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Report on Russia

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1 Introduction

The new century started with a change in Russian citizenship legislation. The citizenship law of 1991 (valid from the end of the Soviet Union throughout the whole post-Soviet period of the 1990s) was replaced in 2002 by Federal Law № 62-FZ ‘About citizenship of the Russian Federation’ (in force from 1 July 2002). The baffling complexity of the previous legislation meant that many former Soviet citizens failed to achieve Russian citizenship during the post-perestroika period, which had serious consequences for millions under the new legislation. The new federal citizenship law 2002 considerably toughened the general rules on naturalisation in comparison to the first liberal citizenship law of 1991 (Henry 2009: 51). As a result, a number of legal problems arose concerning the integration of former citizens of the USSR who did not manage to obtain Russian citizenship according to the previous citizenship law.

After 2002 many citizens of the former USSR (especially those living in the former Soviet republics) were considered as conventional foreigners by the authorities and were compelled to obtain Russian citizenship by the general process of naturalisation (opposite to the earlier simplified naturalisation procedure for former Soviet citizens). A whole new category of so-called ‘captive illegal migrants’ appeared (‘нелегалы поневоле’ - ‘nelegaly ponevole’), i.e. those former Soviet citizens who were declared to be foreigners in their native country. Since the entry into force of the new citizenship legislation in 2002 the naturalisation process has been complicated substantially. Stories about ‘sufferings over citizenship from compatriots coming back to Russia have become well known (Grafova 2010). Stories about confiscation of passports from Russian citizens gained notoriety throughout Russia.¹

The lack of a facilitated procedure for acquiring Russian citizenship is still an important problem. Human rights activists are continuing to demand the re-establishment of the facilitated naturalisation procedure (by registration) for all former Soviet citizens. However, in 2009 this order was abolished. In the sphere of modern Russian citizenship there are still a substantial amount of legal problems. In this research paper we attempt to consider only the most significant examples. Of course, it is impossible within a small research paper to present in detail a whole history of more than three centuries of Russian citizenship; only the most important historical stages will be examined in this paper. Considerable attention will be devoted to the Russian concept of nationality, ethnicity, subjecthood/allegiance and citizenship. The paper will also scrutinize the political ideas which substantially influence the citizenship and migratory policy of modern Russia.

2 Russia - Nationality & Citizenship

While modern international law uses the term ‘nationality’ to refer to the legal bond between an individual and a sovereign state, Russian domestic law uses the term ‘citizenship’ (*grazdanstvo* - гражданство). According to Russian legislation there is a striking difference between citizenship

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¹ Lidia Grafova. Beat on passport. Extrajudicial bureaucratic machinery of Russia deprives tens of thousands of people of citizenship. Russian gazette, N4972, 12.08.2009. <http://www.rg.ru/2009/08/12/migraciya.html> [Лидия Графова. Бьют по паспорту. Без суда и следствия бюрократическая машина России лишает гражданства десятки тысяч человек. Российская газета N4972 от 12 августа 2009 г.]

(*grazdanstvo* - *гражданство*) and nationality (*national'nost'* - *национальность*). In consequence, in the Russian context the term citizenship cannot be used as a synonym for nationality.

The Constitution of the Russian Federation distinguishes between these two legal definitions. Thus, under Article 6 of the Russian Constitution *citizenship* (*grazdanstvo* - *гражданство*) of the Russian Federation shall be acquired and terminated according to federal law; it shall be one and equal, irrespective of the grounds of acquisition (Article 6 (1); a citizen of the Russian Federation may not be deprived of his or her *citizenship* (*grazdanstvo* - *гражданство*) or of the right to change it (Article 6 (3)). At the same time, with regard to Article 26 (1) of the Russian Constitution the term 'nationality' (*national'nost'* - *национальность*) is associated with the ethnicity of the person: 'Everyone shall have the right to determine and indicate his nationality (*national'nost'* - *национальность*). No one may be forced to determine and indicate his or her nationality (*national'nost'* - *национальность*).'² As a result, in the Russian language, the term nationality (*national'nost'* - *национальность*) refers to individual membership in a nation (*нация*) as a cultural, linguistic and historic community.

A correct understanding of this distinction between 'citizenship' and 'nationality' is of crucial importance in the multinational context of the Russian Federation. In Russia, the legal term '*гражданство*' (*grazdanstvo* = citizenship, 'die Staatsangehörigkeit') can be considered as a neutral definition designating an individual's link with a state (*gosudarstvo* - *государство*) without any reference to his or her ethnicity/nationality (*national'nost'* - *национальность*). The term '*национальность*' (nationality, Nationalität / Volkszugehörigkeit) - deriving from *нация* (nation, das Volk / die Nation) - refers primarily to the ethnic background of an individual. Therefore, in the Russian multinational discourse, it is better to use only the term citizenship (*grazdanstvo* - *гражданство*) when one refers to someone's legal status as a *citizen* of a state (*grazhdanin* - *гражданин*) instead of the vague term 'nationality' because of its ethnic connotations.

According to Soviet legislation, information about nationality (*national'nost'* - *национальность*) was an obligatory part of the passport of any citizen of the Soviet Union.³ The designation of nationality (*запись о национальности*)⁴ in the Soviet passport was based on the nationality of an individual's parents. If the parents were of different nationalities, than the nationality could be defined according to the nationality of the father or mother, based on the wishes of the passport's recipient (Article 3 of the Order). In the 1990s, during the presidency of Boris Yeltsin, the new form of the domestic passport was adopted⁵, in which information regarding nationality was excluded from the passport.

It is worth considering the etymology of the word 'citizenship': *grazdanstvo* (*гражданство*). The term *citizenship* describes the legal relationship- the bond of the person to the state (city-state). The word *city* in Russian is '*gorod*' or '*GRAD*'. From this root originates the word '*GRAZHDanstvo*' (the last letter in the root '*grad*' changes from 'д' ('d') to 'ж' ('zh')). The same linguistic phenomenon occurs in English: *city* - *citizenship* (the letter change - the last character in the root changes from 'y' to 'i'). Because of the fact that the city-states, both ancient and medieval,

² Constitution of the Russian Federation. <http://archive.kremlin.ru/eng/articles/ConstMain.shtml>

³ Order of the Council of Ministers of the USSR №677 from 28 August 1974 'On approval of the Provision about passport system in the USSR (Postanovlenie Soveta Ministrov SSSR ot 28 avgusta 1974 goda. №677 'Ob utverzdenii polozenija o pasportnoj sisteme v SSSR').

⁴ During the Soviet era there was slang regarding the nationality of a person - 'item 5' (пятая графа -the literal meaning 'fifth section') - derived from the special section of the application form (questionnaire) and the above mentioned part of the Soviet passport.

⁵ Decree of the President of the Russian Federation from 13.03.1997 N 232 'About main identity document of the citizen of the Russian Federation on the territory of the Russian Federation' (Ukaz Prezidenta RF ot 13.03.1997 № 232 'Ob osnovnom dokumente, udostover'ajushem lichnost' grazhdanina Rossijskoj Federacii na territorii Rossijskoj Federacii').

resembled a state in miniature, special legal terminology was created in order to define subjects under the jurisdiction of the city's authorities - citizens/citizenship. An analysis of aspects of this terminology will underline the efforts of Russian legal scholarship to drawing a clear line between citizenship and nationality, a distinction necessitated by the fact that over 150 nationalities/ethnicities are included within Russian citizenship.

3 Historical background and changes

3.1 Allegiance and Subjecthood during the Russian Empire

The term '*subjecthood*' (in Russian - '*poddanstvo*') became the characteristic of the old-style state. The term 'subjecthood' was in common usage in the legislation and literature of the Russian Empire until 1917. In the context of prerevolutionary Russia 'subjecthood' ('*poddanstvo*') and citizenship ('*grazdanstvo*') must be considered as different terms.⁶ This conclusion is based on the simple fact that until the end of the 18th century, '*poddanstvo*' had the sense of the absolute subjection of the individual to the Russian Tsar (Lohr 2011: 3). This conclusion can be proved by the oath for individuals naturalising into the Russian *poddanstvo*: 'I, named below, former subject ('*poddanniy*') promise and swear to the Almighty God to be a true, good and obedient slave and eternal subject ('*vechno poddannym*') with my family... and promise not to go abroad and not to take any outlandish service'.⁷ The oath to the Russian '*poddanstvo*' remained unchanged until 1796 when the word 'slave' was excluded from the text.

Before the sixteenth century there were no legal or regulatory mechanisms regarding Russian '*poddanstvo*'. At that time, only the custom regulated who was a Russian subject and who was not. The general unwritten rule was that those individuals who were christianized (baptized) by default were considered to be in possession of Russian '*poddanstvo*' (Gessen 1909: 203). This customary order of the acquisition of the Russian subjecthood was applicable until the reign of Peter the Great, who modified the naturalisation procedure by introducing the above-mentioned oath to the head of the Russian State (Ivanovskii 1910: 12).

Until the middle of the nineteenth century Russian legislation had almost no requirements regarding naturalisation ('*ukorenenie*' - 'укоренение') of foreigners (Cadiot 2005: 440). Foreigners could be naturalised as Russian subjects ('*poddannyye*') by the decision of the provincial government ('*gubernskoe pravlenie*') without any special requirements.⁸ Since 1721 the one and only requirement was to take an oath of eternal Russian subjecthood ('*vechnoe poddanstvo*'). Foreigners were entitled to swear an oath even in their native language. Thus, Peter the Great had substantially changed the naturalisation procedure from conversion to Orthodoxy to the taking of an oath to the Russian Emperor (Korkunov 1908: 271).

On 10 February 1864 the naturalisation procedure was modified by introducing a five-year-requirement of residence in Russia ('*5-letnee vodvorenie*'). Moreover, discretion over naturalisation was shifted from the local (provincial) authorities to the interior minister of the Russian Empire, who had the right to reduce the length of the '*vodvorenie*' in Russia. The following categories of foreigners were entitled for reduction of the residence requirement: those who did a special service

⁶ It is necessary to understand the etymology of the word '*poddanstvo*', which has a meaningful root - dan' (дань) - i.e. tribute, toll tax, rent-in-kind.

⁷ Senate's Order from 27 August 1747 'About the oaths of foreigners wishing to be admitted into the eternal subjecthood of Russia'. PSZ I. №9434 [Сенатский указ от 27.08.1747 'О клятвенном обещании иностранцев, желающих принять вечное подданство России'. ПСЗ I. №9434.]

⁸ Certain social and national groups were not allowed to become Russian subjects ('*poddannyye*') - Jews, Jesuits, Dervishes, and married women separately from their husbands. Foreign Jews were not even allowed to settle in Russia due to direct provisions of the Russian law (see Article 819, T. IX, Svod Zakonov (1899). For further information about legal limitations regarding the rights of Jewish people in Russia see: Kuplevaskiy 1902: 245-265.

for Russia, gifted persons with unique abilities and scientific knowledge, and those who invested money into socially beneficial activities in Russia. An important result of the reform in 1864 is that the distinction between temporary and permanent subjecthood (*'poddanstvo'*) was abolished. Some changes were made in the text of the oath (*'prisiaga na vernost'*) taken for naturalisation (*'ukorenenie'*) into the Russian subjecthood. Due to the reform of Russian subjecthood the terms *'poddannyi* and *'grazhdanin'* became 'different names for one and the same concept' (Lohr 2011: 18).

Russian legislation also set forth a simplified naturalisation procedure - without any residence requirement - with regard to foreigners employed in the Russian state service (Korkunov 1895: 77). This kind of foreigner was allowed to take the oath of loyal service (*'prisiaga na vernost' sluzhby'*) at any time based on the discretion of their superiors. Moreover, special provisions were applicable regarding the naturalization procedure in two Russian regions, where the head of authorities was entitled to naturalize foreigners. Thus, the Governor-General in the Amur River region had discretion to grant Russian subjecthood to Chinese and Korean people; and the Governor-General in Turkestan could naturalize the subjects of Central Asian Khanates. Naturalised foreigners were granted full and equal rights and, moreover, were given special privileges, such as a two year exemption from Russian taxes (Article 415 Ustav o Podatyakh).

Under the legislation of the time the subjecthood of Russian women was automatically terminated by marriage with a foreigner. In the case of widowhood or divorce the woman was given the opportunity of return into Russian subjecthood based on the decision of the provincial authority, usually the Governor (Article 853, T. IX, Svod Zakonov (1899)). The loss of Russian subjecthood could occur in the form of separation from it (*'uvol'nenie iz poddanstava'*) but this was possible only with the permission of the Russian Emperor, which had to be applied for through the interior minister. Arbitrary entrance into foreign subjecthood/citizenship was prohibited and punished by Russian law (the penalty was deprivation of rights and banishment to Siberia) (Kuplevskiy 1902: 139).

3.2 Soviet Citizenship Law 1917-1991

During this period a definition of citizenship was first established in Soviet legislation (Shevtsov 1969: 15). Taking into account that the basic legal framework for the citizenship was originally created by Soviet law, it is necessary to scrutinize the main peculiarities of the Soviet citizenship regime in order to understand aspects of citizenship in modern Russia.

3.2.1 The Lenin Era

Vladimir Lenin's Proclamation 'To the Citizens of Russia!' on 7 November 1917 was the first official document which defined the people of the former Russian Empire as citizens.⁹ The first Soviet *lex specialis* regarding citizenship was the Decree of the VTsIK¹⁰ from 23 November 1917, 'About the abolition of social classes and civil ranks' (Kupriz 1971:150). As a result of this document, all existing civil ranks and titles in the Russian Empire were abolished and instead one universal term was established - 'a citizen of the Russian Republic'. At a later date Soviet citizenship was codified in the Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) after 10 July 1918. It is necessary to note that at the time of the formation of the Soviet State the method of citizenship acquisition was very informal and definitely had a class character. Thus, according to the Constitution of the RSFSR, the local Soviet authorities (Soviets) were

⁹ Proclamation of the Revolutionary Military Committee of the Petrograd Soviet of Workers' and Soldiers' Deputies from 25 October 1917 (7 November using the West's Gregorian calendar) 'To the Citizens of Russia!' // Lenin's Collected Works, Progress Publishers, Moscow, Volume 26, 1972, pp. 236.

¹⁰ All-Russian Central Executive Committee (in Russian: ВЦИК).

entitled to grant Soviet citizenship to foreign citizens living in Russia, in particular those who belonged to the class of workers and peasants and who were not using vicarious labour. In compliance with the Soviet Constitution of 1918, this category of the people could obtain Soviet Citizenship ‘*without any baffling formalities*’ (Article 20). The Soviet Government gave a free hand (i.e. full discretion) to all local authorities (Soviets) in order to attract as many as possible to become citizens of the Soviet republic. At that time there were more than 4 million foreign people on Russian territory, mostly residents of the Polish territories (ca.1.5 million people) and prisoners of war from Germany, Austria-Hungary, Turkey, Bulgaria and other states (ca. 2.5 million people) (Kikotya 2003: 32). In addition to this liberal order of citizenship acquisition, Lenin’s government created the option for deprivation of citizenship on the initiative of the Soviet authorities. This measure could be invoked as a defense against ‘the enemies of Soviet power’.

On 31 December 1922 the Union of Soviet Socialist Republics (U.S.S.R., or Soviet Union) was created and the Russian Soviet republic became part of the Soviet Union. General provisions regarding Soviet citizenship were given in the 1924 Constitution of the USSR (art.7) (Belkovets 2010: 204). According to Soviet law, the principle of the automatic acquisition of the Soviet citizenship came into force, i.e. every person in the territory of the USSR were considered as citizens of the Soviet Union, unless they expressly stated that they had foreign citizenship (Kishkin 1925: 4). Under the new regulations, administrative competence for granting Soviet citizenship was transferred from local Soviets to the main public bodies of the Soviet republics (TsIK of the Soviet republics of the USSR).¹¹ Based on the federal structure of the USSR, the Soviet legislator established a two-level model of Soviet citizenship consisting of Federal (Soviet Union) Citizenship and Republican Citizenship.¹² Sometimes there was even threefold Soviet citizenship in the USSR, for example in the case of the Moldavian SSR.¹³ The respective provisions stated that a citizen of the Soviet Union also had citizenship of the Union republic where he or she had a place of permanent residence. If the citizen, according to nationality or other reasons, had considered himself or herself a citizen of any other Soviet republic, he or she was entitled to select the citizenship of the respective republic of the Soviet Union. Nevertheless, the corresponding legislation of the Soviet republics and the republican passports were never provided. Republican Citizenship was thus primarily symbolic.

It has also to be considered that according to the Soviet Law, the marriage to a Soviet female citizen to a foreigner did not change her citizenship. At that time, Soviet legislation based on gender equality considerably differed from the legislations of other countries in which the wife and legitimate children had to follow the citizenship of the head of the family (i.e. the male), while children born out of wedlock kept the citizenship of their mother. Thus, the Soviet Law fixed for the first time ever the principle of preservation of citizenship of the woman after the conclusion of the marriage (Belkovets 2008).

3.2.2 The Stalin Era

The first Soviet Citizenship Law came into force *stricto sensu* only in 1938, replacing Soviet sublegislative provisions¹⁴ (Durdenevsky 1938: 48). The reason for the new citizenship law was the

¹¹ Central Executive Committee (in Russian: ЦИК).

¹² So called ‘federative elements in the Soviet Citizenship’.

¹³ ‘On 12 October 1924, the USSR officially established the Moldavian Soviet Socialist Autonomous Republic (MSSAR) on the present-day territories of the Republic of Moldova’s Transnistrian region (then territories of the Ukrainian SSR). After its first Constitution in 1925, the MSSAR adopted a new Constitution in 1938 which provided in art. 17 for a triple citizenship for the citizens of the MSSAR, i.e. citizenship of the MSSAR, citizenship of the USSR and citizenship of the Ukrainian Soviet Socialist Republic’ (Gasca 2010).

¹⁴ The Law of the USSR from 19 August 1938 ‘About the Citizenship of the USSR’ // *Vedomosti Verkhovnogo Soveta SSSR.1938. № 11. [Закон СССР от 19 августа 1938 года «О гражданстве Союза Советских Социалистических Республик» // Ведомости ВС СССР. — 1938. — № 11]. www.consultant.ru*

adoption of the 1936 Constitution of the USSR (also known as the Stalin constitution) that remained in force until 1977.¹⁵ The 1936 Soviet Constitution (art.21) repeated several provisions from the previous normative acts, in particular that in the USSR a single Union citizenship was established for all Soviet citizens; and that every citizen of a Union Republic was a citizen of the USSR. The 1936 Constitution was considered by the Soviet leaders as a symbol for the successful attainment of socialism in the USSR. According to these new constitutional provisions, class character was no longer a salient feature of Soviet citizenship. The 1938 Soviet Citizenship Law (art.2) provided Soviet citizenship to the following people: 1) all persons who possessed the allegiance / subjecthood (*poddanstvo*) of the Russian Empire at the time of the establishment of the Soviet state (i.e. 7 November 1917) and who did not lose Soviet citizenship; 2) all persons who obtained the Soviet citizenship in the manner prescribed by law (Trainin 1938: 51).

The 1938 Soviet Citizenship Law abrogated the principle of automatic acquisition of Soviet citizenship. The new citizenship law (art.8) introduced the more specific regulation that all persons permanently residing on the territory of the USSR, who were not Soviet citizens and who did not possess any proofs of foreign citizenship, were considered as stateless persons. The citizenship law (art.7) also kept the regulations regarding deprivation of USSR citizenship: 1) due to the court judgement; 2) in special cases due to the Decree of the Presidium of the Supreme Soviet of the USSR. A shining example of the application of article 7 of the citizenship law was given by the Soviet authorities in 1967, when people of Jewish nationality leaving the Soviet Union as migrants to the State of Israel were deprived of their Soviet citizenship.¹⁶

3.2.3 The Brezhnev Era

The third and last Constitution of the USSR (also known as the "Brezhnev" constitution, adopted on 7 October 1977) marked the next-to-last stage in the development of Soviet citizenship legislation.¹⁷ The regulations of the 1977 Constitution were long and detailed. A separate chapter of the Soviet Fundamental Law was devoted to Soviet citizenship (chapter 6). The "Brezhnev" constitution confirmed the standard construction of the Soviet citizenship: 'every citizen of a Union Republic is a citizen of the USSR' (art.33). The constitutional regulations also formally established a new principle of Soviet citizenship: all citizens of the USSR that were abroad were to enjoy the protection and assistance of the Soviet state.

Based on the 1977 Constitution, the new Soviet Citizenship Law was adopted on 1 December 1978 (and came into force after 1 July 1979).¹⁸ This legislation remained applicable until the end of the Soviet Union on 31 December 1991. In general, the 1978 Citizenship Law retained all standard provisions enshrined in the Soviet law tradition inherited from the previous Soviet legislation. Additionally the Citizenship Law (art.7) explicitly prohibited the extradition of Soviet citizens to foreign states. Moreover, the Soviet law *de jure* established the principle of non-toleration of dual citizenship. According to article 8 of the 1978 Citizenship Law 'the person, who is the citizen of the Soviet Union, cannot be regarded as the foreign citizen'. This legislative provision can be considered as prohibiting Soviet citizens from possessing foreign citizenship. Thus, under the provisions of the Soviet law, the citizenship was considered to be a unique relation

¹⁵ English translation of the 1936 Constitution of the USSR -

<http://www.departments.bucknell.edu/russian/const/1936toc.html>

¹⁶ Decree of the Presidium of the Supreme Soviet of the USSR from 17 February 1967 «About the Exit from Soviet Citizenship of persons emigrating from USSR to Israel». This decree was a restricted (secret) document and was published only after Perestroika in 1990.

¹⁷ English translation of the 1977 Constitution of the USSR -

<http://www.departments.bucknell.edu/russian/const/1977toc.html>

¹⁸ The Law of the USSR from 1 December 1978 N 8497-IX 'About the Citizenship of the USSR'. Vedomosti Verkhovnogo Soveta SSSR.1978. № 49. art.816.

between the individual and the state, which can be compared with marriage.¹⁹ Accordingly, the Soviet legislator proclaimed that the duty of every citizen of the USSR was ‘to bear with dignity the high calling of citizen of the Soviet Union’; ‘citizens of the USSR are obliged to uphold the honour and dignity of Soviet citizenship’ (art.59(1) of the 1977 Constitution of the USSR). Following this logic in the case of a breach in fidelity to the state, citizenship could be terminated on the initiative of the state. Therefore, the 1978 Soviet Citizenship Law (art.18) kept the provision regarding deprivation of citizenship: ‘the deprivation of citizenship of the USSR can take place in the exceptional case based on the decision of the Presidium of the Supreme Soviet of the USSR, if the person has performed actions discrediting the high calling of citizen of the Soviet Union, and damaging the honour (prestige) and state security of the USSR’ (Shetinin 1975: 4; Vitruk 1979: 38).

3.2.4 The Gorbachev Era

After the new Soviet leader Mikhail Gorbachev initiated *glasnost* ("openness") and *perestroika* ("restructuring") it became clear that a lot of Soviet legislative acts had to be reviewed and amended. In 1990 the new and last Citizenship Law of the USSR was adopted and entered into force on 1 January 1991.²⁰ The 1990 Soviet Citizenship Law can be considered as the most detailed and longest *lex specialis* among other Soviet citizenship laws. The competence to grant and revoke citizenship was transferred from the Presidium of the Supreme Soviet of the USSR to the President of the Soviet Union, i.e. to Mikhail Gorbachev. The 1990 Soviet Citizenship Law kept the provisions with regard to the deprivation of citizenship, but the conditions of this act were limited. Thus, according to Article 23 of the Soviet Citizenship Law, deprivation of citizenship could only occur in exceptional cases and only to Soviet citizens living abroad if that citizen had performed actions substantially damaging the state’s interests and the security of the USSR. Article 22 specified the following grounds for loss of Soviet citizenship: 1) as a consequence of the fact that the person has entered into the service of military forces, security forces, police, organs of justice or other governmental, administrative bodies of a foreign state; 2) if a Soviet citizen with permanent residence abroad failed to register in the respective Soviet consulate for five years without any reasonable excuse; 3) if Soviet citizenship was obtained by use of fraudulent documents or by knowingly using false information. Thus, by the adoption of the Soviet Citizenship Law 1991, the first real steps were made towards democratization and establishment of legal clarity in the relations between the Soviet state and its citizens. The adoption of the last Soviet Citizenship Law was undoubtedly a great improvement on the preceding citizenship regimes. Despite the fact that the deprivation of citizenship remained in the law, the provision of a comprehensive list of reasons for this measure was a step forward (previously it was entirely dependent on the discretion of the Soviet authorities). Of course, the 1990 Citizenship Law must be seen a product of its time; it also continued to maintain the provision regarding non-toleration of dual citizenship (art.11) (Tunkin 1979: 22).

In summary, the following main features of Soviet Citizenship Laws between 1917-1991 can be highlighted:

- 1) During all Soviet history citizenship of the USSR remained *de facto* in the form of a single union (federal) citizenship. The declared citizenship of the Soviet Republics can be regarded as a legal fiction which existed until the end of the Soviet Union. This conclusion is proved by the fact that

¹⁹ In this regard we can recall the ideas regarding citizenship which were present elsewhere in the nineteenth century: ‘Letter from George Bancroft to Lord Palmerston (Jan. 26, 1849), in S. EXEC. DOC. NO. 36–38, at 164 (1850) [nation-states should “as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it”]. (Spiro 2010: 114)

²⁰ The Law of the USSR from 23 May 1990 N 1518-1 ‘About the Citizenship of the USSR’. Svod Zakonov SSSR, Vol.1. p.47. 1990.

the respective citizenship legislation on the federal level (union legislation) was consequently developed by the Soviet legislator. While several citizenship laws were adopted at the federal level, citizenship of the Soviet Republics remained without legislative codification.

- 2) The Soviet Union consistently denied the right of dual (multiple) citizenship.
- 3) The Soviet state always preserved some means of citizenship deprivation.

These three features of Soviet Citizenship legislation became the focus of public discussion in the post-Soviet period. The legislator of the Russian Federation would renounce these kinds of provisions in the new citizenship law which was adopted in 1991 and entered into force in 1992, and which represented a great liberalisation of the Russian citizenship regime.

3.3 Post-Soviet Citizenship Law 1991-2002

3.3.1 The Yeltsin Era: The Russian citizenship law 1991 and the status of citizens of the former USSR

The elaboration of a new citizenship law at the level of the Russian Soviet Federative Socialist Republic (RSFSR) started during the existence of the Soviet Union. Originally, the main intention of the policymakers was merely to provide detailed regulations for the declarative provisions of the Soviet legislation regarding republican citizenship (i.e. with regard to citizenship of the RSFSR). Thus, on 12 June 1990 the First Congress of People's Deputies of the RSFSR adopted the Declaration on State Sovereignty of the Russian Soviet Federative Socialist Republic (RSFSR).²¹ Based on its exact wording, this declaration can be considered as a political act of the RSFSR which proclaimed the sovereignty of the Russian Soviet Republic (RSFSR) remaining part of the Soviet Union. The preamble of the declaration stated: 'The First Congress of People's Deputies of the RSFSR affirms the state sovereignty of the Russian Soviet Federative Socialist Republic (RSFSR) and declares the political intention to establish a democratic constitutional state within a renewed (reformed) Soviet Union'. According to Article 6 of the Declaration, 'the RSFSR is unionizing with other Republics into the Union based on the Treaty. The RSFSR recognizes and respects the sovereign rights of Soviet Republics and of the Soviet Union'. Article 11 of the Declaration stated that 'the Republican Citizenship of the RSFSR is settled on the whole territory of the RSFSR. Every citizen of the RSFSR retains the citizenship of the USSR'.

In this context, one important fact must be noted: the referendum regarding the future of the Soviet Union was held on 17 March 1991. About 148.5 million people participated in this referendum (turnout was 80% across the USSR) and the result was 76.4% of citizens were in favour of the '*preservation of the USSR as a renewed federation of equal sovereign republics*'.²² The following Soviet republics did not participate in the referendum: Armenia, Estonia, Georgia²³, Latvia, Lithuania, and Moldova²⁴. Thus, nine of fifteen soviet republics took part in the referendum.²⁵ Of course, it was not possible to keep the Soviet Union unchanged in the form of all

²¹ Available in Russian at: <http://constitution.garant.ru/act/base/10200087/>

²² The question of the referendum on 17 March 1991 was formulated as follows: 'Do you consider as necessary the preservation of the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics in which the rights and freedoms of an individual of any nationality will be fully guaranteed?' (Are you for the USSR? 20 years of the referendum about preservation of the Soviet Union. Kommersant. №10 (914), 14.03.2011. <http://www.kommersant.ru/Doc/1598907> [Вы за СССР? 20 лет референдуму о сохранении Советского Союза. Еженедельник "Коммерсантъ", №10 (914), 14.03.2011].

²³ People in Abkhazia and South Ossetia participated in this referendum supporting the continued existence of the renewed Soviet Union.

²⁴ The following parts of the Moldavian SSR took part in the referendum - Transnistria and Gagauzia - and voted almost unanimously in favour of remaining part of the USSR.

²⁵ Olga Shkurenko. 'Soyuzny Prigovor' (Union's Verdict). Kommersant, №48 (952), 05.12.2011]. <http://www.kommersant.ru/doc/1826370> [Ольга Шкуренко. Союзный приговор. Еженедельник "Коммерсантъ", №48 (952), 05.12.2011]. <http://www.kommersant.ru/doc/1826370>

fifteen Soviet republics. As a result of the referendum new forms of cooperation and even state-building attempts were undertaken: e.g. CIS, the free-trade zone of CIS, Union State of Russia and Belarus, the EurAsian Union etc.

In modern English-language scholarship the view is overwhelmingly that the collapse of the Soviet State was inevitable.²⁶ Unfortunately, the voice of those who have a different point of view regarding the end of the Soviet Union remains mostly unheard (among these people is also Mikhail Gorbachev²⁷). Only today, twenty years after the end of the Soviet Union²⁸, the full-fledged and cold-minded discussion begins in Russia. There are different views and arguments (in particular, of those who as decision makers participated in the political life during the 1990s and believed in the modernisation of the state).²⁹ In any case, every reader will be able independently to draw their own conclusion regarding the collapse or elimination of the Soviet Union. Nevertheless, the fact must be taken into consideration that on the territory of those nine Soviet republics, which supported the idea to keep modernized united state, this demand for unity is still present. On 18 November 2011 the Eurasian Union (EAU or 'EU-2') was established and united the following states: Russia, Belarus and Kazakhstan.³⁰ Kyrgyzstan has already applied for membership in the EAU and the authorities of Tajikistan are now preparing an application.³¹ The most probable scenario is that the Eurasian Union will unite even those nine former Soviet republics, where citizens voted for the preservation of the renewed united state.

The above-mentioned definitions from the Declaration on State Sovereignty of the RSFSR and several decisions of the First Congress of People's Deputies of the RSFSR confirmed the original intention of the legislators of the RSFSR. During the first session of the Congress of People's Deputies of the RSFSR in May-June 1990, the members of the congress approved the list of legislative acts of the RSFSR to be adopted in the course of constitutional reform in the RSFSR. The new citizenship law of the RSFSR was among these legislative acts. The elaboration of the new citizenship law started in summer 1990 and was finished in the summer of the following year. The signing of the new Union Treaty for the renewed (reformed) Soviet Union was also planned for August 1991. However, on the eve of the signing ceremony the August Coup (18-22 August 1991) took place against Gorbachev, which prevented all plans for the modernization of the Soviet Union. On 8 December 1991 three leaders of the fifteen Soviet Republics (in particular Russia (Boris Yelzin), Belarus (Stanislav Shushkevich) and the Ukraine (Leonid Kravchuk)) signed the Belavezha Accords which dissolved the Soviet Union by the annulment of the 1922 Soviet Union

²⁶ Quite often the Chinese experience (also a Communist State) is ignored, which was able to shift to a market economy without such catastrophic developments as in the USSR in 1990s. The words of Putin in Munich (regarding the USSR 'collapse as 'the major geopolitical disaster of the century') were primarily based on the perception of ordinary citizens (Gorham 2000: 614; Sheremet 1990: 90) and on the catastrophic consequences faced by the majority of people in 1990s (Nikolay Ivanov. About demographic effects of the dissolution of the USSR. Price of defeat. The collapse of the soviet project caused heavy human losses. During last 20 years this fact remained ignored by the public memory. 'Expert' Journal, 26 December 2011. <http://expert.ru/expert/2012/01/tsena-porazheniya/>[Николай ИВАНОВ. О демографических последствиях распада СССР. (Цена поражения. Крушение советского проекта обернулось тяжелейшими людскими потерями. За истекшие двадцать лет это так и не стало фактом общественной памяти. «Эксперт», 26 декабря 2011 года].

²⁷ Mikhail Gorbachev. We should have preserved the Soviet Union. The Christian Science Monitor. 13 October 2011. <http://www.csmonitor.com/World/Europe/2011/1013/Mikhail-Gorbachev-We-should-have-preserved-the-Soviet-Union>

²⁸ 'Who is responsible for the dissolution of the USSR?' Kommersant, 18.08.2011.

<http://www.kommersant.ru/doc/1753970> [Кто виновен в распаде СССР? "Коммерсантъ", 18.08.2011].

²⁹ For differing opinions on this question see: 'USSR: 20 years after' [СССР: 20 лет спустя]

<http://www.bbc.co.uk/russian/indepth/1991.shtml>. 'Elimination of the USSR: A crime without term of limitation'.

[Развал СССР: преступление без срока давности]. <http://www.km.ru/front-projects/belovezhskoe-soglashenie/20-let-raspada-sssr>

³⁰ Robert Bridge. One small step for Russia, one giant leap for Eurasian Union. 18 November 2011.

<http://rt.com/politics/russia-kazakhstan-belarus-eurasian-union-647/>

³¹ Alexandre Antonov. Eurasian Union: Greater than the EU, but not a new USSR. Russia Today. 20 November, 2011. <http://www.rt.com/news/eurasian-union-eu-better-667/>

Treaty and created in its place the Commonwealth of Independent States (CIS). Finally, on 31 December 1991 the Soviet Union ceased to exist.

Despite the coup d'état in August 1991 and the dissolution of the Soviet Union in December 1991, the new Citizenship Law of the RSFSR was adopted on 28 November 1991 (and entered into force from 6 February 1992).³² Thus, the new citizenship legislation has been admitted as the Soviet Union still existed, but this citizenship law entered into force after the dissolution of the Soviet Union.³³ The 1991 Citizenship Law remained in force for the next decade until the beginning of 2002. An additional peculiarity was caused by the fact that the 1991 citizenship law entered into force two years before the adoption of the Russian Constitution on 12 December 1993. Nevertheless, the 1991 Citizenship Law can be considered as the first full-fledged citizenship legislation of the modern independent Russian state.³⁴

In 1991, there were several reasons for the adoption of the new citizenship legislation. The modern Russian state had to get rid of rigid Soviet provisions to bring Russian citizenship legislation in line with international standards. In particular, it was necessary to bring the 1991 Citizenship Law into accord with article 15 of the Universal Declaration of Human Rights, which stipulates the right of every person to citizenship, the right to free choice of citizenship and the prohibition on arbitrary deprivation of citizenship. Therefore, the provisions regarding the deprivation of citizenship were not included into the 1991 Citizenship Law. The legislator also avoided incorporating the principle of non-recognition of dual citizenship, but was still cautious regarding opportunities to obtain an additional citizenship. According to Act 3 of the 1991 Citizenship Law, a citizen of the RSFSR can be allowed to obtain the citizenship of a foreign state which has an agreement with the RSFSR. Thus, in 1991-1993, the dual citizenship remained under the control and discretion of the state authorities. Later, as the 1993 Constitution of Russia entered into force, the provisions of the 1991 Citizenship Law were changed to allow that a 'citizen of the Russian Federation may hold the citizenship of a foreign state (dual citizenship) according to federal law or an international agreement of the Russian Federation' (see art.62 (1) of the 1993 Russian Constitution).

The 1991 Russian Citizenship Law retained the old fashioned two-level construction of citizenship: Citizenship of Russia and Republican Citizenship (i.e. of the former autonomous republics inside the RSFSR). As in the Soviet Union, in the modern Russia the republican citizenship remained without any practical application throughout 1990s. Some of the republics of the Russian Federation adopted special legislation but it remained without any practical implementation. An additional declarative provision for honorary citizenship of Russia was established by the legislator in Article 8 of the 1991 Citizenship Law.

3.3.2 The Russian Citizenship by default - zero option

A central element of the new citizenship law was the definition of the original body of citizens of the Russian Federation. As in the case of several other former Soviet Republics, the Russian legislator applied the so-called 'zero option'.³⁵ In accordance with article 13 of the Russian Citizenship Law 1991/1992 (Law no. 1948-I of 28 November 1991, as amended on 6 February 1995) all citizens of the former USSR who were permanent residents in Russia on 6 February 1992 (the date of entry into force of the Citizenship Law) automatically obtained Russian citizenship

³² The Law of the RSFSR from 28.11.1991 N 1948-1 «About the citizenship of the RSFSR» // Russian gazette. N 30, 06.02.1992. - Later, after the new Constitution was adopted, special amendments were made to the 1991 Citizenship Law in order to replace 'RSFSR' with 'the Russian Federation'.

³³ Vasilyev V. Citizenship after the disintegration of the Soviet Union. Narodny deputat. 1992. №18. p.55-60.

³⁴ Avakyan S.A. The Citizenship of the Russian Federation. Moscow. 1994. p.5-12.

³⁵ The Russian citizenship legislation defined this procedure as 'recognition of the citizenship of the RSFSR'.

unless they expressed their wish to the contrary before 6 February 1993. The basis for establishing whether a person was permanently resident within Russia was the internal residence registration (*propiska*) in his or her USSR passport. Article 18(g) of the citizenship law provided for a simplified procedure (“by way of registration”) for obtaining Russian citizenship for citizens of the former USSR who arrived in Russia after 6 February 1992 and expressed their wish to become Russian citizens before 31 December 2000.

In the context of the Russian Citizenship Law 1991/1992 *the soviet propiska system* (akin to today’s residence registration system³⁶) became the reason for several legal disputes in Russia, especially in cases of stateless persons (citizens of the former USSR). In the case of *Larisa Tatishvili v. Russia*³⁷ the Russian authorities’ arbitrarily refused to certify her residence at a chosen address. The applicant to the European Court of Human Rights, Larisa Artemovna Tatishvili, was born in 1939 in Georgia. She continued to hold citizenship of the former USSR until 31 December 2000 when she became a stateless person. At the time of the application to Strasbourg she lived in Moscow. The domestic authorities’ refusal was motivated by the fact that the applicant had failed to prove her Russian citizenship or confirm her intention to obtain it.

The Russian Government denied that there had been any interference with the applicant’s right to liberty of movement because her presence in the Russian Federation had not been lawful. The Russian authorities claimed that the applicant, who had arrived from Georgia, had failed to take any steps to determine her citizenship and to make her residence in Russia lawful, such as confirming her Georgian citizenship or applying for Russian citizenship. They stated that the applicant’s situation had been governed by the 1981 USSR Law on the legal status of foreign citizens in the USSR and by the 1991 Rules on the stay of foreign citizens in the USSR. Pursuant to articles 5 and 32 of the 1981 USSR law, the applicant, as a stateless person, should have obtained a residence permit from the Ministry of the Interior. The Russian Government concurrently claimed that, after entry visas had been introduced for Georgian citizens from 5 December 2000, the applicant could only have been lawfully resident in Russia on 25 December 2000 if she had crossed the border with a valid Russian visa in her national passport.

Larisa Artemovna Tatishvili criticised the Government’s arguments as mutually exclusive and inconsistent. She continued to hold citizenship of the former USSR and had never acquired Georgian citizenship. Consequently, she had not been required to obtain an entry visa as a Georgian citizen. In any event, she had not crossed the Russian border in 2000 or later. As to the Government’s reliance on the 1981 USSR Law and the 1991 Rules, article 1 of that Law stated that it did not apply to USSR citizens, which the applicant had remained, and it had therefore not applied to her. In fact, until a new Russian Law on the legal status of foreign citizens was adopted on 25 June 2002, Russia had no legislation imposing an obligation on citizens of the former USSR to obtain residence permits as a condition of their lawful residence in Russia. Thus, she had been lawfully present in the Russian Federation. Finally, the European Court of Human Rights held unanimously that there had been a violation of Article 2 of Protocol No. 4 (freedom of movement) and a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights. Under Article 41 (just satisfaction), the Court awarded the applicant 15 euros (EUR) in respect of pecuniary damage (as compensation for an administrative fine she had to pay), EUR 3,000 in respect of non-pecuniary damage and EUR 2,500 for costs and expenses.

As the case of *Tatishvili v. Russia* illustrates, not being formally registered in Russia prevents any resident (either citizen or stateless person) from exercising fundamental social rights,

³⁶ Karpukhin D.V. Registration on the place of residence in the Russian Federation in the case law of the ECHR. *Zhylyshnoye pravo*. 2011. №6. P.69-90 [Карпухин Д.В. Регистрация по месту жительства в Российской Федерации в актах Европейского суда по правам человека // Жилищное право. 2011. N 6. С. 69-90].

³⁷ *Tatishvili v. Russia*, 22 February 2007 (no. 1509/02).

as it hinders access to medical assistance, social security, an old-age pension, and prevents them from possessing property and marrying. The *Tatishvili* case has special importance for the stateless people living in Russia. After the end of the Soviet Union (December 1991) and until 31 December 2000, individuals who had not obtained the citizenship of one of the newly independent States had had a special legal status in Russia, that of a “*citizen of the former USSR*”. Only after that date were they considered stateless persons.

Almost 10 years before the *Tatishvili* case, on 2 February 1998, the Constitutional Court of Russia ruled, in particular, that “... the registration authorities are entitled only to certify the freely expressed will of a citizen in his or her choice of ... residence. For this reason, the registration system may not be permission-based and it shall not entail a restriction on the citizen’s constitutional right to choose his or her place of ... residence. Thus, the registration system in the sense which is compatible with the Russian Constitution is merely a means ... of counting people within the Russian Federation, ... is notice-based and reflects the fact of a citizen’s stay at a place of his or her temporary or permanent residence.”

The Constitutional Court of Russia emphasised that, upon presentation of an identity document and a document confirming the person’s right to reside at the chosen address, the registration authority should have no discretion and should register the person concerned at the address indicated. The requirement to submit any additional document might lead to “paralysis of a citizen’s rights”. On those grounds, the Constitutional Court ruled that the registration authorities were not entitled to verify the authenticity of the submitted documents or their compliance with Russian laws and, accordingly, any such grounds for refusal were unconstitutional.

The judgment of the Russian Constitutional Court and the case of *Tatishvili v. Russia* significantly influenced registration policy in Russia. Thus, if in the Soviet era registration (‘propiska’) was *de facto* based on the permission of the state authorities; in modern Russia the registration order is extremely liberal. This had led to so called ‘rubber-apartments’ (‘резиновые квартиры’)³⁸ where hundreds of people are registered but do not actually reside there. One consequence of this had been the growth of a black market for registration in many Russian cities. Real estate owners are entitled to register as many people at their property as he or she wishes (of course, in exchange for illegal payments). Today, there are six thousand apartments that have a total of 260,000 people registered as living there.³⁹ This liberalisation of the registration procedure in Russia caused difficulties in identifying the factual place of residence of Russian citizens as well as of foreign migrants. Due to very liberal rules of registration it is quite often almost impossible to find various kinds of offenders, such as absentee fathers, draft evaders, persistent defaulters etc. Thus, the registration policy in Russia has swung from one extreme to another. In Soviet times the movements and place of residence of people were rigidly controlled by the authorities (‘propiska system’). Today, the modern state adopts a policy of indifference regarding people’s actual place of residence, whether they are Russian citizens or foreigners. (Karpukhin 2011: 69; Barkhatova 2009).

3.3.3 The Russian Citizenship Deniers

Today, there are still thousands of people entitled to Russian citizenship who still do not possess it. Whilst passport reform (the process of replacing old Soviet passports with new Russian passports)

³⁸ Maxim Makarychev. ‘FMS will grasp with ‘rubber-apartments’. Russian gazette, 15 February 2012.

<http://www.rg.ru/2012/02/15/migraciya-site.html> [Максим Макарычев. ФМС разберется с “резинowymi квартирами”. “Российская Газета” 15 февраля 2012 г.]

³⁹ Tatiana Smol’yakova. ‘Ten years for illegal resident. Russia will harden the responsibility for law violation’.

Russian gazette, 3 February 2012. <http://www.rg.ru/2012/02/03/romodanovskij.html> [Татьяна Смольякова. Десять лет за нелегала. Россия ужесточит ответственность за нарушения законодательства. “Российская Газета”. N5696 от 3 февраля 2012 г.]

finished in 2004 there are still people without documents proving Russian citizenship. The Federal Migration Service of Russia (FMS) estimates that 686,000 people still are without passports.⁴⁰ For example, in the Novosibirsk region there are approximately one thousand people who still hold the old Soviet passport. The majority of people who lack passports are from disadvantaged backgrounds (for example, homeless people in Russia).⁴¹

However, there are some who deliberately reject citizenship of the Russian Federation (Citizenship deniers or *'убеждённые СССРовцы'* - *'convinced USSR-people'*). There are also those who refuse to change the Soviet passport because of the fact that the new Russian passport does not have information regarding nationality (*'grafa national'nost'*). Thus, in 2011 there were two cases brought before the Constitutional Court of Russia which addressed potential human rights violations by the form of the new Russian passport, i.e. with regard to the nationality (ethnicity) of the passport holder (the case of Boris Stepanovich Kononov⁴² and the case of Kharun Magamedovich Geraev⁴³). Despite the fact that Russian Constitutional Court dismissed both applications, the Court concluded that nationality (ethnicity) does not have any legal significance. The applicants have also demanded to be allowed to use old-style Soviet passports, i.e. to glue in new photos in their Soviet passports.⁴⁴ These claims were also dismissed by the Constitutional Court of Russia. However, it is important to note that the first complaint was lodged by an applicant of Russian ethnicity and the second by an applicant of non-Russian ethnicity.

There is also another group of people who refuse to replace the old Soviet passport for religious reasons. Those citizens claim that the symbols (an ornamental design) on the pages in the modern Russian passport contains the "number of the beast" - 666.⁴⁵ In the case of *Ivanov, Ivanchenko and Litvinova* brought before the Constitutional Court of Russia the applicants complained that the new Russian passport violates their freedom of conscience and religion. Thus, the applicants demanded that officials of the FMS allow them to glue their new photo into the Soviet passport. All these women's requests were refused, which led them to appeal to the Constitutional Court of Russia. In December 2011 the Constitutional Court of Russia rejected their complaints and has also refused to investigate. The reader can form their own conclusion by looking at photos of the Russian passport in Appendix 1 of this paper.

⁴⁰ There are still 686,000 Soviet passports in Russia. Russian gazette, 04.03.2012. <http://www.rg.ru/2012/03/04/pasport-anons.html> [В России осталось 68,6 тысячи "советских" паспортов. Российская газета. 04.03.2012]

⁴¹ Oхана Smirnova. 'Inborn by the USSR' №23 (4675) 2-8 June 2010. http://www.molsib.info/content.php?cat_id=62&id=6234 [Оксана Смирнова. Прирождённый в СССР. №23 (4675) 2-8 июня 2010 года].

⁴² Decision of the Constitutional Court of the RF from 23.03.2010 N 326-О-О 'About the dismissal of the complaint of the citizen Kononov Boris Stepanovich regarding the violation of his constitutional rights by the Provision about the passport of the citizen of the Russian Federation' [Определение Конституционного Суда РФ от 23.03.2010 N 326-О-О 'Об отказе в принятии к рассмотрению жалобы гражданина Кононова Бориса Степановича на нарушения его конституционных прав Положением о паспорте гражданина Российской Федерации'].

⁴³ Decision of the Constitutional Court of the RF from 27.05.2010 N 722-О-О 'About the dismissal of the complaint of the citizen Geraev Kharun Magamedovich regarding the violation of his constitutional rights by para 4 of the Provision about the passport of the citizen of the Russian Federation' [Определение Конституционного Суда РФ от 27.05.2010 N 722-О-О 'Об отказе в принятии к рассмотрению жалобы гражданина Гераева Харуна Магамедовича на нарушение его конституционных прав пунктом 4 Положения о паспорте гражданина Российской Федерации'].

⁴⁴ According to the legislation of the Russian Federation the passport of the citizen of the USSR of a sample of 1974 has indefinite duration of validity and proves the identity of the citizen of the Russian Federation if the citizen has changed in it photos by reaching the age of 20 and 45 years. However, the applicant's request to glue the new photo into the old Soviet passport was rejected by the Russian authorities.

⁴⁵ Irina Aroyan. Six of discord. 140 inhabitants of the Rostov region refused Russian passports having discovered in them a mark of Satan. Russian gazette, № 4721. 05.08.2008. <http://www.rg.ru/2008/08/05/a248022.html> [Ирина Ароян. Шестёрки раздора. 140 жителей Ростовской области отказались от российских паспортов, разглядев в них метку Сатаны. Российская газета. № 4721. 05.08.2008]

3.3.4 Registration of Citizenship

Additionally the Russian legislator has established a simplified naturalisation procedure in the form of registration. Article 18 of the 1991 Citizenship Law listed all categories of persons who could obtain the Russian citizenship through registration: 1) the spouse of a Russian citizen or any person with a lineal relative who had Russian citizenship, 2) a child whose parents were citizens of the Russian Federation at the time of his or her birth was also deemed to be a citizen of the Russian Federation irrespective of the place of birth, 3) a child of a former Russian citizen who was born after termination of his or her parents' citizenship could apply within 5 years of reaching the age of 18, 4) a USSR citizen who was permanently residing on the territory of other republics which were part of the former USSR as of 1 September 1991 if they were not citizens of those republics and if they declared their wish to acquire Russian citizenship within 3 years⁴⁶ of the Russian law on citizenship coming into force, 5) persons without citizenship on the date of the Russian citizenship law coming into force who permanently resided on Russian Federation territory or that of other republics which were part of the former USSR as of 1 September 1991 if they declared their wish to acquire Russian citizenship within 1 year of the law coming into operation, 6) foreign citizens or persons without citizenship irrespective of their place of residency if they themselves or at least one of their parents was a Russian citizen at birth and within 1 year of this law coming into force they declared their wish to acquire Russian citizenship.

To sum it up, between 1991-2000 registration was the most frequently used method⁴⁷ of obtaining Russian citizenship. Unfortunately, there is no reliable statistical information regarding acquisition of Russian citizenship based on the particular provisions of the 1991 Citizenship Law. Thus, there is no information on how many foreign citizens obtained Russian citizenship through marriage with a Russian citizen. Given there was no minimum duration of the marriage, we can only guess how many fictive marriages were concluded in order to obtain Russian citizenship. Nevertheless, the 1991 Citizenship Law played a very positive role in establishing the foundations of the modern Russian citizenship regime.

4 Current citizenship regime

On 19 April 2002, the State Duma of Russia adopted the Federal Law 'About Citizenship of the Russian Federation'. The draft of this federal law was brought into the State Duma by the President of Russia, Vladimir Putin. On 15 May 2002 the Upper Chamber of the Russian Parliament - the Council of the Federation - approved the citizenship law and on 31 May 2002 the new Citizenship Law of Russia was signed by the Russian President (and entered into force on 1 July 2002). The 2002 Citizenship Law of Russia replaced the previous 1991 Citizenship Law (Golovistikova 2005). Thus began a new chapter in the development of the Russian Citizenship doctrine (Kutafin 2003: 170).

There were several reasons for the adoption of the new Citizenship Law (Shevel 2008). Firstly, it was necessary to bring domestic citizenship legislation in line with constitutional standards. The 1993 Russian Constitution provided some legislative innovations such as the non-recognition of Republican Citizenship. Thus, the provision regarding the citizenship of the republics of the Russian Federation was not included into the Citizenship Law of 2002. Eventually, the Russian legislator removed the declarative construction of twofold citizenship in the Russian

⁴⁶ Initially the deadline for the application for the Russian citizenship through registration was on 6 February 1995. However, taking into account the great demand for this simplified order (registration procedure) from the side of the citizens of the former USSR, in 1995 the Russian legislator extended the deadline for application until 31 December 2000.

⁴⁷ According to the Russian Citizenship Law 1991 (art.12) citizenship of the Russian Federation can be acquired: 1) by recognition, 2) by registration, 3) by birth, 4) by naturalisation, 5) by restoration of citizenship, 6) by optation.

Federation. Secondly, it was necessary to abolish several provisions of the 1991 Citizenship Law which were outdated and not applicable. It was also politically expedient to limit the ease with which people were able to acquire Russian citizenship (for example, by marriage). Finally, on 6 November 1997, Russia signed the European Convention on Nationality, which necessitated a new version of the Citizenship Law of Russia.

4.1 Acquisition of citizenship by birth

The acquisition of Russian citizenship by birth is mostly made on the basis of *ius sanguinis* and in some exceptional cases based on the principle of *ius soli*. According to Article 12 of the 2002 Law, Russian citizenship will be given to a child whose parents or single parent have Russian citizenship (irrespective of the child's place of birth). In addition, the acquisition of Russian citizenship by birth on the basis of *ius sanguinis* is applicable if at the date of birth of the child one of its parents has Russian citizenship and the other parent is a stateless person or was declared an unaccounted person. A child shall also obtain the Russian citizenship by birth based on the combination of *ius sanguinis* and *ius soli* if one of the child's parents has Russian citizenship and the other one is a foreign citizen, on the condition that the child has been born on Russian territory or if otherwise he or she would become a stateless person.

The 2002 Citizenship Law also established the procedure for the acquisition of Russian citizenship based on *ius soli*. Thus, according to Article 12(1d) of the Russian Citizenship Law, Russian citizenship shall be granted to a child if both the child's parents or the child's only parent residing in the territory of the Russian Federation are foreign citizens or stateless persons, on condition that the child has been born in the territory of the Russian Federation, while the state where child's parents are citizens does not grant its citizenship thereto. Moreover, according to art.12(2) of the 2002 Citizenship Law, a child found on the territory of the Russian Federation and whose parents are unknown shall become a Russian Federation citizen if the parents fail to appear within six month after the time the child was found (i.e. the acquisition of Russian citizenship on the basis of *ius soli*).

4.2 Acquisition by admission (naturalisation)

The Russian legislator does not use the term 'naturalisation'. Instead, the term 'admission into citizenship' (*priyom v grazhdanstvo - приём в гражданство*) has been fixed in the 2002 Citizenship Law of Russia. However, the examination of the admission procedure provides evidence that this is the same as the naturalisation procedure known in the legislation of other modern states. According to the 2002 Citizenship Law, there are two possible procedures for admission (naturalisation) into Russian citizenship: the General Order (art.13) and Simplified Procedure (art.14).

4.2.1 General order of admission (naturalisation) into Russian citizenship

According to Article 13 of the Citizenship Law 2002, any foreign citizens or stateless persons can be admitted into the citizenship of Russia if they apply for naturalisation (admission) and fulfill the following conditions (Blinov, Chaplin 2002):

- 1) That they have resided on the territory of the Russian Federation since the day when they received a residence permit and to the day when they file a naturalisation application asking for Russian Federation citizenship for five years without a break.⁴⁸ The term of residence in the territory of the Russian Federation for the persons who had arrived to the Russian Federation

⁴⁸ The duration of residence in the territory of the Russian Federation shall be deemed without a break if the person left the Russian Federation for a term not exceeding three months in one year.

prior to 1 July 2002 and do not have residence permits, shall be estimated, as the date of their registration at the place of residence;

- 2) Their compliance with the Constitution and legislation of the Russian Federation;
- 3) That they possess a legal source of income;
- 4) That they have filed applications to the competent body of the foreign state by which they renounce their previous citizenship. No renunciation of foreign citizenship is required if this is allowed by an international treaty of the Russian Federation or the present Federal Law or if the renunciation of another citizenship is impossible due to reasons beyond the person's control;
- 5) That they have command or understanding of the Russian language.

For special categories of people, the general order of admission (naturalisation) provides for a reduction of the duration of permanent residence on the territory of the Russian Federation to one year if the applicant belongs to one of the following categories:

1. The person has high achievements in the field of science, technology and culture; the person has a profession or qualification of interest for the Russian Federation;
2. The person has been granted asylum in the territory of the Russian Federation;
3. The person has been recognised as a refugee.

Also in the framework of the general order of admission (naturalisation), the Russian legislator created the generous provision that a person with special merit to the Russian Federation may be admitted to Russian Federation citizenship without fulfillment of any of the conditions listed above. Discretion over this decision is given to the President of the Russian Federation.

Moreover, the 2002 Citizenship Law provides that citizens of the former Soviet states who serve at least three years in the Armed Forces of the Russian Federation and in other forces, military units or bodies on a contractual basis, are entitled to apply for citizenship of the Russian Federation without fulfillment of the rule regarding the continuous lawful residence on the territory of Russia for five years (i.e. the application will be considered without the need to present a residence permit).

4.2.2 Simplified procedure of admission (naturalisation) into Russian citizenship

The simplified procedure of admission into Russian citizenship is regulated by Article 14 of the 2002 Citizenship Law. Basically, the general procedure of the admission into the Russian citizenship (art.13) consists of rules which significantly simplify the naturalisation procedure (i.e. reduce the duration of residence required). Similar regulations were set forth in art.14 of the 2002 Citizenship Law but in very special cases the applicant for Russian citizenship can also be freed from compliance with other provisions (i.e. confirmation of a legal source of income, knowledge of the Russian language, etc.).

Thus, Russian citizenship can be acquired by the following groups of applicants without fulfillment of conditions regarding the minimum duration of lawful residence in Russia (i.e. without obligation to prove five years of permanent residence in Russia):

1. Foreign citizens and stateless persons who have reached the age of 18 and who have dispositive capacity and who are entitled to naturalisation by application for Russian citizenship if these applicants:
 - a) have at least one parent who is a Russian citizen and resides on Russian territory;
 - b) have had USSR citizenship, and having resided and residing in the former republics of the USSR, have not become citizens of these new states and as a result remain stateless persons;

- c) are citizens of the states which are former republics of the USSR and have received secondary-level professional education or higher education at educational institutions of the Russian Federation after 1 July 2002.
2. Foreign citizens and stateless persons residing on the Russian territory if these citizens and persons:
 - a) were born on the territory of the RSFSR and have been citizens of the former USSR;
 - b) have been married to a citizen of the Russian Federation for at least three years;
 - c) are disabled persons and have a capable son or daughter who has reached the age of 18 and is a citizen of the Russian Federation;
 - d) have a child who is the citizen of the Russian Federation, and if the other parent of this child was also a citizen of the Russian Federation and is dead, or due to a court decision has been declared a missing person, legally incapable or impaired, or who has been limited or deprived of their parental rights (section 'd' was introduced on 28 June 2009).
 - e) have a son or daughter who has reached the age of 18 who is a citizen of the Russian Federation, and who, based on a valid court decision, has been declared legally incapable or impaired. In this case, if the other parent of the above mentioned Russian citizen who was also a citizen of the Russian Federation is dead, or due to the court decision was declared a missing person, legally incapable or impaired, deprived or limited in parental rights (section 'd' was introduced on 28 June 2009).
 3. Disabled foreign citizens and stateless persons who have come to the Russian Federation from the former republics of the USSR, and were registered at their place of residence in the Russian Federation on July 1, 2002.

Furthermore, under the simplified naturalisation procedure, in particular without observing the conditions regarding the minimum duration (5 years) of lawful residence in Russia, a legal source of income and the Russian language test, the following applicants can acquire Russian citizenship: foreign citizens and stateless persons who have been citizens of the USSR who have come to the Russian Federation from the former republics of the USSR, who are registered at their place of residence in the Russian Federation as of 1 July 2002, or who have received a permit for temporary residence in the Russian Federation.

Veterans of the Great Patriotic War who were citizens of the former USSR and reside on the territory of the Russian Federation can also be admitted to Russian Federation citizenship based on the simplified procedure without observing the conditions regarding the minimum duration (5 years) of lawful residence in Russia, a legal source of income, the Russian language test and also regarding the requirement to renounce any other foreign citizenships.

Even without observing any of the conditions set forth in art.13 of the Russian Citizenship Law of 2002, children and disabled persons who are foreign citizens or stateless persons can be admitted into Russian citizenship under the following conditions:

1. a child with a parent who is a citizen of the Russian Federation - on the application of this parent and in the presence of the other parent's consent to the child's becoming a citizen of the Russian Federation. Such consent shall not be required if the child resides on the territory of the Russian Federation;
2. a child whose only parent is a Russian citizen - on the application of this parent;
3. children or disabled persons who are in custody or guardianship - on the application of the custodian or guardian or who is a citizen of the Russian Federation.

Finally, in 2008, due to changes in Russian immigration law the following persons can acquire Russian citizenship based on the simplified procedure - in particular without observing the conditions regarding the minimum duration (5 years) of lawful residence in Russia, a legal source of income and the Russian language test: foreign citizens and stateless persons who have registration of their permanent residence on the territory of the Russian Federation or who are subjects of the Russian Federation selected for residence due to participation in the State Program for the voluntary resettlement in Russia of compatriots living abroad.

5 Implementation of the Russian Citizenship Law 2002

5.1 Factual deprivation of Russian citizenship

Confiscation of passports (factual deprivation of citizenship) based on the decision of public officials of the FMS became a painful problem in Russia. Between 1991 and 2000 a considerable number of former Soviet citizens obtained Russian citizenship when they lived in territories of the former Soviet republics of the USSR. The granting of Russian citizenship (by the issue of Russian passports) was carried out by Russian embassies/consulates, and also by commanders of military units on the territory of the former republics of the USSR according to the previous Russian Citizenship Law of 1991. Afterwards it became clear that when granting Russian citizenship and passports many public officials did not include information about these new Russian citizens in the general register of all citizens of the Russian Federation.

This would cause these citizens problems in the future, From 2003 to 2010 the Federal Migration Service of Russia implemented a special operation named 'total control'⁴⁹, whereby they confiscated passports from those who needed their old Russian passport replaced by the new one. According to Russian legislation it is necessary to obtain a new passport at age 20 and 45 years, or when a person's surname changes by marriage or divorce.

When officials subsequently did not find any information about these Russian citizens in the databases of the Ministry of Foreign Affairs, the Ministry of Internal Affairs, and FMS of Russia, they interpreted this as either an absence (non-acquisition) of Russian citizenship or that they had been illegitimately registered as Russian citizens. As a result the public officials refused to issue new passports. Quite often this decision was also accompanied by withdrawal of the applicant's passport or by declaring all ID documents confirming their Russian citizenship to be invalid. *De facto* Russian citizens were thus extrajudicially deprived of their citizenship and became stateless (*ex curia* deprivation of citizenship).⁵⁰

This situation could have been easily avoided. For more than a decade, almost all of these 'aliens' (non-citizens/stateless persons) had voted in Russian elections, served in the Russian army, and were sometimes even on public or municipal service. They paid taxes, received Russian international passports, and then - due to an administrative decision (*ex curia*) were declared persons without citizenship. For example, in the Kaliningrad region a considerable proportion of these persons were family members of the military personnel of the Armed forces of the Russian Federation who received passports (or special certificate about belonging to the Russian citizenship)

⁴⁹ Lidia Grafova. To deprive of the passport - to deprive of life. Russian gazette, N4990, 4.09.2009. <http://www.rg.ru/2009/09/04/lukin.html> [Лидия Графова. Лишить паспорта - лишить жизни. Российская газета N4990 от 4 сентября 2009 г.]

⁵⁰ Natalia Kozlova. Troika confiscates passports. Ten thousands of Russian are deprived of citizenship by administrative decision of officials. Russian gazette, 15.12.2010. <http://www.rg.ru/2010/12/15/fms.html> [Наталья Козлова. Тройка отнимает паспорта. Десятки тысяч россиян чиновники собственным решением лишают гражданства. Российская газета N5362 от 15 декабря 2010 г.]

on the territory of Lithuania, Latvia or Estonia, or other former republics of the USSR and who came to Russia after February 6th 1992.

In total 65,000 citizens had their Russian passports declared null and void in this manner. Furthermore, FMS officials withdrew passports from 34,000 citizens of Russia. All these people whose passports were withdrawn and declared invalid were offered the chance to apply for a residence permit in Russia as a stateless person (Lukyanova et al 2011: 12). Only after pressure from human rights NGOs, Commissioners (Ombudsmen) for Human Rights in the Russian Federation (federal and regional), and the Presidential Human Rights Council the State Duma of Russia make a decision that a 'passport amnesty' should take place in 2012.⁵¹ As result of this 'passport amnesty' all citizens who had been factually deprived of Russian citizenship by the decision of public authorities should have their Russian passports returned. On 1 November 2011 the draft law regarding 'passport amnesty', successfully passed the first reading in State Duma.⁵² The draft stipulates that deprivation of citizenship of those who received the Russian passport during the period from 1991 to 2002 will be possible only if the passport was obtained by obviously illegal methods. If FMS officials have such suspicions, they must be presented in court.

5.2 Abolition of the simplified naturalisation procedure

5.2.1 Case of Belarus, Kazakhstan, Kyrgyzstan

On 21 October 2011 the President of Russia D.A.Medvedev signed a decree which *de facto* abolished the simplified naturalisation procedure based on existing international treaties.⁵³ At the moment there are two such international treaties: a quadrilateral agreement (between Belarus, Kazakhstan, Kyrgyzstan and Russia) and a bilateral agreement (between Russia and Kyrgyzstan). According to these agreements citizens of Belarus, Kazakhstan, and Kyrgyzstan could obtain citizenship of Russia within 3 months from application. Experts believe that this will substantially extend the length of registration procedure up to two years.⁵⁴

Due to this decree migrants to Russia are now obliged to obtain a residence permit by considering the option of naturalisation in Russia through the simplified procedure based on international treaties. Previously when applying for naturalisation, migrants from these countries could choose to attach to their application for Russian citizenship the migration card, temporary residence permit or permanent residence permit. The procedure for obtaining a permanent residence permit is excessively complex and long in comparison with obtaining the two other documents (Ruget & Usmanalieva 2010: 445).

⁵¹ Natalia Kozlova. Passport amnesty. The deprivation of passports is now prohibited. Russian gazette. №5629. 10.11.2011. <http://www.rg.ru/2011/11/10/pasport.html> [Наталья Козлова. Паспортная амнистия. Отнимать у гражданина паспорт теперь запрещено. Опубликовано в Российская газета (Неделя) N5629 от 10 ноября 2011 г.]

⁵² Draft of the federal law regarding amendments to the Federal Law 'About Citizenship of the RF'. Draft No. 462911-5 from 2.11.2011 [Проект Федерального закона О внесении изменений в Федеральный закон 'О гражданстве Российской Федерации'. Проект № 462911-5 от 2 ноября 2011 г.] <http://www.rg.ru/2011/11/02/grajdanstvo-site-dok.html>

⁵³ Decree of the President of Russia from 19.10.2011. No.1391. 'About amendments to the Provisions about the Order of consideration of questions regarding acquisition of citizenship of the RF' (published and entered into force on 24.10.2011. [Указ Президента России «О внесении изменений в Положении о порядке рассмотрения вопросов гражданства РФ» от 19.10.11 №1391 – опубликован и вступил в силу 24 октября 2011 года].

⁵⁴ Alexandra Viktorovna Dokuchaeva. New rules of naturalisation into the Russian citizenship are violating rights of compatriots. 'МАТЕРИК' - information and analytics from the post-soviet space. 31.10.2011. <http://materik.ru/rubric/detail.php?ID=14131> [Александра Викторовна Докучаева. Новые правила приема в гражданство РФ бьют по соотечественникам. Информационно-аналитический портал постсоветского пространства «МАТЕРИК». 31.10.2011].

Although the presidential decree complicates the simplified naturalisation procedure and undermines the sense of the existing international agreements, all requirements for obtaining Russian citizenship based on the simplified procedure remained unchanged. As before it is necessary to have a spouse or parents who are citizens of the Russian Federation. Also persons who born in the territory of the former RSFSR, have the right to obtain citizenship due to the simplified procedure. However, now migrants from Belarus, Kazakhstan and Kyrgyzstan who earlier expected to obtain Russian citizenship based on the simplified procedure (taking up to three months), will be forced to pass all the stages of the standard naturalisation procedure.⁵⁵

Additionally, the presidential decree can be considered as a violation of the principle of legal certainty. This decree deprived people of any possibility to prepare for the new conditions of the naturalisation procedure. Those who moved to Russia as migrants, having sold their real estate in the former Soviet republics and then expected to obtain Russian citizenship due to the simplified naturalisation procedure ('*uproshenka*'), were *ex facto* deceived by the Russian authorities (or to be exact by the Russian President Medvedev). The presidential decree entered into force on the day of its official publication, 21 October 2011.

5.2.2 Denunciation of the agreement between Russia and Kyrgyzstan regarding simplified procedure of naturalisation

In March 2012 the head of the FMS, Konstantin Romodanovsky, announced that the Russian Government had decided to renounce the agreement between the Russian Federation and Kyrgyzstan regarding the simplified procedure of naturalisation. These measures were a direct consequence of the Presidential decree of October 2011. The Russian authorities justified this measure in terms of the need to streamline Russian legislation regarding migration, and also argued that the bilateral agreement between Russia and Kyrgyzstan duplicated the content of the quadrilateral agreement from 26 February 1999 on the same question, and was thus superfluous.⁵⁶

However, there are some problems with the argument that the bilateral treaty duplicated the quadrilateral agreement. The agreement between Kyrgyzstan and Russia about the simplified naturalisation procedure set forth two possible methods of naturalization: 1) choice of Russian citizenship for permanent residence in Russia (in this case citizens applied to the authorities of the FMS after arrival on the territory of the Russian Federation); 2) choice of Russian citizenship with the possibility of subsequent permanent residence in Kyrgyzstan (in this case citizens had to apply to the Embassy or the Consulate General of the Russian Federation in Osh in order to obtain Russian citizenship).

Following the presidential decree of 19 October 2011, citizens of Kyrgyzstan have the right to apply for Russian citizenship *only* on the territory of the Russian Federation. All applicants must have permanent residence in Russia and an official permanent residence permit ('*vid na zhitelstvo*' - '*вид на жительство*'). Factual acquisition of Russian citizenship by Kyrgyz citizens in diplomatic and consular missions of the Russian Federation in Kyrgyzstan became impossible after October 2011.

Furthermore, there are certain differences between the bilateral and quadrilateral agreements regarding registration of citizenship. According to the quadrilateral agreement an application for

⁵⁵ Yulia Savina. With the residence permit. *Novye Izvestia*. 25.10.2011. [Юлия Савина. С видом на жительство. «Новые известия», 25 октября 2011 года.]

<http://uisrussia.msu.ru/docs/http/demoscope.ru/weekly/2011/0483/gazeta02.php>

⁵⁶ Denunciation of the Agreement. FMS: Russia will terminate the Treaty with Kyrgyzstan. *Expert Online*. 21.03.2012. [Денонсация договора. ФМС: Россия расторгнет договор с Киргизией. *Expert Online*. 21 марта 2012 года.] <http://expert.ru/2012/03/21/denonsatsiya-dogovora/>

naturalisation based on the simplified procedure was only possible for Kyrgyz citizens born in Russia or who permanently lived on the territory of Russia until 21 December 1991. According to the bilateral agreement the right to naturalisation (within three months from the date of submission of documents) was given to any Kyrgyz citizen who had permanent residence in Kyrgyzstan (on 15 December 1990) or Russia (on 9 November 1997).

Thus, we can dispute the placatory statements of the Russian authorities that denunciation of the bilateral agreement would not have significant consequences for Kyrgyz citizens who want to obtain Russian citizenship. Behind these actions other motives may be hidden, such as the desire to close the border of Russia to migrants of a non-Russian nationality. Some evidence to support this conclusion comes from the press release of the Russian Government on 1 March 2012. According to official statistics, the total number of Kyrgyz citizens who have obtained Russian citizenship based on the simplified naturalisation procedure is estimated at 300,000. There is also information regarding the proportion of the citizens granted Russian citizenship by this simplified naturalisation procedure, namely 60% of Kyrgyz nationality, 20% of Uzbek nationality and 20% of Russian nationality.⁵⁷ Most likely this disproportion forced the Russian authorities to make this aspect of their immigration policy stricter.

5.2.3 Loss of citizenship

According to the provisions of the 1993 Russian Constitution (art.6 (3), a citizen of the Russian Federation may not be deprived of his or her citizenship or of the right to change it. Thus, the legal mechanism for the deprivation of citizenship no longer existed. However, Chapter 3 of the 2002 Citizenship Law does provide grounds for the termination of Russian citizenship. The only reason which is *de facto* applicable in the citizenship practice in the Russian Federation is voluntary loss of Russian citizenship. According to the Article 19 of the 2002 Law, a person residing in the territory of the Russian Federation may renounce their Russian citizenship voluntarily. Renunciation of Russian citizenship by a person residing in the territory of a foreign state must be done by means of a voluntary expression of his or her will according to the simplified procedure. Loss of Russian citizenship of a child who has one parent who is a Russian Federation citizen and whose other parent is a foreign citizen or whose sole parent is a foreign citizen shall be effected in the simplified procedure upon an application filed by both parents or upon an application filed by the sole parent.

Under the terms of the 2002 Citizenship Law (art.21), there is also an additional option for termination of citizenship, the Choice of another Citizenship in the case of a change of the border of the Russian Federation. Thus, when territorial transformations occur as a result of a change of the State Border of the Russian Federation under an international treaty of the Russian Federation, citizens of the Russian Federation residing in the territory which has undergone the above transformations shall be entitled to retain or change their citizenship in accordance with the terms of this international treaty. However, this provision remains hypothetical at present.

5.2.4 Dual/multiple citizenship

According to the Russian Constitution (art.62), a citizen of the Russian Federation may hold citizenship of a foreign state (dual citizenship) according to federal law or an international agreement of the Russian Federation.⁵⁸ The possession of foreign citizenship by a citizen of the

⁵⁷ Now it is more difficult for citizens of Kyrgyzstan to obtain Russian citizenship. RBK. 21.03.2012. [Гражданам Киргизии теперь сложнее стать россиянами. РБК. 21 марта 2012 года.] <http://top.rbc.ru/politics/21/03/2012/642810.shtml>

⁵⁸ Russia has concluded only two international agreements regarding dual citizenship: the Treaty between the Russian Federation and the Republic of Tajikistan regarding regulation of the issues of dual citizenship (07.09.1995), and the

Russian Federation shall neither diminish the citizen's rights and freedoms nor free the citizen from the obligations stipulated by Russian citizenship, unless otherwise provided for by federal law or an international agreement of the Russian Federation. In Article 6 the 2002 Citizenship Law the Russian legislator provides the regulations regarding dual citizenship. Thus, a citizen of the Russian Federation who also has another citizenship shall be regarded by the Russian Federation only as a Russian Federation citizen, except for the cases stipulated by an international treaty of the Russian Federation or a federal law. Acquisition by a Russian Federation citizen of another citizenship shall not cause termination of Russian Federation citizenship.

6 Recent debates

6.1 Citizenship & Nationality

The following aspects of case law illustrate the importance of the clear separation between nationality and citizenship in the Russian context. The issue regarding the indication of nationality of Russian citizens remains extremely contentious in the modern Russian Federation (Brubaker 1994: 47; Piattoeva 2009: 723; Stepanov 2000: 305). Due to the legislation in force the domestic passport certifies only Russian citizenship.⁵⁹ Information about nationality can be indicated only in the following documents: birth certificate, marriage certificate, divorce certificate, adoption certificate, paternity certificate, name change certificate and in the death certificate. Notification of nationality in all these documents is made only at the request of the citizen and on a voluntary basis.

Looking into the near future, the issue of nationality notification is likely to remain politically salient in Russia. In the late 1990s, the Russian legislator had not provided appropriate regulations regarding voluntary disclosure of nationality in the domestic passport. This led to high-profile litigation in the Constitutional Court of Russia. In 2004 the Volgograd Regional Duma lodged a request to the Russian Constitutional Court challenging the constitutionality of art.5 of the governmental Provision about passports of Russian citizens.⁶⁰ It was this article that led to information about nationality being excluded from the new Russian passport. At that moment, considering the fact that the Federal Parliament of Russia (State Duma) has been working on the draft of the Federal Law re-establishing the section about nationality in the passport⁶¹, the Constitutional Court of Russia dismissed this request from Volgograd without a hearing on its merits.⁶²

In 2010, the Constitutional Court of the Russian Federation once again had to return to the question of the constitutionality of the above mentioned governmental Provision regarding nationality notification in the Russian passport. This time the constitutional complaint against was lodged by a Russian citizen, Boris Stepanovich Kononov, who was also from Volgograd.

Treaty between Russian Federation and Republic of Turkmenistan regarding regulation of the issues of dual citizenship (23.12.1993).

⁵⁹ In compliance with the requirements of Art.10 of the Federal Law № 62-FZ from 31.05.2002 (revised version on 28.06.2009) 'About citizenship of the Russian Federation' // Russian gazette, N 100, 05.06.2002.

⁶⁰ Order of the Government of the RF from 08.07.1997 N 828 (revised version on 27.05.2011) 'On approval of the Provision about the passport of the citizen of the Russian Federation, blank form and description of the passport of the citizen of the Russian Federation' // Russian gazette, N 135, 16.07.1997.

⁶¹ On 17.10.2003 the State Duma approved at the first reading the draft of the Federal Law prepared by the Russian President 'About the main identity documents of the citizen of the Russian Federation'. The art.10 of this draft re-enacted the possibility of the nationality notification in the passport (based on the voluntary written statement of the passport holder).

⁶² Decision of the Constitutional Court of the RF from 08.04.2004 N 128-O 'On the request of the Volgograd Regional Duma about the examination of the constitutionality of art.5 of the Provision regarding the passport of citizens of the Russian Federation'.

The cause of this repeated complaint was the inactivity of Russian policymakers. After 2003, when the above mentioned draft of the Federal Law about the voluntary nationality notification was adopted, the legislative activity of the State Duma ceased. Eventually the draft was dismissed by the Russian Duma in 2011. Therefore, the Russian passport regime once again became the subject of constitutional inquiry. However, the Constitutional Court of the Russian Federation applied the same strategy and left the complaint of Mr. Kononov without any in-depth examination of its merits. This time, the Constitutional Court of Russia rejected the complaint of Boris Stepanovich Kononov as inadmissible, citing the following reasons:

‘nationality cannot have any legal significance for the status of the person as a citizen of the Russian Federation, and the notification of the nationality in the passport of the citizen of the Russian Federation cannot be considered as an obligatory component of the content of this document. This circumstance does not deprive citizens of the opportunity to determine and indicate his nationality and, thus, the contested legal regulation cannot be regarded as a violation of the constitutional rights of the applicant.’

The general findings of the Russian Constitutional Court were quite controversial; many questions were left unconsidered by the constitutional judges. Thus, the conclusion that nationality does not have any legal consequences is in contradiction with the provisions of Russian legislation. For instance, according to the Federal Law no. 143 (Art.18(4) the ethnic (national) background plays an important role in the definition of the citizen’s full name, in particular by the indication of the patronymic which can be based also on the national custom.⁶³ Still, the question remains: why can nationality be indicated by the citizen in all other state documents but not in the passport? The Constitutional Court of Russia has also given no explanation regarding the practical implementation of the right to determine and indicate nationality (art.26 (1) of the Constitution of the Russian Federation).

It is likely that in the next few years the issue of nationality notification in the passport will remain one of the most significant political and legal problems in Russia. This conclusion is based on several facts. Firstly, the above mentioned lawsuits in the Constitutional Court of Russia have indicated the problem, but the Russian judiciary has not yet provided a substantial judgement on the merits of the complaint. Secondly, the existing legal regulation regarding the main identity documents of the Russian citizen is still far from perfect. The principal issue continues to be the replacement of the applicable Ukaz provisions from 1997⁶⁴ (presidential decree regulations, i.e. the sublaw act of the executive) through the Federal Law of the Russian Duma (regulation of the Parliament, i.e. the act of the legislature). All in all, the existing mechanism of legal regulation regarding Russian IDs cannot be considered to be in full compliance with the rule of law. In October 2003, the corresponding conclusion was made by the state-building committee of the State Duma: ‘at the present moment the legal status of the identity documents of the citizen of Russia is regulated only by the non-legislative normative acts and this fact does not correspond to the existing standard of the legal regulation of the most crucial social relations in our country primarily by the federal laws and this entails technical and legal problems.’⁶⁵ Thus, looking into the near future,

⁶³ Federal Law from 15.11.1997 №143-FZ ‘About Acts of civil status (vital record)’.

⁶⁴ Decree of the President of the Russian Federation from 13.03.1997 N 232 ‘About main identity documents of the citizen of the Russian Federation on the territory of the Russian Federation’ (Ukaz Prezidenta RF ot 13.03.1997 № 232 ‘Ob osnovnom dokumente, udostover’ajushem lichnost’ grazhdanina Rossijskoj Federacii na territorii Rossijskoj Federacii’).

⁶⁵ Opinion of the State-building Committee of the State Duma from 10.10.2003 regarding the draft of the Federal Law (N 369593-3) ‘About main identity documents of the citizen of the Russian Federation’. Exact wording in the Russian language: ‘в настоящее время правовой статус документов, удостоверяющих личность гражданина России, установлен только в подзаконных нормативных правовых актах, что не соответствует существующему критерию правового регулирования базовых общественных отношений в нашей стране именно федеральными законами и приводит к технико-юридическим несоответствиям’.

further fine-tuning of rules regarding the main forms of Russian ID can be expected, especially the adoption of the special Federal Law (*lex specialis*) specifying the main identity documents and their content.

The legislative initiatives and case law discussed thus far may only be the tip of the iceberg. Besides these drafts there are several other political initiatives which intend to re-establish the nationality notification in the Russian passport. The issue of voluntary notification will probably remain the key question in Russian political debate during the next few years. Perhaps the best possible solution for this challenging question would be the adoption of the voluntary procedure of the nationality notification in the Russian passport, i.e. the same voluntary requirement involved in the issuing of birth certificates and other official certificates.

In any case, there are several different parties interested in a change of the existing Russian legislation: political parties, patriotic and nationalistic NGOs, the Russian Orthodox Church and other actors in Russian society. For example, in 2003, the corresponding initiative of the Volgograd Regional Duma was supported by the several regional legislative bodies, in particular the Republic of Altai, St.Petersburg, the Republic of North Ossetia-Alania, the Republic of Tatarstan (Tatarstan), the Republic of Khakassia, the Kostroma Region, the Kabardino-Balkarian Republic, the Krasnodar Krai (Territory), the Krasnoyarsk Krai (Territory), the Tula Region, the Chuvash Republic - Chuvashia and the Republic of Dagestan.⁶⁶ Thus, the initiative to re-establish the nationality notification in the passport was also supported by representatives of the national minorities in Russia. Furthermore, similar initiatives are now present in other post-Soviet states, i.e. in the Ukraine⁶⁷ and Lithuania⁶⁸. In February 2009, Kazakh lawmakers even re-established the nationality notification on a voluntary basis in the passport.⁶⁹ Some post-Soviet states have retained space in the passport for the nationality notification ever since the end of the Soviet period (Uzbekistan, Turkmenistan).

Therefore, the Russian passport regime regarding nationality notification cannot be considered to have been stabilized. In the coming years, the nationality issue will generate much political and legislative work for Russian policymakers. In the Russian Duma election campaign of 2011 and the Russian presidential elections of 2012, the issue of nationality played a dominant role in the programs of different political forces.⁷⁰ This suggests that the issue of the interrelation between nationality and citizenship will continue to be of great significance for Russia as well for other former Soviet republics.

⁶⁶ 'No' to passports without the 'nationality' column. Russkiy Vestnik. 18.03.2003 («Нет» паспортам без графы национальность». Русский вестник. 18.03.2003.) <http://www.rv.ru/content.php3?id=749>

⁶⁷ In the Ukraine, there are two famous legislative initiatives with regard to the re-establishment of the nationality information in the passport. One legislative draft was prepared by the member of the political party NUNS Vladimir Moysik. This political party can be described as pro-presidential i.e. supporting the former Ukrainian President Viktor Yushenko. The second legislative draft was initiated by the member of the Ukrainian National Party Stepan Khmara. See: «The team-mate of Yushenko proposes reintroducing the nationality column into the Ukrainian passport». News agency REGNUM. 09.09.2009. <http://www.regnum.ru/news/1204049.html> «Ukrainian right wing forces suggest providing obligatory information about nationality in passports and birth certificates». News agency REGNUM BELARUS. 25.12.2007. <http://belarus.regnum.ru/news/937267.html>

⁶⁸ «In Lithuania the suggestion was made to re-establish the nationality column in the passport». News agency LENTA.RU. Rambler Media Group. 02.02.2011. <http://lenta.ru/news/2011/02/02/pass/>

⁶⁹ «The public authorities have returned the nationality column into the passport». News agency LENTA.RU. Rambler Media Group. 13.02.2009. <http://lenta.ru/news/2009/02/13/pass/>

⁷⁰ «The Communist Party of Russia suggests reinstating the 'nationality' column in the passport». News agency INTERFAX. 24.10.2011. http://kprf.ru/rus_soc/98097.html

6.2 Miscellaneous

6.2.1 Dual/multiple citizenship

Given the present relaxed regulations regarding dual citizenship, it is to be expected that Russian citizenship legislation will be made more rigorous. At present, there appear to be no intentions among Russian policymakers to prohibit dual citizenship, but some Russian politicians suggest limiting the political rights of holders of dual citizenship. Thus, according to Russian legislation, foreign citizens cannot enter the civil service in Russia but there is no legal liability for violation of this provision. There are also several provisions when the citizen has to declare information regarding ownership of dual citizenship. There is also no single provision regarding the legal responsibility of the applicant for submission of the wrong information or failure to disclose the right information.

6.2.2 Citizenship for compatriots

In 2006 the Russian authorities announced the start of a state program to facilitate the voluntary resettlement of compatriots living outside the Russian Federation (Drozdova 2009). The main goal of the program is to unite compatriots living abroad, with the aim of developing selected Russian regions (Merkulova 2011; Wasil'yev, Yakovlev 2010). There are several groups who are considered to be compatriots. According to the law compatriots are understood to be all persons and their descendants living abroad who have historically lived in the territory of the Russian Federation. Compatriots are also those people who chose to engage in a spiritual, cultural and legal relationship with Russia. Compatriots are also considered to be those persons whose direct relatives previously lived on the territory of the Russian Federation, were citizens of the USSR, lived in the states which were part of the USSR, obtained citizenship of these states or become stateless persons, and also expatriates (emigrants) from the Russian Empire, the Russian republic, RSFSR, the USSR and the Russian Federation, having the corresponding citizenship and who afterwards become citizens of a foreign state or stateless persons. Thus, the concept of the compatriot is not limited merely to people of Russian nationality (i.e. ethnicity).⁷¹

It was originally planned that the program would run from 2006 until the end of 2012 (Ryazantsev, Grebenyuk 2007). Officials in the Russian government recently announced their intention to modify this program to make it applicable on a permanent basis. The developers of the program originally estimated that 300,000 people would be resettled a year. However, the actual numbers have been quite different: during the entire period from 2006-2011 only 62,500 people moved to Russia (as of 31.12.2011).⁷² In 2009 about 90,00 compatriots were resettled in Russia, in 2010 – 13,000 people, in 2011 - about 31,400. Thus, there is a considerable gap between the planned and real number of migrating compatriots to Russia,⁷³ which is due to a number of reasons. Among the main problems is an applicable naturalisation procedure established *ad hoc* for compatriots resettled into Russia. Formally the simplified naturalisation procedure has been outlined in federal legislation (without a five-year-requirement of residence in the Russian Federation, without confirmation of a legal source of income and without a language requirement). However, in practice the procedure is long and difficult for resettlers.

⁷¹ The Federal Law from 24 May 1999 of N 99-FZ 'About a state policy of the Russian Federation concerning compatriots abroad' [Федеральный закон от 24 мая 1999 г. N 99-ФЗ "О государственной политике Российской Федерации в отношении соотечественников за рубежом"].

⁷² Svetlana Sibina. Chemodannoye mood. Every third immigrant chooses as a place of residence Siberia and the Far East. It is published in RG (Economy of Siberia). No.5670. 29.12.2011 [Светлана Сибина. Чемоданное настроение. Каждый третий переселенец выбирает местом жительства Сибирь и Дальний Восток. Опубликовано в РГ (Экономика Сибири) N5670 от 29 декабря 2011 г.] <http://www.rg.ru/2011/12/29/reg-sibfo/migranty.html>

⁷³ Federal Migration Service of Russia. Monitoring of implementation of the program [ФМС РФ: Мониторинг реализации программы] - http://www.fms.gov.ru/programs/fmsuds/files/monitoring_2011.pdf

To obtain Russian citizenship the compatriot is required to renounce their previous citizenship. This provision stops a considerable number of compatriots from applying. Furthermore, in order to obtain Russian citizenship it is necessary for the applicant to come to Russia to obtain a permanent residence permit. While it is possible to receive temporary registration with fewer difficulties, permanent registration remains almost impossible. It can only be obtained if the applicants have relatives or own real estate in Russia. Therefore, the acquisition of Russian citizenship by compatriots and their family members remain blocked. Since the beginning of the compatriot resettlement program, NGOs representing compatriots have repeatedly demand a simplification of the naturalisation procedure and also the possibility of acquiring Russian citizenship before arrival in Russia (i.e. in embassies and consulates of Russia). A naturalisation procedure of this kind could greatly simplify life of compatriots and their family members. Such measures would greatly facilitate the full integration of compatriots in Russia, as it would allow them to become full-fledged citizens of the Russian Federation immediately after arrival.⁷⁴

Some of these obstacles to the naturalisation of compatriots seem to be intentional. On 8 February 2012 the legislative initiative (Zatulin's draft law) regarding facilitation of the naturalisation procedure for compatriots was dismissed by the Russian State Duma.⁷⁵ This policy has caused disappointment and provoked serious criticism from compatriot organizations. Despite the authorities' declared intention to accept compatriots, in practice they refuse to eliminate obstacles for the acquisition of Russian citizenship. Besides difficulties regarding naturalisation, there are also other problems. For example, only 37 regions of Russia participate in the resettlement program (as of 2011). Before this the number was even less, though it is necessary to understand that this is in part caused by the funds available for implementation of the resettlement program and also the priorities of development of various territories of Russia. Ideally, it will eventually be possible for compatriots to move to any region of their choice.

Modern Russia, as the successor of the Soviet Union, arguably bears a moral obligation to consider as compatriots all former citizens of the former Soviet Union willing to obtain Russian citizenship (Petukhov 2007). Therefore, the definition of compatriots was not restricted by belonging to the Russian nation only.

6.2.3 Prohibition of naturalisation of HIV-positive people

The citizenship legislation of Russia contains an indirect prohibition of the naturalisation of HIV-positive individuals. In the course of the naturalisation procedure foreign citizens and stateless persons have to apply for both a temporary residence permit and permanent residence permit. Russian legislation defines the list of documents to be enclosed with an application for a residence permit, among which are a medical certificate proving his or her HIV-negative status. According to the law, foreign nationals and stateless persons who are on Russian territory must be deported once it is discovered that they are HIV-positive. Thus, according to Russian law, this person will be automatically deprived of any possibility of ever acquiring Russian citizenship. Unfortunately, there is no information as to how many people have faced this problem. One of the first cases regarding this matter is the complaint of the Ukrainian citizen 'X.' which was brought to the Constitutional Court of the Russian Federation in 2006.

⁷⁴ A.V.Dokuchaeva. Compatriots are waiting for citizenship of Russia. Information and analytical portal of the Post-Soviet Space "CONTINENT" 15.02.2012. <http://materik.ru/rubric/detail.php?ID=14602> [А.В. Докучаева. Соотечественники ждут гражданства России. Информационно-аналитический портал постсоветского пространства «МАТЕРИК». 15.02.2012]

⁷⁵ Bulletin of the State Duma of Russia. 2012. N 7(1245) Vol.1. Pages 53-61, 66. <http://uisrussia.msu.ru/docs/db/302/2323085?QueryID=3986192&HighlightQuery=3986192> [Бюллетень ГД ФС РФ. N 7(1245) Ч.1. Стр.53-61, 66].

X. was HIV-positive and lived in Russia with his Russian wife and daughter (both of whom were Russian citizens). The applicant complained that Russian legislative provisions (the HIV Prevention Federal Law and the Federal Law about Foreign Citizens) violated his right to respect for his family life and his right to medical assistance and were also discriminatory. On 12 May 2006 the Constitutional Court rejected the complaint.⁷⁶ The Court decided that the contested legislative provisions were fully compatible with the Constitution. They ruled that the existing restrictions on temporary residence of HIV-infected foreign nationals had been imposed for the protection of constitutional values, in particular for the protection of public health.

On 10 March 2011, another case regarding discrimination against HIV-positive foreign people in Russia was brought to the European Court in Strasbourg - *KIYUTIN v. Russia*.⁷⁷ This case was brought by a citizen of Uzbekistan, Mr. Viktor Viktorovich Kiyutin, who claimed to be a victim of discrimination based on his health status by consideration of his application for a permanent residence permit in Russia. Kiyutin was born in the Uzbek SSR of the Soviet Union in 1971 and acquired Uzbek citizenship upon the collapse of the USSR. On 18 July 2003 the applicant married a Russian citizen and they had a daughter in January 2004. In August 2003 Kiyutin applied for a permanent residence permit. He was required to undergo a medical examination during which he tested positive for HIV. Based on this fact, all his following applications for a residence permit were consequently refused by the Russian authorities.

Based on the examination of all circumstances of this case, the European court of Human Rights ruled that most immigration policies demonstrated that most countries in the world shared the understanding that HIV-related travel restrictions were not an efficient method of protecting public health. This was implicitly proven by the fact that a majority of states did not apply any restrictions and that a number of countries had recently abolished such restrictions and recognised that HIV did not pose a threat to public health. The European Court found that as the spouse of a Russian citizen and father of a Russian child, the applicant was eligible to apply for a residence permit by virtue of his family ties in Russia.

Furthermore, the ECHR also stated that Russia does not apply HIV-related travel restrictions to tourists or short-term visitors. The European Court noted that Russian legislation does not impose HIV tests on Russian citizens leaving and returning to the country. This Court's statements are of a great importance in the context of applicable naturalisation procedure in Russia. The Court held that Mr. Kiyutin had been a victim of discrimination on account of his health status, in violation of Article 14 taken together with Article 8. Under Article 41, the Court held that Russia was to pay the applicant 15,000 euros (EUR) in respect of pecuniary damage, and EUR 350 for costs and expenses.

The case of Kiyutin is an important signal to the Russian authorities that they should improve the relevant legislative provisions in the area of Russian citizenship law. The case of Kiyutin is clear evidence that the naturalisation procedure should remain available also for HIV-people, because in most cases these are former citizens of the USSR (i.e. compatriots) or those who have established family ties with Russian citizens. Therefore, the Russian state cannot ignore their

⁷⁶ Decision of the Constitutional Court of the RF from 12 May 2006 of N 155-O regarding the complaint of the citizen of Ukraine X. regarding violation of his constitutional rights by article 11 (2) of the Federal Law 'About the prevention of distribution in the Russian Federation of the disease caused by a human immunodeficiency virus (HIV-infection)', by article 7 (13) and article 9 (13) of the Federal Law 'About the legal status of foreign citizens in the Russian Federation' [Определение КС РФ от 12 мая 2006 г. N 155-О по жалобе гражданина Украины X. на нарушение его конституционных прав пунктом 2 статьи 11 ФЗ 'О предупреждении распространения в РФ заболевания, вызываемого вирусом иммунодефицита человека (ВИЧ-инфекции)', пунктом 13 статьи 7 и пунктом 13 статьи 9 ФЗ 'О правовом положении иностранных граждан в РФ']. The Russian text of the Decision is available on the website of the Russian Constitutional Court: www.ksrf.ru

⁷⁷ *KIYUTIN v. Russia* from 10 March 2011 (Application no.2700/10).

legitimate interests regarding permanent residence or even acquisition of Russian citizenship. Of course, we must consider that this obligation will probably only be implemented by the Russian authorities with regard to compatriots. It is obvious that the integration through naturalisation of HIV-positive citizens may objectively become an additional public burden and place an excessive demand on the publicly-funded health care system in Russia.

6.2.4 Citizenship Policy at the supranational level

Today, in the Post-Soviet Space we can identify three levels of integration among members of the CIS: 1) the general CIS level - for all members of Commonwealth, 2) '*quadriga*' ('*chetverka*') – the four states community, which involves more integrated cooperation between Belarus, Kazakhstan, Kyrgyzstan and Russia and 3) the highest level of cooperation, namely between the Union State of Belarus and Russia.⁷⁸

Commonwealth of Independent States (CIS)

Originally, the development of citizenship policy of the CIS member states was influenced by the first Russian citizenship law of 1991. This Citizenship Law was one of the most liberal in the world. The law did not establish any language or other special requirements regarding acquisition of citizenship, on the contrary, it set forth a wide range of circumstances allowing citizenship to be obtained.⁷⁹ From this the CIS Inter-Parliamentary Assembly developed the Recommendations from 29 December 1992 'About principles of citizenship regulation'. The aim of this document was to protect human rights in the CIS, to reduce the number of stateless persons, to facilitate contacts between people, to establish and maintain friendship and good relations with all states of the CIS.⁸⁰

On the basis of these Recommendations international agreements regarding dual citizenship with Tajikistan (1996) and Turkmenistan (1994) were signed and ratified. However, these treaties were often violated. In April 2003, on the initiative of the Turkmenistan authorities, the agreement on dual citizenship was declared void. The Turkmen authorities began to force people with dual citizenship either to refuse Russian citizenship, or to leave Turkmenistan. Thus, a special provision was included into the Turkmen Constitution forbidding dual citizenship (Ginsburgs 2004: 437).

Thus, in 1990s, the leaders of the CIS member states attempted to harmonize the legislation on citizenship through the adoption of the model law on citizenship. However, the draft of model law offered by the Russian Federation was considered by the CIS member states as an attempt to intervene in their internal affairs and reflected the Russian states' desire to put pressure upon these newly independent sovereign states. In the following years, Russia distanced itself from the principles of the proposed model legislation developed by the CIS Inter-Parliamentary Assembly. The entrance into force of the Federal law on 31 May 2002 N 62-FZ 'About Citizenship of the Russian Federation' can be considered as the beginning of a new citizenship policy in Russia. The Russian authorities have adopted several restrictive measures and practically prohibited dual citizenship.

⁷⁸ A.A. Golovko. State and legal problem of integration in the framework of the Union of Belarus and Russia. Herald of Inter-Parliamentary Assembly of the CIS. St.Petersburg. 1998. Page 85. [Головко А.А. Проблемы интеграции государственно-правового механизма в Союзе Беларуси и России. Вестник Межпарламентской Ассамблеи СНГ. С.-Петербург. 1998. С.85.]

⁷⁹ Shestakova E.V. The model legislation in the CIS countries. International public and private law", 2006, N 1. [Шестакова Е.В. Модельное законодательство в странах СНГ. Международное публичное и частное право", 2006, N 1].

⁸⁰ Inter-Parliamentary Assembly of the Member States of the CIS. Newsletter. 1993. N 2. Page 20-21. [Межпарламентская ассамблея государств - участников СНГ. Информационный бюллетень. 1993. N 2. С. 20 - 21].

In the 2000s, political changes in a number of CIS states (Georgia, Ukraine, Moldova and Kyrgyzstan) led to strengthening of the positions of various nationalist forces. Such developments have essentially weakened efforts at harmonization of the legislation in the field of citizenship (Smirnova 1999). Thus, the Convention on the facilitated naturalisation procedure for citizens of the CIS member states remained unratified. This convention was signed by representatives of Kazakhstan, Russia, Tajikistan in Moscow, on 19 January 1996. Later, on 6 June 2003, after adoption of the new Russian citizenship law 2002 the authorities of Russia announced their intention to withhold participation in the Convention. Nevertheless, it is necessary to study those main provisions which were fixed in this Convention. The Contracting Parties declared a strong intention to establish a facilitated naturalisation procedure (by registration of citizenship during three months after lodging of an application).

CIS-Quadriga: Belarus, Kazakhstan, Kyrgyzstan and Russia

In 1998 the group of four states (CIS-Quadriga) issued the special political statement 'Ten simple steps for ordinary people' (signed in Moscow, on 28 April 1998). The heads of state of Belarus, Kazakhstan, Kyrgyzstan and Russia agreed to improve integration in economic and humanitarian spheres. This development was considered an important factor for the creation of conditions for mutually beneficial co-operation. On the basis of the above mentioned document, the leaders of these states agreed to establish a common economic space with free movement of goods, services, capital and labour., The governments of 'Quadriga' expressed their wishes to improve the living conditions of the population of these countries. The political aims were to establish concrete mechanisms to remove any obstacles for work and travel for the citizens of the states of "Quadriga", and to improve education, health care, and cultural and scientific knowledge. Among others the establishment of the simplified naturalisation procedure repeatedly was declared to be of the highest priority.

Thus, the citizenship policy within the CIS has gone through several stages. At the beginning of CIS integration, attempts to harmonise citizenship legislation by means of model laws were actively undertaken. Later, as a consequence of political changes cooperation in the field of citizenship regimes has been obstructed. The prevailing trend has been towards the toughening of the citizenship laws of Russia and its neighboring countries. The group of four ('Quadriga') was formed in order to keep the positive achievements in the social sector. However even in this area the trend is towards giving up any form of facilitated means of citizenship acquirement.

The Union State of Russia and Belarus (US-RB)

The Union was founded by the Union Treaty, an agreement between the Russian Federation and the Republic of Belarus which was signed on 8 December 1999.⁸¹ This treaty declared the citizenship of the Union of Belarus and Russia to be formally established (Sergiyenko 2008). Each citizen of the Russian Federation and each citizen of the Republic of Belarus has the same legal status as a citizen of the Union State (Art. 2, 18 Union Treaty).

The citizen of the Union State has the right to free movement and permanent residence within the Union State; the right of participation in the Union's public service; the right to property, etc. A citizen of the Union State permanently living in the other state has the right to vote and be elected into local governments on the territory of this state. The equal status of the Union's citizens

⁸¹ Договор между Российской Федерацией и Республикой Беларусь "О создании Союзного государства" от 8 декабря 1999 г. Ратифицирован Государственной Думой РФ путем принятия Федерального закона от 2 января 2000 г. N 25-ФЗ "О ратификации Договора о создании Союзного государства". Собрание законодательства Российской Федерации. 2000. N 7. Ст. 786.

has been formally proclaimed. However, in practice this is still far from true: in some cases the Russian legislation regarding foreigners is still applicable to Belarusian citizens.

For example, in a judgment on 27 April 2010 on the case N A62-8441/2009 the Federal Arbitration Court of the Central District *de facto* equated citizens of the Union State - Belarusians - to foreign citizens. According to this case, the FMS branch of the Smolensk region of Russia has controlled 'InterLogistikService' Ltd. and fixed the violation of Russian immigration legislation (by the registration of working foreign citizens). The Russian authorities claimed that this enterprise had violated the Federal law in effect from 18 July 2006 N 109-FZ 'About the migratory registration of foreign citizens and stateless persons in the Russian Federation' (Art. 20 para 3). The company did not send a corresponding notification after the arrival of the citizen of the Republic of Belarus, Rogatko V.G., to the FMS office, and thus did not provide timely registration of the above mentioned foreign citizen. As result FMS officials made a decision on 12 October 2009 N 65 that the enterprise 'InterLogistikService' Ltd. had violated Russian immigration legislation and therefore was required to pay a fine of 400,000 rub (ca. 10.000 euros).

Moreover, later the Russian court dismissed the reference of 'InterLogistikService' Ltd. to Art. 3 of the Agreement from 24 January 2006 between the Russian Federation and the Republic of Belarus about ensuring the equal rights of citizens of the Russian Federation and the Republic of Belarus for freedom of movement and choice of a place of residence. It should be noted that the law provides such a possibility only if the citizen of the Republic of Belarus remains on the territory of the Russian Federation for no more than 30 days.

Thus, despite the general declarations on the citizenship of the Union State, Russian courts apply to citizens of Belarus the provisions of the Federal law from 18 July 2006 N 109-FZ 'About the migration control of foreign citizens and stateless persons in the Russian Federation' (art. 20 para 6).

Some Russian lawyers draw the conclusion that it is necessary to modify the current legislation of the Russian Federation regarding the legal status of foreign citizens and to establish the special status for citizens of Belarus as foreign citizens of the Union State (Yakovleva 2009). Such conclusions basically contradict the provisions of the founding documents of the Union State. As a result of the failure of Russian authorities there are no legal provisions regarding the union citizenship of Belarusians and Russians. This leads to situations that provisions of the Russian legislation regarding permissions for temporary residence in the Russian Federation are applicable also to citizens of the Republic of Belarus (as in the ordinary case with foreigners). Thus, in practice the Belarusian citizens, who have applied for temporary residence Russia, can be refused it on the grounds that the approved quota is exhausted.⁸²

7 Conclusion

Russian citizenship legislation has a considerable number of shortcomings. Certainly, its further modification will be inevitable in the coming years. One of the main problems is that the Russian public authorities do not have a clear vision of their citizenship and migration policy. This conclusion is confirmed by the political developments of the last 20 years. A long transition from maximum liberalism to rigid restrictions regarding naturalisation has taken place with the Russian citizenship regime. According to the opinion of leading experts a change of philosophy of

⁸² Batygin A. Without restrictions. Ensuring equal rights of citizens - a strategic objective of the Union State. Russian gazette. Union. Belarus - Russia. 23 October 2008 [Батыгин А. Без ограничений. Обеспечение равенства прав граждан - стратегическая цель Союзного государства // Российская газета. Союз. Беларусь - Россия. 23 октября 2008 года].

citizenship law is needed in modern Russia.⁸³ Russian policymakers should rethink the preamble of the Federal Law about the state policy regarding compatriots where it is stated that the Russian Federation is a successor state of the Russian Empire, the USSR and the RSFSR. Based on this concept of Russian statehood the public authorities have to modify their citizenship and migration policy towards further liberalisation. It is necessary to reestablish the facilitated naturalisation procedure and make it open-ended (i.e. permanently applicable) for those considered to be compatriots, i.e. mainly all former Soviet citizens wishing to acquire Russian citizenship.

There is currently a struggle between two political ideologies. One group of politicians considers that Russia has allegedly provided enough time to for people to choose to acquire citizenship. Others argue that it is unfair to put artificial deadlines on those who face such a difficult prospect. Thus, a key question will remain the simplified naturalisation procedure for foreigners from neighboring countries.

Citizenship problems closely interrelate with aspects of Soviet and Russian federalism. Ignorance of history can lead to a wrong interpretation of Russian citizenship policy. Thus, according to the citizenship law all former citizens of the USSR and RSFSR are entitled to the facilitated naturalisation procedure as compatriots. Here are some historic facts. The Crimea (as an autonomous republic) until 1954 was a part of RSFSR. Kazakhstan (as an autonomous republic) until 1937 was a part of RSFSR. Abkhazia until 1931 was an autonomous republic of the USSR (out of the jurisdiction of the Georgian SSR). It was an unfinished list of historical problems of that led to the armed conflict in 2008. Therefore, it is very important to understand the complexity of these questions in the sphere of the citizenship policy of the whole Post-Soviet space.

It is necessary to see the real requirements of citizens, at least of those from the nine former Soviet republics who expressed their opinion in a referendum in 1991 to live in a common state and keep common citizenship. Based on this historic fact, and also on modern integration developments (i.e. the establishment of the Eurasian Union in 2011), we have to assume that in the Post-Soviet Space new scenarios on the supranational level are highly probable. It can be expected that in the framework of the Eurasian Union (EAU) the member states would elaborate a common EAU-citizenship. It is also possible that their work on legal regulation of the Union citizenship in the framework of the Union State of Russia and Belarus will be re-established. Moreover, it is expected that in the near future the Russian authorities will sign international agreements with South Ossetia and Abkhazia concerning dual citizenship. Such an intention was fixed in treaties on friendship, cooperation and mutual aid between Russia and the Republic of Abkhazia, as well as between Russia and South Ossetia (both concluded on 17 September 2008).

At the level of the Russian Federation it is expected that in the next few years an immigration code will be put forward by the Russian State Duma. Adoption of this code will certainly affect the development of Russian citizenship legislation (for example, concerning the resettlement and integration of compatriots). Sooner or later the Russian authorities will have to accept changes caused by the relevant case law of the European court in Strasbourg.

There will certainly be other legislative and political initiatives devoted to problems of citizenship and nationality. For example, the establishment of indigenous subjects of federation (Donahoe 2011: 397), the modification of the languages of some nationalities (ethnicities) in Russia - for example, the transition from a Cyrillic to a Latin written alphabet (Osipov 2010: 27) or the case of special preferences for Russian citizens with permanent residence in the Kaliningrad region

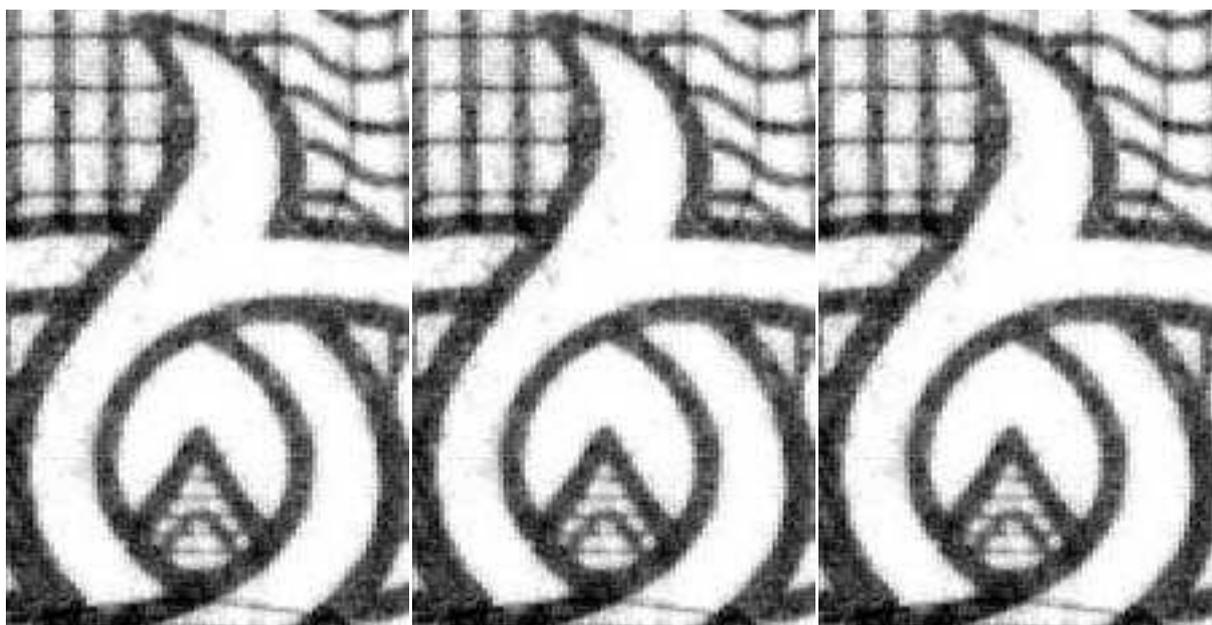
⁸³ Lidia Grafova. 'Everything will be as it is should be, even if it will be different...' L.Grafova's presentation on a round table in the State Duma, devoted to dual citizenship. On 12 April 2010. <http://l-grafova.livejournal.com/19815.html> [Лидия Графова. 'Всё будет так как надо, даже если будет иначе...' Выступление Л.Графовой на круглом столе в Госдуме, посвященном двойному гражданству. 12 апреля 2010 года]

(Salenko 2011: 76). There is still the problem of the non-compliance of Russian authorities with the provisions of the judgment of the Russian Constitutional Court (Smirnov case from 15 May 1996) regarding the acquisition of Russian citizenship by birth (Koss 2011: 42). Unfortunately, not only foreign but also the Russian politicians are not aware of the vast existing practice in this field. Let us hope that the Russian perception of the terms nationality, ethnicity, and citizenship will be carefully examined by foreign researchers. It is not just linguistic axioms that should be taken into account but also the case law of the Russian Constitutional Court which created concepts regarding the equal significance of nationality and ethnicity.⁸⁴ It is through such scientific dialogue that it will be possible to eliminate the terminological chaos which exists in international citizenship law.

⁸⁴ The Judgment of the Russian Constitutional Court from 24 November 1995 N 14-P on the case regarding control of constitutionality of article 10(2) of the law of the republic North Ossetia from 22 December 1994 'About republic parliamentary elections Northern Ossetia-Alania [Постановление КС РФ от 24 ноября 1995 г. N 14-П по делу о проверке конституционности части второй статьи 10 закона республики Северная Осетия от 22 декабря 1994 года 'О выборах в парламент республики Северная Осетия-Алания']. The Russian text of the Judgment is available on the website of the Russian Constitutional Court: www.ksrf.ru

Appendix 1





Source of the photos: <http://pravoslavie.ws/library/pasport.htm>

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