

## UNHCR Moscow

### Background Note On the Replacement of USSR passports In the Russian Federation

*January 2004*

#### Introduction

This note updates (and does not supersede) the previous UNHCR Moscow note dated 28 May 2003 on the same subject. This note further attempts to clarify (i) the relationship between issuance of RF passports and the validity of USSR passports, (ii) the interaction between possession of RF passports and citizenship and (iii) how the applicable RF legal acts on the matter may affect citizens of other former USSR republics.

#### 1. Replacement and validity of USSR passports

The gradual replacement of the (1974-type) USSR passports by RF passports (so-called “internal passports”<sup>1</sup>) by 31 December 2003 is provided for under the Russian Federation Government Resolution No.828 of 8 July 1997<sup>2</sup>. The Resolution further regulates the modalities of issuance, renewal and replacement of internal passports. At the background of the resolution is the wish of the RF authorities to have identity documents (IDs) earlier issued by a State now defunct (the USSR) be replaced by IDs of the successor State (the Russian Federation) for its own citizens. The RF authorities also invoke the insufficient safeguards contained in the USSR passports, which do not meet modern protection standards against forgery. According to sources within the RF Presidential Commission on Citizenship, the replacement of USSR passports by RF passports was completed, by 31 December 2003, for nearly 99% of the RF citizens concerned. It is important to realise that the above-mentioned **Resolution No.828 concerns exclusively Russian citizens**: it does not rule upon the possession, replacement or validity of USSR passports held by non-Russian citizens.

According to Clause 1 of the Regulation “On the passport of the citizen of the Russian Federation”, annexed to Resolution No.828, “the passport of the citizen of the Russian Federation is the main document of identification of the citizen of the Russian Federation on the territory of the Russian Federation”. Possession of an ID (“internal passport”) is mandatory for all RF citizens aged 14 and above, and non-possession of a valid ID is an administrative offence punishable by a fine. As opposed to passports to travel abroad,

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<sup>1</sup> The official term for “internal passport” is “passport of the citizen of the Russian Federation”.

<sup>2</sup> Resolution No.828 of 8 July 1997 “On approval of the regulations on the passport of the citizen of the Russian Federation, the form specimen and the description of the passport of the citizen of the Russian Federation”, amended on 25 September 1999, 5 January 2001, 22 January 2002 and 2 July 2003.

“internal passports” can only be delivered by the organs of the Ministry of Interior, on the territory of the Russian Federation<sup>3</sup>.

While the replacement of USSR passports by RF passports is often linked, in the media as well as by the authorities themselves in their official comments, to the validity of USSR passports, it is important to note that **Resolution No.828 does not fix any time limit to the validity of USSR passports** (held by RF citizens). RF Government Resolution No.828 basically tasks the Ministry of Interior of the RF, starting 1 October 1997, “to carry-out, prior to 31 December 2003, the stage-by-stage replacement of the passport of the citizen of the USSR by the passport of the citizen of the Russian Federation” (Clause 2 of the resolution). In principle and according to the letter of the law, RF citizens whose USSR passports have not been replaced by RF passports by 31 December 2003, should still be considered as being in possession of valid IDs, and their citizens rights shall not be affected.

This position was confirmed by the RF Supreme Court by a Definition (“????????????”) rendered on 4 November 2003. In this case, an appeal was launched by a RF citizen, who was arguing that his citizen’s rights were being violated by the deadline of 31 December 2003 established by (Clause 2 of) Resolution No.828. The Supreme Court rejected his appeal, noting that “The disputed provision in question engages the RF Ministry of Interior; it neither regulates the period of validity of passports nor imposes any obligation on citizens. Therefore, the said provision (...) bears no direct relation to the applicant’s rights and obligations (...)”.

This is for the law and its interpretation by the RF Supreme Court. Considering, however, the risk of mis-interpretation by law enforcement officials, it remains to be seen how the latter will assess the validity of USSR passports held by RF citizens after 31 December 2003.

This further relates to the question of registration. By law, all RF citizens shall be registered by the local bodies of the Ministry of Interior at their place of residence and, in case of sojourn elsewhere in Russia, at their place of sojourn<sup>4</sup>. Residence registration is stamped onto the (internal) passport. If not by law, certainly in practice, the access by RF citizens to their rights and entitlements, including social benefits and allowances (pension, unemployment benefits, child allowances, access to medical care, etc.), is very much linked to the possession of valid residence/sojourn registration. Hence, it remains to be seen whether persons holding residence registration (so-called “permanent registration”) onto their USSR passports will be hampered, after 31 December 2003, in

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<sup>3</sup> Order No.347 of the RF Ministry of Interior, of 24 May 2003, further facilitates the modalities of issuance of RF passports for those citizens who do not live at their place of residence or sojourn registration, by envisaging the possibility to issue RF passports at the place of ‘factual residence’ in the Russian Federation. This is important for IDPs staying in their place of current displacement without sojourn registration, to the extent that they are not required to return to Chechnya to exchange their (internal) passport.

<sup>4</sup> Law of the Russian Federation No.5242-1 “On the rights of the citizens of the Russian Federation to freedom of movement, choice of place of stay and residence within the territory of the Russian Federation”, dated 25 June 1993.

the exercise of their citizens' rights at their place of residence<sup>5</sup>. More problematic may be the situation of persons holding USSR passports who wish to register their sojourn in another subject (region) of the Russian Federation after 31 December 2003. Idem for persons who wish to change their place of residence while holding a USSR passport.

In conclusion, it cannot be excluded that, after 31 December 2003, RF citizens who are not yet in possession of new RF (internal) passports may encounter administrative obstacles in the enjoyment of their civil and social rights. In the perspective of possible protection interventions on behalf of persons of concern to the Office (e.g. internally displaced persons and *de facto* stateless persons), UNHCR's position will be based on the letter of the law as elucidated by the RF Supreme Court.

## **2. Replacement of USSR passports and RF citizenship**

As mentioned above, Resolution No.828 does not fix any time limit for the validity of USSR passports held by Russian citizens. This being said, **whether USSR passports held by RF citizens will be considered (after 31 December 2003), in practice, as valid IDs or not, shall not affect the citizenship of their holder. They remain RF citizens.** What is at stake under Resolution No.828 is only the replacement of IDs (internal passports) for persons who already are Russian citizens.

Before new RF passports were designed and started being issued to RF citizens, the actual citizenship of the citizens of the Russian Federation was established through "stickers" ("?????? ?") inserted onto their USSR passports as an indication of their Russian citizenship. To the extent that one's citizenship is not depending upon the validity of his/her ID, the validity (non-validity) of USSR passports, as identity documents, is not expected to create situations of statelessness. This being said, the possible restrictive interpretation, by RF law enforcement authorities, of Resolution No.828, is likely to complicate the establishment of their RF citizenship by certain categories of RF citizens holding USSR passports. (As for the acquisition of RF citizenship by foreigners holding USSR passports, see section 3 "Replacement and validity of USSR passports in relation to the acquisition of RF citizenship by citizens of former USSR republics", below).

The following categories are possibly at risk:

1. Former USSR citizens who earlier acquired RF citizenship through Russian consulates abroad (mainly in former USSR republics): when processing the requests from the concerned persons to be issued with a new RF passport, the local interior organs systematically verify the validity of the citizenship certificates issued by Russian consulates as well as the grounds under which they were issued and, reportedly, find many irregularities.
2. Former USSR citizens granted RF passports to travel abroad (as opposed to internal passports) in Abkhazia and, to a lesser extent, in South Ossetia, Georgia (mainly ethnic

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<sup>5</sup> It could be speculated that they may face obstacles with the enjoyment of newly acquired entitlements: for instance, persons reaching the pension age after 31 December 2003 may have difficulties effecting the necessary demarches for the payment of their pension if their residence registration is stamped onto their USSR passport.

Abkhaz and/or ethnic Ossets, but not exclusively) and other dual citizens in Central Asian countries: according to some NGO sources, some 130,000 such RF travel documents were issued. Some NGOs have reported that ethnic Abkhaz from Georgia have been facing difficulties when trying to obtain RF internal passports in Russia from the local bodies of interior. UNHCR is directly aware of dual citizens from Central Asia, having fled to Russia for political reasons holding RF passports to travel abroad, but who were denied the issuance of RF internal passports by local bodies on the interior in Russia.

3. Former USSR citizens born on RSFSR territory: such persons were recognised *ipso facto* as RF citizens under the 1991 citizenship law (Article 13.2). However, those who failed to be issued with a RF citizenship sticker onto their USSR passports are now often being (unduly) opposed by local interior organs that the Article 13.2 provision of the 1991 law does not apply anymore, since it was not re-enacted under the 2002 citizenship law (thus contesting a status/citizenship acquired by the automatic operation of the 1991 citizenship law!).
4. Those “Baku Armenians” in Moscow and Meskhetians in Krasnodar Krai who settled in Russia before the entry into force of the 1991 citizenship law (6 February 1992): they are *de jure* RF citizens (under Article 13.1 of the 1991 law) while in practice they are often denied RF citizenship<sup>6</sup>. After 31 December 2003, in the absence of a “valid” ID, their attempts to prolong their sojourn registration in Russia (and have their RF citizenship recognised) might be further complicated.

### **3. Replacement and validity of USSR passports in relation to the acquisition of RF citizenship by citizens of former USSR republics**

On 4 December 2003, the RF Government adopted Resolution No.731 “On the extension of the validity of 1974-type USSR passports until 1 January 2006 for certain categories of foreign citizens and stateless persons”. This resolution is problematic, not so much in its substance (the intention is rather positive) than with the legal assumptions it makes. Firstly, it provides for the “extension” of the validity of USSR passports, while, as seen in section 1 above, and to UNHCR’s knowledge, no legal act does foresee an expiry to the validity of the said documents, in the first place. One may see here the effect of the continued confusion that is made between the planned replacement of USSR passports (envisaged by the law as a task assigned to the MOI) and the period of validity itself of the same documents (not regulated under the law). Secondly, this resolution applying to non-Russian citizens (stateless persons as well as foreign citizens), one may wonder to what extent the RF Government has competence to rule upon the validity of identity documents whose extension or replacement falls primarily under the jurisdiction of States, citizens of which the holders are<sup>7</sup>.

The expressed purpose of the resolution is to enhance the process of acquisition of RF citizenship by former USSR citizens (stateless persons as well as citizens of former USSR republics) legally residing on the territory of the Russian Federation. For the

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<sup>6</sup> This is less and less the case for Baku Armenians in Moscow, who are now routinely issued RF passports based on court decisions establishing the fact of their residence in Russia as at 6 February 1992.

<sup>7</sup> During a recent meeting with a representative of the RF Presidential Commission on Citizenship, these two questions remained unclarified.

purpose of sojourn, temporary or permanent residence in Russia, the validity of their USSR passports “shall be extended till 1 January 2006”.

Amendments to the 2002 RF Law on Citizenship were passed in November 2003, with the intention to facilitate the acquisition of RF citizenship by former USSR citizens residing on the territory of Russia. According to estimates from the RF authorities, several hundreds thousand former USSR citizens (up to one million and half) could benefit from the amended version of the 2002 citizenship law. In particular, Article 14.4 of the citizenship law (introduced through the December 2003 amendments to the law) stipulates that “Foreign nationals and stateless persons, who used to possess USSR citizenship, arriving from States that formed part of the USSR and registered at the place of their residence as at 1 July 2002 [date of entry into force of the citizenship law] or who have been issued a permission for temporary residence [provided for under the 2002 Law on Foreigners], shall be admitted to the simplified procedure without complying with the requirements envisaged under Article 13 part 1 points (a) [five years uninterrupted residence], (c) [lawful source of income] and (e) [established knowledge of Russian language] of this Federal Law and without submitting a residence permit, providing they declare their intention to acquire the Russian citizenship before 1 January 2006”.

While welcoming these amendments, some forced migrants NGOs have argued that the acquisition of RF citizenship is still tied to possession of residence or sojourn registration, which will limit the scope of beneficiaries (considering that the practice by local organs of the MOI to issue sojourn/residence registration remains, to some extent, arbitrary). Indeed, many former USSR citizens in Russia are striving to obtain residence or sojourn registration, and in between renewals of their sojourn registrations, often remain without any proper registration, thus hampering their possibility to obtain permissions for temporary residence (or residence registration) and, subsequently, to apply for RF citizenship.

In conclusion, and despite the positive effects of above-mentioned Resolution No.731 combined with the November 2003 amendments to the 2002 citizenship law, the dysfunctioning of the registration system in the Russian Federation may continue to prevent some former USSR citizens currently living in Russia from acquiring RF citizenship. This being said, **this should not affect their current citizenship, to the extent that, presumably, the concerned persons possess the citizenship of the State of their former residence.** A more precise assessment of this assumption (and, subsequently, of the possible risks of statelessness among this group) would necessitate a survey of the citizenship laws of the (other) former USSR republics<sup>8</sup>.

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January 2004

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<sup>8</sup> In particular, one would need to look at how citizenship was determined and documented in these former USSR republics following the dissolution of the USSR. In other words, how was citizenship established and documented in USSR passports before the said countries started to issue their own national identity documents.