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RIGHTS OF MIGRANTS AND STATELESS PEOPLE

To the International Migrants Day 18 December

ADC memorial
Anti-Discrimination Centre

DISCRIMINATION DUE TO FAMILY CIRCUMSTANCES

In expelling foreign citizens for minor violations, the migration authorities are separating families and leaving children without parents, guardians, and breadwinners.

Imagine a driver exceeding the speed limit. Or a pedestrian crossing the street in the wrong place. And then, after several traffic violations, being fired, expelled to another country, and banned from returning—in a word, having the habitual course of their lives interrupted and being separated from their family and children. This is no fantasy. In fact, this is the fate of many foreign citizens deemed by the Department for Migration Affairs and then a court to be violators of migration rules for minor, insignificant violations like breaking traffic rules, making mistakes on documents, and missing deadlines for bureaucratic procedures. The authorities even behave this way with people who have been living in Russia since childhood, who are surrounded by friends and acquaintances, and who have started families. Russian citizens, who are only fined for minor violations, generally have no idea that police officers and courts treat foreigners differently, or that the fates of adults and children can be turned upside down by repressive court decisions.

In 2018, many foreign citizens banned from entering Russia for violating migration rules appealed to ADC Memorial for help. All the applicants had lived in Russia for a fairly long time and started families; they did not connect their futures with their countries of origin. The severe decisions of the migration police cancel out the interests not just of migrants themselves, but also of their families.

Achieving the right to family through court

One person who appealed for help was Gamlet A., a citizen of Armenia. His parents moved him from Armenia to Saint Petersburg in 2003, when he was 10 years old. Since then, A. has lived, studied, and worked in Russia; he has no family connections with Armenia. In 2014, he met a women—a Russian citizen—whom he later married. When a court issued a decision on A.'s expulsion, he and his wife already had a child. On March 23, 2018, the Department for Migration Affairs banned A. from entering Russia until December 30, 2020 for repeatedly breaking traffic rules, including violating the rules for transporting people (Article 12.23 of the Russian Code of Administrative Offenses), operating a vehicle with defects (Article 12.5), and proceeding against a signal (Article 12.12). Russian citizens are generally fined from 500 to 1,000 rubles for these violations. In A.'s case, however, the Department for Migration Affairs determined that these offenses were significant, numerous, and flagrant. Migration officials ignored A.'s marriage to an RF citizen and their shared child, deeming these circumstances "not unconditional grounds" for lifting the entry ban.

Meanwhile, the right to respect of private and family life is one of the most important and generally recognized human rights. It means that no one, including the state, can arbitrarily interfere in private life and inhibit a family's free existence. This is especially true of cases involving the rights and interests of children, since separation from parents can have a negative impact on a child's physical and mental health and development.

Russian law does not contain a wholesale ban on separating children from their expelled parents, but the Constitution does proclaim that motherhood, childhood, and the family are protected by the state. Beyond this, the practice of expelling people who have family members and minor children in

their countries of residence is banned by the Convention on the Rights of the Child, which Russia ratified in 1990.

A. turned to ADC Memorial attorneys for help and appealed the migration service's decision in court. On September 13, 2018, Saint Petersburg's Smolinsk District Court issued a ruling in favor of A. In its review of his appeal, the court was guided by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights, which has repeatedly noted that states must consider all relevant factors, including personal family situations, length of stay in the country, strength of family ties, and children's interests when working to resolve the matter of the proportionality of interference in family life. The court cleared A. of any wrongdoing and stressed that expulsion and deprivation of the right to be in Russia for a period of three years would be a violation of the right to respect for private and family life.

Even though the migration service did not agree with the court's decision and demanded a review, it was unable to provide one new reason for overturning the court decision and instead continued insisting that the sanctions were legal and justified.

On February 25, 2019, the higher Saint Petersburg City Court ruled that the migration service's arguments were justified, but that its arguments ignored existing circumstances and the weight of its decision. The court also cited provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, noting that the decision to expel A. and ban his entry into Russia did not have any legitimate purpose. Thus, the city court upheld the ruling of the first instance court and protected A.'s right to respect for family and personal life.

Unexplained entry bans

The case of Irina B., a citizen of Moldova, also ended favorably. In February 2019, a court found that the revocation of her temporary residence permit and a 10-year ban on her entry into Russia were illegal. Like A., Irina came to Russia as a child. In 2002, when she was nine-years-old, her parents moved to Saint Petersburg, where she grew up, graduated from high school and an institute, married a Russian citizen, and had a child with him.

She only traveled to her home country once over this entire time. She did not have a residence permit for Moldova or any relatives there, except for her father, who had long been divorced from her mother. When she crossed the border, she was certain that she would be able to return to Russia without any problems, particularly because Russia's migration service had issued her a temporary residence permit without any problem. Nevertheless, when she returned from Moldova, Irina learned that she had been banned from entering Russia for ten years because of her extended and uninterrupted stay in Russia. The migration service refused to explain how this ban could be allowed with her temporary residence permit, her registered marriage to a Russian citizen, and her minor son, who was also a Russian citizen. To appeal this repressive decision, Irina's attorney appealed to a court, which lifted the entry ban on February 26, 2019 and obligated the migration service to return Irina's temporary residence permit and accept her documents for a residence permit.

Courts are not doing anything revolutionary when they overturn incompetent decisions made by the migration service, but are merely implementing the recommendations of higher courts. For example, the Constitutional Court clarified that authorized bodies must avoid taking a formal approach to considering matters relating to entry bans. Russia's Supreme Court holds the same position. In one of its judgments, it noted that administrative punishment in the form of expulsion from Russia is only possible if public interests and the foreign citizen's interests are balanced fairly. In spite of these statements, however, many Russian courts still do not have a unified, qualitative approach to appealing migration service decisions. Many courts take the migration service's side, satisfying themselves with the formal, surface arguments that run counter to the right to non-interference in private and family life. This happens especially frequently in relation to applicants who have families in Russia, but not children (courts are inclined not to consider adopted children as "children").

"The court did not believe that these were my wife and my child"

The fate of the family of Rustam S., a citizen of Tajikistan who was banned from entering Russia because he did not have a car seat for his child or insurance, could have been especially tragic. In 2018, Rustam married a Russian citizen who had little education and was unemployed. They had a son, and Rustam's wife was six-months pregnant during the trial.

Rustam was responsible for all of the family's material need. Because he did not know the laws, he missed the deadline for leaving the country and the deadline for appealing the migration service's decision, which greatly complicated the case for his attorneys. While he lived in Russia, Rustam, like all the other people mentioned in this article, did not commit any crimes. Minor administrative offences like breaking traffic rules could do no harm in comparison to what his family faced: an extended separation from their spouse and father, who was the family's only breadwinner.

In spite of these circumstances, the missed deadline for appealing the decision played a negative role, and the court was decisively set against Rustam. The judges were also convinced that Rustam's marriage was fictitious because his wife, who was extremely anxious, could not provide a coherent answer to any question posed to her during the session. On top of this, Rustam was not able to submit documents confirming his relationship to his son on time.

The court was expected to uphold the entry ban, but a representative of a human rights organization Rustam had asked for assistance appeared at one of the court sessions in Rustam's defense. This representative confirmed that Rustam had submitted a written statement to have the decision revoked to the migration service. This testimony and the attorney's arguments about Rustam's extended residence in Russia, his family situation, and his law-abiding behavior helped achieve the revocation of the migration service's initial decision and the restoration of Rustam's rights.

Adopted children don't count

The migration service and the courts do not consider the presence of adopted or foster children cared for by migrants to be sufficient grounds for not taking repressive decisions; in other words, they reject that notion that migrants have a family in these cases. One of these "childless" people who appealed to ADC Memorial for assistance was Tajik citizen Azamat S. Over the years prior to his case, he had been living legally in Saint Petersburg. He was preparing to file for a temporary residence permit and was living with a Russian citizen and helping her raise her three children from a previous marriage. In 2017, the migration service banned Azamat from entering Russia for a period of three years for running a red light and violating right of way at an intersection. He was supposed to leave Russia but did not, instead continuing to work. Three children were under his care, and he could not leave them.

To fight for his right to remain with his family, Azamat and his common-law wife officially registered their marriage, but this was not enough. Even though the first instance court ruled in his favor, the migration service was able to win over the Saint Petersburg City Court. The deciding factor for the court was the fact that the couple did not share any children and that Rustam did not have any formal obligations to raise his wife's children.

Separation instead of care

Sometimes state bodies and courts do not even attempt to meet families with children requiring special care and parental attention halfway. In December 2017, Akmala D., an Uzbek citizen, was banned from entering Russia. The migration service ignored both his marriage to a Russian citizen, the fact that he was raising her two children from her first marriage, and the fact that one of the children was autistic. Akmala was prosecuted for having falsely registered at his place of stay, which he did to obtain a work license. His only goal was to find work to feed his family.

To work legally, the law requires migrants to register at their place of residence. Until recently, any employer could arrange for a registration at the organization's legal address. Beginning in 2018, however, migrants could only register with the migration service using the address where they were residing. The new rules complicated life for employers and migrants and encouraged intermediary companies that prepared fake registrations. Most apartment owners who lease their premises to migrants refuse to register these migrants. Fake registrations make it possible to apply for licenses, but if police bodies learn that the address listed in the document does not match the address of actual residence, they ban the migrant from entering Russia.

In 2018, Akmala's attorney filed an appeal to the migration service's decision with the support of ADC Memorial. The defense insisted that Akmala's family situation needed to be taken into account and that the entry ban was incommensurate with the minor violation he had committed. The attorney explained that the autistic child considered Akmala to be his father and that his illness was incompatible with long-distance travel. Thus, an entry ban would mean that a child would be separated from his adoptive parent. The migration service and the court were notified of these nuances, but the court did not rule in the family's favor: it did not view the relationship between Akmala and the children as a close personal connection and refused to recognize the danger of separation, citing the fact that "the case file does not contain any evidence that the family cannot live in D.'s country of citizenship." In other words, the court believed that an entry ban would not destroy D.'s family: according to the court, this family, which includes a disabled child with Russian citizenship, could move to the native country of the adoptive father.

Officially, the "blood" approach of the migration service and the court to an understanding of a family contravenes the norms of the Convention on Human Rights. This convention's understanding of marriage and blood ties is not restricted, but includes other types of "family" relationships where a couple lives together but is not married. Adverse court decisions in these cases are not fair even from the viewpoint of Russia's Constitutional Court, which believes that the accused's liability should be weighed against the severity, size, and nature of the damages. The victims of these repressive decisions are not just the spouses, but the children as well. In Akmala's case, one of the chief victims was a disabled child who was especially attached to Akmala and considered him his father; in fact, autistic people take changes to their usual situation and social group particularly hard. Considering this circumstance and the fact that Akmala committed a minor offense, the court could have chosen a milder sanction and allowed Akmala to remain with his family; however, the right of Akmala and his family members to respect for private and family life was ignored.

Positive rulings are still in the minority

Judges have started to pay attention to the importance of the integrity and inviolability of the family and are now more frequently requesting state bodies to take a special approach and responsibility when adopting decisions that could wreak havoc on the lives of people, including children. In most cases, however, the family situation of foreign citizens has little impact on decisions of the migration service, and few migrants are able to appeal these decisions.

We are firmly convinced that migrants whose families and children live in Russia cannot be deported and banned from entering the country for minor offenses.

COURT OVERRULES RUSSIAN CONSUMER WATCHDOG'S DECISION ON UNDESIRABILITY OF A HIV-POSITIVE PERSON'S STAY

On May 14, 2019, Dzerzhinsky district court of St. Petersburg overruled the earlier resolution concerning undesirability of the stay of Mr. Ts., a HIV-positive citizen of Moldova, in the Russian Federation, which had been issued by the office of Russia's health and consumer rights watchdog Rospotrebnadzor in St. Petersburg and Leningrad region.

Mr. Ts., the applicant in this case, had lived in Russia for more than five years, his wife is a citizen of the Russian Federation and they raise a child together. In April 2015, while undergoing a medical examination to draw up documents for a temporary residence permit, Ts., same as his wife, was found to be HIV-positive. On the basis of this, Ts. was refused a temporary residence permit in the Russian Federation and was forbidden to stay in the country.

Ts. decided to appeal this ban as an unjust and unjustified interference of state bodies of the Russian Federation in his personal life. The interests of Ts. in court were represented by lawyers Olga Tseytlina and Sergey Mikhaylichenko with the support of ADC Memorial. The applicant's legal representatives indicated in court, that the decision of Rospotrebnadzor did not take into account such legally significant circumstances as the length of Ts.' residence in Russia, him being a law-abiding resident, his marital and social status, the severity of his state of health and the health of his wife, who was a citizen of the Russian Federation, and the fact that he had guardianship of a child.

In accordance with the provisions of the law, which were in force at the time of the decision by Rospotrebnadzor on the undesirability of Ts.' stay in Russia, the presence of a HIV-positive foreign national in the country was considered hazardous for the welfare of the population, such person was subject to deportation and the documents, which gave him/her the right to stay in Russia had to be annulled. However, the legal representatives of Ts. drew the court's attention to the fact that on March 12, 2015, the Constitutional Court of the Russian Federation issued a decree on HIV-positive foreigners, who had families in Russia: rules allowing them to decide on the undesirability of their residence in the Russian Federation, on their deportation and on their refusal to get temporary residence permit or cancellation of already issued temporary residence permit were found to be inconsistent with the Constitution of the Russian Federation.

When considering this case, Dzerzhinsky district court has taken into account the fact that the decision of Rospotrebnadzor had been adopted solely on the basis of Ts. being HIV-positive, without clarifying other important circumstances in his case. Such an approach to decision-making, according to the court, did not meet the principle of fairness and proportionality of the established restriction in relation to the revealed legal violation, and it contradicted the existing legal norms and prevented realization of human rights and freedoms.

BIRTH AND DEATH IN RUSSIAN DETENTION CENTRES

Four beds are squeezed into a tiny room with dirty grey walls. There is hardly any space in the room. There's also a shower and a toilet here, separated by a curtain. Sunlight illuminates the room through the bars.

This tiny room in a detention center in Russia was the first home for new-born Nabotov and the last for the severely ill Vephviya Sordiya.

The conditions in which foreign citizens and stateless persons are detained in Russia (the stated end goal being deportation) are often inhumane and violate national and international legislation. Migrants can be detained here regardless of their physical condition or family situation. The European Court of Human Rights has found serious human rights violations in the practice of immigration detention in Russia – yet Russian legislation and its implementation remain unchanged, often leading to tragedy.

A range of state bodies in Russia have the power to make decisions about the expulsion of foreigners or stateless persons, including the Ministry of Foreign Affairs, Ministry of Internal Affairs, State Security Service and Ministry of Justice. There are 81 detention centres across the country with a total capacity of 8,000.

One of the most outrageous cases in the recent years was the detention of Dilafruz Nabotova, a citizen of Uzbekistan, who was 40 weeks pregnant when she was detained by migration officers in Saint Petersburg on 7 September 2015. Her two children – eight-year-old Sarvarbek and seven-year-old Makhbaba – were detained with her, but then separated from their mother and sent to an orphanage. Two weeks later, on 20 September 2015, Dilafruz Nabotova gave birth to a son – five days later, she was returned to the detention centre, the first home for her newborn child. Three weeks later, both were deported. When Dilafruz asked to be reunited with her two older children, migration officers refused, instead threatening to take her baby away from her. It was only three months later that Sarvarbek and Makhbaba were also deported and reunited with their mother.

Dilafruz was detained in violation of the Russian legislation that prohibits the detention of pregnant women and mothers of children younger than 14. What is more, the conditions she faced were unfit for a pregnant woman, a new mother, or a baby. These centres are overcrowded with no medical assistance available. The detention centre in Saint Petersbury where Dilafruz was kept, has a capacity of 336 people, but there are usually many more than that. The shower and toilet situated on each floor are used daily by a dozen people. Each detainee has around 2.5 square metres of living space and shares their room with three others. In some rooms, there is no access to drinking water. Due to poor hygiene, the detention center is infested with mice. According to the detainees, it is only the mice that are free in this institution.

Stateless persons are also kept in these detention centers. As with foreign nationals they are detained to ensure forced expulsion. But their deportation is impossible due to absence of any citizenship, and their detention is simply senseless. Stateless persons are often detained for months or even years waiting for deportation that is impossible to realize. At some point they are released, because they cannot be deported. However, from the perspective of Russian legislation, they continue to violate the law. They cannot leave Russia due to lack of identification documents, but the state refuses to issue these documents. Because of this, they are often detained for a second or third time on the same grounds. Detention for stateless persons becomes an indefinite punishment. For some, it lasts until the end of their lives.

On 8 October 2016 a stateless person, Vephviya Sordiya, died in the hospital in Saint-Petersburg. He had lived in Russia since 1998, but he did not have any citizenship or identification documents. In 2015 he was detained due to violating immigration legislation. Six months later, he was released, punished with a fine, and told by the court to leave Russia on his own. However, since he had no papers (and the authorities refused to issue him any) and could not cross the border, he was unable to leave. In 2016 he was arrested for the second time and sent to a detention centre because of his failure to comply with the court decision of 2015.

While in detention, Vephviya's health deteriorated – his chronic diseases intensified and he began to suffer from unbearable physical pain. He was refused hospitalization and was not provided with any medical assistance in the detention centre. On 16 August 2016 the city court of Saint Petersburg rejected a request to release Vephviya due to his health problems. Nothing changed even after the intervention of the European Court of Human Rights (ECHR). Hours before his death, Vephviya was released from detention and finally sent to hospital – but the intervention was too late.

In a high-profile case in 2014, the European Court of Human Rights ruled that the detention of stateless persons in Russia violates the Convention on Human Rights and that the conditions in the Saint Petersburg detention centre were inhumane. The Court demanded that Russia take general measures to combat violations and prevent further violations of the rights of stateless persons. But the government has taken no such measures – the detention centres have not been improved and the legislative gaps have not been addressed.

Until the appropriate measures are taken at state level, the nightmare experiences of Vephviya, Dilafruz and others will continue – people will be born and people will die in detention, just because of their migration status.

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THE PRICE OF ONE LETTER:
MONTHS BEHIND BARS IN AN FNTDC PENDING DEPORTATION
How mistakes spelling foreigners' names lead to extended periods of imprisonment in an FNTDC

The confinement of foreign nationals in a temporary detention center pending expulsion is a common practice in the Russian system of administrative law. Detention terms in these centers depend on how quickly bailiffs can execute documents giving foreign nationals the right to return to their home country (this usually takes several weeks). However, expulsion may become impossible when mistakes with the personal information of foreign nationals are made in court documents; in these cases, detention can become indefinite.

Migrants are often stopped on the street for document checks and may not have their passports or migration cards with them. This is generally enough for police officers to suspect them of violating residence rules, write up an administrative protocol, and send them to court.

In cases when a person who has been arrested does not have documents on them but is suspected of an illegal act, Russian law specifies that their identity must be established. This laborious procedure involves interrogations, witnesses, and inquiries by various authorities. A foreign national cannot be expelled or deported unless their identity is established. However, police officers frequently fail to do this when arresting migrants and instead write up reports from the migrants' oral statements, often with mistakes (and there are also cases where the arrestees provide names that are made up or belong to another person). These reports are then forwarded to courts as is. The court may find the mistake and defer consideration, or it may state that it has no grounds for not trusting law enforcement officers and issue a decision on expulsion. These decisions are illegal and should be overturned, but this does not happen in practice and costs migrants many months of liberty because administrative law lacks a norm for correcting mistakes in an accused person's personal documents that are made by the court.

One year of imprisonment due to mistakes in a report

On November 1, 2019, the Third Cassation Court of General Jurisdiction considered the appeal of K., a citizen of the Republic of Cameroon, to a ruling on expulsion for overstaying his term of residence in Russia. K. spent one year in a foreign national detention center with no hope of returning home only because he did not have his documents on him when he was detained by the police and a migration service officer misspelled his name in the report. A judge of the Kuybyshev District Court of Saint Petersburg, which considered K.'s case, concluded that there were no grounds for not trusting the law enforcement officer and the procedural documents he submitted and found K. guilty. On November 6, 2018, K. was confined in an FNTDC pending expulsion. However, when the court bailiffs attempted to execute the court decision, they found it impossible to do so: The repatriation certificate received from Cameroon's embassy listed K's actual name, which differed from the misspelled name in the court ruling. To resolve this problem, the court bailiff filed an application with the Kuybyshev District Court of Saint Petersburg to amend the ruling, but this application was denied because the Code of Administrative Offenses does not have any norms that allow for changes to the identification documents of individuals prosecuted from administrative offenses.

In the practice of administrative courts on cases related to administrative violations, there is still no clear opinion on the permissibility of correcting identification data in court decisions. Even though a procedure for correcting errors, typos, and other mistakes in court documents in administrative cases is envisaged in Article 29.12.1 of the RF Code of Administrative Proceedings, the majority of judges state that mistakes in the identification data of guilty persons cannot be eliminated even if these mistakes entail serious human rights violations, since correcting mistakes changes the content of the court decisions and makes them incompatible with other documents in the administrative case. In rare cases, ADC Memorial attorneys have succeeded in having mistakes corrected and avoiding deportation, but it takes several months for these decisions to be handed down.

After one month of confinement in the FNTDC, K. turned to ADC Memorial for assistance. The decision on expulsion was appealed with the Saint Petersburg City Court, and then with the chair of the city court. The judges agreed with the defense's argument that K.'s identity was not established correctly, but they refused to recognize that deprivation of liberty in an FNDTC without the possibility of expulsion is a human rights violation. The appeal was denied, and K. was left without any hope for release.

Even though the court decision had already entered into force, in October 2019 K.'s defense attorneys filed an appeal with the Third Cassation Court of General Jurisdiction. After considering the appeal, on November 1, 2019 the court concluded that the first and second instance courts did not meet the requirements for a full, comprehensive, and ob-

jective consideration of the case and that the decision to expel K. and confine him in an FNTDC could not be recognized as lawful. The decision of the Kuybyshev District Court was reversed, and K. was finally released.

This example illustrates the limitations of procedural opportunities for foreign nationals in confinement who have no opportunity for release, even when an illegal decision is adopted in relation to them.

A similar story occurred with A., a Tajik citizen who was confined in an FNTDC pending expulsion in August 2017 with no indication of the concrete term of his sentence. When the Gatchina City Court issued its ruling, it made a typo in A.'s date of birth that prevented his expulsion. FSB Border Service officers would not allow A. to cross the border because the date of birth listed in his passport did not match the date of birth listed in the court ruling. A. was held at the FNTDC until February 2018. His appeal to the Gatchina City Court asking the court to change his identification data was not granted. However, the second instance court did rule to correct the mistake in his birthdate and A. was expelled to Tajikistan.

ADC Memorial is currently handling the case of R., a citizen of Turkmenistan who gave a different name when he was arrested and has been in confinement since September 2018. The expulsion ruling was appealed, but the court has refused to correct the mistake and reconsider the previous decision.

Holding a foreign national in an FNTDC without any prospect for expulsion is a gross violation of the right to liberty and security of person envisaged in Article 5(1)(f) of the European Convention on Human Rights and Fundamental Freedoms. In 2014, the European Court for Human Rights issued a judgment in the case of Kim v. Russia under which the Russian Federation was found guilty of violating a number of articles of the European Convention, including Article 5(1) (excessive length of detention and impossibility of expulsion) and Article 5(4) (violation of the right to appeal and the right to judicial review over the lawfulness and length of detention). The ECtHR required Russia to take measures of a general nature to correct the situation in order to prevent similar violations in the future. This should have put an end to the practice of issuing obviously unenforceable court rulings on the confinement of foreign nationals whose personal information has not been established, as well as stateless persons.

Unfortunately, Russia has still not taken any general measures to implement the ECtHR's judgment in relation to stateless persons and other prisoners at FNTDCs and has not made any systemic changes to laws and law enforcement practices.

Arbitrary decisions on confinement in an FNTDC can even be issued in relation to Russian citizens

Sometimes, however, court bailiffs execute expulsion orders speedily in spite of mistakes or discrepancies in personal data. There have been cases when people were even expelled during the appeals process because their guilt had not been established.

For example, in January 2018, migration service officers in Saint Petersburg detained I., a citizen of Georgia who did not have his documents on him when he was stopped. Officers established his identity only on the basis of his own words and listed him in the case file as citizen of Azerbaijan A. Law enforcement officers did not conduct any additional procedures to establish his identity. The court where I. was taken after the report was drawn up also refused to establish his identity and imposed a fine and confinement in an FNTDC pending expulsion on what was essentially an unidentified person.

Once he was in the center, I. confessed to providing incorrect information about himself. The court bailiffs then contacted the Embassy of Georgia and obtained a repatriation certificate. The bailiffs also asked the court to amend the expulsion order, but the court refused. I.'s lawyer finally succeeded in getting the order cancelled after 11 months, which I. spent in the FNTDC. However, it was later found that I. was expelled a week before his court hearing under an order that the court issued in relation to a completely different (and possibly non-existent) person, a citizen of a different country whose guilt had never been established.

An even more absurd decision on confinement in an FNTDC was adopted by a Saint Petersburg district court in relation to Russian citizen N., who obviously cannot be expelled.

In February 2017, N. was found guilty of violating migration rules and sentenced to a fine and expulsion to Turkmenistan, which the court believed her to be a citizen of. In October 2017, the Embassy of Turkmenistan in Russia reported that it did not have any information that N. was a citizen of Turkmenistan and refused to issue a repatriation certificate. Her attorney later established that the deportation order had been issued in relation to another person and that N. was actually a citizen of Russia and a native of the Republic of Bashkortostan, as confirmed by a copy of her passport and other documents. N. was held in an FNTDC until late January 2018, when the Saint Petersburg City Court reviewed her appeal and ruled to release her. However, in spite of her Russian citizenship and the decision of the first instance court that was issued in error, the expulsion was unbelievably not cancelled and was instead replaced with "independent controlled departure" from Russia. N. is now free, but the court decision on her "independent departure" remains in place, even though it has no legal or attainable purpose.

Health problems – no reason for a lighter sentence

The majority of FNTDCs lack conditions for holding seriously ill or disabled people. These centers are generally not accessible and they do not have licenses for providing specialized medical care, which means that people with illnesses requiring special treatment cannot be held there. Nevertheless, this has not prevented judges from issuing expulsion orders with confinement in an FNTDC in relation to foreign nationals in poor health.

One person who contacted ADC Memorial for protection of his rights was M., a citizen of Moldova who could not move on his own and needed special care, treatment, and regular monitoring by doctors. On May 11, 2018, M. was found guilty of overstaying his deadline for leaving Russia and was fined 5,000 rubles and sentenced to administrative expulsion with confinement in the Saint Petersburg FNTDC. At the time the sentence was handed down, M.'s identity had not been properly established, making it impossible to execute the court decision.

M. overstayed his time in Russia because of his worsening health, but the court indicated in its decision to place him in the FNTDC that M. was trying to avoid leaving Russia and that it was imposing this punishment to prevent him for committing new administrative violations.

The argument that a foreign national might attempt to avoid executing a court decision without being placed in custody violates the presumption of innocence enshrined in Article 1.5 of Russia's Code of Administrative Offenses and contravenes the position of the Constitutional Court, spelled out in the case of N.E. Mskhiladze, which is that placement in an FNTDC is not a separate punishment, but a measure for executing a deportation order and, as such, requires proof that the deportation order cannot be executed without deprivation of liberty. The court ruling did not take M.'s state of health into account and did not prove the necessity of depriving M. of liberty for an indeterminate period.

M.'s attorney filed an appeal with the Leningrad District Court several days after M. was placed in the FNTDC.

The appeal contained a request to consider M.'s state of health and the unacceptable detention conditions and release him. The attorney also submitted testimony from the center's deputy warden to the effect that the center lacked the required conditions for holding disabled people and did not have a license to provide special medical care, meaning that disabled people like M. could not be held there. After reviewing the appeal, the court set aside the important comments and testimony of witnesses, but still ruled to release M. because of violation of the requirements for establishing identity. In this case, the negligence of the first instance court, which ignored the mistakes with M.'s personal information, helped human rights defenders get the decision changed to a more humane one. However, this still cannot be called a success, because the court disregarded evidence of the unlawfulness of confining severely ill people in FNTDCs. This means that M. and other severely ill people could end up in an FNTDC again.

There is still no practice of compensating for illegal confinement in an FNTDC

Russian law contains a norm that allows an individual under arrest to demand compensation from the state for emotional harm if a case is ended in connection with the absence of an element of a criminal offense. This norm does not stipulate the minimum or maximum amount of compensation, but it does provide a guarantee that deprivation of liberty will be compensated with some amount of money. This is not the case with compensation for harm caused by illegal confinement in an FNTDC. Under the law, deprivation of liberty in an FNTDC is not an independent type of punishment, but is instead a protective measure prior to expulsion. This gives courts the right not to recognize the unlawfulness of excessively long and pointless confinement in an FNTDC and helps the state avoid liability for these decisions.

Separating confinement in an FNTDC out into a stand-alone form of administrative punishment could provide an important guarantee for innocent prisoners and keep law enforcement bodies and courts, which are often casual about the procedure for establishing the identity of people accused of violating migration rules, in line. But it's hard to see how laws in this area can change quickly when the Russian government continues to ignore recommendations the ECtHR made five years ago to improve detention conditions and provide judicial review over the length of detention and the need for deprivation of liberty.

ECTHR AGAIN FINDS EXTENDED DETENTION OF STATELESS PERSONS IN DETENTION CENTERS ILLEGAL

On January 29, 2019, the European Court of Human Rights issued a judgment in case no. 23019/15 Alimuradov v. Russia holding that there had been a violation of Article 5 § 1 (right to liberty and security of person) and Article 5 § 4 (speedy review by a court of the lawfulness of detention) and a judgment in case no. 8279/16 Mardonshoyev v. Russia holding that there had been a violation of Article 5 § 1.

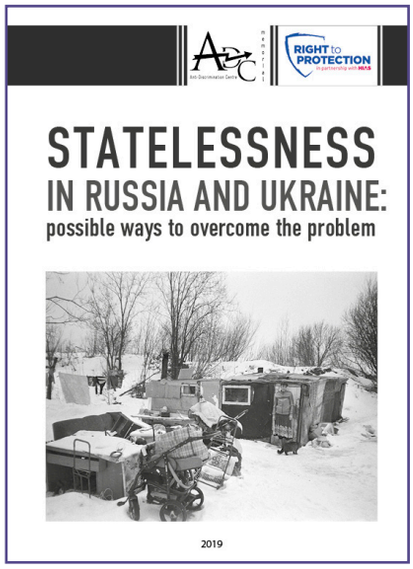
The applicant in the first case is I. Alimuradov, a stateless person and native of Azerbaijan. Even though he has lived in Russia since he was a child and has the legal right to RF citizenship, he was not able to obtain it due to Russia's lack of an effective legalization procedure for stateless persons. In 2014, Alimuradov was found guilty of violating residence rules and was confined in a special facility for the detention of aliens run by the Saint Petersburg Office of the Russian Federal Migration Service, where he spent six months in extremely difficult conditions. The court's failure to properly establish his identity and citizenship, determine if the ruling could be executed, or consider that Azerbaijan's consulate confirmed that he was not an Azerbaijani national led to his extended detention.

Through the efforts of attorney Olga Tseytlina in cooperation with ADC Memorial, the court's ruling was successfully appealed and Alimuradov was released. However, his expulsion was replaced with voluntary departure, which also could not be executed, since Alimuradov did not have any documents that would allow him to leave the Russian Federation. Alimuradov was re-arrested two months later for failing to execute the removal decision, but this time the judge declined to prosecute him, thereby ending proceedings in the case.

The applicant in the second case is Kh. Mardonshoyev, a stateless person and native of Tajikistan. In 2014, Mardonshoyev's residence in Russia was found undesirable by the Arkhangelsk Oblast office of the Federal Migration Service. Under this office's decision, Mardonshoyev was to leave Russia within one month, but he was not able to do this because he did not have any documents. A court found him guilty of violating residence rules by failing to enforce the decision and confined him in a special facility for the detention of aliens in Arkhangelsk Oblast and then to a similar facility run by the Saint Petersburg Office of the Russian Federal Migration Service, where he spent a total of nine months in terrifying conditions, just like Alimuradov. The court announced that the applicant would be deported, even though Tajik authorities reported that Mardonshoyev was not a Tajik national. Bailiffs and the Federal Migration Service office attempted to have his expulsion annulled, but the court determined that even an apatride can be removed from Russia and that the applicant's extended detention was not without grounds, even though there were no prospects for removal. Mardonshoyev was only released after his attorney Yuri Serov spend months appealing this decision.

The applications regarding illegal extended confinement of stateless persons in inhuman conditions filed by the attorneys Olga Tseytlina on behalf of I. Alimuradov and Yuri Servov on behalf of Kh. Mardonshoyev concern the violation of the rights not just of these two applicants, but of thousands and thousands of people living in the Russian Federation who are not nationals of any country and are either being held in expulsion centers or are living under the constant threat of detention. Despite numerous ECtHR judgments, Russia has yet to introduce judicial oversight of the terms and grounds for holding stateless persons in special detention facilities for aliens. Meanwhile, stateless persons continue to be held in detention even though their removal is impossible and legalization procedures have not yet been determined at the legislative level.

ADC MEMORIAL AND THE RIGHT TO PROTECTION PARTICIPATED IN THE WORLD CONFERENCE ON STATELESSNESS IN THE HAGE



Speaking at the panel "Shifting borders: statelessness in the context of changes of sovereignity" experts from ADC Memorial and The Right to Protection presented a new Human Rights report "Stateless in Russia and Ukraine: possible ways to overcom the problem".

In the report, the situation of stateless persons in Russia and Ukraine is analysed: people originated from ex-Soviet countries can not be legalized; Roma living in Russia can't return to the country of origin – Ukraine; inhabitants of Eastern Ukraine face challenges related to their citizenship. The story of Anna Lakatosh and Aladar Forkosh serves as a mirror of the problem – they are Roma from Ukraine, applicants to the ECHR who in 2010 received big compensations fom the Russian Federation but they do not have legal status so far.

After almost 10 years after the recognition of violation of the European Convention by the ECHR in the case "Lakatosh and others vs Russia" these very people remain undocumented stateless persons — this fact confirms that the problems of statelessness, whose roots reach way back into the past, have yet to be overcome in either Russia or Ukraine. The laws and practices of both countries are unfriendly to stateless persons, most of whom are citizens of the former Soviet Union. Currently, dozens thousands people do not have legal status while more 25 years passed since dissolution of the Soviet Union, and the goal of the global campaign by the UNCHR is to overcome the problem of statelessness by 2024. Ukraine now faces the challenges of adapting laws and practice to the Convention Relating to the Status and of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

Russia who agreed with recommendations made within the framework of the Universal Periodic Review (2018) concerning accession to these Conventions, must implement the ECtHR's strategic judgment in the case of "Kim v. Russia" and the subsequent RF Constitutional Court judgment in the case of Mskhiladze. In the absence of general measures, systemic violations of the rights of stateless persons continue. These include the practices of confining stateless persons in foreign national temporary detention centers for an indefinite period without judicial control and of ordering expulsions that cannot be enforced.

Both countries must adopt urgent positive measures to improve the situation of the Roma minority, including in relation to documentation.

The matter of the citizenship of residents of Donetsk and Luhansk oblasts who are now governed by the self-proclaimed DPR and LPR is particularly critical in light of the military conflict. Russian passports issued to residents of these territories under simplified procedures are not recognized by Ukraine and will likely be boycotted by other countries as well. This means that holders of these passports may be deprived of their Ukrainian citizenship. Children born in these territories who do not have any documents other than the ones issued by the de facto authorities are now hostage to this situation.

ABAKAN COURT RELEASED STATELESS PERSON, BASED ON CONSTITUTIONAL COURT'S RULING ON INADMISSIBILITY OF INDEFINITE DETENTION

On March 5, 2019 the Abakan city court ruled to release Denis Li, a stateless person, who had been detained for nine months in the regional temporary detention centre for foreign nationals "with the aim of ensuring further expulsion from the country". Li was represented in court by lawyer Valery Zaitsev, with the support of the ADC Memorial.

Denis Li is a native of Uzbekistan, an orphan, who in the late 1990s has moved to Abakan with his relatives. A few years later, Li lost the citizenship of Uzbekistan, because during his entire residence in Russia he did not notify the consulate of Uzbekistan of his whereabouts, thus becoming a stateless person. For several years, Denis Li appealed to various state bodies in order to obtain Russian citizenship, however, even despite the fact that he had children, who were citizens of Russia, he was refused the country's citizenship.

On June 22, 2018 Li was found guilty of violating Section 1.1 of Article 18.8 of the Code on Administrative Offenses of the Russian Federation for exceeding the period of stay in the RF. He was sentenced to a fine of 3,000 rubles with administrative expulsion from the RF and prior placement into the Abakan detention centre for foreign nationals. When considering this case, the court mistakenly considered Li a citizen of Uzbekistan.

On July 20, 2018 the bailiffs received a certificate from the Ministry of Internal Affairs of Uzbekistan, which stated that Li had lost citizenship of this country and that providing him with identity documents, which would allow him to return to his native country, was not possible. Having received this certificate, Li has immediately appealed to the Supreme Court of the Republic of Khakassia with a complaint against the earlier decision on his expulsion from Russia and illegal placement in the detention centre for foreign nationals. Li referred to the Russian Constitutional Court's ruling, which had been made on the complaint of another stateless person, Noe Mskhiladze, whose defense had also been supported by the ADC Memorial. Thanks to the decision of the Constitutional Court of the RF on the complaint of Mshiladze, a legal mechanism was set up in Russia for the release of stateless persons, who were actually deprived of their liberty for indefinite periods of time. The regional court continued to consider Li as a citizen of Uzbekistan and refused to satisfy his legal complaint.

Finally, on December 10, 2018, lawyer filed a complaint with the Abakan city court asking for Li to be released from the detention centre. The lawyer pointed out the fact that it was impossible to execute the expulsion order due to the absence of citizenship of Li, which made his detention at the centre for foreign nationals de facto indefinite and violated his rights under Article 46, Section 3 of Article 55 and Section 3 of Article 62, and also contradicted the position of the Constitutional Court of the RF.

Having considered the lawyer's complaint, the city court recognized that, taking into account the requirements of the ruling of the Constitutional Court of the RF, the term of Li's detention in a special institution entailed an unjustified restriction of his right to liberty and personal inviolability, and decided to stop the execution of the administrative expulsion order and to release Li from the detention centre.

Statement of ADC Memorial to 30th anniversary of the UN Convention on Rights of the Child: MIGRATION STATUS SHALL NOT PREVENT FROM REALIZATION OF CHILDREN'S RIGHTS

Today, in 30th anniversary of the UN Convention on the Rights of the Child and the Committee on the Rights of the Child, we would like to acknowledge the contribution of this important instrument and the treaty body to protection of rights of children migrants.

30 years ago the Convention declared the guarantees for protection of rights of any child in the world. According to its provisions, all the children shall enjoy their rights provided in the Convention regardless of their or their parents' or legal guardians' migration status.

In 2017 the Committee on the Rights of the Child jointly with the Committee on protection of the rights of all working migrants adopted the essential two General Comments, in which it interpreted the provisions of the Convention in the context of international migration. According to the Committee, in all actions concerning children migrants, States should be guided by the overarching principles of non-discrimination (art. 2); the best interests of the child (art. 3); the right to life, survival and development (art. 6); and the right of the child to express his or her views in all matters affecting him or her, and to have those views taken into account (art. 12).

The Committee on the Rights of the Child have repeatedly affirmed that children should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely eradicate the immigration detention of children, and forbid it by law.

The State shall treat all children migrants as individual rights holders, and not as a violators of the migration regime, and the children's views shall be taken into account. The Committee reminded that States shall refrain from actions which could result in family separation and take positive measures to maintain the family unit. Moreover, all children in the context of international migration, irrespective of status, shall have full access to all levels and all aspects of education and to all aspects of health care

Today the awareness on children's rights is raising in the world, and some governments put efforts to realize the provisions of the Convention and recommendations of the Committee regarding the children migrants. For example, a number of states prohibited the migration-related detention of children in legislation, others develop the alternatives to detention (in Norway the court based on the individual assessment decides the alternative measures for migrants as residence at fixed address, regular reports to authorities, surrender travel documents). Some states prohibit forced return of unaccompanied minors, providing only the possibility for voluntary return if it is in the best interests of child and the family consented to return. France prohibits even the voluntary return of unaccompanied minors. When a child could not be returned to country of origin, some governments provide temporary residence permits: in Germany the residence permit for 18 months could be issued based on humanitarian grounds, for education or work. After the several years of temporary residence, a minor could be issued permanent residency. The practices of support of children even after 18 is also regarded as progressive and innovative(in Latvia, for example, the delay in return could be provided when 18-years-old study or there are other humanitarian grounds).

We call on the governments to fulfill and ensure their obligations regarding all children under their jurisdiction. All children should enjoy all their rights irrelevant of their origin and status, and as stated in the Convention on the Rights of the Child – all children should grow up in a family environment, in an atmosphere of happiness, love and understanding.

ROUND TABLE ON MIGRANTS CHILDREN RIGHTS IN CENTRAL ASIA

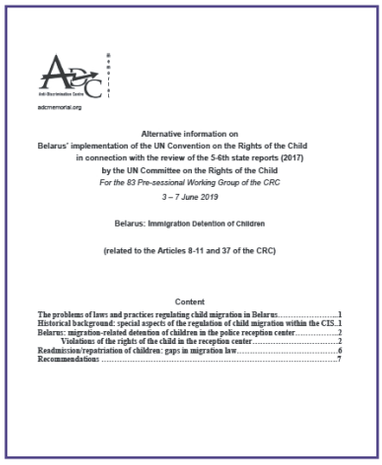
When world celebrated the 30th anniversary of the UN Convention on the Rights of the Child (November 20, 2019), a Round Table on the Protection of the Rights of Migrant Children in the Central Asian Region was organised in Shymkent, Kazakhstan as a step in campaign of ADC Memorial #CrossborderChildhood.

During the Round table participants highlighted the importance of the CRC UN approach to children in migration and shared their experience and concerns, discussing the ways to return the minors-migrants to the places of their permanent residence. The Round table gathered representatives of governmental structures, ombudspersons and representatives of the NGO's and served as a platform for cooperation on additional instruments on children repatriation between the CIS member states. The event was well-covered by media.

The representatives of the organization Sana Sezim, Shymkent and ADC Memorial, Brussels, addressed the participants with the introductory speeches. The discussion was opened by the ombudsman of the children rights in the Kyrgyz Republic Gulnara Gamgyrchieva and Leading Specialists of the Department for the Protection of the Rights of Children, Women And Family in the KR. Subsequently, the represents of the Uzbekistan, NGO IstiqbolliAvlod, shared the legal base of the temporary detention center for minors in Uzbeksitan and presented the insight into Uzbekistan practice of the returning minors to the country of origin. The way to support children in migration adopted in Kazakhstan was presented by the Head of the Department for Family, Children and Youth Affairs from Shymkent. The important contributions to the discussion were also made by Saule Ongarbaeva who works in the temporary detention center for minors in Shymkent. Gaziza Gaicanbayeva spoke about the experience of her organization Rodnik (Spring) in Almaty, Kazakhstan, on providing migrants families with children the documents needed for crossing the borders on the way home.

The International Round Table in Shymkent as a part of the campaign *#CrossborderChildhood* was conduced by admitting a need for a new instrument on children repatriation between the CIS member states and proposing prepare the bilateral agreement between CIS countries in order to address the best interests of children and international norms and regulations.

THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNS ABOUT THE SITUATION OF MIGRANT AND ROMA CHILDREN IN BELARUS



adcmemorial.org

Alternative information on
Belarus' implementation of the UN Convention on the Rights of the Child
in connection with the review of the 5-6th state reports (2017)
by the UN Committee on the Rights of the Child
For the 83 Pre-sessional Working Group of the CRC
3 – 7 June 2019

Belarus: Immigration Detention of Children

(related to the Articles 8-11 and 37 of the CRC)

Content

The issue of immigration detention of children raised in the alternative report by ADC Memorial is included into the List of Issues addressed by the UN CRC to the government of Belarus.

The Committee asks to specify the steps taken to review the legislation and practices concerning children in situations of migration to ensure the best interests of the child in asylum procedures and in case of return, end immigration detention, ensure education and psychological assistance and support migrant families to prevent family separation. The Committee requires updated statistical disaggregated data on vulnerable groups of children, including those in immigration detention centres.

During the pre-session in May 2019, ADC Memorial raised the issue of Roma children rights, in connection with the recent anti-Roma raids and mass arbitrary detention of Roma in Belarus. Before, ADC Memorial covered the issue of social vulnerability of Roma populaitno in Belarus in the alternative report to the UN CERD, including the problem of separation of families recognized as "being in socially dangerous situation". The CRC requested from the government of Belarus detailed information about the grounds amounting to "socially dangerous situation" and measures on guaranteeing of the rights of vulnerable children, including Roma ones.

The state periodic report will be examined at the 83rd session of the UN CRC in January, 2020.

RIGHTS OF MIGRANT CHILDREN DISCUSSED AT ODIHR OSCE SESSION

ADC Memorial held a side event on humanizing the return of migrant children in the CIS region to their home countries at the Human Dimension Implementation Meeting organized by the OSCE Office for Democratic Institutions and Human Rights on September 20, 2019, the day on which migrants' rights were examined at this meeting.

ADC Memorial has been leading the *#CrossborderChildhood* campaign on the rights of migrant children. This campaign addresses the need to replace the outdated criminalizing norms regulating migration for families with children and unaccompanied minors in CIS countries with more contemporary and humane agreements that correspond to the modern international legal framework.

Experts who spoke at this side event came from Moldova, Ukraine, Kazakhstan, and Uzbekistan, all countries where migration is a significant and large-scale phenomenon. The experts spoke about how their countries resolve the question of placing migrant children in a facility, return children to their home countries, and provide opportunities for children to communicate with their families, receive an education, and exercise other rights of the child.

Mariana Ianachevici, the expert from Moldova, shared her experience integrating children previously held in the Children's Reception Center in Chisinau, which is now closed. Replacing the Chisinau Agreement with new norms is particularly urgent for Moldova, which rejects the idea of entrusting the fates of these children to the police and has instead assigned this task to the Ministry of Social Protection. The next speaker was Katerina Budiyanskaya, a representative from the Kiev office of Right to Protection. She explained that even though Ukraine is currently reconsidering its approach to many agreements in connection with its withdrawal from the Commonwealth of Independent States, the system for returning children to their home countries continues to be handled by staff from the Ministry of Internal Affairs. The position of human rights defenders in Ukraine is that "the very mechanism for returning children to their home countries is outdated, we must reject transit centers, children shouldn't even be in these facilities."

A colleague from Kazakhstan shared her country's interesting model for national law: the system for holding migrant children and regulating their return has been completely handed over to the Ministry of Education, which manages the juvenile adaptation centers where children are temporarily kept. (Kazakhstan is a receiving country; millions of people, including many children, also travel through it on their way from Central Asia to Russia.) A lawyer from Tashkent then reported on the work of juvenile adaptation centers run by the Ministry of Internal Affairs in Uzbekistan.

This discussion was particularly timely considering that many current and former CIS countries are now selecting various models for regulating child migration and are assigning this work to various ministries. This is evidence of a changing reality that no longer corresponds to the old "agreements on cooperation."

The speakers and participants agreed that more humane norms are needed to protect the rights of migrant children at both the domestic and international levels. Ukraine and Moldova will likely be able to provide an example of this kind of bilateral agreement, and their experience will be useful for all countries, including the Central Asian countries that are most involved in migration.

On the eve of International Children's Day ADC Memorial announced the *#CrossborderChildhood* campaign.

The campaign advocates for the rights of migrant children in Eastern Europe and Central Asia, who are frequently detained in prison-like conditions, calling for the replacement of an outdated regional treaty that regulates the movement of children with special treaties that are in line with current international law standards.

THREE QUESTIONS FOR PARTICIPANTS IN THE MEETING ON THE RIGHTS OF MIGRANT CHILDREN IN EASTERN EUROPE AND CENTRAL ASIA

Mariana Ianachevici
(Ave Copiii, Moldova)

Why is the return of migrant children an important topic?

The question of returning children is a question of protecting the rights of the child, in particular the right to a family. In the context of contemporary migration, return should be based on the child's best interests and not on the priorities of social services. Sometimes it is in the child's interest not to be returned to their country of citizenship, but to remain where they are, because, for example, the most important family members for the child may be in that country.

Today, the question of return must be handled differently than before: This process now involves many more procedures and government agencies. In our region of the former Soviet Union, the return of children was a simple procedure between reception centers within the shared system of the Ministry of Internal Affairs. Now children have to obtain their documents through embassies, and then social services, the police, and border guards get involved.

How can the existing procedure be changed?

I see the process of returning children through the prism of protecting children's rights. I do not believe that child migrants who get into trouble should be returned to their native country just because they are foreigners. Countries in our region will continue to have problems with returning children and violation of children's rights until these countries remove migrant children from the Ministry of Internal Affairs system and assign these matters to children's services. All countries have their own nuances, but Ministry of Internal Affairs structures should not perform transport or social services functions; they have their own mandate. In addition, return is not just a transport process with rules similar to the ones for transporting passengers. The best interests of the child must be determined during this procedure. If a child is moved from one children's home to another, this is unlikely to improve the situation. The end result must be finding a family for the child, be it a foster family or the birth family. It is important to determine if the child wants to return: Sometimes violence in the family or other problems can be the reason why a child does not want to return home. It is important to prepare the child and lay out all the details; the process must be transparent. Also, a plan for reintegrating the child must be made immediately. This includes provision of protection, placement in a family, and further rehabilitation prior to return so that no time is wasted. And professional monitoring after return is vital: what happened with the child after return, is everything in order, did return help. This monitoring system and exchange of information between countries must exist. This is still not the norm for countries in Eastern Europe and Central Asia. But we have become accustomed to this approach in our work with our Western European partners and we see how effective it is in practice.

What did you get from the HDIM 2019 conference?

Meetings involving so many representatives from different countries in such a wide-ranging format give me the opportunity to speak with various specialists and learn more about the situation in different countries firsthand. HDIM helps us understand contemporary trends in the region and "keep our fingers on the pulse." This is also useful for the work of my organization, Ave Copiii: I can understand what risks exist for children and families in the countries they leave for Moldova and in the countries where Moldovan children end up. By speaking with my colleagues, I can understand why it is harder to return children in some cases and easier in others. For me, the takeaway from these meetings is practical information that I can use in my work.

Khadzhiakbar Isakov
(attorney from the Istiqbolli Avlod, Uzbekistan)

Why is the return of migrant children an important topic?

Migrants comprise an extremely vulnerable layer of the population. They have many difficulties in the processes of migration and adaptation in their local communities, including lack of money, ignorance of the language, lack of accessibility to high-quality medical care, and, frequently, a low level of legal awareness and a lack of education. Migrant children suffer even more: Their parents often do not know how to enroll them in kindergarten or school, or how to get them the documents they need. This is why state monitoring in this area must be carried out in full compliance with the rights of the child, especially if a child has been left without guardians or legal representatives. This topic is extremely pertinent in our region.

How can the existing procedure be changed?

I think there should be one system for returning children that accounts for international standards. We must develop a single mechanism for identifying children who are in need of assistance or who are in a critical or vulnerable position, a single standard for providing comprehensive assistance to these children, and a mechanism for returning children that works in their best interests. Structures responsible for returning children in countries throughout the region must be able to share information.

What did you get from the HDIM 2019 conference?

It was interesting and useful for me to participate in this conference. Both the side event and the plenary session were opportunities for me to share experience, meet other people, and learn about the best practices and difficulties in other countries. And, of course, this was an excellent opportunity for our organization to report on its activities and the experience of Uzbekistan in general.

THE SITUATION OF UNACCOMPANIED MIGRANT CHILDREN FROM CIS COUNTRIES IN UKRAINE

Speech by Kateryna Budiyanskaya at the side event #CrossborderChildhood: the rights of migrant children in Eastern Europe and Central Asia

Even though Ukraine has essentially left the CIS and taken a path towards European integration, the return of migrant children is still regulated by the outdated Chisinau Agreement (Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence, 2002). This agreement violates the rights of the child and fundamental international standards.

Under the Chisinau Agreement, minor citizens of another state are placed in specialized closed institutions that also hold juvenile offenders. It is unclear why states members equate children who have committed a crime with children who have been left without parental care and keep both groups of children in the same facilities. After all, an unaccompanied minor from another country is not automatically an offender.

In Ukraine, migrant children are held in juvenile transit reception centers. Under Article 7 of Law of Ukraine "On Children's Affairs Offices and Services and Special Children's Institutions," juvenile reception centers are special institutions run by National Police agencies and are intended for children ages 11 and over. The ground for placing children in these centers is a court ruling. **However, this law does not clearly regulate the period that a child can been held in one of these facilities.** Accordingly, under Ukrainian law, migrant children are held in reception centers for the period required to transfer them to their parents, people standing in loco parentis, or workers from specialized institutions of the country of permanent residence.

Thus, instead of determining why a foreign child found in Ukraine is in that situation to begin with and then providing this child with the preliminary assistance required, Ukraine asks a court for a ruling on placement in a reception center and then sends the child to such a center. This means that the child is put in a stressful situation instead of receiving support and psychological care.

The Convention on the Rights of the Child underscores that states must refrain from the practice of placing children in detention facilities for violating immigration laws. In its General Comment No. 6, the Committee on the Rights of the Child notes that ***"...Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof."*** The Committee also recommended that ***"States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State,*** in compliance with the Convention and other international obligations." The Council of Europe also ***bans holding unaccompanied children in detention for reasons of migratory status and recommends replacing detention with special guardianship arrangements.***

The idea of changing the system for holding migrant children emerged in Ukraine several years ago. In 2013, Child Rights in Ukraine, a coalition of NGOs, conducted a study of the situation in juvenile reception centers at the initiative of and with support from Ukraine's Ministry of Internal Affairs. This report recommended abandoning these institutions altogether and proposed creating resocialization centers for children in conflict with the law. It also stressed that children in transit, who are regulated by the Chisinau Agreement, should never be held in closed institutions within the Ministry of Internal Affairs system with children in conflict with the law. The ministry supported these recommendations at the time.

However, juvenile reception centers in the system of the National Police, which was created after ministry reforms in 2015, still exist. There are currently 10 juvenile reception centers operating in Ukraine. Two of these—in Kyiv and Kharkiv—have transit functions. The activities of these reception centers are set forth in Law of Ukraine "On Children's Affairs Offices and Services and Special Children's Institutions" and are regulated by internal rules and regulations approved by Order of the Ministry of Internal Affairs of Ukraine of July 3, 2017. Even though new regulations were adopted, the essence of the problem did not change: Children who have left their countries of permanent residence are still being sent to police-run reception centers that are focused on holding and confining children in conflict with the law and are not guardianship institutions.

In its report, the Child Rights Coalition described the following problems it recorded during its monitoring of reception centers:

- There are no special rules for schedules, daily routines, and education for different categories of children, particularly **for children in conflict with the law and children who will be sent back to their countries of residence in compliance with the Chisinau Agreement.**
- Human rights standards are not complied with during procedural actions. For example, in most cases investigators question children alone, without a legal representative or attorney. In general, children's access to legal assistance is problematic, since children in reception centers may only request legal assistance through the center's administration.
- Children have no "personal space" or "free time"; there are no organized recreational activities. Children complain that they have limited time for exercise in the winter. Children usually spend the whole day watching television.
- Children have virtually no personal items. Mobile phones, watches, and jewelry are banned. Some institutions do not even allow books or photographs. For example, Paragraph 5 of Section One of the Rules and Regulations for Juvenile Reception Centers of Agencies of the National Police of Ukraine, approved by Order of the Ministry of Internal Affairs of Ukraine No. 560 of July 3, 2017, specifies that reception centers must have a special room for storing children's personal items. Children are only given their favorite toys with the permission of the director and depending on their behavior.

- An uninterrupted process of education is a major problem. Norms regulating the activities of reception centers do not stipulate that an educational process must be organized for children. For example, the Daily Schedule of Juvenile Reception Centers, approved by an order of the Ministry of Internal Affairs of Ukraine, envisages only one hour and 40 minutes of instruction per day. Considering that these facilities hold children over the age of 11 and keeping a typical secondary school workload in mind, it is clear that this amount of time is not sufficient for the educational process. If any academic classes are held at all, then this is only at the initiative of the administration and staff. In addition, **there is no possibility of instruction in a child's native language for children who are waiting to be sent to their country of residence**.
- Reception centers do not operate like socialization or resocialization institutions and lack the corresponding programs. This is partially resolved through educational work, which mainly involves educational "discussions." But this approach is not based on a child's individual needs, so the goal of this set of measures is not always clear.
- Reception centers do not provide directSS access to personal hygiene products; children must ask personnel for these products every time they are needed.
- There is no clear approach to rewards and punishments. The primary methods used are threats of the "disciplinary room," reprimands, and severe reprimands; "educational discussions" are employed everywhere.

Meanwhile, the system of Ukraine's Ministry of Social Policy offers socio-psychological rehabilitation centers for children as an alternative to the receptions centers run by the National Police. These centers, whose activities are regulated by standard provisions approved by a resolution of the Cabinet of Ministers of Ukraine of January 28, 2004, can hold children aged three to eight for a period of up to nine months for live-in residents and up to 12 months for non-live-in children. Migrant children in transit and foreign children in general are not viewed as a separate category of clients, but the Ministry of Social Policy is prepared to take these children in and work with other agencies to establish their identities, provide them with documentation, and search for their parents, because it believes that children should not be held in institutions run by the police.

Migrant children and unaccompanied children should not be held in institutions run by the police, including reception centers. The confinement of unaccompanied children is a violation of the rights of the children. This practice should be ended without delay. Unaccompanied children must have special protection because they have been separated from their families. They must be placed in guardianship institutions with conditions that are as close to family conditions as possible.

Kateryna BUDIYANSKAYA

"Compliance with the Rights of the Child in Reception Centers of the Ministry of Internal Affairs of Ukraine," 2013

THE CAMPAIGN *#CROSSBORDERCHILDHOOD* IS SUPPORTED IN KHARKIV

On October 17, 2019 within the campaign of ADC Memorial *#Crossborder-Childhood* the round table 'Cooperation in the field of return of children-migrants to country of origin' was organized by ADC Memorial and Center for Social and Gender Studies. The event was organized in the premises of the temporary detention center for minors in Kharkiv, where dozens of children-migrants stay while they return back home. The officers of the National Police of Ukraine in Kharkiv region informed the participants about the practical work of the center and its conditions.

The round table was devoted to the discussion of new instruments between Moldova and Ukraine for the regulation of return of children-migrants to their country of origin. The participants recognized the necessity of replacement of outdated Agreement on cooperation between the member states of the Commonwealth of Independent States on the return of minors to their permanent residence and adoption of new bilateral agreement that would be based on the modern standards of child protection, described by the UN Committee on the Rights of the Child and Council of Europe.

The director of the Center for Social and Gender Studies Eugenia Lutsenko and the director of the temporary detention center Iryna Danylina addressed the participants with the introductory speeches. During the discussion the representatives of the Ministry of Social Policy of Ukraine Ruslan Kolbasa and Olesya Tsybulko promoted the humanization of the process of return of children and supported the idea of transfer of the issue of child-migrants to social services. The representative of the Office of Ombudsperson of Ukraine on the issues of rights of the children and family Aksana Filipishina and People's Advocate on the defense of the children's rights in the Republic of Moldova Maia Beneresku highlighted that the Convention on the Rights of the Child should be respected during the return of children-migrants. The important contributions to the discussion was made by Mariana Ianachevici (NGO Ave Copiii, Moldova), vice-president of All-Ukrainian Foundation 'Protection of Children Rights' Oleksiy Lazarenko, and lawyer of Charitable Foundation 'Right to Protection' Catherine Budiyanska. The other NGOs, members of the Coalition 'Rights of the Child in Ukraine) – Kharkiv Institute of Social Studies, NGO 'Vera. Nadezhda.Lubov' took part in the discussion, as well as the representatives of the regional and city authorities of Kharkiv and Odesa (the city which is specifically interested in the cooperation with Moldova on return of children).

FAMILY SEPARATION POSES A THREAT TO THE HEALTH AND DEVELOPMENT OF MIGRANT CHILDREN

A heated discussion about family separation has been raging since 2018. The US practice of separating children from adult family members and holding them in detention camps caused broad public indignation. It is difficult to say exactly how many children have been taken from their parents at the border, but estimates reach into the thousands. Even though the United States ended family separation under pressure from international organizations, many children have remained in detention centers, where intolerable detention conditions have been documented. In some cases, children have been placed in large cages and have not been provided with nutritious food, bed linens, clean clothes, or personal hygiene products.

Unfortunately, family separation is practiced not just in the United States: Police and migration officers in many CIS countries conduct repressive raids that end in children being separated from their parents. The parents are then sent to a special institution while their children are sent to the hospital and then on to a closed children's facility, where they are often deprived of an education, for an extended period.

Opinion of pediatricians

Human rights defenders are not the only ones outraged by family separation—pediatric health specialists have also been sounding the alarm. In fact, the connection between family separation and growing problems with a child's physical and mental health has been long known and is well documented.

Researchers at The Bucharest Early Intervention Project demonstrated the negative impact that institutionalization at an early age has on children's cognitive development and behavior. This study was conducted in Romania, where thousands of children were kept in overcrowded children's homes under Ceaușescu.

The Bucharest Early Intervention Project showed that being kept in an institution without family members is harmful to a small child's development and can delay the development of cognitive skills, increase the risk of psychological disorders, and stunt physical growth. These studies are also relevant for understanding the physical, psychological, and mental states of migrant children in closed institutions. Charles Nelson, who worked on the Bucharest project, is a neuroscientist and psychologist at Harvard Medical School. Nelson has stated that children who are separated from their parents and placed in a closed institution lose their sense of being protected and experience trauma that could result in changes to brain structure and cause long-lasting emotional, psychological, and physical damage. The absence of a parent or guardian also often signifies the loss of a nurturer who can stimulate a child's development.

In describing the situation with family separation, Nim Tottenham, a psychologist and director of the Developmental Affective Neuroscience Laboratory at Columbia University, used the term toxic stress, i.e. strong, repetitive, and/or prolonged adversity without adequate adult support, which can impact a child's entire future life. According to Tottenham, when children are in a state of toxic stress, the brain and body are fixated on ensuring immediate survival. But children are especially vulnerable because they are experiencing major brain development, which means survival takes priority over things like academic development and physical growth. The long-term effects of toxic stress have been confirmed in a study published in the official journal of the American Academy of Pediatrics. Even though toxic stress is not as visible as, say, a broken arm or leg, it can leave a lasting mark on a child's brain and destroy the foundation for future learning, behavior, and health.

Alan Shapiro, a clinical professor in pediatrics at Albert Einstein College of Medicine and co-founder of Terra Firma, a group that provides migrant children with access to medical care, has also spoken about the chronic problems children in institutions have with their health, education, and growth and development. Shapiro identifies the short-term and long-term effects of stress on children in closed migration camps. In the short-term, children develop regressive behavior, which may include withdrawal, bed-wetting, and mutism. Institutionalized children have elevated levels of the stress hormone cortisol (which manages response to danger), and this level does not drop, because children in these camps feel that they are in constant danger. This results in chronic medical problems. Pia Rebello Britto, who is the chief of the Early Childhood Development Division at UNICEF has stated that the negative effect of elevated cortisol levels impedes the formation of new connections in the nervous system and destroys old connections. This means that children often lose the stimulus they need to develop and learn, which makes it difficult for them to return to regular development.

Child psychologist Gilbert Kliman shares Rebello Britto's point of view. When the United States started separating migrant children from their parents and placing them in institutions, Dr. Kliman surveyed dozens of migrant children in shelters. He concluded that children can return to their normal lives after reunification with their parents, but noted the short-term consequences of separation in the form of night terrors, anxiety, and trouble concentrating, as well as long-term consequences like increased risk for psychological and physical problems such as depression and cancer in adulthood.

A child's age is quite significant when considering matters related to trauma, stress, and problems with early brain development. According to Jack Shonkoff, director of the Center on the Developing Child at Harvard University, an infant who experiences trauma will remember the fear and anxiety of their early years even if they later end up in a stable environment. Nelson warned that for young children, even a short period of waiting can seem eternal: time stands still for children while they are waiting, which leads to a sense of tremendous despair and hopelessness. In addition, as an International Detention Coalition report notes, young children cannot understand why they have been detained and fear that this detention will last forever. Shonkoff also believes that for children, the trauma of separation from their family is akin to kidnapping.

Pediatrician Julie Linton has studied the detention of migrant children and noted that the enormous stress of family separation affects children's immune systems. Children become indifferent and may experience fits of anger, speech problems, and difficulties completing tasks. Lipton has emphasized that even a short time in detention is dangerous for the health and development of child immigrants.

The Best Medicine

Pediatricians, including Craft and Shonkoff, assert that prevention is the best medicine for toxic stress. There is no better way to help children than by not separating them from their families, not locking them up in institutions, and not causing them any trauma. Pediatricians do not share the opinion that detention centers for migrant children must simply be made more comfortable: The institutional environment is harmful to children in and of itself and contravenes the best interests of the child irrespective of matters of cleanliness, nutrition, and so forth. Craft suggest that even a state program to rehabilitate children who have experienced toxic stress would not guarantee complete mental, emotional, and physical rehabilitation.

As part of the *#CrossborderChildhood* campaign, ADC Memorial calls for the development of new forms for regulating a child's return to their country of origin and an end to the practice of placing migrant children in a closed facility for violators in both the country of migration and the country of origin. Children must be immediately returned to their own family, a foster family, or a special children's center; the receiving country must be notified in advance of a child's arrival, situation, and needs in regard to rehabilitation and education.

Patrycja POMPALA

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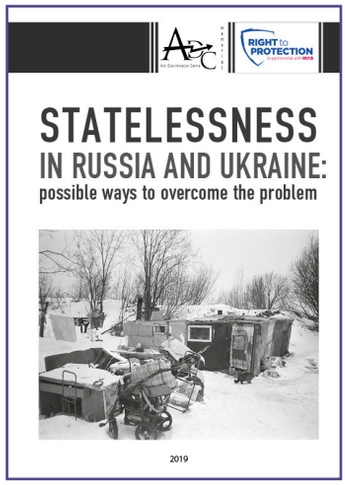

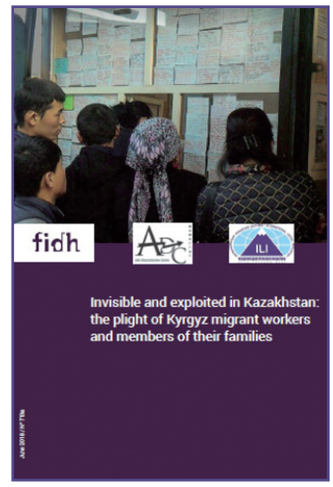

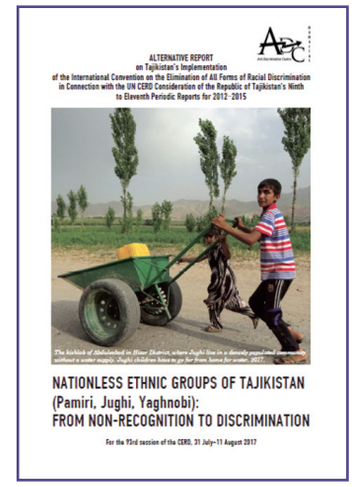

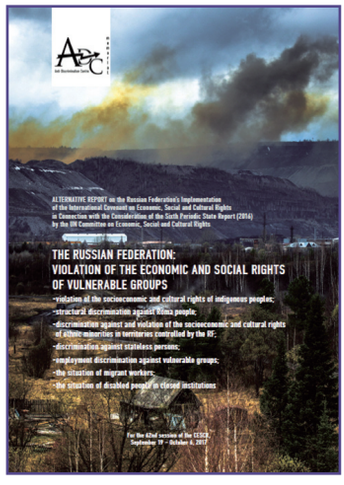

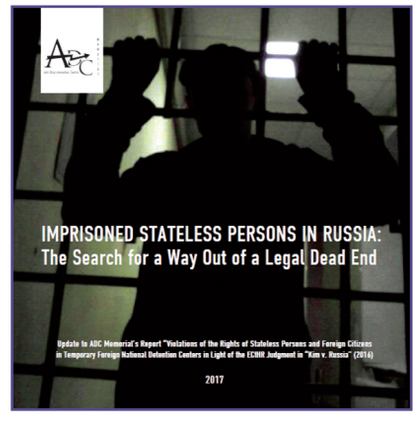

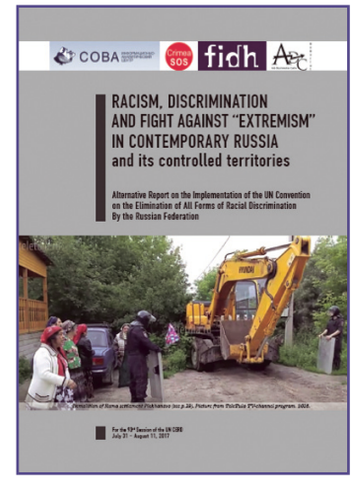

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