

# RIGHTS OF MIGRANTS AND STATELESS PEOPLE

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To The International Migrants Day on December 18



## THE PANDEMIC AND MIGRANT WORKERS

The introduction of quarantine measures in the spring of 2020 caught millions of Russians by surprise: Specialists at the Higher School of Economics found that almost 10 percent of Russians lost their jobs and 40 percent saw a drop in their salaries after the epidemic started. Migrant workers found themselves in a much more vulnerable position. According to a RANEPa poll, up to 40 percent of migrant workers lost their jobs over the first months of quarantine, but they were allowed to remain and work in Russia without extending expired work permits (Directive No. 274 “On Temporary Measures to Regulate the Legal Situation of Foreign Citizens and Stateless Persons in the Russian Federation in Connection with the Threat of the Spread of the Novel Coronavirus Infection (COVID-19)” of April 2020). Prisoners in temporary detention centers for foreign nationals, however, became hostage to quarantine measures and were forced to wait out several months in these facilities, where there is a higher risk of infection, before being sent home.

By March, many migrants who lost their jobs and could not find new ones had already decided to return to their countries of origin, but faced a sharp jump (by a factor of two to three) in ticket prices. By the second half of March, no amount of money could buy them a ticket home. The unexpected border closings and cancellations of international flights left large groups of Tajik, Uzbek, and Kyrgyz citizens stuck in train stations, airports, and border areas, which forced the Russian authorities in these regions to set up tent camps, creating fertile ground for the disease to spread. Unfortunately, there is no accurate information about the number of migrants living in these camps who fell ill.

The problem of returning migrants to their countries of origin has yet to be satisfactorily resolved.



### NOWHERE TO RETURN TO, BUT NO WAY TO GET HOME

In mid-March, thousands of migrants from Central Asia got stuck at various entry points along the Russian-Kazakh border and at train stations in Russian cities. False rumors that it was possible to cross the border at an entry point near the village of Mashtakov in Orenburg Oblast spread among Uzbek migrants, and hundreds of people from all over Russia gathered there in mid-May. They were not allowed into Kazakhstan, but they also had nowhere to return to in Russia. Local authorities set up a tent camp outside the village of Bolshaya Chernigovka where people were provided with food, drinking water, and basic necessities, but witnesses said that this was insufficient and that no epidemic prevention measures were taken. As an exception, groups of migrants were moved out of the camp and into Uzbekistan through Kazakhstan several times following diplomatic negotiations: On May 20, a convoy was organized for 1,199 citizens, and on August 7 the last group of 928 migrants left the camp and took a train from Kinel Station, Samara Oblast to Tashkent.

The camp outside of Kinel became a safe haven for several thousand Uzbek citizens, who, like the ones who came before them, got stuck at the border at the end of the summer.

According to one Kinel resident, “Around August 10, about 400 people

gathered on the platform at the station. They tried to squeeze into any train under any pretext as long as they could leave for home, for Uzbekistan. There was no international travel at that point, so they set up camp right at the train station, sleeping both inside and outside. Many of them knew that the Kinel line goes to Uzbekistan through Kazakhstan, and others had heard rumors that it was possible to leave from here, so after just a few days there were over 700 people here, and by August 20 there were over 1,000. They came from all over - from Astrakhan, Chita, Moscow, Saint Petersburg, and so forth. There were a lot of them at one point. It became difficult to walk through the station, and local residents started to get worried. Then the oblast administration decided to create temporary accommodations for them. Those were opened on August 21 in a field three kilometers from the city; everyone who was living in or near the station was taken there. The Ministry of Emergency Situations and other agencies set up high capacity tents there and arranged for lights and food deliveries.”

The camp became overcrowded right away because people were coming there from all over Russia. One member of the Kinel City Administration described the situation as follows:

“The good thing that we initially planned for foreign citizens turned into a huge problem for us. When we deployed this temporary camp and started analyzing who was coming from where, we found that no more than five percent were com-

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ing from Samara Oblast. The rest were coming from Moscow, Saint Petersburg, Rostov-on-Don, which has its own temporary camp, Saratov, which also has its own camp, Bashkiria, Dagestan, and so on. The more people we sent off, the more people arrived. We were planning for 800 people. But there were already 2,000 after several days, and there was nothing to be done. I remember one elderly woman who came here from Dagestan. We asked her why she didn't stay there, and she said: 'The administration there told us to come to Samara because people were being accepted and sent home here.' My understanding is that they could have set up their own camp and provided people with at least some basic necessities, but instead they decided to shift everything onto us. In this situation, we allowed the migrants to stay next to our camp to avoid sending them somewhere else. They just bought tents or brought them with them and set them up on the camp's territory. At the peak, 4,760 people were living there; over 8,000 people passed through over the 37 days the camp was open."

According to local residents, the camp conditions were cramped, food had to be prepared over a fire, and there was no way to wash normally in the heat (there was not enough water or shower stalls, which were built by camp residents themselves). There were many elderly and ill people in the camp. Pregnant women were in the most precarious situation because they had no access to medical care, adequate nutrition, or sanitary conditions.

The migrants were taken away on a special "consular" train that arrived in Kinel from Uzbekistan every few days and collected an average of 900 people each time. Camp residents were supposed to register for departure, but this procedure was not followed because the most vulnerable had to be sent first. This provoked conflicts between people, who were tired of their multi-day stays in the overcrowded camp, and subsequently a special train car was assigned for the migrants most in need.

After the last 300 migrants set off for home, the camp was taken down on September 27, 37 days after the first migrants arrived. But a new camp was opened outside of Bogatoye, a village 50 kilometers from Kinel, the very next day in anticipation of a new influx of migrants.

Similar situations have been seen in many Russian cities that are transit points for trains bound for Central Asia. For example, in September almost 5,000 Kyrgyz citizens lived in temporary camps set up for them in Bashkiria and Orenburg Oblast because the border with Kazakhstan was closed. In early September, a tent camp was built near the Pervomayskaya Station in Rostov-on-Don for migrants from Uzbekistan. Local authorities say that it held over 3,000 people. By Sep-

tember 8, however, a train carrying 940 passengers had already left for Tashkent. The remaining migrants were moved to Likhaya Station in Rostov Oblast. On September 25, another almost 1,000 people were sent to Volzhsky, Volgograd Oblast, where a train was supposed to be waiting for them. About 200 people were not able to board because of mistakes made by railway personnel (tickets were not sold online, travel documents could only be obtained at the station). These people and another several hundred migrants who started converging on Volzhsky from other Russian regions lived at the station for several days until they were moved to the building of an Islamic cultural center.

A second group of 700 migrants left for Uzbekistan on September 29, and at least seven more trains were organized by November.

### CLOSING OF THE BORDERS AND TEMPORARY DETENTION CENTERS FOR FOREIGN NATIONALS

Foreigners who have broken migration laws or been deemed "undesirable" and are subject to expulsion or deportation on these grounds also cannot leave Russia.

In addition to extending the term of work permits, the abovementioned Directive No. 274 also placed a ban on decisions related to "undesirability," administrative expulsion, deportation or transfer under readmission procedures, and deprivation of refugee status or temporary asylum.

In practice, courts actually have stopped imposing administrative expulsion with confinement in a foreign national detention center (FNDC) for violating Russian residence rules, but they are continuing to hand down decisions on the deportation of "undesirable people." Some judges have refused to release migrants from FNDCs because the directive is below the level of a law. According to lawyers

from the Migration and Law network in Saint Petersburg and Orenburg, (see page 6 of the report "Releasing Migrants from Foreign National Detention Centers during the COVID-19 Pandemic,"), the Department for Migration Affairs of the Ministry of Internal Affairs continues to issue deportation orders and file applications with courts to place foreign nationals in FNDCs, which the courts grant in most cases. Even though it is not permissible to hold foreign nationals in an FNDC indefinitely, in Moscow and Moscow Oblast only the very few people whose maximum two-year term is ending are released.

In the first months of quarantine, the situation of migrants in FNDCs was complicated by the fact that the courts were closed and had stopped accepting appeals to deportation orders; this meant that it was not possible to appeal confinement in an FNDC or the length of confinement for several months. For example, because of quarantine lawyers were not able to meet with their clients at an FNDC in Leningrad Oblast for five months—from March to the end of July, which is a gross violation of the right to a defense and to appeal a court decision. As the acting director of this facility told members of the Public Monitoring Commission for Saint Petersburg on July 24, 2020, meetings were denied because the facility does not have rooms equipped with special glass dividers and telephones that would allow for meetings during an epidemic. This was also why all visits from relatives and packages were suspended during the first month of quarantine.

In some regions (the Republic of Tatarstan, Stavropol Krai, Rostov, Sverdlovsk, Tambov, Smolensk, Samara, and Volgograd oblasts, see page 5 of the report "Releasing Migrants from Foreign National Detention Centers during the COVID-19 Pandemic,"), a handful of courts considered applications submitted by electronic mail and scheduled court hearings in a timely manner.



Until recently, almost 600 people, mainly migrants from Central Asia, were being held in one of the largest FNDCs in Russia—Sakharovo (Novaya Moskva). They lived in what amounted to prison-like conditions for several months at a time and were not able to return to their home countries because of the border closures. According to information provided to ADC Memorial by members of the Public Monitoring Commission, as of early April the maximum capacity of FNDC No. 1 in Saint Petersburg was exceeded by 80 people. Thanks to cooperation between Russia's Federal Bailiffs Service and consular offices of Kyrgyzstan and Uzbekistan, charter flights were arranged and most of these countries' citizens were able to return home by the end of May. However, many citizens of Belarus, Ukraine, Moldova, Turkmenistan, and other countries with which air travel was suspended spent from six to nine months in FNDCs.

After repeated attempts to appeal an expulsion order, on August 31, 2020, Georgian citizen Igor Goginav was released from a Saint Petersburg FNDC after spending seven months there for exceeding the legal term of stay for a foreign national in Russia. In May, his lawyer, Yuri Serov, sent an application to stop enforcement of the deportation order to the Kirov City Court of Leningrad Oblast, which issued the deportation order, and then with the Leningrad Oblast Court, since the order could not be executed due to the suspension of flights between Russian and Georgia (at the same time, the Consular Service of the Republic of Georgia had issued a certificate of return to Goginav to replace his expired passport). In addition, the applicant had a serious illness that required treatment. Neither court was convinced by arguments about the applicant's state of health and disrupted transportation, and they both ruled the Goginav could still be expelled. The applicant was able to get these rulings overturned only in late August 2020 after appealing to the Third General Jurisdiction Court of Cassation; he was released after seven months and allowed to return home.

The Saint Petersburg Bailiffs Service arranged for the deportation of Belarusian citizens in mid-August, six



months after the borders were closed, and the deportation of Ukrainian citizens in late September.

Until this time, many facilities were overcrowded. Because of a lack of beds, prisoners were forced to sleep on mattresses in the corridor, which increased the risk of mass COVID-19 infections. There is no accurate information about the prevalence of disease among prisoners in FNDCs.

The pandemic has exacerbated the long-existing problem of medical care in FNDCs: These facilities are not able to protect prisoners from COVID infection, they are not licensed to provide medical services, and basic medical care is provided by physician assistants, whose responsibilities include examining new arrivals, taking complaints about health, and administering prescribed medications. The medical kit only contains first aid supplies. Foreign nationals are only provided with free medical care in emergencies or if their life is in danger and cannot receive specialized medical care for chronic illnesses, including tuberculosis and HIV. Many HIV-positive people awaiting deportation in an FNDC have come from correctional facilities, which, unlike FNDCs, provide them with ART therapy and even give them extra medication to take with them when they

leave for an FNDC. The problem is that this supply runs out because of extended terms in FNDCs, which poses a danger to these people's life and health. The situation is particularly serious for foreign nationals who were released from prison early and would have been deported long ago but have had to spend time in worse conditions in an FNDC because of the epidemic.

### MIGRATION FLOWS DURING QUARANTINE

Most countries will be under some degree of quarantine for the foreseeable future. The difficult situation of migrants who are not able to receive free medical care in Russia has forced many of them to find another way to get home. This is exactly why it is so important to avoid the formation of large crowds in border cities, airports, train stations, and institutions, which are all associated with the high risk of disease transmission, by organizing safe passage for people who want to return to their country of origin. It is also why all migrants and stateless persons must be released from FNDCs. In March, Russian human rights defenders published a statement emphasizing that holding migrants in FNDCs could end in mass infection because FNDCs do not have "a way to organize a robust system of protection or effective medical care."

On the other hand, Russian employers are seeking ways to circumvent strict quarantine measures and are actually bringing migrants into the country to work in the construction, service, retail, and housing and utilities sectors. Needless to say, in this case employers must guarantee proper working conditions, fair wages, epidemic prevention measures, and medical care.

Council of Europe Commissioner for Human Rights Dunja Mijatović has called on COE member states to free the highest possible number of immigration detainees:

*«In the face of the global Covid-19 pandemic, many member states have had to suspend forced returns of persons no longer authorised to stay on their territories, including so-called Dublin returns, and it is unclear when these might be resumed. Under human rights law, immigration detention for the purpose of such returns can only be lawful as long as it is feasible that return can indeed take place. This prospect is clearly not in sight in many cases at the moment. Furthermore, immigration detention facilities generally provide poor opportunities for social distancing and other measures to protect against Covid-19 infection for migrants and staff.»*



## "THE CHAIN HAS BEEN BROKEN..."

The coronavirus pandemic that has swept across the world and the accompanying quarantine measures have tested many forms of our existence. Staggering changes to the convenient "unity" of the global market, European transnationality, and the customary pace of exchanging goods, services, and technologies have been noted repeatedly. Developed countries have discovered supply problems with basic necessities like medical masks that they have not produced at home for a long time and have instead purchased from China. It turns out that Europeans cannot even produce these simple items themselves and have not been able to learn over three months of acute need and shortages, so have been forced to bring them in from China again.

Another enormous and really quite obvious problem has also come to light: Developed countries cannot get by without imported labor. It's a paradox: The main problem the world is facing as it comes out of quarantine is unemployment, yet there's no one to work in the fields or at construction sites, or to manufacture essential items (food products and those same masks). All this work was done either in other countries, from which it is now more difficult to import goods, or domestically by migrants, who have gone home after losing their jobs because of quarantine.

Migrants' loss of work, income, and the ability to survive is a colossal disaster of our time. As Nikolai Nekrasov wrote about the abolition of serfdom, "the chain has broken up, the links have snapped, hitting the baron with one end and the peasant with the other." Employers have lost cheap labor, and migrants have lost the ability to feed themselves and their children. Everyone has set their sights on the same thing—the lifting of quarantine—so they can restart work, exploit laborers from poor countries, and earn income. But new viruses and quarantines are not just possible, but highly likely. The fact that foreign labor is not suitable for these situations deserves some thought and, accordingly, a global overhaul. But it doesn't appear that the world has started to consider this yet.

Another problem has come to light: the hypocrisy of principles about the social safety net in developed (read: wealthy) countries. People who work on the problems of migrants have long understood that the benefit of hiring poor foreign workers is directly connected to saving money on social protection measures. Salaries for "locals" and foreigners do not differ greatly in many spheres of employment (retail, construction, gas stations), but employers do not have to pay anything else like vacation pay, pension contributions, or health insurance for the latter. All of these risks fall on the migrants themselves, and if they are not able to work because of ill-

ness or age, they are left without a penny to their names. Everyone who has hired a nanny from Kyrgyzstan for their children or paid an Uzbek home attendant to care for a sick relative knows that these people cost their employers exactly what they are paid. When employment is arranged properly, every employer spends a significant amount of money on taxes and social payments, meaning that workers cost an additional at least one-third, and in some countries, one-half of their salaries.

Who needs these nannies and home attendants now when people are home, in quarantine? And if they're not needed, then they are let go that very minute without any severance pay. Hiring people in this manner for work at construction sites or in the fields is also a common way of saving money. No one needs any of these people anymore: workplaces are closed, there's no insurance for loss of work, and the state "doesn't owe them anything" because their salaries were not entirely legal. People are now starving in the country where they worked, or, if they managed to leave, in their countries of origin, which are also in deep crisis, and not just because of the epidemic: These countries have become accustomed to living on transfers from migrant workers. That money has dried up. Completely.

Also starving are people who work "far" from Europe—people who sewed cheap clothes in Bangladesh and India, who grew roses, asparagus, and so forth in the fields of Kenya and Ethiopia. For residents of wealthy countries, the price of having all these luxuries easily accessible was the vulnerability of the producers. The chain reaction of the economic crisis reached poor countries in no time at all: Once markets and stores closed, there was nowhere to sell these clothes at knock-down prices, so there was no point in producing them and factories closed. Air travel has almost completely stopped, so there's no way to deliver fresh roses from Africa, and European masters have stopped paying people in the fields.

Moreover, it is very hard, if not impossible, for consumers to make ethical choices. Let's say that conscientious consumers are prepared to pay more for an item so that social protection for the workers who produced it is included in the cost. The problem is that there are very few goods available at an "honest price," and some necessities are not available at all. OK, so we can not buy 10 pairs of shoes every season and instead try to find one pair from a socially responsible producer, we can forgo roses and asparagus, but what if we can only buy masks from a Chinese manufacturer? And the problem here isn't even social protection. We have no idea if these goods from China were made in Xinjiang torture

camps where Uighurs and other Muslims are repressed.

Europeans, Americans, Australians all shifted production to other countries where it was more favorable and cheaper for them to do what they could have done just as easily at home. They are now dependent on links with these countries, and this doesn't refer just to transportation links, but also to political, economic, and environmental risks.

The word "risk" is a very important word in the 21st century. Everyone is always "calculating risks," preparing "risk mitigation plans," spending a massive amount of money and time discussing and preventing risks. The International Organization for Migration also constantly makes statements on this topic. I myself even participated in a 2015 conference where representatives from many dozens of countries discussed exactly what is happening now—protection of migrants from "global risks," that is, epidemics, catastrophes, nuclear explosions. Over several days of talks involving members of the government and experts from international organizations, I did not once hear anything about how a plan to protect this group, which would become truly vulnerable in the face of a disaster, would actually work. It all boiled down to yet more proposals to "adopt a course of action."

And lo and behold: there were no plans, and there aren't any now. Some compassionate people are holding sporadic actions by trying to feed migrants in Saint Petersburg, creating the threat of another Khodynka and fines for violating quarantine, or by hanging bags of food on fences for the homeless and the hungry. Of course, these good deeds are not going to solve the overall problem, but they do generate sympathy for people who are trying to do something, effective or not, who are trying to share.

It's not just the problem of hungry migrants left in Russia that remains unresolved. The only solution both the migrants themselves and the Russian government see is to give these hapless people work again (as the mayor of Moscow has stated openly). There is no real answer to the truly global challenge of the times: We cannot live any longer on the labor of people from poor countries. Not only is this unethical (a question that has troubled some people for some time but is really not important to others), it is also impractical. There's been enough talk about risks—here they are, with us, right now. We need to change the labor system, make it more honest, sensible, and effective. Even if that makes it more expensive.

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## RUSSIA'S CONSTITUTIONAL COURT DECISION HELPS TO PROTECT STATELESS DETAINEES AS LEGAL CHANGE APPROACHES

*In Russia, tens of thousands of stateless people are at risk of spending years in detention if the courts order their deportation or expulsion from Russia; a decision that is legally impossible to implement as they have no country of citizenship to which they can be returned. This practice, however, was successfully appealed in the High Courts and legal change is on the way.*

### MSKHILADZE V. RUSSIA

In May 2017, the Constitutional Court of the Russian Federation declared in its decision in the case of Noé Mskhiladze v Russia, that the Administrative Code of Russia has to be changed in order to give stateless detainees the right to appeal in court against the deprivation of their freedom. This decision was based on the earlier European Court of Human Rights (ECHR) decision on Kim v Russia, a case in which the ECHR recognised the violation of Articles 3 and 5 of the European Convention on Human Rights by placing the stateless Mr. Kim in detention for years. Most important in the ECHR ruling on the Kim v Russia case was the Court's conclusion that Russian authorities should adopt general measures, including a periodic court revision of the purpose of detention (that is, always ensuring deportation or expulsion, which is not possible for stateless people) and length of detention. Whilst the recommendation of the ECHR was not sufficient for the Russian authorities to change the law, the next step of strategic litigation brought success. The Constitutional Court agreed with Mr. Mskhiladze, whose lawyers argued that non-implementation of the Kim ECHR ruling in fact violated the rights of other stateless detainees, who still had no court control over their deprivation of freedom – lasting for years in the case of Noé Mskhiladze. Real change became possible only when the Constitutional Court agreed with this position and declared the lack of legal possibilities for stateless people to appeal expulsion as the grounds for their detention, to be unconstitutional.

### A NEW PROCEDURAL CODE

In the summer of 2020, a draft version of the new procedural code of administrative offenses was published with an important change, regulating the way and terms of possible detention of third country nationals and stateless persons accused of violating Russia's migration rules. It states that a third country national or stateless person can be placed in a special detention facility only on the basis of the court decision indicating a particular time period for the detention (point 5 of Article 4.7). Previously, the courts simply ruled that expulsion from Russia could take place by placing individuals in immigration detention, meaning that without an indicated time period, detention could last for many months and even years in cases of statelessness. Article 4.7 also now states that the time spent in detention cannot exceed 90 days and may be prolonged by a court for another 90 days only. That means that every detainee will have a chance once within three months to appeal their detention in court. In the case of a stateless detainee and de facto impossible deportation, there should be no prolongation of the detention period. These changes will significantly help stateless people, when implemented. This is a clear and positive result of many years of strategic litigation efforts and the Constitutional Court decision.

### PROTECTING STATELESS PEOPLE FROM ARBITRARY DETENTION

As the COVID-19 pandemic made the expulsion of immigration detainees impossible due to closed borders, ADC Memorial and other human rights organisations tried to call upon Russian authorities to release them, again reminding that in the judgment of May 23, 2017, Russia's Constitutional Court found that custody of foreign nationals in a detention centre whose deportation is not feasible, contravenes the Russian Constitution. In these cases, detention has no attainable legal purpose and translates into arbitrary and illegal deprivation of liberty. Unfortunately, the general decision proposed by this statement was not taken immediately.

Nevertheless, we have continued to use the same argument in courts for the protection of both stateless people and third country nationals from arbitrary detention, sometimes with direct effect. In May 2020, ADC Memorial in cooperation with lawyer Yuri Serov, achieved the cancellation of an earlier court ruling by Kingisepp town court on the expulsion of stateless person Boris Zimonin, found guilty of committing an administrative offense for evading his previously assigned expulsion from the Russian Federation. Mr. Zimonin had lived in Estonia for a long time and had held a stateless person's document there. He moved to Russia and did not acquire another passport; meanwhile his Estonian ID expired. Thus, at the time of the expulsion order, Mr. Zimonin did not have any documents that would prove his right to legally stay either in Russia or in Estonia. Still, Mr. Zimonin was sentenced to deportation and placed in detention. His lawyer asked the court to terminate the execution of its earlier expulsion order and stated that there was no legitimate or achievable goal in keeping Mr. Zimonin in detention, as there was no information about his citizenship of any State. The immigration detention was therefore without purpose, as the Constitutional Court of Russia had stated in the Noé Mskhiladze case. The court concluded that the absence of a de facto possibility for expulsion caused the prolonged detention of Mr. Zimonin, violating his rights and freedoms. After three and a half months of detention, Mr. Zimonin was finally released.

Georgian citizen Igor Goginava was also released from detention, after being prosecuted for exceeding the legal period of stay of a foreign citizen on the territory of the Russian Federation. The consular service of the Republic of Georgia in Russia issued a certificate to Goginava for his return instead of a passport, which had expired. The applicant had been diagnosed with a serious illness that required treatment. His lawyer asked the Court to release Mr. Goginava, as the borders in 2020 have been closed and there have been no passenger transport connections between Russia and Georgia. Only on the 31st of August 2020 after seven months in detention, the decision on Goginava's expulsion and detention was finally canceled, and he was released.

Finally, in September, 2020, as a result of successful cooperation between lawyer Yuri Serov and ADC Memorial, Azizjon Alisherov, a native of the Republic of Tajikistan who had been detained for ten months was released from immigration detention. In October 2019, Alisherov was detained for violation of the migration rules. However, he had presented himself under a different name, recorded in the protocol without additional checks, as is required by law. Under this name, the Court made a decision to expel him. His lawyer appealed the decision since expulsion from Russia was impossible due to the Covid-19 pandemic. The court came to the conclusion that, in view of the closure of the borders and the lack of transport connections between Russia and the Republic of Tajikistan, Mr. Alisherov's detention had no legal or achievable goal, and he was released.

These examples show that strategic decisions of the Hight Courts against the arbitrary detention of stateless people – the ECHR in the case of Mr. Kim and the Constitutional Court of Russia in the case of Mr. Mskhiladze – help both to improve legislation and achieve direct results in on-going court proceedings in Russia concerning stateless people and even third country nationals who's status, problems with documentation, name or other circumstances make expulsion impossible and detention arbitrary. In the time of the COVID pandemic and subsequent border closures, these decisions are especially important.

**Stephania KULAEVA**

*Blog of the European  
Network on Statelessness*

## IN SOLIDARITY WITH THE STATELESS

### ***An urgent call to states, donors and other stakeholders to promote and protect the rights of stateless persons in their COVID-19 responses***

As governments across the world confront the COVID-19 pandemic, facing deeply challenging decisions on protecting public health while averting starvation and warding off economic disaster, it is increasingly evident that in times of crisis, states are largely embracing a “citizens first” approach. Denied nationality and deprived basic rights and welfare, the stateless were already marginalised before the crisis. They now face even greater, life-threatening marginalisation, with potentially disastrous consequences.

We, the undersigned 84 civil society actors, work on the right to nationality, non-discrimination, and statelessness around the world. We have been tracking and responding to the devastating impact of the COVID-19 pandemic and state responses to it, on those whose nationality and belonging is denied or under threat. We have observed that in democratic states, measures including border closures and movement restrictions, health assistance, emergency relief and economic stimulus packages, privilege citizens and their concerns. Migrants, refugees, populations at risk of statelessness and the stateless themselves are left behind. Those without documentation to prove their citizenship or denied protection status are most at risk. Moreover, with rising authoritarianism, as leaders exploit the pandemic to grab more power, increase surveillance, and derogate from human rights obligations under declared states of emergency, non-citizens and members of minority groups – including those residing and rendered stateless in their own country – are increasingly scapegoated, vilified and targeted for hate-speech, arbitrary detention and even expulsion.

Most of the people and communities we work with endure discrimination, marginalisation and disadvantage under ‘normal’ circumstances. As the pandemic crisis takes its toll, the stateless are among those paying the highest of prices. Many face increased racism and xenophobia and are denied access to critical health services and information (in a language they understand) on prevention and treatment. Many are also fearful of seeking such assistance, as they are at-risk of being arrested, detained and subject to removal proceedings. Others are excluded from desperately needed emergency relief – as states require digital identity or documentation establishing proof of

citizenship in order to administer relief. We are also concerned that measures that disrupt vital state functions such as birth and civil registration appear to be having knock-on effects for access to nationality and protection for marginalised groups. These dynamics could leave more people at risk of statelessness and exposed to its most pernicious consequences, even when the health of all people depends on the health of every individual, regardless of their legal status or lack thereof. Below are some examples:

- On all continents, minorities and those deprived of documentation and citizenship, including Dominicans of Haitian origin, Indians declared foreigners in Assam, the Bidoon of Kuwait, the Maragoli, Nubians, Shona and Pemba communities of East Africa, and Europe's Roma now face additional threats to their livelihoods and health, with many enduring heightened hate-speech, police violence and discrimination.
- Women who are denied the equal right to confer citizenship on their children or spouses, face impossible choices as non-citizen family members are separated from them and/or denied COVID-19 relief.
- Stateless people in densely populated camps, detention centres and informal settlements, as well as those in situations of homelessness and poverty, are at high risk of infection due to the inability to be protected through social distancing and preventative hygiene measures.
- The Rohingya have endured new waves of hate speech in Malaysia, ongoing persecution in Myanmar and the first cases of COVID-19 have been reported in camps in Bangladesh, while a number of boats carrying Rohingya refugees have been denied safe and expedited disembarkation. As the crisis takes hold, it is evident that states are not taking full responsibility or providing adequate protection for this group, who have faced extraordinary persecution.

As we witness first-hand the cost of institutional and public blindness and structural violence towards the stateless (and those at risk of statelessness) as states respond to COVID-19, we are deeply concerned about the lasting impact on an estimated 15 million stateless persons worldwide, and tens of millions whose nationality is under threat. Without urgent attention, protection and intervention, from states, human rights and humanitarian actors and donors alike, the state-



less face irreparable harm, undermining progress in addressing this urgent human rights issue over the last decade.

The COVID-19 pandemic highlights our collective and individual vulnerability, bringing into sharp focus the paramount importance of at all times promoting, protecting and fulfilling everyone's universal human rights, wherever they may be and whatever status they may have. In addition to demanding urgent and immediate action, the crisis provokes longer-term introspection and highlights the need for structural change to dismantle discriminatory and degrading laws, policies and practices, which deny and deprive nationality while excluding, marginalising and penalising on this basis.

While acknowledging and welcoming emerging examples of good practice, we urge all stakeholders to take the following urgent actions:

1. **States**, to not discriminate in COVID-19 responses on any grounds including citizenship, documentation or migration status; to make every effort to reach the furthest behind first, including the stateless; and to ensure that no one's right to nationality is undermined as a result of disruptions to registries or for any other reason.
2. **UN agencies**, including the WHO, WFP, UNHCR, OHCHR, UNICEF and UNDP to ensure that their COVID-19 responses identify and reach the stateless and other vulnerable and overlooked groups as a matter of priority, to provide them with critical information, healthcare and relief.
3. **Human rights actors**, including OHCHR, to maintain a spotlight on enduring discrimination, rising authoritarianism and harmful state practices such as police brutality in response to the COVID-19 pandemic; and to monitor and highlight rights violations faced by the stateless and those whose right to nationality is at risk.
4. **Humanitarian actors**, including the WFP, to identify and target emergency relief and aid to stateless and other vulnerable communities who are excluded from state relief efforts, in consultation with those working on these issues.
5. **Public health actors**, including the WHO and health ministries, to reinforce the importance of ensuring equal and adequate access to healthcare and public health information to all, regardless of nationality or statelessness, without fear of arrest, detention or reprisal.
6. **Media and social media actors**, to act responsibly, only publish verified information, counter xenophobia and hate speech and take decisive action against those who abuse media plat-

forms to provoke hatred and prejudice against the stateless, migrants, minorities and other marginalised groups.

7. **Donors**, to support stateless communities, the crucial work of activists and grassroots groups, as well as the tracking, coordination and advocacy conducted at national, regional and international levels, to provide for and draw attention to the needs of stateless persons at this time.

Most importantly, we remind all stakeholders of the imperative to listen to, work with and be guided by stateless activists and communities, and to be accountable to them for actions and inaction, during this time of crisis and beyond.

While the price already paid has been immense, we hope that through urgent and concerted action, we will together be able to promote a rights-based, inclusive and non-discriminatory response to COVID-19, based on the premise that no one – including the stateless – should be left behind. We stand ready to share information and work with all stakeholders in furtherance of this goal.

#### SIGNATORIES

ADC Memorial  
Aditus Foundation, Malta  
Americas Network on Nationality and Statelessness  
Amnesty International  
Asia Pacific Refugee Rights Network  
Asian Federation Against Involuntary Disappearances (AFAD)  
Bahrain Women Union  
Bangladesh Institute of Human Rights (BIHR)  
Beyond Borders Malaysia  
Burmese Rohingya Organisation UK  
Canadian Centre on Statelessness (CCS)  
CARAM AsiaCenter for Justice and International Law (CEJIL)  
Central Asian Network on Statelessness  
Centre for Advancement of Development Rights (CEADER), Nigeria  
Charitable fund "Right to Protection" (R2P), Ukraine  
Citizens Against Hate  
Citizenship Affected People's Network, Nepal  
Coalition de la Société Civile Ivoirienne Contre l'Apatridie (CICA), Côte D'Ivoire  
Collective for Research and Training on Development-Action (CRTDA) – My Nationality is A Right for Me and My Family Campaign  
Conscience International  
Sierra Leone (CISL) Consonant  
Development and Justice Initiative (DAJI), India  
Development of Human Resource for Rural Areas (DHRRA), Malaysia  
Dominican@s por Derecho Platform, Dominican Republic  
East Africa Nationality Network  
Equal Rights Trust  
Equality Now  
European Network on Statelessness  
Families of Victims of Involuntary Disappearance (FIND), Philippines  
Focus Development Association, Madagascar  
Foreign Spouses Support

Group (FSSG), Malaysia  
Forum for Women, Law and Development, Nepal  
Fundación Cepaim Acción Integral con Migrantes, Spain  
Foundation for Access to Rights (FAR), Bulgaria  
Global Campaign for Equal Nationality Rights  
Gulf Institute for Democracy and Human Rights (GIDHR), Australia  
Haki Centre, Kenya  
Indonesian Legal Aid Association for Women (APIK)  
Institute on Statelessness and Inclusion  
International Campaign for the Rohingya  
International Commission of Jurists  
International Detention Coalition  
International Observatory of Human Rights  
International Refugee Rights Initiative  
Justice & Equality Forum, UK  
Kenya Human Rights Commission  
Kuwaiti Bedoons Movement  
Lawyers for Human Rights, South Africa  
Malaysian Campaign for Equal Citizenship (MCEC)  
MENA Rights Group  
MENA Statelessness Network (Hawati)  
Minority Rights Group International  
Minority Rights Organization (MIRO), Cambodia  
Mosawa Network, Jordan  
Movimiento Reconoci.do, Dominican Republic  
Muslim Engagement and Development (MEND), UK  
Namati Naripokkho, Bangladesh  
New Women Connectors, Europe  
Nubian Rights Forum, Kenya  
Observatory Caribbean Migrants (OB-MICA), Dominican Republic  
Odhikar, Bangladesh  
Our Journey, Malaysia  
Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO), Senegal  
Rights Realization Centre  
Rohingya Human Rights Network, Canada  
Roma Youth Organization "Walk with us – Phiren amena"  
Ruwad alHoukuk FR, Lebanon  
Salam for Democracy and Human Rights  
Serantau, Malaysia  
Smile Myanmar  
Southern African Nationality Network  
Statelessness Network Asia Pacific  
Swedish Organization Against Statelessness (SOAS)  
The Arab Women Organization of Jordan (AWO)  
The Arakan Project, Myanmar  
The Brunei Project  
The Omani Association for Human Rights  
Tirana Legal Aid Society (TLAS)  
United Stateless, USA  
Voice of the Children, Malaysia  
Women Peace Network  
Women's Refugee Commission (WRC)

#### #SolidarityWithStateless

AN URGENT CALL TO STATES, DONORS AND OTHER STAKEHOLDERS TO PROMOTE AND PROTECT THE RIGHTS OF STATELESS PERSONS IN THEIR COVID-19 RESPONSES

# IN SOLIDARITY WITH THE STATELESS

## TWO MORE STATELESS PERSONS RELEASED FROM DETENTION IN RUSSIA

***At the end of June 2020, ADC Memorial in cooperation with lawyer Olga Tseytlina managed to secure the release of two more stateless persons (natives of Kyrgyzstan) from temporary detention centre for foreign nationals. Both of these stateless persons had been detained for a long time for the purpose of their further expulsion from the Russian Federation, which could not be executed, since no state considered them to be their citizens.***

One of the applicants, O., a native of Kyrgyzstan, is a stateless person who had lived in Russia for more than 15 years. He was kept in a temporary detention centre for foreign nationals since September 2019, and this was not the first time he had been detained there. The order to expel O. from Russia, with a fine of 5,000 rubles and placement in the temporary detention centre for a violation of immigration rules, had been issued by the Krasnogvardeysky district court of St. Petersburg despite the objective impossibility of him leaving the Russian Federation. In December 2019 this court order was appealed to the St. Petersburg city court, but to no avail – the city

court has upheld the previous court ruling. On April 30, 2020 the Third cassation court of general jurisdiction in St. Petersburg approved this earlier expulsion order. Finally, on May 19, 2020, lawyer Olga Tseytlina, using the legal mechanism for the liberation of stateless persons from temporary detention centre for foreign nationals has again appealed to the Krasnogvardeysky district court with a request to verify the legality and validity of the applicant's further detention in a temporary detention centre and to terminate the execution of his expulsion order. The lawyer's legal appeal stated that the legitimate and achievable purpose of keeping O. in the temporary detention centre for foreign nationals was absent, since the state authorities did not have information about O.'s actual citizenship of any state and therefore his expulsion was not feasible. The court has accepted this argument and on June 19, 2020 has canceled its own earlier ruling. Thus, after 10 months of detention, O. was finally released.

On June 23, 2020, the decision on the expulsion of B., also a native of Kyrgyzstan, was appealed with the Frunzen-

sky district court of St. Petersburg. Earlier in 2018, B. had renounced his Kyrgyzstan citizenship and became a stateless person. While being working in Russia, B. was convicted on June 19, 2019 for violating the rules of stay in the country. For about a year B. was held in detention centre for foreign nationals, as the court had incorrectly identified him as a citizen of the Republic of Kyrgyzstan. His forced expulsion from the Russian Federation could not be carried out not only because of him being stateless, but also due to the lack of air transport connection between Russia and most of other countries during the Covid-19 pandemic. Given all these circumstances, lawyer Olga Tseytlina has filed an application with the Frunzensky district court of St. Petersburg in order to verify the legality and validity of the applicant's further detention in the temporary detention centre for foreign nationals. The court ruled to release B. from the detention centre. However, the rest of the earlier court ruling was left unchanged: B.'s forced expulsion was not canceled, but only replaced with an "independent controlled exit" from Russia.

## GATCHINA TOWN COURT IGNORED CONSTITUTIONAL COURT'S RULING, REFUSED TO RELEASE STATELESS PERSONS FROM DETENTION

***The decision of the Constitutional Court in the case of Noe Mskhiladze, which had been pronounced 3 years ago, has determined the mechanism for the release of stateless persons from these detention centres once and for all. However, different courts still issue conflicting rulings in cases with similar circumstances.***

Thus, at the end of December 2019, the Vsevolozhsk town court (Leningrad region) ruled to release two stateless persons who had been held in the detention centre of foreign citizens for a long time without the prospect of their expulsion from Russia. At the time of the decision on their expulsion, the two applicants had lived in Russia for more than twenty years and had families here.

Completely different rulings on identical cases were adopted on January 10, 2020 by the Gatchina town court (Leningrad region) in respect of two applicants who had earlier applied to the ADC Memorial, Mr. N., a native of Armenia, and Mr. R., a native of Azerbaijan. Both of these people are stateless persons who have lived in Russia for more than 20 years now.

Mr. N. was accused of violating the rules of stay in the Russian Federation and was placed in the temporary detention centre for foreign nationals on August 26, 2019 with the aim of further expulsion. In response to a request from the bailiffs, the

Consulate General of Armenia failed to confirm Mr. N.'s citizenship, which made his expulsion impossible and further detention in the detention centre for foreign nationals purposeless. When applying to the court with a statement on the verification of the legality and validity of N.'s detention in the temporary detention centre for foreign nationals, the lawyer Yuri Serov provided copies of N.'s birth certificate, a certificate of his permanent residence in the Leningrad region since 1995, his social security and personal taxpayer's identity numbers. These documents testified to N.'s stable connection with Russia and his serious intentions to live and receive documents for legalization in the country. However, the court dismissed this application. According to the court, the information provided did not indicate the actual impossibility of expelling N. from the country, and the measures taken by the bailiffs to expel him were not comprehensive.

A similar negative decision was also made regarding Mr. R., who has been kept in the temporary detention centre for foreign nationals for more than 6 months without the possibility of deportation, since the Republic of Azerbaijan had not confirmed R.'s citizenship. During the court hearings, R. stated that he had close relatives in Azerbaijan and would like to return to them, but did not have such an opportunity due to lack of identity documents. The lawyer Yuri Serov, speaking

in defense of R., explained that in the absence of citizenship of any country, further detention in the centre for foreign nationals was meaningless and did not pursue a legitimate aim. The lawyer assured the court that if R. was released from the detention centre, assistance would be provided to him in procuring the documents necessary for the legalization of his presence on the territory of the Russian Federation and his further return to his native country. However, the court stated that there was no information on the absence of the actual possibility of R.'s expulsion from the country, and the cessation of the execution of the expulsion order did not exclude the possibility of prosecuting R. again.

The rulings of the Gatchina town court vividly illustrated the lack of systematic approach for the courts' decisions on the release of stateless persons. The latter are being released only in certain cases, and these decisions are based not on the practice of higher courts, but on the lower courts' own interpretation of the rule of law. Having ignored the earlier decision of the Constitutional Court in the case of Noe Mskhiladze, which had created a legal mechanism for the release of stateless persons from the temporary detention centres for foreign nationals, the Gatchina town court sentenced stateless persons, Mr. N. and Mr. R. to unlawful and senseless imprisonment.



## ADC "MEMORIAL" SECURED RELEASE OF THE NATIVES OF UKRAINE FROM DETENTION

***In June 2020, ADC Memorial secured release from temporary detention centre for foreign nationals of two natives of Ukraine, who for various reasons could not be expelled from the Russian Federation. Unfortunately, people like them continue to be deprived of liberty by court orders, although their placement in temporary detention centres for foreign nationals does not pursue any legal and achievable goal.***

B., a native of the Donetsk region, had left Ukraine in 2016 because of the outbreak of armed conflict in the Donbass region. He lost his passport in Russia and could not return back. In 2017 he spent five months in a temporary detention centre for foreign nationals and was then released from there by decision of the deputy chairman of the St. Petersburg city court, which said, with reference to Article 3 of the UN Convention against torture, that "in case of B.'s expulsion (a native of Donetsk region) real threat to his life and health is recognized as reasonable ... Given these circumstances, B.'s forcible expulsion from the territory of the Russian Federation is impossible, and his detention in the temporary centre for foreign nationals becomes indefinite".

Despite the court ruling and objective reasons for the absence of opportunities for B.'s return to Ukraine (besides that the Consulate General of Ukraine refused to issue B. identity certificate for his return to

his native country), in August 2019, B. was again detained, fined for violation of the terms of stay in the Russian Federation and placed in the detention centre for foreign nationals before expulsion from Russia. At the same time, Frunzensky district court of St. Petersburg had not indicated the motives and terms for depriving him of freedom, as well as the type of expulsion from the country. The court's decision was contrary to an earlier decision of the Russian Constitutional Court dated May 23, 2017 in the case of N.G. Mskhiladze. The court ruling in the case of B. also violated the legal provisions established by Articles 19, 15 (part 4), 17 (part 1) and 38 of the Constitution of the Russian Federation and Articles 3 and 5 (paragraph 1 "f") of the European Convention on human rights. The struggle for liberation of B. from detention took a long time: in November 2019, the Third court of cassation has left the expulsion order without changes; following that a legal complaint was presented to Frunzensky district court St. Petersburg, whose decision on June 9, 2020 finally ruled to cancel orders on B.'s deportation and detention in the temporary centre for foreign nationals. Following 10 months of legal battles B. was finally released.

On June 10, 2020 a related ruling was made by Dzerzhinsky district court of St. Petersburg in the case of M., a native of the Sumy region of Ukraine, who didn't have an identity card. On June 7, 2019, the Ministry of Internal Affairs of the Russian

Federation had made a decision concerning undesirability of his stay in the Russian Federation based on his criminal records. On April 23, 2020 M. was placed in a special detention centre of the Main Directorate of the Ministry of Internal Affairs for a period of not more than 60 days for the purpose of further deportation based on the ruling of Dzerzhinsky district court St. Petersburg, despite the fact that M. lacked his passport and the Consulate General of Ukraine in St. Petersburg at the request of the Chief Directorate of Ministry of Internal Affairs for St. Petersburg and Leningrad region had indicated that it did not have evidence of M.'s Ukrainian citizenship, therefore claiming that providing M. with an identity certificate for his return home had not been possible. Besides, the borders of Russia were closed due to the coronavirus pandemic. Thus, M.'s placement and further detention in the special detention centre has lost its legally achievable goal. In a move to defend M.'s legal rights lawyer Olga Tseytina with the support of ADC Memorial appealed to Dzerzhinsky district court with a legal complaint, in which she had pointed out the impossibility of deporting M. from Russia given the refusal of Ukraine to recognize him as its citizen and the fact that international borders had been closed for the time being. The court agreed that M.'s further detention in a special detention centre was wrong and the execution of the court's decision on deportation was thus cancelled.

## ST. PETERSBURG CITY COURT LIFTED BAN ON THE ENTRY TO RUSSIA OF A TAJIK CITIZEN

***Rustamjon S., a citizen of Tajikistan, was banned from entering the Russian Federation at the end of 2017 for the reason of a minor violation of traffic rules. This decision of the Russian immigration authorities became almost a disaster for his family: Rustamjon is married to a Russian citizen, who belongs to the Roma minority and does not have even basic education due to difficult life circumstances, so Rustamjon was and still is the sole provider for the family. In addition to this, he has other ties with Russia: back in Tajikistan, he graduated from a Russian school, his father is a native of the Chechen Republic, and his sister is a citizen of the Russian Federation.***

In 2019, lawyer Olga Tseytina, with the support of the ADC Memorial, has already managed to get a positive ruling in the case of Rustamjon S. in the Smolny district court of St. Petersburg. In its decision, the court cited the position of the European Court of Human Rights (ECtHR), accord-

ing to which the expulsion of a person from a country where close members of his family lived violated the right to respect for family life guaranteed by the International Convention for the Protection of Human Rights and Fundamental Freedoms.

Despite the court's findings concerning the existing strong family links and the interests of children, and the support provided by the positions of the Constitutional Court of the Russian Federation and the ECtHR, this decision of the Smolny district court was appealed against in a higher court by the Migration Department of the Ministry of Internal Affairs of Russia for St. Petersburg. It should be noted that the Russian migration authorities appeal all such positive court decisions without exception, which creates an additional burden on the courts and puts family members in an undecided situation.

On March 10, 2020 representatives of the Main Department of Internal Affairs claimed in the St. Petersburg city court that S. Rustamjon had maliciously violated immigration regulations. The lawyer retorted to this that her defendant

couldn't legalize himself precisely because of the ban on entry, nor could he leave the country, while leaving his family for 5 years without a livelihood and his support. The complaint of the Chief Department of Internal Affairs was rejected by the city court, and the decision of the Smolny district court of St. Petersburg to lift the ban on entry came into force.

Despite the cancellation of the earlier repressive court decision, the family still fears that if they leave the country for the purpose of subsequent entry into the Russian Federation, the immigration authorities may again ban Rustamjon S. from entering, so the lawyer will appeal to the Chief Department of Internal Affairs with a request to allow him to apply for a temporary residence permit without leaving Russia.

The right to respect for private and family life is one of the most important and universally recognized human rights. It implies that no one, including the state, can intervene in private life and impede the free existence of the family without special grounds for this.

## HUMAN RIGHTS SHOULD BE RESPECTED WHILE IMPLEMENTING THE AGREEMENT BETWEEN THE EUROPEAN UNION AND BELARUS ON READMISSION

***ADC Memorial, Human Constanta and Our House, welcoming the dialogue between the European Union and Belarus in the sphere of migration, are concerned that the newly approved Agreement on readmission gives rise to new risks to Human Rights.***

On 13 May 2020, the European Parliament endorsed the Agreement between the European Union and Belarus on facilitation of visa procedures. Together with that treaty, the Parliament also endorsed the Agreement on readmission. Following the signature and ratification by the EU member states, the Agreements will enter into force.

The Agreement on readmission envisages a simplified procedure of return of the citizens of Belarus and of the third countries, who transited Belarus, and who irregularly entered the EU from the territory of Belarus or irregularly stayed in the territory of the EU. The Agreement also provides the mirror provisions for the EU states: the

citizens of the EU member states who entered or stayed in Belarus irregularly are to be returned to their countries of origins within the simplified procedure. For the implementation of the Agreement, two centers for migrants have been constructed in Belarus financed by the EU.

The mentioned above organisations consider that procedures of readmission give rise to risks to human rights and migrants' rights violations. The number of persons, both citizens of Belarus and of third countries – «transit» refugees and migrants deported back to Belarus, could increase, as it happened in other countries of Eastern Partnership that concluded the Readmission Agreements with the EU.

We are concerned that the readmission takes place regardless of the willingness of the deported person, that could lead to the violations of the right to asylum and non-refoulement principle. Another issue of concern is possible detention of migrants in the special centres. The Readmission Agreement

also covers families with children, and therefore, under the treaty children could also be detained only because of migration status of their parents. That is the serious violation of children's rights. Moreover, it is still unclear, whether independent civil society would be enabled to monitor the implementation of the Readmission Agreement and visit detention centres for migrants.

We call the government of the Republic of Belarus and the governments of the European Union member states:

To respect and guarantee human rights and migrants' rights while implementing the Readmission Agreement;

To avoid immigration detention, especially of children-migrants based solely on the migration status;

To include independent civil society into the monitoring of implementation of the Agreement, including providing access and opportunities for visiting the detention centres for migrants.

### ADC MEMORIAL SPOKE AT THE 87TH PRE-SESSION OF THE UN CRC ON THE RIGHTS OF MIGRANT CHILDREN IN UKRAINE

***The UN Committee on the Rights of the Child had an online meeting with representatives of civil society in order to form a List of Issues to the government of Ukraine on the observance of children's rights.***

ADC Memorial in partnership with the Center for social and gender studies "New life" raised the issue of transit children's reception centers governed by the National police, the need to stop the practice of migration detention of children and the adoption of bilateral intergovernmental agreements on repatriation of children – taking into account modern Human Rights standards and replacing the outdated Chisinau agreement. As part of the ADC Memorial campaign #CrossBorderChildhood, a model agreement on the repatriation of children was developed and discussed by representatives of Ukraine and Moldova.

In its statement, ADC Memorial highlighted another aspect of the problem of migration, freedom of movement

and closed borders in the context of the pandemic: the recent situation when representatives of the Hasidic religious community were not allowed to enter Ukraine, as a result hundreds of people, including children of different ages, spent a significant time on no-man's land suffering from extreme stress, lack of food and water, camping in inappropriate conditions on the no-man's land, facing roadblock by military forces. The Ukrainian authorities, knowing about the custom of the annual Hasidic pilgrimage to Uman, should have paid more attention to informing about anti-epidemic measures and take into account the needs of children traveling with their families. Criticism was also aroused by harsh statements by Ukrainian officials ignoring the danger of anti-Semitism and prejudice against religious Jews.

### ADC Memorial prepared recommendations for EU Strategy on the Rights of the Child

Within the framework of open consultations, ADC Memorial presented its recommendations to the European Commission focusing on enhancement of EU actions aimed at protecting the Rights of the Child in its foreign policy. ADC Memorial recommended elaboration of special treaties on the return of children-migrants to the countries of origin; ban of the immigration detention of children; strengthening measures to ensure equal access to education and free development for all children; and counter-action to practices and stereotypes violating rights of the child.

In September 2019, the President of the European Commission Ursula von der Leyen initiated the elaboration of the comprehensive EU Strategy on the Rights of the Child based on the 2006 Communication "Towards an EU Strategy on the Rights of the Child" and the 2011 EU Agenda for the Rights of the Child. Prioritizing rights of the child in all spheres of EU actions, the new Strategy will bring together all existing and future EU actions and policies on children's rights, and will become basis for the EU comprehensive policy on children's rights.

## THE CONFERENCE "MIGRANT CHILDREN IN THE FORMER SOVIET UNION: WHAT COMES AFTER THE CHISINAU AGREEMENT?"

*In advance of two important dates—Human Rights Day on December 10 and International Migrants Day on December 18—the OSCE Office for Democratic Institutions and Human Rights and ADC Memorial organized the online conference "Migrant Children in the Former Soviet Union: What Comes After the Chisinau Agreement?" on November 7 and 8, 2020. Participants included international child rights and human rights experts and representatives of international organizations, the governments of Eastern European and Central Asian countries, and civil society.*

Discussions centered around opportunities for incorporating contemporary international child rights standards into the laws and practices of countries in the region and possibilities for applying these standards to return procedures and interstate cooperation aimed at replacing the outdated Chisinau Agreement on the Return of Minor Children to Their Country of Origin (2002).

During the discussions, Professor Manfred Nowak, an independent expert for The United Nations Global Study on Children Deprived of Liberty, and Committee on the Rights of the Child experts Renate Winter and Mikiko Ôtani emphasized that the immigration detention of children violates most of the rights enshrined in the Convention on the Rights of the Child (1990) and that a ban on immigration detention is one of the most basic international human rights standards.

The other fundamental standards are non-discrimination, a ban on separation from parents, account for the

child's opinion, and decision-making based on the child's best interests. Roos-Marie van den Bogaard (PICUM) presented on the best interests of the child and ways to formalize these interests in procedures.

Maya Banareska, the children's ombudsman for Moldova, and Gulnara Zhamgyrchieva, deputy children's ombudsman for the Kyrgyz Republic, spoke about the problematic aspects of the Chisinau Agreement and the regional system for the return of children and the situation of migrant children in their countries.

Gulnara Zhamgyrchieva stressed that the practice of depriving children of liberty and separating them from their parents solely due to their immigration status should be recognized as an unacceptable practice that is extremely outdated and does not correspond to international norms. Maya Banareska spoke in support of overhauling the Chisinau Agreement and added to the list of proposed initiatives the urgent need for

countries to sign a new agreement that would incorporate clearly-defined procedures, including procedures for force majeure situations like the COVID-19 pandemic and so forth.

Ruslan Kolbasa, Director General of the Directorate for the Development of Social Services of Ukraine's Ministry of Social Policy, Ekaterina Mikhailas, a representative of Moldova's Department for Refugee and Migrant Affairs, and Igor Kishke, a representative of the Ministry of Health, Labor, and Social Protection of the Republic of Moldova, presented on the particulars of national systems and planned and completed reforms.

All the government representatives and human rights ombudsmen pointed to the need for countries affected by migration to develop new regional instruments on matters related to migrant children and to establish close cooperation. This opinion was also shared by the members of civil society who spoke.

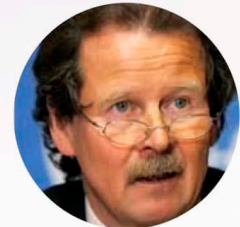
Tineke Strik, a member of the European Parliament (Greens/EFA Group) stressed that readmission agreements between the EU and countries in the region must be more carefully monitored in terms of human rights and that the implementation of these agreements must correspond to international children's rights standards.

ADC Memorial expert Yevgenia Andreyuk explained how international standards can be incorporated into national and regional procedures.

### MANFRED NOWAK

INDEPENDENT EXPERT FOR THE UNITED NATIONS GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY

“When a child is behind bars, they are deprived of a childhood. Three hundred and thirty thousand children worldwide are in custody because of migration status, and this practice is not used only as an extreme measure.”



#CROSSBORDERCHILDHOOD

HUMANIZING THE PROCESS FOR RETURNING MIGRANT CHILDREN

### ROOS-MARIE VAN DEN BOGAARD

JUNIOR ADVOCACY OFFICER PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

“The State uses euphemisms to avoid calling closed institutions prisons: Russia, for example, calls them transit centers for children. But the children being held there cannot leave of their own volition, so these are in fact actual prisons.”



#CROSSBORDERCHILDHOOD

HUMANIZING THE PROCESS FOR RETURNING MIGRANT CHILDREN



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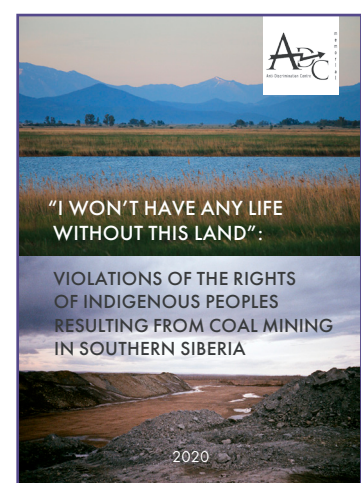
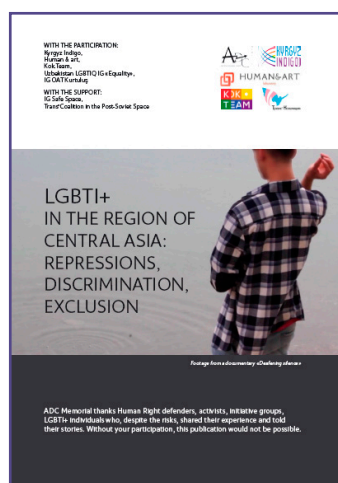
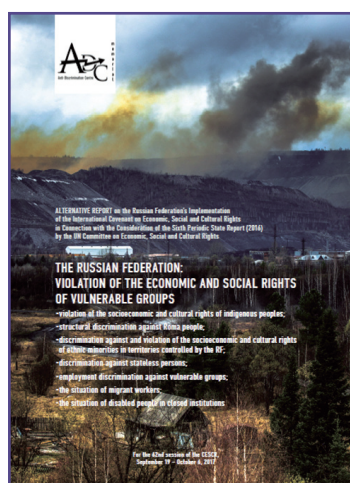
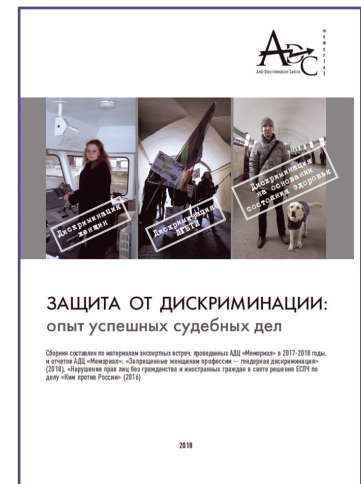
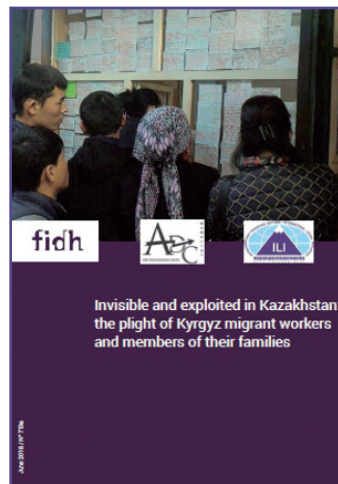
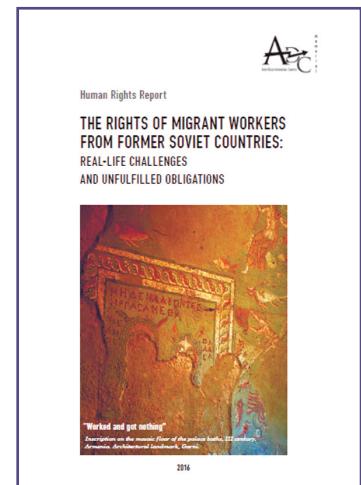
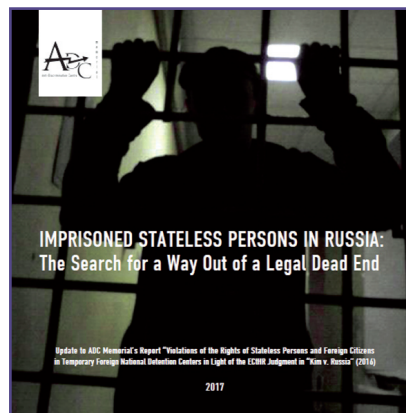
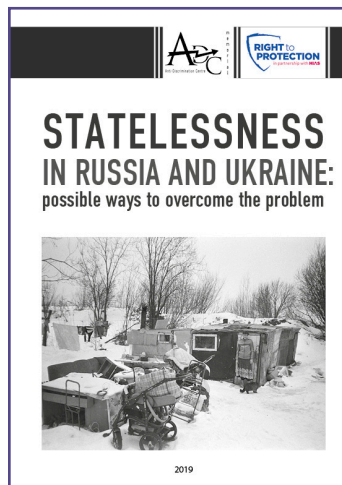
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