

## **FROM THE 1990 LAW ON THE CITIZENSHIP OF THE USSR TO THE CITIZENSHIP LAWS OF THE SUCCESSOR REPUBLICS (PART I)\***

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With the demise of the USSR, its heirs face the difficult task of setting the technical criteria governing membership in the respective national constituencies. Sorting out who will henceforth "belong" to whom runs into a host of problems that involve not only legal considerations, but also such primal (and volatile) concerns as ethnic affiliation, cultural affinity, minority entitlements, and human rights. The process of devising viable answers to these messy questions is bound to be long and hard and how well the job is going to get done is by no means certain at this point.

It is clear, however, that anyone working on this assignment on the premises that once constituted the Soviet Union will have to pay attention to the provisions of the last federal bid to "codify" this branch of the law – the 1990 citizenship statute of the USSR – for reasons that are fairly obvious. First, that piece of legislation summed up the state of affairs in this precinct up till then and offers a handy reference to the policy and legal desiderata which shaped the product's complexion. Second, the successor regimes must take into account that the status of many individuals was determined by the operation of these rules and that in order to decide which of the USSR's citizens each of them should claim as its own, they must start by identifying those persons in the pool who have retained a valid stake in the predecessor state's nationality and those who had lost it in the meantime. The existence or absence of that vital bond can only be ascertained by looking at past files of entries into and exits from Soviet citizenship, including, of course, the record of such traffic during the tenure of the 1990 statute. Third, not all the

\* Part II (forthcoming) will trace subsequent developments here, culminating in the passage of the Russian Federation's citizenship act.

sovereign and independent republics that have emerged from the rubble of the USSR have already enacted their own citizenship laws. One thus assumes that the 1990 bill of fare is called upon to fill the legal vacuum there – at least provisionally – insofar as the principles enunciated on that occasion do not contradict the tenor of the new civic mores which have officially supplanted the Marxist canon. Whatever guidelines still exist to local practices in matters of citizenship law must draw on previous resources, which certainly means heavy reliance on the salient features of the 1990 script.

Finally, remember that the 1990 citizenship statute sought to treat various recent phenomena that no longer fit the old frame, notably, the accelerating shift of the center of gravity from the federal to the republican level. Indeed, the hasty elaboration of the 1990 law may have been primarily motivated by a sense of alarm that further fragmentation of the USSR's former unity and the splintering of its legal "space" would have serious adverse consequences for major segments of the country's population. Any rush to "nativize" the terms of civil enfranchisement in the infant communities, to peg citizenship rights to attributes of racial origin, or even to impose lengthy residency requirements or language fluency as a test of assimilation would result in stranding large groups of "aliens" in an environment dominated by the indigenous majority on an inferior footing, *e.g.*, statelessness or second-class nationality, discrimination in access to political, social and economic opportunities, etc.

Those who wish to avoid these stigmas have championed the concept of an "umbrella" citizenship designed to preserve the equality of Soviet citizens regardless of where they make their home on the map of the late USSR by persuading every republic to afford the denizens of the other republics living on its territory the same package of benefits as vests in the members of the titular cast. Fear of widespread "quarantining" on such egregious grounds persists and, quite clearly, ranks among the concerns that moved Gorbachev to emphasize the urgency of retaining a shared inter-republican citizenship even in the post-federal phase – whether adapted to confederal conditions or some other loose form of partnership. It is symptomatic that, after the failed August coup, Gorbachev kept prodding the republics "to maintain, at least for a while, a single citizenship".<sup>1</sup> Nor did the debut of the Commonwealth of

1. *New York Times* 20 December 1991, A1, A10. The same idea had already been expressed earlier by V. Iakovlev, State counsel for legal policy to the President of the