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# Human Rights and State Secrecy

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## PERSPECTIVE

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# Human Rights and State Secrecy

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In January 1974, after an unprecedented struggle by a number of Soviet human rights activists and Jewish "refuseniks," most of whom had been denied permission to leave the USSR "because of the knowledge of state secrets," the US Congress passed the famous Jackson-Vanik amendment. This legislation connected the fundamental human right to emigrate freely from the Soviet Union with the bestowal by the US of most-favored-nation status, and consequent important trade advantages for the USSR. (1) This amendment proved to be a historic turning point.

In 1994 the Russian Prime Minister, Viktor Chernomyrdin, held discussions with leaders of the American Jewish community during his visit to the US. He also met with former Congressman Charles A. Vanik, offering assurances that obstacles to emigration from Russia had been lowered and, therefore, the Jackson-Vanik sanctions could be lifted. Mr. Chernomyrdin discussed the work of the special Refuseniks Appeal Body (MVK), an authoritative governmental commission which cancels about 90% of the refusals through which different military departments try to stop would-be immigrants. (2)

According to the official process, persons appeal to and are refused by UVIRs (former OVIRs) of the Ministry of the Interior (MVD), although the UVIR does not determine whether state secrets are at risk. (3) Every case is sent to the FSB (former KGB), which in turn begins its investigation at the applicant's place of employment. In most cases the FSB conclusion is crucial in determining whether the person receives a passport for travel abroad. The MVK was created on January 1, 1993 through a law which allows

each refusenik to contest the UVIR denial of his or her application. Further appeal is permitted only after a refusal given by UVIR is reaffirmed by MVK.

The MVK is very influential; its 11 members were appointed personally by a special decree of the prime minister in May 1993. They represent the presidential administration, the governmental apparatus, the FSB, the General Staff of the Army, the Chief Military Industry Department, and the Foreign Ministry's Department on International Humanitarian Cooperation and Human Rights. The commission presently is chaired by First Deputy Foreign Minister Igor Ivanov. It constitutes the only body in Russia which considers individual refusenik cases objectively and impartially. Without any doubt this body was created to console Western anxiety over the refuseniks problem.

The nongovernmental organizations, Movement Without Frontiers and Public Council for Secrecy Refuseniks, have worked in close cooperation with MVK since its creation and can confirm that their list of Jewish and non-Jewish refuseniks (about 100 families) is constantly updated thanks to MVK. Of course only a small number of refuseniks possess the energy and courage to struggle; appealing to the MVK is not a simple procedure. Still, the effort is usually worthwhile, since in most cases we win and applicants are permitted to go abroad (to emigrate or for temporary stays) regardless of the enormous opposition they faced from powerful military departments.

In February 1994, the former chief of the all-Russian OVIR, Rudolf Kuznetsov, informed MVK that there were about 6,000 secrecy refuseniks in Russia. Of those, 180 reapplied to emigrate; the others intended to make a temporary trip abroad. Unfortunately, we do not know whether these figures are still current: Kuznetsov retired in August 1994 and the Ministry of the Interior no longer reveals these statistics.

We can testify that powerful military departments despise MVK for its liberal exit politics and did their best to excise any mention of this special appeal body and, therefore, its legal status, from the draft of the new Russian Law "On Exit and Entry." Happily, we can

report that their attempts failed. The law, with the passages pertaining to the MVK intact, was passed by the State Duma on July 18, 1996, and the MVK continues its work. However, we must always remember that the MVK will hardly remain independent if the West loses its interest in freedom of movement in Russia.

The need for such a commission has existed for a long time, as the Russian military and the KGB (now the FSB) have shown their teeth over the years:

- **Natan Sharansky**, in a famous and tragic case, was accused in 1978 of committing treason to the Motherland and of revealing state secrets; he spent almost 10 years in a Soviet jail.
- **Semyon Livshits**, an officer in the Soviet Navy's Pacific Fleet, openly announced his intention to emigrate to Israel in 1988 and applied for a military retirement. He was refused. Two years of difficult struggle with his command followed. At last he was released from the military and he came home to Belorussia, which was still a Soviet Republic. However, once he arrived there and applied to the OVIR, he was arrested and accused of attempting to steal a Soviet atomic submarine for the Mossad. In the face of immediate international protests, the authorities changed their minds and their charges, and instead accused Livshits of raping and robbing girls. He was sentenced to 10 years' imprisonment.

Thanks to enormous efforts by Russian and foreign human rights activists, the Military Board of the Supreme Court of Russia did not give in completely to pressure from military circles and in August 1995 reduced his term from 10 to 6 years. Only now does Semyon Livshits' tortured odyssey come to an end--on August 11 he left Russia for Israel.

- **Vil Mirzayanov** in 1993 protested the dangerous activities of the Russian military-chemical complex. (4) He was arrested and accused of revealing state secrets. Despite widespread protests, nothing could stop the wheels of "state-secrecy justice" until democratic Procurator General Yuri Kazannik dropped the case in

1994 after establishing that there were no grounds on which to bring action against Mirzayanov. Kazannik, who was appointed to his position following the defeat of the 1993 coup (which was also organized by the extremist "red-browns" in the Army and secret services), retired in January 1994 after the coup organizers received amnesty.

- **Aleksander Nikitin**, an ecologist, was arrested by the St. Petersburg FSB in February 1996 because he had cooperated with the Norwegian ecological organization Bellona in preparing its report on nuclear security for the April 1996 "7 plus 1" Summit in Moscow. The report focused on the hazards posed by the Russian Atomic North Fleet's nuclear waste. Nikitin was accused of committing treason to the Motherland and espionage for the foreign ecological organization. Already he has spent more than six months in jail. The case challenges the Russian Constitution, testing the independence of the judicial branch, and exposes the environmental dangers which threaten Russia and its neighbors. (5)

### **Who Rules the Country?**

In the former USSR, human rights were violated by the totalitarian state; in present-day Russia, they are violated on an even wider scale because in a sense there is no state at all. Instead there is regional or departmental feudalism. Article 42 of the Russian Constitution, adopted in December 1992, states: "Everybody has the right to truthful information about the state of the environment," while Article 7 of the Law On State Secrecy, adopted in July 1993, proclaims that "information about catastrophes and accidents threatening to ecology, health or life of people cannot be secret." In addition, the same article stipulates, "The officials who make this information secret may themselves be sued."

Nevertheless, experts with the Ministry of Defense, FSB (KGB), and the St. Petersburg Procuracy accuse Aleksander Nikitin of revealing "top secret information" on the accidents and catastrophes of the atomic submarines of the Russian North Fleet. During his state visit to Norway in March 1996, the Russian president openly stated that Russian authorities have no claims against Bellona. But the harassment (which began

as early as October 1995 when the FSB searched the Bellona headquarters in St. Petersburg and Murmansk and confiscated all their research materials, computers, etc.) continues without any attention being paid to the words of Boris Yel'tsin.

In 1992 Yel'tsin issued a decree creating a "Department of Civil Control over Security of Military Nuclear Objects (storage etc.)." Over the last three years the General Staff of the Russian Army regularly issued special instructions prohibiting the admission of Yel'tsin's civil controllers to the secret units of the Ministry of Defense. In July 1995 this controversy ended with a full defeat for the president: while hospitalized, he suddenly signed a decree disbanding the above-mentioned Civil Control department.

In October 1995 the Federal Commission on State Secrets (CSS) was established by special presidential decree. It represents the more reactionary tendencies in government. Of course the interests of the "power ministries" are so strong because they have influence in the president's entourage, in the State Duma, and in the government. The Soviet military-industrial complex reportedly absorbed 40-50% of the nation's annual income, a level unprecedented in world history. (6) This sector was the actual, although unseen, master of the country. In present-day Russia, it remains very powerful.

### **It is Worthwhile to Struggle?**

For decades there was no law at all to regulate departure from "the first country of world socialism." In May 1991, the Supreme Soviet of the USSR at last passed the Law "On Exit and Entry" which came into force in Russia in January 1993. This represented a kind of revolution since, according to this law, any citizen had the right to apply for a passport without needing an invitation from abroad. Of course many people tried to take advantage of this opportunity and were confronted immediately by the departmental state secrecy regulations--hence the thousands of refuseniks mentioned earlier.

More than a year ago, the State Duma began work on a draft of a new Law "On Exit and Entry." We participated in this work as human rights experts. Now the law includes our

formulations of the initial portion of Article 15-1 (making voluntarily-concluded personal contracts with an agency performing classified work the only grounds for limiting a person's fundamental right to leave the country, and even that for "not more than five years after the date of last admission to the classified information"); Article 16 (which abrogates the common practice of anonymous refusals to grant permission to leave); and some other articles. The new Law "On Exit and Entry" was passed by the Parliament on July 18; on August 8 it was signed by the president, and now it has been promulgated.

This law has a complicated history. It was passed by the State Duma on December 8, 1995, but rejected on December 20, 1995 by the Federation Council. The bicameral Consent Commission was formed to address the dispute; during the six months of its existence, the FSB and the military repeatedly added their amendments to the law, attempting to annihilate any mention of the MVK, nullify the role of personal contracts, and place all decision making regarding refusals into the hands of the CSS and various other departments.

At the last meeting of the Consent Commission on July 15, Leonid Paperno, a member of our group, confronted four FSB lobbyists who insisted on their amendments. In the end they did not win, due in large part to Jackson-Vanik and to the Council of Europe's demands. Conclusion N193 (1996) of the Parliamentary Assembly of the Council of Europe, which lists the demands accompanying Russia's entry to the Council, was particularly useful since it states clearly: "The practice of confinement of foreign trips of the persons admitted to state secrets must be immediately stopped." (7)

However, the FSB managed to weaken substantially Article 15-1; now a new paragraph enables the CSS in some special cases to appeal to the MVK to prolong emigration restrictions for an additional five years over and above the original five years. To what extent this nasty amendment will result in arbitrary refusals depends on the general situation in the country, i.e., on the answer to the question: "Who really rules the country?" The struggle continues.

## **The "Elders of Zion"**

One element that has made the struggle intense is a new communist-ultranationalist ("red-brown") ideology which has formed in Russia since 1991 and which proclaims "struggle with the Zionist occupational Barukh Eltsin regime," and which constitutes the ideological framework for all military and nonmilitary reactionaries. The role of the Ministry of Defense in creating this ideology cannot be overestimated. Again the Protocols of the Elders of Zion and the myth of the "World Jewish Conspiracy" have become hot topics for discussion; these themes are particularly abundant in the papers, sold in Moscow's subways and in Revolutionary Square near the Kremlin, which for the most part are printed by Publishing House N12 of the Russian Ministry of Defense (also located close to Red Square). Nor should we overlook the role of the communist majority in the Duma and Zyuganov's campaign pronouncements.

Thus it is not surprising that in June 1996, just before the presidential elections, the Jewish Agency/Sokhnut was deprived suddenly of its official status in Russia. Evidently, this was a political "bone" thrown to the reactionaries. However, officially the authorities are issuing assurances that actually there is no actual problem, just some new rules of registration which must be fulfilled. Now the Jewish Agency has applied for new registration and in practice it continues to work, regardless of registration problems. Paradoxically, this also proves the weakness of the rule of law in this country, where regulations can be and are used for political purposes.

### **Notes:**

1 The International Convention on Human Rights, to which the USSR was a signatory, expressly confirms "the right of a citizen to leave his country..." a concept which was incorporated subsequently in "Basket Three" of the Helsinki Final Act, to which the USSR acceded (not least because it gained major political concessions in "Basket One").--ed.

2 The MVK is an interdepartmental commission which hears the cases of individuals who have been refused foreign passports because of an alleged knowledge of state secrets.

3 The Department of Visas and Registration.

4 Mirzayanov pointed out that, despite official claims, Russia's huge chemical warfare pile was not being destroyed, indeed could not be destroyed safely. See Vil Mirzayanov, "Chemical Weapons: An Expose," in *Perspective*, Vol. V, No. 4 (April-May 1994).--ed.

5 Amnesty International has declared Nikitin a prisoner of conscience and has initiated an international campaign to gain his release and his rehabilitation. Meanwhile, Bellona's report, which relies exclusively on open sources, shows that Russia has stored thousands of nuclear fuel rods and other nuclear waste with no security within a short distance of the Norwegian border.--ed.

6 B. Altshuler, P. Wasilewsky, A. Gol'tsov, S. Ozerov, "Distribution of the National Income of the USSR," Leningrad 1971, (Munich: Samizdat Archive, N 1411).

7 Article 10-XV of the Conclusion N193.

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