

Passportisation policy of Russia and new old concerns of the Baltics

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Abstract: The collapse of the USSR left millions of ethnic Russians outside of the borders of the Russian Federation. Since then, the Russian state has portrayed itself as a kin-state for Russian minorities and pursued protectionist policies. One of the modes of protection has been the policy of passportisation in the near abroad. Concerns of the bordering countries over the rapidly progressing development and “spread” of Russian passports became particularly sound after the Georgian and South Ossetian War in 2008 and the crisis in Ukraine since 2013 when the involvement of Russia was justified by the protection of Russian citizens and Russian minorities. The paper looks at the Baltic region described by many political analysts as the next possible “target” of Russia’s protectionist claims. Of particular interest are the issues concerning Russian minorities in Estonia and Latvia – citizenship and language debates, as well as Russia’s and the EU reactions to existing issues.

Keywords: passportisation, Baltics, Russian minorities, kin-state, minority protection

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Introduction

Change of borders after the dissolution of such multinational states as the USSR and Yugoslavia initiated the emergence of a kin-state activism regarding kin minorities who found themselves residing outside the boundaries of a kin-state. While it is arguable whether the boundaries were drawn accordingly, in many newly established states the size of a titular

nation was so low that could not reach even the half of the population – like in Bosnia (48%) or Montenegro (43%).

The breakup of the Soviet Union only left 25 million of ethnic Russians outside the border of a newly established Russian Federation. Called by Rogers Brubaker as “accidental Diasporas”, the majority of the 25 million population were the descendants of those Russians sent by the central government to the outskirts of the USSR to expand the workforce. Although the size of titular nations in some republics was quite low - only 53% of the whole population in Kazakhstan claimed to be Kazakh, 58% of Latvian population claimed to be Latvians, 65% of Kyrgyz in Kyrgyzstan, and 68% of Estonians in Estonia (CIA fact book, States of Eastern Europe and FSU after 1989). Thus, the process of decolonization within the newly independent states brought along the largest Russian minority group, many of whom decided to move to the territory of the Russian Federation shortly after the USSR collapsed. Many remained in states where they resided and acquired citizenship and went through the process of naturalization. In some states the presence of a large Russian minority led to ethnic tensions and strengthened citizenship rules.

While some countries (like Central Asian republics) automatically accepted all residents as citizens, other states (like the Baltics) tightened up the process. Naturalization requirements, for example, were set for Russian minorities who resided in those republics for several decades prior independence. Russia perceived such policies as a sign of discrimination toward its nationals and even accused Latvia and Estonia of creating “a system of social apartheid” to take revenge on ethnic Russians for the Soviet occupation.

To make ethnic Russians in the near abroad feel secure, Russian Government eased citizenship requirements first for ex-Soviets and then for ethnic Russians residing in post-Soviet countries. A suggestion was made to grant Russian citizenship even to those who already became citizens of successor states. As Rogers Brubaker “predicted” in 1994, such “jurisdictional claims in the near abroad [would] provide a convenient pretext for intervention”. In 2008, Russia’s passportisation policy gave it a legal right to intervene into the Georgian-South Ossetian War to protect its citizens and to Eastern Ukraine in 2014 (where a part of it – Crimean peninsula – joined the Russian Federation through referendum). Many political experts rushed to claim that the Baltic States could be the next ‘target’ of Russian protectionism policies as all Estonia and Latvia particularly has concentrated population of Russians and has had difficulties integrating ‘inherited’ Russian population and

Moscow has long criticized Baltic governments for showing prejudice toward ethnic Russians. But can the kin state's aggression be justified by its right to protect its ethnic minorities abroad, some of whom are the citizens of a foreign country? And how legal is Russia's passportisation tactics?

Minority protection and nationality law

The earliest attention in regard to minority protection can be traced to the 17th century when the main concern was the protection of religious minorities. Minority question was later established in the Treaty of Versailles after the World War I and the League of Nations proclaimed the protection of minorities in Europe. Issues related to protection of national and ethnic minorities emerged later in the 19th century in the aftermath of the WWII with the declaration of the United Nations, drafting of the Article 27 of the Covenant on Civil and Political Rights, and other important treaties regarding protection of Human Rights.

State's sovereign decision on determining their nationals was not always operating without restrictions of International law. In 1921, the Permanent Court of International Justice (PCIJ) played a role in resolving the dispute on Tunis and Morocco Nationality Decrees noting that France's decrees extended extraterritorially and, thus, were restricted.

Further advancement of International Law on matters of nationality resulted in the introduction of the "Convention on Certain Questions Relating to the Conflict of Nationality Laws" (The Hague – 12 April 1930). The very first article of it confirmed the sovereign right of states to decide on whom to consider its nationals – "it is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality". Regarded by many as the father of the modern discipline of international law, Openheim stated in the book of the same name (International Law) that "It is not for International Law but for Municipal Law to determine who is, and who is not, to be considered a subject". The 1992 EU Maastricht treaty "reconfirmed" that the questions of nationality fall within national competence and, thus, the right to determine whether a person "possesses the nationality" of a state is the right and expression of a sovereignty.

Estonian and Latvian citizenships

The Republic of Estonia was first formed in 1918; it became a part of the Soviet Union in 1940 (according to Estonian historians – it was occupied, according to the Russian side – it was being protected from the Nazis); it was taken over by Nazi Germany in 1941 until 1944 when it was “re-conquered” by the Red Army and the rule of the Soviet Union was once again established on the territory of Estonia. In 1990, all three Baltic States claimed independence from the USSR and accepted new Nationality policies. On 26 February 1992, the Supreme Council of the Republic of Estonia returned the Citizenship Act of 1938 where *ius sanguinis* became the main principle for granting citizenship. Thus, only those who were citizens of Estonia before Soviet occupation in 1940, including their descendants, could become the citizens automatically while all others (colonial settlers) were obliged to go through the process of naturalization. Exclusionary policies were widely supported within Estonia mainly because the number of non-Estonians drastically increased particularly after 1940 (from 10% in 1940 to 38.5% in 1989). Such restrictive measures made many non-Estonians stateless and thus kept them from 1992 Parliamentary elections when elected Parliament became 100 per cent Estonian.

After international “recommendations” from the OSCE, the Council of Europe and the EU, a new Citizenship Act was ratified in 1995 and introduced new conditions for naturalization – five years of residence, test on the Estonian Language, Estonian Constitution and the Citizenship Act. The biggest debate developed around the law prohibiting the issue of citizenship to children born on the territory of Estonia to stateless parents. The violation of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child was resolved in four years only when an amendment to the Citizenship Act was ratified.

The number of stateless residents dropped from 32 in 1992 to 9 per cent in 2008, especially when Estonia joined the EU in 2004 and had to launch an integration program for non-Estonians. At the same time, population censuses of 1989 and 2000 showed that (in eleven years) 29 per cent of non-Estonians acquired Estonian citizenship while 14 per cent became Russian citizens. Yet 116,000 people remained stateless by the end of 2007.

Because the majority of non-citizen population were and are ethnic Russians, the concern of the Russian Federation was indeed predictable. After being admitted to the European Union, nationality policies of Estonia were left approved. And while the EU basically stopped assigning recommendations, the issue of Russian minority became the political agenda of the

Russian Federation. The situation became worse in 2007 when Estonian government ordered the dismantling of a Soviet war memorial (known as the Bronze Soldier) two weeks before the celebration of the Victory Day. Russian Embassy in Tallinn reported that applications for Russian citizenship doubled between 2007 and 2008.

The situation within Latvia and the adoption of the Citizenship Law were rather similar to the one in neighbouring Estonia – the citizenship is based on *ius sanguinis* principle and was granted to those who were Latvian nationals on 17 June 1940 and their descendants together with those who resided and were nationals of other states but submitted an expatriation permit. Thus, ethnic Russians, or Soviet occupants and their descendants, were excluded but offered to naturalize. The requirements for naturalization are: permanent residence in Latvia for at least five years (since 1990), knowledge of the Latvian language, the Constitution, the anthem and the history of Latvia, legal source of income.

Since Latvia joined the EU, the number of naturalized persons per year considerably increased. According to Naturalisation Board, over 16,000 people naturalized in 2004 (near 20,000 in 2005 and 16,439 in 2006). The number of non-citizens, however, still remains high - over 365,000 people in 2008. At the same time, the number of non-citizens is not an indicator as their position in Latvia is not really a disadvantaged one. Non-citizens are granted with a special passport which indicates their belonging to the state and thus gives a right to return; besides internal recognition, non-citizen passport is recognized by the EU and allows a visa-free travel within the Union (Regulation 1932/2006/EC).

However, strict citizenship regulation is not the only concern of Russian speaking minorities in both states. Educational reform in Estonia implies to increase the number of classes in Estonian language and leave Russian language as an option for classes of other languages. According to official authorities and the Ministry of Education, such reform would only increase the integration of Russian speaking minorities and their future prospects of finding a job in Estonia. Thus, Educations Reforms aimed at completely revising the language of instruction in Latvia by 2004 and in Estonia by 2007.

External responses: Russia and the EU

Since the collapse of the Soviet Union, the issue of Russian minorities and Russian diaspora as a whole became the political agenda of the Russian Federation who recognizes the territory

of the former Soviet Union as the area of special interest and mandates for Russia. Russia became widely described as conducting an imperialist project of expanding the nation (particularly through passportisation and compatriots policies). In 1999, the Law on Compatriots Living Abroad was adopted to support former citizens, descendants of citizens of the Russian Empire of 1917, and former USSR citizens who reside outside Russia in their repatriation. In July 2010, the meaning of the term “compatriots” was amended to only Russian citizens and ethnic Russians residing outside Russia.

Since 2008, Russia also simplified entry regulations for former Soviet citizens residing in Latvia and Estonia without any citizenship. To cross the border without any visa they only need to have a valid document – a non-citizen passport or an alien passport. Such privileges were broadly criticized by both states as could suspend the naturalization process. According to the Naturalisation Board, the number of naturalized people decreased from almost 17,000 in 2006 to nearly 7,000 in 2007 and only 3,000 in 2008 (which could also be associated with the introduction of resettlement program of compatriots initiated by Russia in the middle of 2006).

While Russia tries to promote its protection mission in the Baltic States, the question arises - why isn't European Union deals with the cases of discrimination as both states are part of the EU. First, to become the members of the European Union, both countries had to meet the Copenhagen criteria's on minority policies and as was indicated earlier, recommendations on a reduction of stateless population were presented.

Conclusion

Since the adoption of the Nationality Act in 1992, the attitudes of Estonians/Latvians and Russian population were completely opposite. Baltic approach to the question is broadly historical – their populations decreased during the Soviet Union and, therefore to preserve the nation today, Soviet settlers should be rejected the citizenship. Russian approach to the issue is more legal and supported by the Helsinki Watch which “rejects the argument that all those who came to Estonia after 1940 did so illegally and therefore were never citizens. Their residency was legally established under the applicable law at the time they entered the territory of Estonia. Those who settled in Estonia after 1940 must be treated as individuals, not as instruments of state policy, however reprehensive that policy may have been” (Helsinki

Watch, 1993:14). At the same time, the International Law states it is the decision of every country to determine its nationals. The same law can be used to justify the passportisation policy of Russian Federation and its sovereign right to determine its nationals.

European Union Minorities and Discrimination Survey (EU-MIDIS) revealed that Russian minorities in Estonia were feeling the most discriminated in Europe in 2011 – over 59 per cent claimed to experience discrimination. Current situation regarding Russian minorities and educational reform in Estonia are also indicators of forced assimilation although Naturalization policies were improved and the number of naturalized persons surpassed the number of stateless residents.

Whether a legal basis for intervention would appear, intervention of one government to protect persons in another country should take the form of a diplomatic protection when the rights of citizens or minorities are violated. At the same time, the Law concerning the regulation of nationality can serve as an important extraterritorial function – as a “justification for the intervention of one government to protect persons and property in another country”.

Concerns of Estonian and Latvian authorities on granting and expanding political rights of Russian citizens and non-citizens would certainly be used more cautiously. And while Rainer Bauböck was concerned about the rights of external citizens to vote and thus politically participate in the decision making of a kin-state, the case of Ukraine showed that there should be a concern regarding minorities’ participation within the state they reside in.

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References

- Åkermark, A. S., 1996. *Justifications of Minority Protection in International Law*. The Hague, Netherlands: Martinus Nijhoff Publishers.
- Bauböck, R., 2007. Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting. *Fordham Law Review* 75, no. 5, pp.2393–2447.
- Bauböck, R., Perchinig, B. and Sievers, W., 2009. *Citizenship Policies in the New Europe*. Amsterdam: Amsterdam University Press.
- Best, M., 2013. The Ethnic Russian Minority: A Problematic Issue in the Baltic States. *Verges: Germanic and Slavic Studies in Review*, 2, no. 1, pp.32–41.
- Brubaker, R., 1996. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge University Press.
- Brubaker, R., 2010. Accidental Diasporas and External ‘Homelands’ in Central and Eastern Europe: Past and Present. *Political Science Series*, 71, pp.1–19.

- Lerhis, A., and Kudors, A., 2008. *Outside Influence on the Ethnic Integration process in Latvia*. Riga: Centre for East European Political Studies, pp.36–62.
- Lottman, A., 2008. No Direction Home: Nationalism and Statelessness in the Baltics. *Texas International Law Journal*, 43, pp.503–519.
- Natoli, K., 2010. Weaponizing Nationality: An Analysis of Russia's passport policy in Georgia. *Boston University International Law Journal*, 23, pp.389–417.
- Weis, P., 1979. *Nationality and Statelessness in International Law*. Alpen aan den Rijn, The Netherlands: Sijthoff&Noordhoff International Publ.

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