

Propiska abolished in Ukraine. What next?

No. 43/244, November 26, 2001

Article 33 of the Constitution of Ukraine stated that «everyone legally residing on the territory of Ukraine is guaranteed freedom of movement, free choice of a place of residence, the right to leave the territory of Ukraine freely, except in cases of limitations established by the law.» Article 24 of the Constitution stipulates that «there may be no privileges or limitations based on race, color, political, religious or other beliefs, gender, ethnic and social origin, property status, place of residence, language or other factors», and Article 64 of the Constitution provides that «Constitutional rights and freedoms of a human being and citizen may not be limited except in cases envisaged by the Constitution of Ukraine»...

Paradoxically, until recently these were violated practically on a daily basis - whenever a citizen contacted official institutions, got married, filed a lawsuit to the court, needed medical assistance etc. Violations concerned not only laws of Ukraine, but also the international law, as the right to choose the place of residence freely was included in the International Act of Civic and Political Rights (Article 12, p.1) that came into force in the Soviet Union in 1976.

The institution of propiska represented a specific form of Soviet-style serfdom inherited by Ukraine from the USSR - the «society of mature relations», as the country was referred to in the Preamble of the last Soviet-time Constitution, adopted under Leonid Brezhnev in 1977. Noteworthy, the 1977 Constitution does not contain any reference to the freedom of movement and the right to choose a place of residence freely, notwithstanding the international agreements signed by Ukraine.

The institution of the propiska and the Soviet passport system still function in Ukraine, almost unmodified. They began to develop in 1930s, at the start of the processes of collectivisation and industrialization of the USSR. On December 27, 1932, the Central Executive Committee and the Soviet of People's Commissars of the URRS issued a resolution that introduced the passport system and the mandatory registration of residence, i.e., the propiska. The Stalin-time Big Soviet Encyclopedia (1939) put it rather bluntly: the passport system represented «the order of administrative registration, control and regulation of movement of the population by means of introducing passports». That definition of the passport system and the propiska institution was true for the USSR and Ukraine for almost 50 years.

One of the key features of the Soviet-type passport system was the introduction of passports only for residents of cities, working towns, and state farms. It also introduced the notion of so-called «regime places», where it was practically impossible for an outsider to receive a passport and, therefore, the propiska. Such zones emerged in 1933. In Ukraine the first «regime» areas were Kyiv, Odessa, Dnipropetrovsk and Stalino. Later on, the «regime» was expanded to include other cities. By 1953 there had been 340 «regime» cities, locations and railway connections (data presented in the «Human Rights in Ukraine, issue 17, K. 1996, p. 69). The state authorities could exercise full control over the issue of passports and propiska in the «regime» zones and could use full discretion in selecting the «worthy» compatriots and denying the right to others. Within the 50 years the Soviet state issued plenty of directives, resolutions and other documents that developed and «improved» the mechanism of propiska and limited the freedom of movement and the right to choose one's place of residence freely.

Importantly, collective farmers were first denied the right to receive passports and were in fact transformed into the Soviet serfs. Violation of the passport regime by collective farmers in 1940-1950s was a criminal offence. Collective farmers received passports - and, with them, at least a hypothetical possibility to choose the place of residence and employment - only in 1974, with the adoption of a new regulation of the passport system that required on every citizen of Ukraine aged 16 or more to have a passport. Hence, the system of Soviet serfdom began to liberalize. The process of issuing passports to all citizens aged 16 and more began in 1976 and was completed only in 1981. Noteworthy, the number of passports issued to residents of rural areas of the USSR totaled 50 million (data presented in the

«Human Rights in Ukraine, issue 17, K. 1996, p. 69).

Nowadays, the legacy of propiska may actually undermine the credibility of numerous declarations about respect for human rights and freedoms in this state. The institution of propiska has been not only the way of controlling citizens, but also a mechanism of peculiar social exclusion - for instance, in case of financing health care facilities based on the district-by-district principle. The propiska also kept an army of petty bureaucrats employed and opened a field for corruption.

The necessity to abolish propiska as soon as possible was repeatedly stressed in Ukraine since independence. The notion of propiska is not included in the Constitution or other laws. However, de facto the situation remained unchanged. After the adoption of the new Constitution in 1996, then vice Prime Minister Victor Pynzenyk promised that the propiska would be substituted with simple registration shortly in order to facilitate «more free migration of labor» (Vseukrainskie Vedomosti, October 18, 1996). At that point the need to abolish the propiska was seen by the government as an economic issue. De jure, citizens of Ukraine received the right to choose their place to work freely only on June 20, 1997 - given the situation in Ukraine the parliament amended the law to allow Ukrainians to seek jobs in places other than their official place of the propiska. However, the problem remained, as the mandatory registration of residence was a complex institution with a broad scope of tasks and functions. The society, particularly employers, still see the propiska as a «must-have» for any decent citizen. Noteworthy, even after the formal abolishment of the registration requirement, in February 1999 then Vice Prime Minister Serhiy Tihipko made a formal proposal to the government to ensure «free movement of citizens throughout the country» (Vechirnyi Kyiv, February 4, 1999) and to abolish the propiska that was an impediment to job-seeking for people who had to move in search for jobs far from their places of residence, as the unemployment was growing.

Only on May 15, 2001 the parliament of Ukraine approved the law «On Making Amendments to the Code of Ukraine on Administrative Offence» that released the Code from a number of inherited «archaic» provisions. For instance, de jure «violators of the passport regime», i.e., those who resided in places different from the ones indicated in their passports, as well as those who allowed such «violation» and provided housing without the propiska even to their relatives could be fined for up to UAH 50. So, it's only since May 2001 that living in a place different than the official place of «propiska» is not regarded as an offence of the law!

In fact, the legacy of the Soviet propiska system was finally abolished only on November 20, 2001, when the Constitutional Court published the judgment on the appeal of 48 MPs who questioned the compliance of Regulation of the passport service of Ukraine (resolution of the Cabinet of Ministers of Ukraine, October 10, 1994) and the Regulation of the passport system of the USSR (resolution of the Council of Ministers of the USSR, «On Some Rules of Propiska of Citizens» of August 28, 1974, with Articles 24, 33, 64 of the Constitution of Ukraine. According with the Resolution of the parliament of Ukraine of September 12, 1991, both of the above documents were valid in the independent Ukraine.

Specifically, the Constitutional Court judged that the regulation on the passport service of Ukraine, approved by the Cabinet of Ministers of Ukraine on October 10, 1994, #700, allowing the law enforcement bodies to authorize the choice of a place of residence, contradicted the Constitution. According to the regulation of the performance of the passport service, introduced by the Cabinet on October 10, 1994, the passport service was made a branch of the Ministry of the Interior. Its tasks were defined as «implementation of the state policy of passportisation of citizens, ensuring the issue of passports of citizens of Ukraine to the citizens residing permanently in Ukraine, and the issue of passports of citizens of Ukraine for traveling abroad, and travel documents for children, providing foreign citizens and stateless persons (hereinafter, foreigners) with documents to enter Ukraine, staying on its territory and leaving its confines.»

Moreover, the institution was in charge of registering residents who settle at a certain place and those who leave it. Nowadays, those tasks have been judged «unconstitutional» and supposed to «become invalid since the date of adoption of this judgment by the Constitutional Court of Ukraine».

Noteworthy, the resolution «On Some Rules of the Propiska of Citizens», approved by the Council of Ministers of the USSR on August 28, 1974, was never published in full. The four initial provisions of the documents were published, while the other six were marked as «not for publication». The resolution allowed registration of spouse and children at the places of propiska of their spouses and

parents. The regulations marked as «not for publication» made it possible to deny the right to return home for released political prisoners.

So, the matter of abolition of the propiska has been finally resolved. What next? The question is how to ensure that the personal data collected through the propiska procedure are not used for purposes other than protection of human rights and national interests.

In early June 2001, the parliamentary Committee for Legal Reform presented a draft bill «On the State Register of Individuals». Author of the bill, then Member of Parliament Oleksandr Lavrynovych, stressed that the bill would allow abolishing the propiska. Specifically, the draft provided that the State Register would be maintained and kept by the Ministry of Justice, not the Ministry of the Interior. The bill also specified the exact list of personal data that could be collected: full name, date and place of birth, gender, personal ID number, citizenship, place of residence (including the date of registration), marital status, children, parents, spouse, date and place of death, if applicable.

The bill, however, was challenged by the parliamentary Committee for Human Rights, National Minorities and International Relations – particularly the provision about the inclusion of the so-called «mandatory» data, like belonging to a «category of individuals with certain disease». They also protested against the inclusion of information about place of employment, education, degree, disabilities, entitlement to social security funds, military duty, relevant court judgments, the records of crossing the state border, any insurance, any issued documents, as well as a sample of the person's signature and a mark of the person's right thumb. If the new regulations were approved, the Soviet system of the propiska would seem to be a minor nuisance... If the bill is voted into law, Ukrainians may face total control by the state.

Nowadays, the bill expects formal debates in the parliament. According to its author Oleksandr Lavrynovych (now the State Secretary of the Ministry of Justice) who welcomed the abolition of the propiska by the Constitutional Court, the Ukrainian parliament may approve the bill before the March 2002 elections. According to Lavrynovych, it was possible that the State Register would be withdrawn from the competence of the law enforcement authorities, «as it is done in the predominant majority of countries worldwide» (UNIAN, November 20, 2001).

Most likely, the judgment of the Constitutional Court will not have any impact on the course of the forthcoming elections and the performance of the election commissions. In particular, chairman of the Central Election Commission (CEC) Mykhailo Ryabets argued that the new election law did not contain any reference to the propiska but clearly referred to «the place of residence». Moreover, according to Ryabets, «the law gives an exclusive list of documents based on which a citizen may receive a ballot». The law also provides that 20 days before the polling day any citizen may claim a certificate at the local election commission that would allow him or her to vote anywhere (UNIAN, November 20, 2001).

Paradoxically, the abolition of the propiska may create new problems for Ukrainians, like increase in corruption opportunities and other unpleasant situations that are common in contacts between ordinary citizens and ordinary bureaucrats. The more conditions and paragraphs are in the process of «registration», the more corruption opportunities may arise. While analysis predict the growth in labor migration, the abolition of the propiska will not have a critical impact on that increase, as labor migration is restricted not as much by the propiska but by other factors like housing prices, infrastructure and alike. While a number of regions of Ukraine suffer from increasingly high poverty rates, substantial increase in labor migration seems unlikely.

The consequences of the abolition of the Soviet kind of serfdom, the propiska, will depend primarily on what will substitute that institution, what system or registration will be introduced and what state agency will be in charge. The answers to these questions will be yet another demonstration of ability and intention of the government to abide by its pledges and deliver something else than total control and monitoring to the citizens.