

Passports and visas

Coats of arms of a feudal mindset

Presentation by

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at the

9th EMN Educational Seminar on Migration

“Bratislava, 4 July 2023”



Would it be morally fair to deny Schengen tourist visas to Russian citizens because Russia invaded Ukraine?

Two recent challenge

- 1) Should Russians be allowed into the EU?
- 2) Does GLOBSEC justify the restoration of border controls?

Visa ban

Against the ban

- Illegal under the Visa Code and the Schengen acquis
- Morally wrong: collective punishment
- Inhuman towards those who wish to escape or have other legitimate grounds
- No-one bans US tourists when the US goes to war

In favour of the ban

- If visa policy vis-a-vis a third country may depend on that country's actions, (moving to or from visa-free access) then it can move to total ban, too
- Law can be amended to allow for ban
- Any economic EU sanction hits the whole population for the deeds of the gov.

GLOBSEC conference 2023 Temporary reintroduction of border controls



Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 *et seq.* of the Schengen Borders Code

NB	Member State	Duration	Reasons/Scope
365	Lithuania	07/07/2023 - 13/07/2023	NATO Summit in Vilnius on 11 and 12 July 2023; international airports and seaports, land border with Latvia, land border with Poland
364	Norway	24/05/2023 - 04/06/2023	Informal meeting of NATO Ministers of Foreign Affairs in Oslo; all internal borders
363	Slovakia	24/05/2023 - 08/06/2023	International security conference of <u>Globsec 2023 Bratislava Forum</u> taking place at the same time as the international event of the motorcyclist club <u>Hells Angels MC Slovakia - World Run</u> ; all internal borders
362	Norway	12/05/2023 - 11/11/2023	Threat to critical on-shore and off-shore infrastructures, Russian intelligence threat in Norway; ports with ferry connections to the Schengen area
361	Denmark	12/05/2023 - 11/11/2023	Islamist terrorist threat, organised crime, smuggling, Russian invasion of Ukraine, irregular migration along the Central Mediterranean route; land border with Germany and ports with ferry connections to Germany
360	Germany	12/05/2023 - 11/11/2023	Increase in irregular migration from Türkiye through the Western Balkans, strain on the asylum reception system, human smuggling; the land border with Austria
359	Sweden	12/05/2023 - 11/11/2023	Islamist terrorist threat; all internal borders (exact borders to be determined)
358	Austria	12/05/2023 - 11/11/2023	Pressure on the asylum reception system, high migratory pressure at the EU's external border to Türkiye and the Western Balkans, threat of arms trafficking and criminal networks due to the war in Ukraine, human smuggling; land borders with Hungary and Slovenia
357	France	01/05/2023 - 31/10/2023	New terrorist threats, increasing risk of terrorist organisations present on national territory targeting the <u>Rugby World Cup</u> taking place in <u>September and October 2023</u> , increase in <u>irregular entry flows</u> at the external borders (from the Central Mediterranean and the Western Balkans); internal borders with Belgium, Luxembourg, Germany, Switzerland, Italy, Spain

- How would you know who is dangerous?
- What if the dangerous people take the train?
- Is a Belorussian citizen a larger potential threat than a Spanish?

Passports

The dual character of the passport



Early function of „passports“
They certify a link to the
overlord, the sovereign („The
Prince“) to whom the subject
owes allegiance (in exchange the
overlord promises protection –
even in territories of other
rulers)

Feudal character

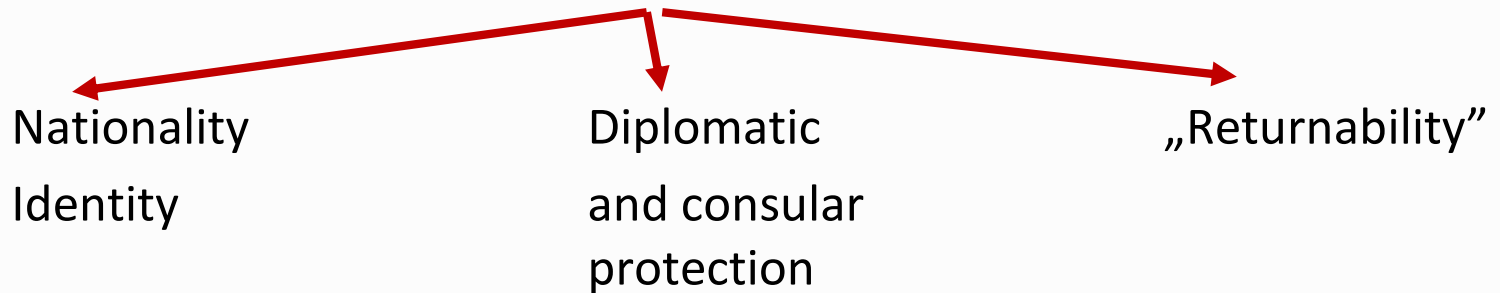
2) Modern, industrial society,
„governmentality“, recording and documenting
the population, especially for labour market
purposes – and preventing emigration
„monopoly of the legitimate means in of
movement“ (Torpey)
+ separation of the „members“ of the „nation
state“ from „aliens“ – prevent unwanted
immigration

Modern, capitalist character

Functions of the passport

There is „very little consensus as to the role which passports are intended to play” Goodwin – Gill, 1978, p 24

In relations between states: 3 functions



Department of State of the US asserted an American passport to be "a document of **identity and nationality** issued to **persons owing allegiance** to the United States and intending to travel or sojourn in foreign countries. It indicates that it is the right of the bearer to receive **the protection and good offices of American diplomatic and consular officers** abroad and requests on the part of the Government of the United States that the **officials of foreign governments permit the bearer to travel or sojourn** in their territories and in case of need to give him **all lawful aid and protection**" 13. G.H. Hackworth, Digest of International Law, vol. 3 (Washington, 1942), p. 435 . Quoted in Turack, 1972, p. 16

Municipal aspects:

- is **passport a prerequisite** to travel abroad?
- is there **a right to passport**?

Passport as tools of emigration control

Historically: main goal: **to keep the population at home** – mercantilist philosophy – source of wealth

Emigration (not immigration) was the main concern during the large emigration wave from Europe **between 1870 – 1914**

Cold war period – duality :

Territorial limitations of the passport – no travel to Cuba, China, etc
Accepted

the **West** promotes the right **to emigrate**, the **Socialist** and much of the developing world **denies it**

Even the West (the US) uses it as a political tool – long struggle in the 1950's to assure that „communists“ and others not be denied access to passport

Passport as tools of emigration control

21st century: departure is still not an available right to many – denial of exit across a border without a valid passport locks persons in their own country or in a transit country.

(Libya, Turkey!)

Denial of passport
without

- a good cause (e.g. pending criminal proc.)
- due process for challenging denial

is

- discriminatory and
- a breach of the right to liberty

ICCPR Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including [but not limited to – BN] his own.

Passports and entry - Trump travel bans

Executive order 13769 27.1.2017	Executive order 13780 6.3.2017	Proclamation 9645 24.9.2017	Proclamation 9723 10.4.2018	Executive order 9983 31.1.2020
Iran	Iran	Iran	Iran	As before + Myanmar, Eritrea, Kyrgyzstan, Nigeria, Sudan, Tanzania
Iraq,	-	-	-	
Libya,	Libya,	Libya,	Libya,	
Somalia,	Somalia,	Somalia,	Somalia,	
Sudan,	Sudan,	-	-	
Syria,	Syria,	Syria,	Syria,	
Yemen	Yemen	Yemen	Yemen	
		Chad	-	
		North-Korea	North-Korea	
		Venezuela (partial)	Venezuela (partial)	

Revocation of Trumps entry bans

Joe Biden, Proclamation 10141 of January 20, 2021

„[the **Trump executive orders**] prevented certain individuals from entering the United States—first from primarily **Muslim** countries, and **later, from largely African countries**. Those actions are a **stain on our national conscience** and are **inconsistent with our long history of welcoming people of all faiths** and no faith at all. Beyond **contravening our values**, these Executive Orders and Proclamations have **undermined our national security**”

Non - acceptance of certain Russian passports in the EU

DECISION (EU) 2022/2512 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2022

„Since the EU has not recognised the illegal annexation of the Crimean peninsula by the Russian Federation or of other Russian-occupied regions in Ukraine, travel documents **issued by the Russian authorities in these territories** should be unequivocally invalidated by Union law for the purposes of travel. The same applies to travel documents **issued in** the Russian-occupied Georgian territories of **Abkhazia and South Ossetia**.” Comm Proposal, (2022) 622, p. 4

Decision of the EP and the Council, 14 December 2022

„Article 1

Travel documents of the Russian Federation (Russian travel documents) **issued in or to** [issued anywhere – BN] **persons resident in regions or territories** in Ukraine which are occupied by the Russian Federation or breakaway territories in Georgia which at the time of the entry into force of this Decision are not under the control of the Georgian government shall not be accepted as valid travel documents for the following purposes:

- (a) the issuing of a visa ...;
- (b) the crossing of the external

Exceptions: earlier Russian citizen, minors, incapacitated persons

Still serve as **documents of identity**

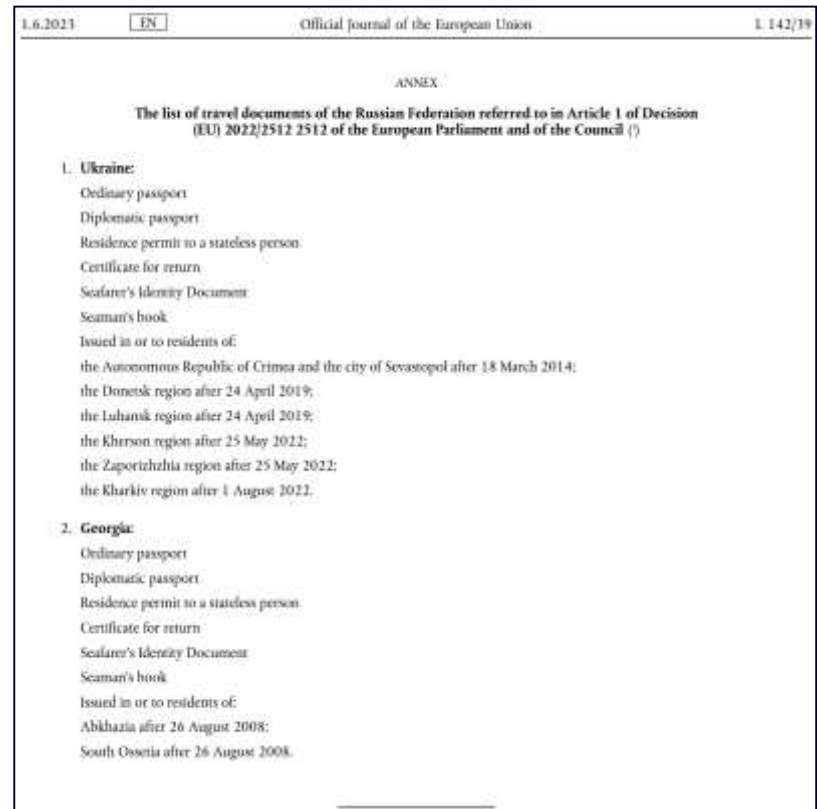
Does not affect asylum seekers with such passports

The essence of the Russian case

Entry bans against concrete politicians, business people or military are **based on** presumed individual **contribution to the survival of Putin's regime** and therefore applying **individual responsibility**

A **blanket non-recognition** of passports makes **the affected population** an instrument in **interstate (sovereign) politics** between the Member States (and the EU) and Russia

COMMISSION IMPLEMENTING DECISION (EU) 2023/1061 of 31 May 2023 on the establishment of the list of travel documents of the Russian Federation issued in or to persons resident in regions or territories in Ukraine which are occupied by the Russian Federation or breakaway territories in Georgia which are not under the control of the Georgian government that are not accepted as valid travel documents for the purposes of issuing of a visa or of crossing the external borders



Travel documents – passports – nationality Diversity

Passport	Travel document
<p>„A document issued by the competent authority of a State, valid for international travels, which identifies the holder as a national of the issuing State and constitutes evidence of the holder’s right to return to that State” (With exceptions!)</p>	<p>A document issued by a government or by an international organization which is accepted as a proof of identity for the purpose of crossing international borders.</p>
Source: IOM Glossary on Migration, 2019	

- UN laissez-passer
- (Geneva) Convention travel document (for refugees and for stateless persons) – now: machine readable
- EU European travel document for the return of illegally staying third-country nationals (EU Reg 2016/1953)
- National „aliens’ passports” and many other types



The maze of passports – an example: Argentinian travel documents in the EU

[Travel documents, in which place names (toponyms) of the territory of the Hellenic Republic are recorded with inaccurate and, thus, unacceptable denominations, are not recognised by the Hellenic authorities, even if these documents are marked in the list of travel documents as recognised]

Part I: Based on the notifications from Member States until 1 June 2023

	BNL	CZ	DK	DE	EE	EL	ES	FR	HR	IT	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	IS	NO	CH/LI	
ARGENTINA¹																									
Ordinary passport Pasaporte																									
Diplomatic passport ² Pasaporte Diplomático																									
Special diplomatic passport ³ Pasaporte Diplomático especial																									
Official passport ⁴ Pasaporte Oficial																									
Special Official passport ⁵ Pasaporte Oficial Especial																									
Official passport-Military mission Pasaporte Oficial Misión Militar																									
Service passport Pasaporte de servicio																									
Consular passport ⁶ Pasaporte Consular																									
Alien's passport Pasaporte para extranjeros																									
Alien's special passport Pasaporte especial para extranjeros																									
Alien special passport (Refugees, Geneva Convention of 28 July 1951) ⁷																									
Alien special passport (Stateless persons, NY Convention of 28 September 1954) ⁸																									
Provisional passport ⁹ Pasaporte provisorio																									
Emergency passport ¹⁰ Pasaporte de Emergencia																									
Travelling certificate ¹¹ Certificado de viaje																									
Seaman's book																									
C (with comments)	recognised for exit or transit to return to Argentina																								
C1 (with comments)	recognised for exit to return to Argentina																								
C2 (with comments)	recognised for exit or transit to return to the place of residence																								
C3 (with comments)	Recognised in the case of Argentinian nationals, not recognised in the case of aliens or nationals of other countries																								
C4 (with comments)	Treated as an ordinary passport																								
C5 (with comments)	shall be used together with an ordinary passport on which the visa is affixed																								
C6 (with comments)	only for argentinian citizens to return to Argentina																								
C7 (with comments)	Recognised for exit or transit to return to Argentina in category C																								
C8 (with comments)	The document issued electronically is recognised. The document issued manually is recognised for exit or transit to return to the place of residence																								

¹ Argentina issues a 'Travelling authorization' which is obligatory for minors travelling unaccompanied by their legal guardians. The 'Venia de Viaje' is not a travel document as such but without it, a minor cannot travel abroad (In case of altered parenting rights, an express consent of both parents is required so that that minor could travel abroad).

² 5 years validity; issued to high-ranking officials.

³ 3 years validity; issued to high-ranking officials.

⁴ issued for official external missions.

⁵ issued for special missions abroad.

⁶ issued to Argentine citizens abroad.

⁷ The 'Alien special passport' is issued to refugees in compliance with the 1951 Convention relating to the Status of Refugees.

⁸ The 'Alien special passport' is issued to stateless persons in compliance with the 1954 Convention relating to the Status of Stateless Persons.

⁹ A-category document in loose-leaf format, valid for 60 days and issued to Argentine citizens abroad only to return to Argentina.

¹⁰ issued to Argentine citizens abroad.

¹¹ issued to holders of passports from Kosovo, Nauru, Saharawi Arab Democratic Republic, Taiwan, Tonga y and Tuvalu.

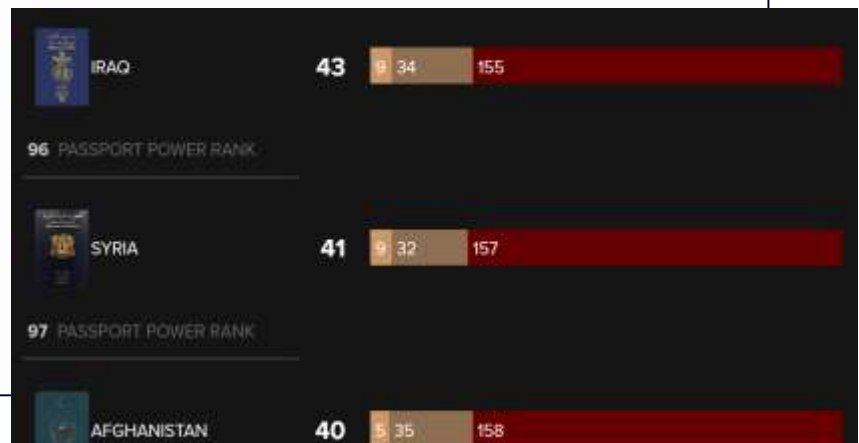
Source: [Travel documents issued by third countries and territorial entities \(Part I\) \(europa.eu\) \(20230703\)](https://european-council.europa.eu/media/e3000000/1/press/2023/07/03/230703_en.pdf)

The power of the passport



Source: [Global Passport Power Rank 2023 | Passport Index 2023](#) (20230701)

Other indexes exist. Compare, e.g.
[HENLEY PASSPORT INDEX 2021 Q4 INFOGRAPHIC GLOBAL RANKING 2 10928_1-1.pdf \(henleyglobal.com\)](#)
(20230701)



Nationality as the core problem

Hannah Arendt is not forgotten (right to have rights),
but:

Nationality is **birthright lottery** - having a “good” nationality is like having **a feudal privilege** (Ayelet Sachar, Joseph Carens)

Bounded communities “nation states” are built on the distinction between nationals and foreigners (“aliens”), and members of the community, the nationals, claim the right to exclude the foreigner

There is no “natural unit” of those bounded communities (UK? Great Britain? England? Czechoslovakia? Slovakia?) **nor are there morally legitimised physical borders**, there is **no “ontological” correspondence** between a group and the territory it claims to control in 2019. (Whom should Lviv, Strasbourg, Dacca, Ogaden, the Seychelles or New Mexico belong?) (Few exceptions exist)

Borders as barriers – formal immigration controls directed at all (not just vagabunds, enemy nationals etc.)
– late 19th - early 20th century

Except for the Asian empires, migration in the 19th century – generally – was free.

At the present day the right of admission and sojourn on the part of unobjectionable aliens is almost universally recognized. Qualifications of the right, which are to be found in the possibilities of exclusion, expulsion and the fixing of conditions of sojourn by the state, must in practice be based upon reasonable grounds.

Edwin M. Borchard: The Diplomatic protection of Citizens Abroad, New York, 1916, 37. old.,
<http://www.archive.org/stream/diplomaticprotec00borc#page/36/mode/2up/search/36>

Travelling book (Wandrownická knizka) of a furrier. https://commons.wikimedia.org/wiki/File:Wanderbuch_journeyman_Wobrausky_from_Daschitz_01.jpg

State boundaries became obstacles to migration in the US in the late 19th century, in Europe after WWI. – passports and visas started to be required. (Torpey)



Visa: the dual stigmatization

- 1) Selecting the country the nationals of which require a visa for entry
- 2) Selecting the individual who is denied a visa

Visa-obliged countries - collective punishment

The denial of freedom of movement is a limitation of liberty – therefore a limitation of individual freedom

That limitation must be an exception.

Justification



Legitimate
punishment

Other compelling
reason (E.g. pandemic,
Art 5 ECHR)

Collective punishment – medieval method

What makes a country appear on a visa-list? **Stigma 1**

Purely **political** (and economic) decision – there are **no moral or legal standards** to be used for the justification – **essentially arbitrary**

Criteria in the visa-list regulation

Regulation (EC) 539/2001 (old)	Regulation (EU) 2018/1806 (new)
a considered, case-by-case assessment of a variety of criteria relating <i>inter alia</i> to illegal immigration, public policy and security , and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity .	a case-by-case assessment of a variety of criteria relating, <i>inter alia</i> , to illegal immigration, public policy and security, economic benefit , in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries, including, in particular, considerations of human rights and fundamental freedoms , as well as the implications of regional coherence and reciprocity

What makes a visa obliged person excludable?

Stigma 2

Visa Code



Reg (EC) 810/2009, consolidated, § 21

„ particular consideration shall be given to assessing whether

- the **applicant** presents a **risk of illegal immigration** or
- a **risk to the security of the Member States** and whether
- the applicant **intends to leave the territory** of the Member States **s** before the expiry of the visa applied for.”

[Line breaks and dots added – BN]

Problems with the criteria

1. Risk of illegal immigration – **self fulfilling prophecy/vicious circle** : many applications denied  presence of risk
 many applications denied
2. **Fellow nationals** overstay/ irregular entry/ clandestine work - **the innocent** does not get a visa = **collective punishment**
3. Informed guesses on irregular presence are **notoriously unreliable**. Statistics do not exist.
4. Access to territory by **asylum seekers** made **impossible or extremely risky**

Problems with the criteria

5. **Machine bias:** creating profiles of „potentially dangerous persons” may disadvantage migrants with certain characteristics. (Mau, 2020)
6. Visa **questionnaire normally can't screen out yet unknown dangers** to public order or national security. **Known persons** can be **kept away/removed** even if there is no visa obligation (E.g. Schengen alert, denial of ETIAS)
7. The EU list of visa obliged countries expresses racism without races (Balibar) **All African states** are on the list except for **Mauritius** and **the Seychelles**
8. If **one member state has political problems with a third state** and manages to **put it on the visa list**, nationals of that state are **excluded** from free access **to all the Schengen area**

slido



Having heard this - my view on the denial of visa to Russians in light of the aggression

① Start presenting to display the poll results on this slide.

Feudal mindset

(must Harry give his fingerprints?)

Passport (and nationality) determine (limit) life chances, like birth in feudalism: if born as a serf, then dying as a serf. Bound to the land of birth. If born to be a citizen with a powerless passport then remaining that till the end of life.

Denial of passport = denial of exit = limitation of liberty. The territorial power („the Prince”) has control over exit

Visa = collective stigma = punishment for the transgression of others or the consequence of the (bad) relations between the sovereigns

Denial of visa = denial of entry = limitation of liberty = occasionally (push back) exposure to serious harm

Even the possession of a visa „shall not confer the automatic right of entry” (Visa Code, § 10) - almost unfettered discretion



„The following applicants shall be exempt from the requirement to give fingerprints: ...

c) heads of State or government and members of a national government with accompanying spouses, and the members of their official delegation

....

d) **sovereigns** and other **senior members of a royal family**, ... (on official visits)”

EU Visa Code (Reg 810/2009) § 13

The conceptual solution: global freedom of movement and settlement

Meaning: a right to enter and settle on the territory of a state irrespective of the nationality of the migrant and without the requirement to meet any specific condition.

Does not exclude border controls, passports and check of identity, criminal record, etc.

As the EU was before Schengen, but not limited to certain categories

Conditionality/graduality/exceptions (suspension) would apply

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Thanks for the attention!

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