The right to have rights: Citizenship in newly independent OSCE countries

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"Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen."

U.S. Supreme Court Chief Justice Earl Warren, dissenting, Perez v. Brownell (1958)

"History will judge this Conference not by what we say here today, but by what we do tomorrow — not only by the promises we make, but by the promises we keep."

President Gerald Ford, at the signing of the Helsinki Final Act (1975)

I. Introduction

Questions relating to citizenship began to inch towards the top of OSCE agendas in 1991 when the unthinkable actually happened: the Soviet Union sprung a leak. At first, only its pugnacious little 'break-away' Baltic states trickled out, but eventually all of its artificially crafted Soviet Socialist Republics came gushing forth. The sinking of the Soviet empire came as a shock to western governments, which may have hoped for and pressed for reform and democratization within the Warsaw Pact states, but were, in reality, unprepared for the changes that came.

While government officials from Washington to Bonn were left scrambling to figure out whether the end of the Soviet Union was, after all, good or bad (and, more to the point, figuring out what this meant for European security structures), a representative of a Baltic state quietly previewed what would soon become the focus of several international organizations.

Speaking at the 1991 CSCE (OSCE) Oslo Seminar on Democratic Institutions (only two months after Estonia, Latvia, and Lithuania were admitted to the OSCE as full participating states), this delegate declined to engage in the general debate on election laws; instead, he argued that electoral legislation in his country would be meaningless until a basic law on citizenship was passed. A citizenship law would, in turn, determine who could vote, run for office, or own media enterprises and banks, as well as a host of other rights and privileges.

Citizenship — or the lack thereof — defines the relationship between an individual and the state. In East-Central Europe and the former Soviet Union, newly independent states now have the potential to embrace people on the

1. Counsel for International Law, U.S. Commission on Security and Cooperation in Europe. The Commission is a U.S. Government agency established in 1976 to monitor and report on the Helsinki process. The views expressed herein are those of the author and do not necessarily represent the views of the Commission or the U.S. Government.
basis of civic principles; they also have the potential to exclude hundreds of thousands of people, rendering former ‘citizens’ stateless. In fact, almost half (22 of 54) the countries of the OSCE were established, or re-established, after 1 January 1991.

Moreover, citizenship questions are inherently intertwined with the process of post-communist transition. In some countries, such as the Czech Republic and Slovakia, citizenship must be established before one can petition for redress against past official abuse or restitution of or compensation for property wrongly confiscated by the Communists.2

This setting presents extremely complex legal, political, and moral questions. It also poses a threshold human rights question that is decisive for consideration of many others: while some human rights inhere in people by virtue of their humanity alone and regardless of one’s citizenship status (e.g., the right to be free from torture), many other internationally recognized human rights are preconditioned on one’s citizenship, such as the right to participate in the electoral process.

II. Relevant standards
A number of observers have incorrectly concluded that citizenship is a subject virtually unregulated by international law or standards and, consequently, they assume that questions of nationality or citizenship fall, for all practical purposes, within the ambit of unfettered state sovereignty. This view seems to stem, to a great extent, from the relative paucity of jurisprudence developed by the International Court of Justice (ICJ), Inter-American human rights system, or Council of Europe human rights system that explicitly addresses citizenship issues. However, the absence of cases at the ICJ dealing with citizenship issues may largely be attributed to the fact that it is exclusively a state-to-state system, and provides no opportunity for individuals with citizenship claims to be heard before that court. The Inter-American system was established after 19th century de-colonization in Latin American and the Council of Europe system was established at the same time Europe entered a period of geographic stability that, until 1990, remained more or less fixed.3

The post-1990 wave of state-making presents the first opportunity for the OSCE community to consider how already existing norms apply to this particular issue.

2. In fact, the U.N. Human Rights Committee determined two years ago that a citizenship requirement in the context of the Czech restitution law is discriminatory in violation of the International Covenant on Civil and Political Rights. Views of the Human Rights Committee Concerning Communication no. 516/119; U.N. Doc. CCPR/C/54/D/516/1992. Thus far, however, the Czech Government has declined to act on this finding.

3. Border changes, or changes in sovereignty, are the driving forces that most obviously present or create citizenship questions. That said, a broad range of other events — policy changes, refugee fluctuations, changes in standards relating to dual citizenship, evolving concepts of equality of the sexes — also present important citizenship questions.