there are no legislative acts in Estonia to regulate the internal registration procedures, and some elements of *propiska* still remain. Registration mostly depends on a person's legal status within the Estonian borders. Estonian citizens may register in any living premises for an unlimited period. After the break-up 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, and vice versa. Conscription is being carried out by the regional military departments of the Estonian Republic in accordance with internal registration (*propiska*). An unemployed person who has no *propiska* cannot register at the unemployment office. In privatization of real estate priority was given to the persons registered in their living premises. Some members of the Parliament of Estonia called for the review of the "constitutionality" of the de-facto *propiska* system, but their calls have not been acted upon.

##### **Georgia**

*Propiska* was outlawed in Georgia. A number of laws were amended to conform to this. The implementation is still lagging. To close this gap, the ODIHR is planning a workshop on the implementation of the new



registration system. In addition, there are problems concerning permanent registration of internally displaced persons.

### **Kazakhstan**

The Constitution formally abolishes the "*propiska*" system of residence permits, a holdover from the Soviet era, and replaces it with a system of registration. The Government can refuse to register a citizen, just as it did under the *propiska* system. Since city services are still tied to registration, living without legal registration is exceedingly difficult. It has been reported that such refusals are particularly frequent in Almaty.

### **Kyrgyzstan**

The new system of registration in Kyrgyzstan does not in practice differ very much from the *propiska* system. Citizens still get their place of residence stamped in the passport and risk losing some of their rights if they reside in a location different from the one shown in their passport. In addition, as of April 1998, there are restrictions concerning the capital city of Bishkek. Individuals who do not have appropriate documents to stay in the city can be deported to another part of the country.

### **Latvia**

Latvia has 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.

The Latvian government began this process by identifying the link between *propiska* and social policies, state security (including military conscription), education, law enforcement, voter registration, and local budgets. During this work around 200 normative acts that refer 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. However, the Parliament still has not formally abolished the *propiska* system.

The experience of Latvia casts doubt on attempts to replace the *propiska* system quickly. Without proper preparation, a number of legal and other problems may arise if the consequences of removal of *propiska* are not thought out. Latvia may be an example for other Newly Independent States to follow in reforming the *propiska* system.

### **Lithuania**

Lithuania has been working on the legal reform of the *propiska* system. Relevant legislation was passed in July 1998 and will come into force in July 1999. Some issues still remain in de-linking the *propiska* system from the social security system.

### **Moldova**

The *propiska* system is in the process of evolution in Moldova. In 1995 the government made a decision which stipulated that a person's place of residence had to be reflected in their internal passport. Only those individuals who were officially registered in a specific municipality had the right to be employed there, to receive state medical care there, or to vote there. In May 1997, the Constitutional Court of Moldova held that this system contradicted the principle of choice of residence reflected in the Moldovan Constitution. Moldova has embarked on the course 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. One problem that has been reported in connection with the new Moldovan identity card is its lack of recognition in other former Soviet republics.

### **The Russian Federation**

In 1993, the "Law of the right of citizens of the Russian Federation to freedom of movement and choice of their place of sojourn or residence within the RF" was adopted. The Law, however, listed a number of restrictions to choice of place of residence.

Since 1995, the Constitutional Court of the Russian Federation has been making rulings to overturn various regional *propiska*-like laws and regulations. Nevertheless, many regions of the Russian Federation continue

adopting regulations aimed at restricting choice of residence and, in particular, in denying registration to migrants, including internally displaced persons. While the spotlight of the international human rights community has been on the city of Moscow, all of the Russian regions neighboring Chechnya have adopted laws hindering integration of Russian citizens who fled the conflict in Chechnya. A recent (June 1998) decision of the Supreme Court reaffirmed the inadmissibility of *propiska*-like practices of registering new arrivals every six months. It remains to be seen if this decision will lead to uniform implementation of Constitutional provisions on freedom of movement and choice of residence throughout the country.

### **Tajikistan**

Tajikistan's civil war rendered most of its national laws relevant to freedom of movement meaningless. While the *propiska* system has not been abolished, most of the problems in the area of freedom of movement and choice of residence stem from security problems.

### **Turkmenistan**

The *propiska* system remains intact in Turkmenistan. The capital city, Ashgabad, is practically off-limits to newcomers. No legislative or other reform is underway.

### **Ukraine**

Ukraine has embarked on genuine reform of the *propiska* system. There is realization on the part of the government that change will not come overnight. The reform effort centres around creating a population registry and changing the legislative base. Employers in the private sector are no longer penalized for hiring persons without *propiska*. In another positive step, the Crimean Tatars returning to their ancestral homelands are granted *propiskas*. However, social safety benefits, housing, as well as participation in elections among others, are still linked to *propiska*.

### **Uzbekistan**

The *propiska* system is still in use and *propiska* is necessary in order to have access to certain social and economic rights in Uzbekistan. There is no specific law dealing with the choice of place of residence in Uzbekistan. Issues of freedom of movement, choice of place of residence, registration and *propiska* are regulated differently for citizens of Uzbekistan, citizens of other CIS countries, and citizens of other countries. The regulations are issued in the form of decrees, regulations and instructions. This leaves wide scope for interpretation and even abuse by law enforcement agencies.

## **5. CONCLUSIONS AND INFORMAL RECOMMENDATIONS**

The arguments for maintaining the *propiska* system do not withstand the test of history. Even in times of the strictest enforcement of this system, it did not prevent those people who wanted to change residence from doing so. The idea of achieving economic prosperity at the expense of human rights has been discredited in the age of democracy. Freedom of movement and choice of place of residence are fundamental human rights. A person should not forfeit any of his/her rights or benefits if he/she moves within his/her state. It is clear that the *propiska* system contradicts this principle, as confirmed by a number of decisions by Constitutional Courts of some Newly Independent States. A democratic state's role is to protect individual rights.

The issue of freedom of movement could be given more attention not only at various OSCE fora, but also in the OSCE's assistance to the Newly Independent States. This could include providing expert advice and making available information on the experience of other States, taking into account the interests of states envisaged in OSCE commitments. The development of new legislation is only a small part of the task. Assuring implementation is far more important. Making the public aware of new regulations is another component of the work.

The OSCE/ODIHR needs to 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 that those violating the

*propiska* regulations often have no opportunity to vote needs to be regularly addressed during ODIHR election observation missions.

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 privatize the property on which they resided, since privatization was closely linked to *propiska* in most of the Newly Independent States. Working on solutions to overcome the legacy of *propiska* for these persons requires the OSCE's special attention in the field.

There is a need for exchange of knowledge and strengthening of expertise about registration systems which correspond better 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 are in the process of replacing the *propiska* system (Georgia, Latvia, Moldova, Ukraine), as well as established registration systems in Western countries, has to be shared, taking into account local specificities and concerns. The OSCE, through the ODIHR, can play a vital part in disseminating this information as well as in stimulating discussions aimed at breaking down the stereotypes of the supposed benefits of the *propiska* system.

### **Informal Recommendations to the Participating States Concerned**

In this regard, some of the recommendations of the 1997 Kyiv Experts meeting on this subject provide guidance in the further work:

The *propiska* system could in practice be replaced by a different form of registration system, which could perform the useful "information" functions of the *propiska*, while discontinuing those which relate to "control" of the population. Identification of the functions which should and should not be served by any new system is key.

In a democratic society, any system will also need to address individual data protection issues (i.e. confidentiality/sharing information and access to information). In this context, the need for a civil body (such as the Ministry of Justice) to undertake the task of such information-gathering, rather than a police body, was suggested.

Some measure of control over the freedom of movement of asylum-seekers may be needed. Reasons for such control are not only related to control of vice (i.e. drug trafficking) or unwelcome activities (onward movement), but also may be related to the demands of providing some social benefits for these groups. A balance, however, should be struck between such needs, and the guarantee of the asylum-seekers' right to freedom of movement.

As a variety of government authorities or departments handle different aspects of the response to arrivals of refugees and their assistance needs, including any *propiska* requirements affecting them, there is a need for much greater co-operation among these authorities.

In addition, courts and national human rights institutions could consider dealing with complaints on violations of the right to freedom of movement and choice of residence as a matter of top priority.

## **B. THE CIS MIGRATION CONFERENCE**

### **EXECUTIVE SUMMARY**

This paper traces the history of the OSCE's involvement in the CIS Migration Conference. It summarizes the main ideas of the Programme of Action of the Conference and highlights the follow-up to the Conference. The paper goes on to examine the human rights issues in the Programme of Action of the Conference and to produce recommendations on OSCE potential action that could enhance the implementation of the Programme of Action.

Among the key recommendations is the suggestion to increase the OSCE's focus on the following issues:

- Freedom of movement and choice of residence;
- Property restitution in post-conflict situations;
- Protection of internally displaced persons;
- Creation of an enabling environment for NGOs providing assistance to displaced persons;
- Provision of fora for discussion of follow-up to the Conference;
- Incorporating human rights in technical training of relevant officials (such as border guards) in the ODIHR's technical assistance programs.

It is also recommended that OSCE missions should to an increasing degree be aware of standards on protection of the displaced and ensure the uniform implementation of international standards and best field practices. Documentation of the best practices and of field experience on these issues should also be considered.

## 1. BACKGROUND

The first CSCE/OSCE commitments relating to migration are contained in the Helsinki Final Act and a number of the follow-up documents. Most of the commitments on migration deal with human contacts and reunification of families. Not until the 1990s, when a number of armed conflicts erupted in the region, have the CSCE/OSCE participating States undertaken commitments dealing explicitly with refugees and displaced persons.

In the CSCE Helsinki Document 1992 states the following:

“The participating States

- Express their concern over the problem of refugees and displaced persons;
- Emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;
- Recognize the need for international co-operation in creating with mass flows of refugees and displaced persons;
- Recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension;
- Reaffirm the importance of existing international standards and instruments related to the protection of and assistance to refugees and will consider acceding to the Convention relating to the Status of Refugees and the Protocol, if they have not already done so;
- Recognize the importance of the United Nations High Commissioner for refugees and the International Committee of the Red Cross, as well as of non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons;
- Welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions.”

The Document of the Stockholm Meeting of the CSCE Council of 1992 states the following:

“The increasing problem of refugees and displaced persons is an issue of major concern to all participating States, particularly in conflicts where the fulfillment of basic human needs is most at risk. The Ministers deplored the plight of civil populations most affected in such conflicts and called on all participating States to contribute to a concerted effort to share the common burden. All Governments are accountable to each other for their behavior towards their citizens and towards their neighbors. Individuals are to be held personally accountable for war crimes and acts in violation of international humanitarian law.”

*The Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States*, or as it became known “the CIS Migration Conference”, was one of the international community’s responses to the population displacements that took place shortly after the break-up of the Soviet Union on the territory of its successor states. In light of the previous OSCE commitments, the involvement of the OSCE was quite logical.

Migratory movements within, to, and from the USSR were tightly controlled prior to 1991. The USSR was not a party to major conventions and agreements in this area. Therefore, the Newly Independent States had no institutions or experience in dealing with population movements. As a result, an effort to focus the international community’s attention on population movements as well as on existing gaps was in order.

In UN General Assembly resolution 49/173 of 1994 the international community called upon the United Nations High Commissioner for Refugees to convene this Conference. The OSCE participating States committed themselves to contributing to the organization of this Conference at the Budapest Summit of 1994. At the same Summit, the OSCE participating States expressed their concern at mass migratory movements in the OSCE region, including millions of refugees and displaced persons, due mainly to war, armed conflict, civil strife and grave human rights violations.

An extended report on the implementation of the Programme of Action of the CIS Migration Conference was produced by UNHCR, IOM, and OSCE/ODIHR earlier this year.<sup>2</sup> This report highlights issues that are most relevant to the work of the OSCE and updates the reader on dilemmas that emerged during the post-Conference period.

## 2. THE SIGNIFICANCE OF THE CIS MIGRATION CONFERENCE

The concern that unmanaged mass movements could affect regional stability stems from the fact that a number of armed conflicts, both between states and internal, in the CIS had already produced huge population movements which placed additional challenges on the affected countries, while a lack of institutional support exacerbated the plight of persons on the move. In addition, the participating in the CIS Migration Conference felt that it was important to address the plight of those wishing to return to their historical homelands as well as of those dislocated by environmental disasters. In addition, the international community sought to devise a framework that would enable the states concerned not only to manage the current population flows, but also to be prepared to deal with future migratory movements, should they occur, by creation of appropriate institutions. The overarching theme of the Conference was protection of the human rights of persons on the move. Thus, the Conference's agenda contained several aspects:

Humanitarian (assistance to the populations concerned)  
Institutional (creation of national institutions mandated to manage migratory flows)  
Human rights (protection of the human rights of persons on the move).

Shortly after the conclusion of the Conference, the OSCE Permanent Council in Decision 124 recognized that the "involuntary, massive and uncontrolled movements of population may have a considerable impact on the stability and security of participating States, especially in the countries of the Commonwealth of Independent States."

Two years after it took place, the follow-up to the Conference remains broadly on track on the humanitarian side. The humanitarian organizations, in particular the United Nations High Commissioner for Refugees, as well as humanitarian NGOs, have carried out relief operations in a number of CIS countries. Examples of this work include:

- UNHCR's provision of humanitarian assistance to some 150,000 refugees and displaced persons in Armenia;
- In Georgia, assistance to the returnees to South Ossetia (by UNHCR and the Norwegian Refugee Council) and to the Gali district is being provided;
- In Kyrgyzstan, UNHCR, IOM, and the local Red Crescent and Red Cross society are assisting the integration of internal migrants;
- In the Russian Federation, the UNHCR and the Federal Migration Service support temporary accommodation centres for displaced persons. Direct assistance was delivered to an estimated 175,000 IDPs in the North Caucasus by UNHCR.

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<sup>2</sup> See the *Report to the 1998 Steering Group Meeting on the Implementation of the Programme of Action of the Regional Conference to Address the Problems of Refugees, Displaced Persons, other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States*, May 12 1998. Available from UNHCR headquarters, Geneva.

On the institutional side, a number of the states concerned are in the process of creating institutions, designing legal frameworks, and acquiring technical means to cope better with the migratory flows. Some examples are:

- In Kyrgyzstan, the Bishkek Migration Management Center was established as a venue for training activities. The Center also facilitates regional dialogue and information sharing;
- In the Russian Federation, IOM provided technical and material assistance to upgrade the regional offices of the Russian Federal Migration Service;
- In Tajikistan, a State Migration Service was established under the Ministry of Labour;
- Turkmenistan adopted the Law on Refugees, National Minorities and Migration and acceded to the 1951 Geneva Refugee Convention and its 1967 Protocol;
- Ukraine granted a *propiska* (residence permit) to some 100,000 returning Crimean Tatars.

However, much remains to be done as far as building capacities of local institutions and in drafting and implementing legislation. Not all states of the CIS have acceded to the 1951 Refugee Convention and the 1967 Protocol. Legislation governing entry and exit from some CIS countries is not in place. At the 1998 Steering Group meeting of the CIS Migration Conference, a number of donor states voiced serious concern over the protection of refugees and asylum seekers in the states of the CIS. In a number of states, there is either a legal vacuum or legal confusion governing the status of internally displaced persons (see below). Most of the states of the CIS have not joined international agreements on readmission of illegal migrants. There is little institutional response to the plight of persons who left their places of residence due to ecological disasters.

While the lack of resolution of conflicts as well as at times inadequate financial support from the donor community present obstacles to humanitarian and institutional aspects of the implementation of the Programme of Action of the CIS Migration Conference, it should not be neglected that both the humanitarian and institutional efforts should go hand in hand with the third aspect of the Programme of Action, the human rights agenda. The slow progress in the overall development of societies based on the rule of law and respect for human rights is an obstacle to the effective protection of the rights of displaced persons.

On the human rights aspect of the Programme of Action, progress is much more modest. Some NGOs link this development with the non-binding nature of the Programme of Action. However, it should be remembered that the Programme of Action builds on OSCE political commitments, while highlighting those human rights issues that are particularly important for the implementation of the Programme of Action of the CIS Migration Conference.

These issues and gaps in implementation of the human rights aspects of the CIS Migration Conference, as well as the role of the OSCE in achieving progress towards meeting these goals, are discussed below.

### **3. THE HUMAN RIGHTS AGENDA OF THE CIS MIGRATION CONFERENCE**

#### **3.1 The Role of Non-governmental Organizations**

Paragraph 19 of the Programme of Action of the CIS Migration conference calls for freedom of assembly and association as well as for the development of comprehensive co-operation with non-governmental organizations. In the context of the CIS Migration Conference, the role of NGOs is important since they can efficiently deliver humanitarian assistance and provide expertise on legal and institutional development. Therefore, creation of the enabling environment for NGOs can alleviate the burden carried by States in assisting displaced persons. The CIS States have only had limited experience with the positive role played by NGOs in humanitarian assistance and institutional development. The annual Steering Group meetings of the CIS Migration Conference provide only limited opportunities for such exchanges. Various OSCE fora, in particular the Human Dimension Implementation Meeting, provide an excellent venue for discussing the humanitarian role of NGOs.

In addition, the recommendations developed in the ODIHR report on NGO legislation are applicable in the context of enhancing the role of NGOs in the follow-up to the CIS Migration Conference.

### **3.2 Internally Displaced Persons**

A full section in the Programme of Action of the CIS Migration Conference deals with the return of internally displaced persons (IDPs) to places of their habitual residence. Since the Conference has taken place, a new normative framework for dealing with issues of internally displaced persons has been developed. A panel of legal experts convened by the Special Representative of the United Nations on Internally Displaced Persons elaborated Guiding Principles on Internal Displacement to address the specific needs of IDPs. These Principles were adopted by the UN Commission on Human Rights.

Internally displaced persons are defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized state border.”

In the CIS states large-scale internal displacements took place in Azerbaijan, Georgia, the Russian Federation, and Tajikistan. There is a good reason why the international community has addressed internal displacement as a distinct problem. Internally displaced persons are likely candidates for crossing international borders and, therefore, becoming refugees. It should also be noted that none of the countries of the CIS that face serious internal displacement problems have developed normative frameworks that are consistent with international norms. The definitions of ‘internally displaced’ used in the CIS countries are often confusing and do not offer adequate protection to affected persons.

The Programme of Action of the CIS Migration Conference states that return of internally displaced persons to the places of their permanent residence is the most desirable solution. However, in some situations, in particular when the central governments do not control entire territories and when a political settlement is not a likely short-term outcome, the OSCE may consider a dialogue with governments concerned on other solutions to the problems of internal displacement, such as temporary integration of IDPs. The OSCE may consider an approach which ensures that IDPs are not hostages to prolonged political negotiations and that they enjoy the rights guaranteed to all citizens, including freedom of choice of residence in their own country and the right to vote.

The OSCE is uniquely positioned to address the problems of internal displacement. Often internal displacement takes place as a result of violation of human rights. According to OSCE principles, human rights are a matter of direct and legitimate concern to all OSCE participating States. Hence, the OSCE Missions and Institutions can play an important role in protecting the rights of the internally displaced. Thus far, OSCE field missions have been dealing with internal displacement on an *ad hoc* basis. However, given the emergence of an internationally accepted normative framework, the OSCE can now address internal displacement in a more systematic manner. For example, the Guiding Principles on Internal Displacement can be included in regular training for OSCE Mission members, while the ODIHR could consider assisting the participating States in developing national norms consistent with international standards.

### **3.3 Property Restitution**

One of the most frequently occurring obstacles to the return of displaced persons and refugees is occupation of their homes. The Programme of Action of the CIS Conference calls for compensation through bilateral and multilateral mechanisms, with the co-operation of relevant international organizations. However, in practice, this issue needs to be adequately followed up. For example, a bilateral agreement between Armenia and Azerbaijan on mutual compensation of displaced persons, developed during preparatory meetings to the CIS Migration Conference, was not ratified by the Parliament of Azerbaijan and subsequently not renegotiated.

In 1998 a first ever resolution on housing and property restitution was adopted by the United Nations Commission on Human Rights. The international community for the first time recognized the importance of



fair and effective mechanisms designed to resolve outstanding housing and property problems in the context of return of displaced persons. The OSCE field Missions and the ODIHR have developed expertise in this field via their experience in former Yugoslavia, Tajikistan and Georgia. The next step may be a compilation of “best practices” on this issue to serve as reference material to the participating States as well as to OSCE Field Missions.

An additional property-related aspect of the Programme of Action is the provision for transfer of property across borders by migrants. There is little progress on agreements related to this. According to NGO reports, many migrants have to leave their property behind.

### **3.4 Freedom of Movement and Choice of Residence**

This topic is a subject of separate report for 1998 OSCE Human Dimension Implementation Meeting. Freedom of choice of residence is key to the integration of migrants and prevents vulnerable situations for displaced persons. There is a danger that difficult economic conditions in some of the states of the CIS can be used as justification for restrictions in choice of residence.

### **3.5 Incorporating Human Rights in Regular Training**

The new states are only now developing services such as border guards whose functions include humane migration management. Incorporating human rights in the training of these services is one of the issues that the ODIHR has capacity to pursue, building upon its other human rights training programmes.

### **3.6 The Unfinished Agenda: Who Monitors the Implementation of the CIS Migration Conference?**

One of the issues that has been raised by NGOs involved in the follow-up to the CIS Migration Conference is the monitoring of implementation of the CIS Migration Conference’s Programme of Action. Some, such as the Forced Migration Projects of the Open Society Institute, have argued that organizations engaged in assistance are in a poor position to raise cases of non-implementation. Recently, the donor countries have been more vocal about their concerns at the meetings of the Steering Group of the CIS Migration Conference.

The issue of monitoring is not likely to be addressed adequately in the process of the CIS Migration Conference. Both NGOs and the donor countries may be encouraged to consider using the OSCE fora to voice concerns over the shortcomings in the implementation of the Programme of Action of the CIS Migration Conference.

## **4. CONCLUSIONS AND RECOMMENDATIONS**

To summarize the main points of this paper, the OSCE’s future role in the implementation of the CIS Migration Conference could focus on the following issues:

- Freedom of Movement and choice of residence;
- Property restitution in post-conflict situations;
- Protection of internally displaced persons;
- Creation of an enabling environment for NGOs providing assistance to displaced persons;
- Provision of fora for discussion of follow-up to the Conference;
- Incorporating human rights in technical training of relevant officials (such as border guards) in the ODIHR’s technical assistance programs.

OSCE missions should to an increasing degree be aware of standards on protection of the displaced and ensure the uniform implementation of international standards and best field practices. Documentation of the best practices and of field experience on these issues should also be considered.