

Snowden: Human Rights and Global Information Security

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On July 12 fugitive whistleblower [Edward Snowden](#) held a meeting with human rights representatives in the transit area of Moscow airport. Snowden told a small group of activists that he was reinstating a claim for asylum in Russia and asked for their support. In order to be guaranteed safety in Russia, the only way for him to go is to file a formal asylum plea.

According to Russian law, there are provisions to be met before the asylum could be granted. First, it applies to a person who seeks shelter and protection from persecution, or faces a real threat of being persecuted in the country of citizenship or residence for social and political activities or convictions. Second, the activities and convictions should not contradict democratic principles and world-wide recognized international norms. Finally, a person asking for asylum should be an immediate object of persecution. (1)

Prima facie all the conditions are evidently met in the given case. The US persecutes Snowden for the efforts to attract the world public attention to the fact of mass human rights violations that is social and political activities and convictions. The views expounded by Snowden do not contradict democratic principles and international legal norms; he makes clear his support for democracy and law. The case has entailed a string of human rights violations, so the Snowden's activities are aimed at protection of international law making the world community a party which has an interest in the outcome of proceedings.

At international level, article 12 of Universal Declaration of Human Rights states that «No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks».

It's also expedient to recall the article 17 of the International Covenant on Civil and Political Rights (ICCPR) that guarantees individual liberty stating «No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks».

Talking about Snowden himself, there is an outright violation of article 13 of the Universal Declaration of Human Rights which protects the individual freedom of movement, «Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country».

The article 9 of the International Covenant on Civil and Political Rights says, «Everyone has

the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation».

When the USA invalidated the Snowden's passport he was destitute of freedom to move and it was done in an arbitrary way. The article 19 of the International Covenant on Civil and Political Rights states «Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals». This is just a shortlist of international law violations committed by the United States.



During the direct transmission from Sheremetyevo airport, Moscow, lawyer Henry Reznik (picture) had said before the meeting with Snowden that the conditions for granting political asylum are stipulated by article 89 of Russian Constitution. But the article he mentioned only says who takes the decision (The President of Russian Federation). Article 63 provides more detailed information on the matter. It says the Russian Federation grants political asylum to foreign citizens and people who hold no citizenship according to international law. Besides, it says the Russian Federation does not extradite individuals persecuted for political convictions, as well as actions (or inactivity), which are not considered to be crimes in Russia «The Russian Federation shall grant political asylum to foreign citizens and stateless citizens in conformity with the commonly recognized norms of international law. The extradition of persons persecuted for their political views or any actions (or inactions), which are not qualified as criminal by the law of the Russian Federation, to other states shall not be allowed in the Russian Federation. The extradition of persons charged with crimes and also the hand-over of convicts for serving time in other countries shall be affected on the basis of the federal law or international treaty of the Russian Federation». The procedure is described by the special law on political asylum in Russia (the Law on Refugees). There have been two of them adopted correspondingly in 1995 and 1997. The 1997 version is effective today amended in 2003, 2007 and 2012. It creates some obstacles on the way of granting asylum to Snowden. First, an asylum seeker who enters the Russian Federation must personally file an application with the regional migration office within seven days since

arrival or since the situation preventing his (her) return to the country of citizenship or residence occurred. The application is addressed to the President of Russian Federation but should be submitted to regional migration office. As one can see Snowden did not do it within the period required, while his appearance in person at local migration office is problematic. There are some difficulties related to article 5 which excludes the right to receive asylum for those who come from the countries with strong democratic institutions to protect human rights. In these cases the applications are refused to be taken for consideration.

The list of countries democratic enough to exclude any suspicion of being involved in any kind of persecution is made up by the Ministry of Foreign Affairs. The list is yearly renewed and submitted to the Presidential and Federal Migration Service Commissions on Migration Policy. The list is closed from public view, so I couldn't see if the United States of America is included. But there is another official [document](#) made public by the Russian Foreign Ministry's website. It gives me a reason to believe the USA is not part of the unconditionally democratic states list.

There is also an important [publication](#) by International Affairs magazine with the head of Election Commission V. Churov among other authors, which proves that mass violations of human rights took place in the United States during elections.

Once an application is received, the Russian authorities should issue a certificate to asylum seekers. If the applicant is determined to be a legitimate «refugee» and is granted asylum by the FMS, he (she) will immediately be entitled to receive travel documents and a refugee ID card to legitimize the person's staying in Russia. It is important to note, however, that the refugee status is only granted on a temporary basis. Refugee status can be granted for up to three years, after which it must be extended on an annual basis. Once declared a refugee by the Russian authorities, the refugee then can apply for Russian citizenship. It allows to surmise that after the application is received, Snowden can change his status of a transition zone prisoner. How long can this period last? The decision of granting political asylum is taken by President of the Russian Federation. There are state agencies involved in the process, while the application is considered, including the Federal Migration Service, the Ministry of Internal Affairs, the Ministry of Foreign Affairs and the Federal Security Service. The law states the time frame should not exceed one month for any of the agencies listed. There are no time frame limitations for the President. Thus, the procedure may take a very long time. The process will be greatly expedited after the decision is taken by President - it becomes effective upon the moment the head of state signs off on it.

Besides, there are international legal norms being part of Russia's domestic law (article 15 of the Constitution). For instance, article 14 of Universal Human Rights Declaration states «Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations».

Even if Snowden's application is refused, Russia won't be able to extradite him to the United States, especially against the background of mounting accusations of his complicity in more serious crimes. In his interview to Russia-24 TV channel lawyer A. Kucherena said Russia cannot send him to death, he emphasized the humanitarian aspect of the case. (2) Legally Russia cannot extradite him to the country which practices death sentence because it complies with the European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms). Russia is not exactly a

party to the Convention as a whole, but rather to the Protocol 6 of the document which forbids death sentences in peace time. (3) Some lawyers note it's not obligatory because Russia has only signed the Protocol but has not ratified it. It's not exactly so. According to the Vienna Convention on the Law of Treaties (VCLT), an international treaty, what is applied to the Protocol 6 of the European Human Rights Convention, has a special status in the period between its signature and ratification. The state is to abstain from actions to devoid the document of its object and purpose.

Reading the document it becomes clear that the practice of death sentence does away with its object and purpose. Thus, death sentence is legally banned in the Russian Federation after the signature of the Protocol, no matter if it is ratified or not. The European Human Rights Court finds the extradition to a country which practices death sentence to be a violation of Convention. A violation is not only death sentence practiced by a state, which is a party to the Protocol, but also a death sentence handed down by a state a culprit was extradited to by a country being a party to the European Human Rights Convention. This is a clearly formulated position of the European Human Rights Court which is well known in Russia.

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The Snowden's case underscores once more the need to introduce amendments to international information security legal base. A few years ago the Russian Federation submitted to the United Nations a [Draft Convention on International Information Security](#), which still remains only a draft [due to the strong resistance](#) on the part of the United States of America and some of its allies. The Russian project of Convention presupposes a definition for international security as «a state in which personal interests, society, and the government are protected against the threat of destructive actions and other negative actions in the information space».

The US efforts to block the draft convention are explained by quite understandable reasons to justify unlawful purposes. Let's hope the Snowden's case will make many members of international community, especially in Europe, where many countries have become victims of US information aggression, reconsider the approaches and support the Russian legal initiative.

Notes

(1) The Russian Federation's Law on Refugees with amendments adopted on December 1 2003, July 27 2007, and July 12, 2012.

(2) Russian State Duma speaker Sergey Naryshkin spoke about the humanitarian aspect too.

(3) Russia is not a party to Protocol 13 of the Convention , which bans death sentence practice in peace and war time.

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