



*“The children are really only restricted from leaving the facility and doing what they wish,”-
police major, senior upbringer, Temporary Detention Center for Juvenile Offenders (Russia).*

MIGRANT CHILDREN IN CIS COUNTRIES: Lack of Adequate Legal Norms Regulating Cooperation Between Involved Countries

Migrant Children in CIS Countries: Lack of Adequate Legal Norms
Regulating Cooperation Between Involved Countries.

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The photo and quotation on the cover are from an article about the Temporary Detention Center for Juvenile Offenders of the Smolensk Oblast Office of the Ministry of Internal Affairs (Russia): Ekaterina Rusilova, "Maybe Someone Killed Me, Anything Could Happen to Me," February 18, 2015, Russkaya planeta project, rusplt.ru.

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OVERVIEW

ISSUES WITH LAWS AND PRACTICES REGULATING CHILD MIGRATION IN THE FORMER SOVIET UNION

This report provides information on institutions where migrant children are held in countries that are or have recently been part of the Commonwealth of Independent States (CIS). The fundamental document that regulates the legal and technical matters involved in moving children between these countries is still the Chisinau Agreement: the Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence (2002).

There is no question that the Chisinau Agreement has become outdated, first and foremost for purely technical reasons: Georgia and Ukraine have withdrawn from the CIS; prior to its withdrawal, Ukraine was in a *de facto* state of war with Russia; and the children's reception centers managed by the Ministry of Internal Affairs (MVD) that are listed in the Chisinau Agreement no longer exist in several countries that have conducted reforms. Many countries in the region have humanized the system for moving children: Armenia, Georgia, Moldova, and Kazakhstan have shut down their reception centers entirely; in Kyrgyzstan, the MVD reception center continues to have transit functions, but children are only there for a very short time and are immediately handed over to legal guardians or transferred to social services institutions; in Russia, transit institutions subordinate to social services and the MVD coexist. However, even transit institutions that have been moved into the spheres of education (Kazakhstan) or social services (Russia) remain places of confinement: children cannot leave them at will and cannot receive visits from relatives or independent observers.

But the Chisinau Agreement is also outdated in terms of content and does not correspond to the contemporary understanding of children's rights, as noted by human rights defenders from the Child Rights International Network (CRIN) in a special report devoted to the migration of unaccompanied children in CIS countries (2014).¹

1 The report "In Whose Interests? How the Law Treats Unaccompanied Children in the Countries of the Commonwealth of Independent States", 2014, Child Rights International Network (CRIN), https://www.crin.org/sites/default/files/crin_unaccompanied_children_final.pdf. ADC Memorial, a member of CRIN, consulted with the authors of this report and provided information on a number of cases of the violation of the rights of migrant children that its lawyers and experts worked on.

Above all, CRIN notes that the Chisinau Agreement uses the general term “minors left without care,” while international practice uses separate definitions: unaccompanied minors/children (i.e. children separated from both parents and any other relatives); separated children (children separated from both parents or primary caregiver, but not necessarily other relatives);² as well as other groups of children deprived of a family environment.

The failure to distinguish between various categories of children left without care leads, first of all, to situations where children who have relatives (and sometimes even fully competent parents) prepared to care for them are declared “left without care” and placed in transit institutions.

Second of all, a broad understanding of the category “children left without care” results in the criminalization of children: both MVD receiving centers and more humane transit institutions under a different jurisdiction hold children who have committed crimes, victims of crimes, street children who lead an asocial lifestyle, and children seized from the homes of migrant parents charged with violating migration laws, including adolescents over the age of 16, who have themselves been found to be violators of the migration regime (since administrative liability arises at the age of 16). Thus, migrant children are to all intents and purposes deprived of their liberty only because of their migration status, which is unacceptable.

The CRIN report also notes other obvious violations of child rights that result from following the Chisinau Agreement. These include the prolonged detention of children in closed institutions; the unclear benefit of returning a child to its country of origin; failure to recognize the child’s right to be heard; the absence of monitoring after children return to their home country; violation of the right to due process; and lack of access to legal assistance.

On the basis of this study’s results, CRIN launched the campaign “Stop the Detention of Unaccompanied Children in CIS Countries” (2014).³

Paradoxically, countries that have announced their withdrawal from the CIS (Ukraine) or that have eliminated the system of MVD reception centers (for example, Moldova), still continue to be guided by the outdated Chisinau Agreement, primarily because this document regulates the financial and logistical conditions for moving children across borders. At the same time, institutions for migrant children have not been sufficiently humanized and national laws and practices have not been adapted

2 General Comments of the UN Committee on the Rights of the Child No. 6 “Treatment of Unaccompanied Minors and Separated Children Outside the Borders of their Country of Origin” (2005).

3 CRIN campaign “Stop the Detention of Unaccompanied Children in CIS Countries” (2014), <https://www.crin.org/en/home/campaigns/regional-campaigns/stop-detention-unaccompanied-children-cis>

to international child rights standards. Under these circumstances, the application of the Chisinau Agreement results in continuing violations of child rights, including prolonged stay in what amount to closed institutions and deprivation of access to education and a normal family environment.

The authors of this report believe that, given the radically altered political landscape of the former Soviet Union, the Chisinau Agreement is in need not just of reform, but of replacement by bilateral agreements on the readmission of children that take current human rights standards into account. The practice of depriving separated children of their liberty and placing them in special institutions solely due to their migration status must be recognized as unacceptable in legal codes and must be stopped.

THE QUESTION OF DEPRIVING MIGRANT CHILDREN OF THEIR LIBERTY IN RELATION TO THE PRINCIPLE OF "THE BEST INTERESTS OF THE CHILD" AND OTHER INTERNATIONAL HUMAN RIGHTS STANDARDS

All of the countries in the region are parties to the Convention on the Rights of the Child, which declares the guiding principle of the best interests of the child: when a decision is made in relation to children, their interests are given priority. In reference to migrant children, including children in transit, this principle is understood inconsistently and unpredictably in practice, especially in the matter of placing restrictions on a child's liberty: in a number of countries, the "best" (and perhaps only) decision is the forced placement of children in a closed institution.

Children's reception centers or temporary isolation/temporary detention centers for juvenile offenders in the MVD/police system are, without a doubt, places of confinement. However, social services and educational institutions that are more humane and that fulfill transit functions in several countries are essentially also closed, even though they do not have bars on their windows: children cannot leave them at will and relatives and other persons cannot freely visit children or remove them. In a sense, MVD institutions are actually more transparent for independent control. For example, in Russia, public observation committees may visit places of forced confinement, while children's shelters run by social services do not fall within their mandate.

The confinement of children in closed institutions, even those run by social services, corresponds to the international definition of deprivation of liberty given in Clause 2 of Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment: **"any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."** According to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the definition of deprivation of liberty for

juveniles is as follows: “the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.” (Rule 11).

Holding children in closed transit institutions is in line with the concept of “any form of detention” used in the definitions cited above, which are imprecisely translated into Russian as “any form of containment under guard” and “any form of custody”: even though transit institutions do not have “guards” (that is, armed security) in the strict sense of the word, children cannot leave these institutions at will.

In recent years, the world has been faced with a large-scale “migration crisis” involving millions of children. This has forced international human rights structures to adopt a series of documents about children in migration. Of particular importance are two joint General Comments from the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and of the Committee on the Rights of the Child, which were adopted at the same time and supplement one another: No. 3 CMW/No. 22 CRC (2017) “On the General Principles Regarding the Human Rights of Children in the Context of International Migration” and No. 4 CMW/No. 23 CRC (2017) “On State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return.”⁴

In these joint general comments, the CMW and the CRC speak out unequivocally regarding **the unacceptability of the immigration detention of children** —a situation where a child “is deprived of liberty because of their or their parents’ migration status, regardless of the name and reason given to the action of depriving a child of his or her liberty, or the name of the facility or location where the child is deprived of liberty.”⁵ This means that it is not acceptable to place migrant children in closed institutions, regardless of their name and jurisdiction, and regardless of the legal status of the children and/or their parents:

Children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely

4 Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22; Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23.

5 Paragraph 6 of CMW/C/GC/4-CRC/C/GC/23.

cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.⁶

If it is not acceptable to deprive children of their liberty and separate them from their parents, then the next logical step is to not deprive adult migrants of their liberty:

When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose non-custodial solutions for the entire family.⁷

The General Comments of the CRC and CMW also note that children aged 15 to 18 are especially vulnerable because they are frequently mistaken for adults and their special child rights are not taken into account. Instead of repressing older adolescents for “illegal labor activities,” receiving countries should observe the rights of children of legal age to decent working conditions and protect them from on-the-job exploitation.

These UN Committees maintain that, under any legal action, children are independent holders of individual rights, including child rights, which are more expansive than adult rights, and that children cannot be viewed as an “appendage” of parents who have been determined to have violated the migration regime or to be insufficiently affluent to raise children. The authorities must realize the right of children to live in a family environment by means of social support, rather than by implementing the cruel practice of removing children from poor families where parents cannot provide them with all the necessities. The Committees note that states must create effective barriers between migration authorities and social agencies within the education and child welfare systems and that the latter should not become a part of the repressive machine to rout out “illegal migrants.”

The Committees also stress that the principle of non-discrimination should lie at the foundation of migration laws:

All children involved in or affected by international migration are entitled to the enjoyment of their rights, regardless of the children's or their parents', legal guardians' or family members' age, gender, gender identity or sexual orientation, ethnic or national origin, disability, religion, economic status, migration/documentation status, statelessness, race, color, marital or family status, health status or other social conditions, activities,

6 Paragraph 5 of CMW/C/GC/4–CRC/C/GC/23.

7 Paragraph 11 CMW/C/GC/4–CRC/C/GC/23.

*expressed opinions, or beliefs. This principle is fully applicable to every child and his or her parents, regardless of the reason for moving, whether the child is accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or with any other status.*⁸

Another important principle alluded to by the Committees is the need for the opinion of children to be heard:

*All children, including children accompanied by parents or other legal guardians, should be treated as individual rights holders and not as criminals; their child-specific needs considered equally and individually and their views appropriately heard and given due weight. They should have access to administrative and judicial remedies against decisions affecting their own situation or that of their parents, to guarantee that all decisions are taken in their best interests.*⁹

These joint general comments are binding on UN member states and information about their implementation must be included in countries' periodic reports to the UN Committee on the Rights of the Child and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

8 Paragraph 21 CMW/C/GC/3-CRC/C/GC/22.

9 Paragraph 15 CMW/C/GC/4-CRC/C/GC/23.

THE CHISINAU AGREEMENT IN THE CHANGING CIS

The Soviet Union ceased to exist in 1991. New independent states arose across its vast territory, signifying not just the setting of new, guarded state borders, but also the severing of the hierarchical and horizontal ties that had existed for decades between the diverse but similarly structured agencies of Soviet republics and the need to establish new connections with the new structures of these independent states.

Since the 1990s, people have moved throughout the former Soviet Union on a large scale. This includes both emigration and labor migration from one former Soviet country to another, which, naturally, involves the participation of children. The regulation of different aspects of migration has been handled by various unions of independent former Soviet republics that started to arise on the ruins of the Soviet Union immediately following its dissolution: first the CIS (Commonwealth of Independent States, 1991), then the USRB (the Union State of Russia and Belarus), followed by the EEC (Eurasian Economic Community, 2000), the Eurasian Customs Union (2007), and, most recently, by the EAEU (Eurasian Economic Union, 2014). The problem of child migration was pressing even in the 1990s and was regulated by a number of documents created by the CIS, which is the earliest of the existing integrated formations of post-Soviet states. These documents include the Volgograd Agreement Concerning Cooperation with the MVD on Returning Minors to their Countries of Origin (1993) and, later, the Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence (2002, henceforth, the Chisinau Agreement).

The structures that controlled the movement of people within the Soviet Union (passport offices, reception centers, etc.) were within the purview of the MVD. Thus, it is not surprising that migration, including child migration, ended up under the jurisdiction of the MVD when, after the collapse of the Soviet Union, the need to coordinate migration matters between the newly independent states arose.

In terms of its text and its “police-related” spirit, the Chisinau Agreement basically repeats the earlier Volgograd Agreement (1993), with some exceptions (for example, the term “juvenile reception center,” which was used in

the Volgograd Agreement, was replaced by “special institution” in the Chisinau Agreement). The annexes to both agreements list the same institutions for holding migrant children (with the addition of new institutions created at the time of the signing of the Chisinau Agreement), and the absolute majority of them are part of the MVD system.

TECHNICAL OUTDATEDNESS OF THE CHISINAU AGREEMENT: CHANGES IN THE POLITICAL LANDSCAPE OF THE CIS

Today it is clear that the Chisinau Agreement, which was created in 2002 and effectively repeats the older Volgograd Agreement of 1993, has become outdated, primarily because of changes in the composition of the CIS and the political priorities of former Soviet countries, and also because the dramatic events of contemporary history have resulted in a redirection of migration flows in the region. For example, Georgia left the CIS in 2008 after a military conflict with Russia, and Russia’s introduction of a unilateral visa regime has led to a sharp drop in labor migration from Georgia to Russia. In 2014, Russia and Ukraine found themselves in a *de facto* state of war, which complicated the picture of Russo-Ukrainian migration and had a significant impact on the ability of one country to return children to the other. Ukraine, which officially never ratified the CIS Charter and is, *de jure*, a former founding state, declared its withdrawal from the CIS beginning in 2014, but the president of Ukraine announced a final split in 2018 in a corresponding order proposing a revision of all the legal documents signed by Ukraine within the CIS framework. Georgia, Ukraine, and Moldova have expressed their aspirations to European integration and have even taken concrete steps in recent years to establish associations with the European Union, which has set reforms in motion in these countries, including reforms of children’s institutions. Armenia — a member of the CIS and the Eurasian Economic Union, but also a country associated with the European Union—has recently undergone a change in government and continues to exist in this ambiguous situation.

At the same time, in the economic and political senses Russia remains the most influential country of the former Soviet Union and the recipient of the largest number of migrants (up to 10 million people) and plays a dominant role in the migration policy of the entire region. Without question, this also concerns matters of child migration. The number of migrants working in Russia from European (Moldova, Ukraine, Belarus) and Caucasian (Georgia, Armenia, Azerbaijan) countries of the former Soviet Union remains high, even

in the face of the expressed priority of some of these countries to integrate with Europe. Among former Soviet countries in Central Asia, Kazakhstan, like Russia, receives migrant workers, while Uzbekistan, Tajikistan, and Kyrgyzstan are donors of labor migration, which is estimated to amount to millions of people, most of whom work in Russia, with significantly fewer traveling to Kazakhstan (and countries outside the CIS).

OPTIONS FOR REFORMING JUVENILE TRANSIT INSTITUTIONS IN FORMER SOVIET COUNTRIES

The technical outdatedness of the Chisinau Agreement can also be seen in the fact that institutions for migrant children have been reformed in a number of former Soviet countries and moved out of the MVD system and into the education and social welfare systems. This means that in many cases the MVD centers listed in the Chisinau Agreement simply no longer exist. A literal adherence to the Chisinau Agreement (the need to deal with children's reception centers that have been shut down) means that it is sometimes impossible to return children to their home country and that they get stuck in transit institutions for extended periods. In these circumstances, returning children to their country of origin frequently depends on the personal connections developed by workers at the transit institutions of various countries over the years of their cooperation.

The profiling of children's institutions as transit institutions (even if the question refers to the transit of children within one country) raises questions. This specialization is likely based on the ideas that children spend a very short period of time in these institutions and that staff at these institutions have the special skills required for working with "difficult" children and establishing their identities.

However, children's stays in these facilities are actually not that brief. For example, in 2015 the majority of children from CIS countries taken in at the Transit Shelter in Saint Petersburg spent up to three months there (65 people), but a significant number of children (21) spent three to six months there, and four people (all citizens of Uzbekistan) spent from six months to a year there.¹⁰ There is also evidence that children have had extended stays in Kazakhstan's juvenile adaptation centers due to difficulties establishing their identities. Generally, no kind of normal school education is organized within the walls of transit institutions. For example, Russian transit institutions only

¹⁰ Data from a report for 2015 by the Child Rights Commissioner of Saint Petersburg.

offer classes with psychologists, arts and sports clubs, excursions, and holiday celebrations. These institutions are also visited by members of the clergy, law enforcement officers, and “interesting people” (for example, sportsmen). Sometimes children are allowed to leave to attend a neighboring school that has established a partnership with the transit institution, but in isolated cases known to the authors of this report, these were Russian children, not migrant children from the CIS and other countries.

Additionally, from a logistical standpoint, it is extremely expensive to deliver unaccompanied children from the place they are found first to a children’s transit institution (which may be located in the capital or a remote oblast center) and then, after the children’s identities and circumstances are established, on to the next arrangement (a family or a children’s institution).¹¹ It is much more sensible to place unaccompanied children in the geographically closest social and rehabilitation center (children’s home and so forth) and establish their identities and work on rehabilitation, further arrangements, and education at that center.

The list of children’s transit institutions provided in the annex to the Chisinau Agreement has long been obsolete. In a number of countries, these institutions are still under the jurisdiction of the Ministry of Internal Affairs (MVD); in other countries, transit functions are shared by MVD agencies and other agencies (social services agencies, for example), and agencies sometimes even compete with each other on the topic of child transit. Finally, some countries have completely handed over child transit to civilian agencies (social, educational).

Transit Institutions Managed by the Ministry of Internal Affairs/ Police

A system for handling unaccompanied children—a category including migrant children — that is very close to the one described in the Chisinau Agreement has been preserved in **Tajikistan**, even though there have been discussions about transferring reception centers from the MVD to the health-care or education systems.

11 For example, a worker at an MVD reception center in Dushanbe lamented that unaccompanied children detained, for example, in Khatlon Oblast, were taken to the capital of Tajikistan to establish their identities and for other necessary actions and then returned to Khatlon Oblast, since there are only two reception centers in the country. Media report: “Spetspriemnik bez priemki,” [Special Reception Center without Reception] October 8, 2014, <http://news.tajweek.tj/view/specpriemnik-bez-priemki/>.

The juvenile reception center in Dushanbe was previously a separate division of the MVD. In 2009, it became a part of the Juvenile Delinquency Prevention Service of Tajikistan's Ministry of Internal Affairs. It has the status of transit institution, which means that migrant children from other countries are brought there (the other existing MVD reception center in Tajikistan is located in Khujand (Sughd Oblast) and does not have transit status). The Dushanbe center holds children from the ages of three to 18, and the term of stay is up to 30 days. However, this term may be extended for another 30 days. In addition to migrant children who have been returned to Tajikistan, street children, working children, juvenile offenders, lost and missing children, and children who are victims of violence, exploitation, and trafficking also end up there.¹² Employees of the center wear police uniforms. The center is located in a dilapidated one-story building with iron bars on the windows. Employees explained that major repairs had not been made because the institution was preparing to move to a new building (information obtained in May 2017).

According to media reports, a similar situation exists in **Belarus**: for example, foreigners—both children and adults passing themselves off as children (who are generally immigrants from Vietnam, Syria, Iran, Somalia, and other places attempting to enter European countries through Belarus), end up in the juvenile reception center run by the Minsk Department of Internal Affairs, where they are held for 30 days (this term may be extended if it is not possible to establish the child's identity quickly or determine his or her further fate).¹³ It is likely that children from CIS countries also end up there. The authors of this report have no information about attempts to transfer the reception center to more humane agencies.

12 This information was received from a staff member at the Dushanbe reception center in May and June of 2017. The categories and ages of children at the MVD reception center in Dushanbe are also listed in an official description of the organization on the "Social Services in Tajikistan" website at <http://mappingru.sdc-eu.info/3.htm>.

13 Media report: "Trudnye deti ili deti kotorym trudno" [Difficult Children or Children Facing Difficulty], June 7, 2016. This material quotes L. Lychkovsky, head of the reception center, on the presence of foreign children in this institution, <https://minsknews.by/trudnyie-deti-ili-deti-kotoryim-trudno/>. The conditions for children to enter the reception center are set forth in Article 22 of Law of the Republic of Belarus No. 200-3 "On the Foundations of the System for Preventing Juvenile Neglect and Delinquency" of May 31, 2003 with amendments and additions, and Order of the MVD of the Republic of Belarus "On Several Matters Concerning the Organization of Inspection Activities in Cases of Juveniles and Juvenile Reception Centers" of June 28, 2013.

According to some data, children in transit in **Uzbekistan** also come under the jurisdiction of the MVD and are placed in reception centers. Children who have been in Russia are brought to Uzbekistan by staff members of transit institutions and may be handed over to their parents or legal guardians directly at the airport. Children who have been in Kazakhstan are accompanied by staff members of juvenile rehabilitation centers and are transferred to employees of Uzbek reception centers at the border. The transfer of children in the opposite direction may also take place at the border (employees of reception centers accompany children to the border with, for example, Afghanistan (when Afghan children are deported separately from their parents)).¹⁴

Coexistence of Police and Civilian Transit Institutions

In **Russia**, the system of child transit institutions has been moved to the social sphere: the Altufeyvo Juvenile Social and Rehabilitation Center (Moscow), the Transit Shelter (Saint Petersburg), and the Juvenile Social and Rehabilitation Transit Center (Orenburg) fall under this jurisdiction and are listed in the Chisinau Agreement as “social and rehabilitation centers” (information about the “transit” activities of other social institutions listed in the Chisinau Agreement is not publicly available).

At the same time, institutions under the auspices of the Russian MVD are responsible for holding children from the CIS and transporting them to their country of origin: these are temporary detention centers for juvenile offenders (previously known as temporary isolation centers). The Chisinau Agreement lists several such MVD institutions; together with social services reception centers, they “cover” the entire country (and provide a second layer of coverage to Moscow, Saint Petersburg, and Khabarovsk Krai, since these areas have both types of institutions) and form a system analogous to the temporary detention centers for adult foreign citizens facing expulsion that exist in almost all 85 constituent entities of the Russian Federation.¹⁵

Children are assigned to social reception centers or police institutions depending on their age, country of origin, and juvenile record. The separation of children who have committed violations from children in difficult situations, who are lost, and so forth may

14 Information from representatives of an Uzbek NGO, June 2018. Reports that, in 2017, Uzbekistan created places of confinement in every quarter where offenders, including unaccompanied children, can be held for up to 10 days, need to be verified.

15 The Chisinau Agreement lists “the Ekaterinburg, Krasnoyarsk, Moscow, Nizhny Tagil, Novosibirsk, Rostov, Samara, Saint Petersburg, Sochi, and Khabarovsk temporary isolation centers for juvenile offenders, the juvenile social and rehabilitation centers in Belgorod, Moscow, Orenburg, and Saint Petersburg, and the juvenile social services shelters in Makhachkala, Khabarovsk, and Smolensk Oblast.”

initially seem fair. However, in practice, Russia frequently criminalizes minor violations committed by children (including minor violations of the migration regime). Therefore, children who have in actual fact done nothing criminal end up in closed MVD institutions.

As an example, the Transit Shelter in Saint Petersburg accepts children of any citizenship aged three to 18 who are not intoxicated by drugs or alcohol or in a state of severe psychological distress and who have not committed any violations, **with the exception of CIS citizens over the age of 16** (there are special instructions for this). Thus, children aged 16 to 18 from CIS countries who are in difficult situations and lack parental care cannot receive any state-provided social assistance whatsoever in Saint Petersburg — a city where hundreds of thousands of migrants live and work and where there is an unquestionable need for such assistance.

Children aged 16 to 18 from CIS countries end up in a temporary detention center for juvenile offenders — a closed institution intended for children in conflict with the law. The following categories of juveniles are placed in these types of centers:

1. juveniles to be sent to special closed educational institutions;
2. juveniles awaiting a court's consideration of the matter of sending them to a special closed institution;
3. juveniles who have left special closed institutions without authorization;
4. juveniles who have committed a socially-dangerous act prior to attaining the age entailing criminal liability;
5. juveniles who have committed an administrative violation prior to attaining the age entailing administrative liability;
6. juveniles who have committed an administrative violation and have attained the age where they can be held liable for an administrative violation.¹⁶

Child migrants aged 16 to 18 from CIS countries are most often confined in temporary detention centers for juvenile offenders merely for violating the migration regime (Article 18.8 of the Russian Administrative Offenses Code – violation of the regime of stay, or Article 18.10 of the same Code – illegal labor of foreign citizens). Even though children aged 16 to 18 are officially subject to administrative responsibility and the detention conditions in some temporary detention institutions have improved significantly in recent years, placing children in closed institutions for minor violations of migration laws should be deemed unacceptable.

Prosecuting migrant children for illegal labor is discriminatory and absurd: first of all, under Russian law, children have the right to work in principle (if the corresponding conditions are created and restrictions are placed on working hours); second of all, even if the right of migrant children to work is dependent on their migration status/citizenship, only adult foreigners (over the age of 18) are permitted to work in Russia.

¹⁶ Article 22 of Law of the Russian Federation No. 120-FZ “On the Foundations of the System for Preventing Juvenile Neglect and Delinquency” of June 24, 1999.

In Russia, administrative liability arises at the age of 16, but children under 16 who have been accused of illegal stay in Russia end up in temporary detention centers for juvenile offenders. According to data provided by the Child Rights Commissioner of Saint Petersburg,¹⁷ in 2015 to 2017, children from CIS countries found themselves in temporary detention centers for juvenile offenders just for committing minor administrative violations, frequently before attaining legal age:

	2015	2016	2017
Children admitted from CIS countries	43	38	34
Children placed in a temporary detention center for juvenile offenders for violating the migration regime	19	30	18
“Children who violated the Administrative Offenses Code prior to attaining legal age”	7	7	16
Children returned to country of origin by employees of the temporary detention center	2	-	-
Children handed over to parents/legal guardians or other persons under power of attorney in Saint Petersburg	41	24	28

These data do not make it clear how many children under 16 were in the temporary detention center specifically for violating the migration regime, but such cases have been documented:

In 2014, ADC Memorial defended the Musayev children, who are citizens of Tajikistan. These siblings, aged 15, 13, and nine, were detained by the police on the street and placed in a temporary detention center, where they spent two days and two nights (without their parents and with juvenile offenders) in what amounted to prison conditions before appearing court. Their mother, who had the same mistake with registration dates as her children, was herself detained as she attempted to rescue them from the isolation cell. These children certainly could not have been guilty of violating migration rules, since their documents were completed by adults. Their release and return to their parents was only possible after a lawyer and human rights defenders intervened.¹⁸

17 Data from the annual reports of the Child Rights Commissioner of Saint Petersburg for 2015, 2016, and 2017, <http://www.spbdeti.org/id4670>

18 This case was included in the joint report of FIDH and ADC Memorial “From Tajikistan to Russia: Vulnerability and Abuse of Migrant Workers and their Families,” 2014, p. 26.

There have also been cases where children from CIS countries are returned from regions of Russia by employees of child welfare agencies, not transit institutions.¹⁹

In **Kyrgyzstan**, the government has approved a separate Regulation on the Return to the Kyrgyz Republic of Juvenile Citizens of the Kyrgyz Republic Left Without Parental Care and Residing Outside of the Kyrgyz Republic (2013).²⁰ This Regulation assigns responsibility for the entire process of returning children to Kyrgyzstan and further arrangements for them to the authorized child protection agency (which is under the Kyrgyz Ministry of Labor and Social Development). Agencies of the Ministry of Foreign Affairs and healthcare and population registration agencies are also involved in the procedure, but the MVD is not. The Chisinau Agreement is not directly mentioned in the Regulation, but it was cited along with another CIS document — the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (1993) — by the Ministry of Labor and Social Development as the foundation for the transit of children in an official response to a query concerning the transit of children.

Even though the MVD is not listed in Kyrgyzstan’s Regulation as an agency assigned functions in the process of returning children, an MVD transit institution (the Juvenile Delinquency Prevention Center, which is the former MVD Juvenile Reception Center) does operate in the country.²¹ This is the center that receives children from other CIS countries (except for children under the age of three, whose transit and immediate delivery to children’s institutions is handled by the Kyrgyz Ministry of Labor and Social Development). Most children are delivered to the Juvenile Delinquency Prevention Center by employees of transit institutions in Russia and Kazakhstan, which are the most popular destinations for labor migration from Kyrgyzstan (employees of this Kyrgyz center used to travel to Russia and Kazakhstan to pick up children, but this has not been possible recently because of lack of funds).

A closed institution, the Juvenile Delinquency Prevention Center is intended to hold 70 children ages three to 18 and is located on a large plot enclosed by a high fence. A guarded checkpoint is installed at the entrance. The territory has a nature corner and a play area, while the building has spaces for meetings with a psycholo-

19 Report of staff members at Kazakhstan’s Juvenile Adaptation Center in Almaty, where child welfare agencies brought a child from the Republic of Bashkortostan. This information was obtained during a visit to the center in November 2017.

20 Approved by Resolution of the Government of Kyrgyzstan No. 571 of October 21, 2013.

21 This information was obtained during a visit to this center in November 2017. According to data provided by staff members, in October 2017, 16 children (four from Kazakhstan, 12 from Russia (Saint Petersburg, Moscow, Novosibirsk) were brought to the center within the framework of the Chisinau Agreement.

gist and educational and club classes. In addition to migrant children brought from other countries, children who have run away from home or children's institutions, homeless children, and lost or missing children also initially end up at this center.

According to employees at the center, it generally holds very few children because length of stay ranges from 3 to 48 hours, a timeframe that is rarely exceeded (there are sleeping accommodations in case children are brought in at night or over the weekend and cannot be transferred to a different institution). Children are handed over to relatives directly at the center upon their arrival (relatives are informed of the time of arrival in advance). If relatives are not able to come for the children, employees deliver the children to their places of residence as quickly as possible. If it is not possible to install children with a family or the children do not have proper documents, center employees transfer them to a social services institution (state- or NGO-run) within three to 48 hours. A decision on this transfer is made by the Commission for Children's Affairs, which exists within the framework of the Administration for Social Development. Further documentation and arrangements for children are handled by social rehabilitation and adaptation centers, where children may spend up to six months (this term may be extended for another six months pursuant to a decision of the Commission for Children's Affairs). These centers are open institutions where children attend school, move around on their own, and use public transportation.

Thus, the country's domestic subordinate legislation excludes the MVD from the return of children to the country (the matter of transporting foreign children from Kyrgyzstan to other countries is not separately regulated). The transit of children under the age of three has been almost entirely transferred to social services, while older children returned to Kyrgyzstan within the framework of the Chisinau Agreement are still being received by the Juvenile Delinquency Prevention Center, which is under the MVD, although this center now plays a technical role as a place where children are immediately handed over to relatives or employees of social services institutions and are not held for more than 48 hours. This kind of role for the Juvenile Delinquency Prevention Center, which is, strictly, a transit institution, appears justifiable.

In **Ukraine**, ideas for changing the system for handling children in conflict with the law were formulated in the Roadmap for Juvenile Justice Reform (2011).²² At the initiative of and with support from the MVD, in 2013 a coalition of social organizations called "Children Rights in Ukraine" conducted a study of the situation in child reception centers, which resulted in a recommendation to stop using these centers entirely.²³ The coalition proposed creating resocialization centers for children in con-

22 Approved by Order No. 597 of the President of Ukraine, May 27, 2011, <http://zakon4.rada.gov.ua/laws/show/597/2011>

23 Children Rights in Ukraine coalition, "Observance of the Rights of the Child in MVD Reception Centers in Ukraine," Kyiv, 2013, https://issuu.com/crc-ngo/docs/prava_dytyny_u_pryymalnykah-rozpodi

flict with the law and emphasized that children in transit, who are regulated by the Chisinau Agreement, should not ever be kept in closed institutions within the MVD system with children in conflict with the law. At the time, the MVD supported these recommendations.

Nevertheless, juvenile reception centers in the system of the National Police, which was created after MVD reforms in 2015, have been preserved. Ten juvenile reception centers are currently in operation, and two of them — in Kyiv and Kharkiv — have transit functions. The activities of these reception centers are governed by a Regulation and internal Rules approved by a recent order of the minister of internal affairs (2017).²⁴ According to these documents, children who have left their countries of permanent residence and are subject to return and transfer to their parents, legal guardians, or officials from special institutions in their country of permanent residence may be placed in these centers without a court decision for the period required for completing these actions (Clause 1.5 of the Regulation).

At the same time, Ukraine's Ministry of Social Policy offers 75 juvenile social and psychological rehabilitation centers and eight reception centers as an alternative to the child reception centers under the National Police. These centers are governed by Model Regulations adopted in 2004 and amended in 2012.²⁵ Children aged three to 18 are placed in them for a period of up to nine months in the inpatient department and 12 months in the outpatient department. Migrant children in transit and foreign children in general are not set apart as a separate category of clients, but the Ministry of Social Policy is prepared to receive these children in social services institutions and cooperate with other agencies to establish their identities, provide them with documents, and search for their relatives because it believes that police institutions are not the place for these children.²⁶

Officials from the Transit Shelters under the National Police assert that transit functions should remain with them and justify this by their years of experience and the ties they have developed with officials at transit institutions in other coun-

24 Order of the Minister of Internal Affairs of Ukraine No. 560 "On Organizing the Activities of Juvenile Reception Centers of Bodies of the National Police of Ukraine," <http://zakon3.rada.gov.ua/laws/show/z0926-17>

25 Model Regulations Concerning Juvenile Social and Psychological Rehabilitation Centers, approved by Resolution No. 87 of the Cabinet of Ministers of Ukraine of January 28, 2004 and most recently amended by Resolution No. 1128 of November 21, 2012, <http://zakon3.rada.gov.ua/laws/show/1128-2012-%D0%BF>.

26 This position was articulated by an official from the Department for the Protection of Children's Rights and Adoption of the Ministry of Social policy at a roundtable concerning the problems of children in transit organized by ADC Memorial in Kyiv on June 15, 2017.

tries.²⁷ It seems, however, that the abilities and skills required during the transit of children are far from unique and can be mastered by the employees of social welfare institutions. Experts note that, in the face of the existing competition between the two agencies, transit functions are in practice being shifted to social services centers. This is because there are many more social services centers than reception centers (it is more convenient to deliver a child to a center near the place where the child is found), they accommodate children aged three to 18 (while the reception centers only take children over the age of 11), a directive from the Service for Children's Affairs or the corresponding police act is required to place a child in a center (Paragraph 13 of the Regulations on Juvenile Social and Psychological Rehabilitation Centers), and personnel at social welfare institutions are trained and fully capable of establishing a child's identity and connecting with relatives and the relevant authorities of other countries.²⁸ As far as the authors of this report know, the only stage of the transit procedure that is not yet handled by the social and psychological rehabilitation centers is the direct conveyance of children to their countries of origin.

As far as can be determined by existing data, in **Azerbaijan**, the MVD juvenile reception center in Baku exists in name only and does not function; care for vulnerable children, including migrants from other countries, has to all intents and purposes been entrusted to shelters and social services organizations under ambiguous terms. Because the authorities in Azerbaijan do not officially recognize the problem of street children and the country has no social services institutions that can receive children returned from other countries, and also because bureaucratic structures in Georgia and Azerbaijan are organized differently, there are difficulties returning children arrested in Georgia for begging and held in shelters there.²⁹ This mainly concerns children who are members of the Azerbaijani Kurd and Roma minorities, including children who are unaccompanied and children who have migrated to Georgia with their families and are involved in begging, small-scale street trading, or prostitution.³⁰

27 This opinion was stated by the director of the Kyiv reception center at a roundtable concerning the problems of children in transit organized by ADC Memorial in Kyiv on June 15, 2017.

28 Expert opinion of Aleksey Lazarenko, vice-president of the All-Ukrainian foundation "Protection of Children's Rights," June 2018.

29 Information received from employees of an NGO in Azerbaijan, October 2017.

30 Report of UNICEF Georgia, "Children Living and Working in the Streets of Georgia," http://unicef.ge/uploads/Street_Children_Summary_ENG_HQ_2mm_bleed.pdf. This study was conducted by Fato (Norway).

Transfer of the Transit of Children from the MVD System to Civilian Agencies

Following reforms, MVD reception centers no longer exist in **Moldova**. According to officials from the Ministry of Labor, Social Protection, and the Family, the transfer of children to relatives or other persons takes place right in the office of the Department for Family Protection and Child Rights Policy. Otherwise, the child is delivered to its family at its place of residence or to the social services institution where the child will reside. The persons or institutions that receive the child provide advance notification of arrival.³¹ The specific aspect of Moldova's practice is its wide interpretation of the concept of "family": documents on the repatriation of children refer to a "biological/expanded" (up to and including the 4th degree of relationship) family to which a child may be transferred if the family is prepared to care for him or her. The fate of children after repatriation may take the following paths: (re)integration into the biological/expanded family, adoption, or placement in family-type children's homes, foster care, temporary accommodation centers, or mother and child centers. For example, out of 33 children repatriated in 2014, 15 were reintegrated into their biological/expanded families, six were placed in foster care, and 12 were sent to temporary accommodation centers. Of these 33 children, 18 were returned from Russia and 15 from Ukraine in the course of 17 repatriation missions.³²

Prior to 2008, Moldova lacked any national acts on child repatriation, and this process was only regulated by the Volgograd and Chisinau CIS agreements. In 2008, the government approved Regulations on the Procedure for Repatriating Child and Adult Victims of Human Trafficking and Illegal Migration and Unaccompanied Children.³³ The Regulations factor in the principle of the best interests of the child and a child's right to have his or her own opinion regarding repatriation (children over the age of 10 give their written consent to repatriation) and provide for guarantees of control over a child's situation after repatriation. The Regulations also cite readmission treaties Moldova has signed with other countries. Amendments

31 Remarks by Igor Kishke, an official from the Department for Policies Concerning Protection of the Family and the Rights of the Child, at a roundtable concerning the problems of children in transit organized by ADC Memorial in Kyiv on June 15, 2017.

32 Ministry of Labor, Social Protection, and the Family of the Republic of Moldova. Annual social report for 2014. <https://msmps.gov.md/sites/default/files/document/attachments/rsa2014ru.pdf>.

33 Regulations on the Procedure for Repatriating Children and Adult Victims of Human Trafficking and Illegal Migration and Unaccompanied Children, approved by Resolution No. 948 of the Government of the Republic of Moldova of August 7, 2008. <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=333827&lang=2>

were made to this document in 2017 and it is now known as Regulations on the Procedure for Repatriating Child and Adult Victims of Human Trafficking, Persons in a Difficult Situation, and Unaccompanied Children.³⁴

In practice, Moldova uses the professional guide “Working on the Case of a Child Discovered on the Territory of a Foreign State and Unaccompanied by Legal Guardians” (2014).³⁵ This guide details actions that government bodies, institutions, and specialists in the sphere of child protection must perform at various stages of the repatriation of different categories of children (newborns, school-age children left without parental care, with special health problems, and so forth). It was created during a project realized in the interests of children from Moldova located in Russia, but this experience was extrapolated to general principles of repatriation.³⁶

Georgia also no longer has juvenile reception centers. Instead, it has four transit centers to which unaccompanied children are delivered by the police or mobile groups of specialists and where they can stay for up to three days. Then children are placed in family-type children’s homes or shelters (four state shelters for various vulnerable categories, including children, are in operation).

Experts believe that the elimination of the existing system of children’s homes in Moldova and Georgia had negative consequences, including an increase in the number of street children³⁷ and the capture of the “market” for children’s shelters by church organizations, which carries the risk of child exploitation and violation of children’s right to freedom of conscience.³⁸

34 Approved by Resolution No. 255 of the Government of the Republic of Moldova of April 27, 2017.

35 Approved by Order No. 52 of the Minister of Labor, Social Protection, and the Family of April 25, 2014.

36 This guide was prepared as part of the project “FACT – Transnational Actions – Protection of Moldovan Children in a Socially Dangerous Situation and Victims of Exploitation and/or Human Trafficking in the Russian Federation,” which was realized by the representative office of Terre des Hommes in the Republic of Moldova with financial support from the Swiss Agency for Development and Cooperation (SDC).

37 The latest report of UNICEF Georgia (2018) cited above does not provide statistics for street children. There are expert assessments placing the number of these children at around 1,600. Of these, 45 percent are ethnic Georgians, 20 percent are Roma, 20 percent are ethnic Kurds from Azerbaijan, and five percent are other, including those of mixed ethnic heritage (opinion of the independent consultant, journalist, and photographer Onnik Janes Krikorian (2016), author of “Street Children in Tbilisi”), <http://onnik-krikorian.com/projects/street-kids-of-tbilisi/>.

38 This information was received from experts/human rights defenders in Georgia and Moldova in October 2017.

Armenia's MVD reception center has been shut down (piecemeal reforms started as long ago as 1999); unaccompanied, homeless, and other vulnerable children aged three to 18 are received by social institutions: the Children's Center under the Fund for Armenia Relief (a former reception center, fully restructured and managed by FAR on the basis of an agreement with the MVD and Ministry of Labor and Social Affairs),³⁹ the state-run children's center ZATIK, and several non-governmental round-the-clock centers.

In Kazakhstan,⁴⁰ reception centers have been replaced with juvenile adaptation centers, which fall under the education system. Of the 18 centers operating in the country, four are transit institutions responsible for different parts of the country located in Almaty, Uralsk (west), Petropavlovsk (north), Oskemen (or Ust-Kamenogorsk, east). Juvenile adaptation centers receive children aged three to 18 for a period of up to three months. Children who have run away from home or children's institutions, street children, lost or missing children, and children with deviant behavior waiting to be sent to special schools (under a court decision for a period of up to 30 days) are held with migrant children from other countries. According to the administration of the center in Almaty, migrant children spend an average of one-and-a-half months at this institution. The center organizes school instruction for children with visiting teachers.

Children are generally delivered from Russia by employees of Russian transit institutions to a center in Kazakhstan that is closest to their place of permanent residence. Children to be returned from Kazakhstan to other Central Asian countries or from these countries to Kazakhstan are transported by adaptation center employees, who transfer the children to transit institution staff members. Children may also be transferred to employees of another country's transit center at Kazakhstan's border with Kyrgyzstan or Uzbekistan. Usually, however, children are returned to their parents/legal guardians or other persons under a power of attorney within the walls of the adaptation center. Family ties, citizenship, place of residence, and other circumstances are established by adaptation center workers in cooperation with other agencies (education agencies, consulates, population registration agencies, the MVD, and so forth).

The majority of foreign children in adaptation centers are from Uzbekistan and Kyrgyzstan. These children are from the families of migrant workers or are even migrant workers themselves, and a significant number of them are members of the Romani people involved in begging. Below are statistics on foreign children held at the Juvenile Adaptation Center in Almaty:

39 FAR Children's Center, <http://farusa.org/child-protection/children-center/>

40 Information about the situation in Kazakhstan was obtained during a visit to the Juvenile Adaptation Center in November 2017.

Child's Country of Origin	2017	2016	2015
Uzbekistan	95 (62 – Lyuli)	121	73
Tajikistan	76	88	76
Kyrgyzstan	53	77	89
Georgia	4	2	
Russia	3	1	
Moldova			1
Azerbaijan		2	
TOTAL	232 (over 10 months)	291	238

According to summarized data of the Child Protection Committee of the Ministry of Education, most children from adaptation centers are handed over to their parents/legal guardians or other relatives under a power of attorney. Of the 657 foreign children arriving at juvenile adaptation centers in 2014, 433 were handed over to parents or legal guardians, 193 were transferred to relatives under a power of attorney, three were turned over to officers of the migration service for subsequent deportation, one was given over to center officials for transport to an institution in another country, and 18 were transferred to center officials for transport to institutions in other oblasts of Kazakhstan for subsequent delivery to a family.⁴¹

Country of Origin of Children Placed in Kazakhstan's Juvenile Adaptation Centers	2014	2013	2012
Russia	10	15	16
Kyrgyzstan	145	123	143
Uzbekistan	375	354	443
Tajikistan	113	120	143
others	14	7	8
TOTAL	657	619	753

41 For more on the activities of juvenile adaptation centers in the Republic of Kazakhstan, see the website of the Child Rights Protection Committee of Kazakhstan's Ministry of Education and Science, <http://www.bala-kkk.kz/ru/node/32039>.

Why the Chisinau Agreement Continues to be Applied in a Changing Reality

It is not surprising that in Russia, which was and remains a member of the CIS and the largest recipient of international migration, the Chisinau Agreement is generally interpreted as the main document regulating the transit of children between CIS countries. Children from CIS countries make up a significant portion of transit institution clients in Russia,⁴² and children are frequently transported using funds from the Russian budget. This is why Russian transit institutions are guided by the Chisinau Agreement in their daily activities and in their long-term planning.

For example, Transit Shelter in Saint Petersburg sets the strategic task of “expanding international cooperation within the framework of the Chisinau Agreement” in its roadmap for development for 2015-2025.⁴³

However, even countries that have announced their withdrawal from the CIS (Ukraine) or that have eliminated the system of MVD child reception centers (Moldova) continue to be guided by the Chisinau Agreement, even though changing circumstances have created barriers to its application.

In our opinion, the main reason why the Chisinau Agreement continues to be applied in the changing former Soviet Union lies in the fact that this agreement regulates the procedures and financial terms for moving children across borders that are familiar and convenient for agencies that have been involved in the transit of children for decades.

Article 1 of the Chisinau Agreement provides a definition of “expenses connected with the transport of minors,” which include financial expenditures on passage and food for children and passage, accommodation, and per diem expenses for transit institution employees.

Article 7 regulates the party that incurs the expenses connected with the transport of children:

Expenses for keeping minors in special institutions are incurred by the Party on whose territory they originated.

42 In 2013, children from CIS countries comprised 30 percent of the population of Altufevo Transit Institution in Moscow. This figure stood at 32 percent in 2012. Source: Report on the Institution’s Activities in 2013, <http://srcaltufevo.ru/plany-otchety>. In 2017, children from CIS countries accounted for 33 percent of all arrivals at Transit Shelter in Saint Petersburg. Source: Results of the Work of the Social and Legal Assistance Department at Transit Shelter for 2015-2017, <https://shelter-tranzit.ru/статистика-работы-приюта-транзит/>.

43 Roadmap for the Development of the State Budgetary Institution Transit Social Services Shelter for Children for 2015-2025, <https://shelter-tranzit.ru/документы/>.

Expenses connected with the transport of minors are incurred by the state of their permanent residence.

Any expenses not set forth in Article 1 of the present Agreement are paid by the agreement of the Parties.

Expenses incurred by the Party of the receiving state during the transport of minors to the state of their permanent residence shall be returned by the other Party within a 30-day period from the time it is provided with the corresponding financial records.

The importance of the specific financial aspect of the Chisinau Agreement is supported by the fact that the so-called Dushanbe Executive Protocol to this agreement was executed relatively recently (2015, in force since November 19, 2016). This protocol details countries' financial obligations, the procedure and format for submitting financial documents, the terms for compensating for expenses, the settlement currency (US dollars) and exchange rate, and so forth.

In practice, Russia and Kazakhstan frequently take on expenses on the transit of children, and the transport of children to their country of origin is handled by employees of Russian and Kazakhstani transit institutions.

For example, staff members from the Juvenile Delinquency Prevention Center in Bishkek, an institution within the MVD system in charge of the transit of children (the former Juvenile Reception Center), have not themselves traveled to Russia or Kazakhstan for several years due to financial problems. Staff members from Russian and Kazakhstani institutions handle the delivery of children to Kyrgyzstan.⁴⁴

However, use of the Chisinau Agreement in Russia is actually problematic in the financial sense.

In many cases, migrant children from CIS countries end up in Russian transit institutions when their parents are found by a court to have violated the migration regime, face forcible expulsion from Russia, and are confined in a Foreign Citizen Temporary Detention Center (FCTDC). Because these centers lack conditions for keeping parents and children together, these children end up first in hospitals and then in social transit institutions, where they await expulsion either separately from their parents and in the accompaniment of institution employees (at the expense of the state budget) or together with their parents (if it has been possible to reach an agreement on simultaneous expulsion and the parents themselves or someone else find money for the children's tickets, since the state only covers the cost of forced expulsion for the

44 Interview with staff members from the MVD's Juvenile Delinquency Prevention Center in Bishkek, November 2017.

violator and not for family members⁴⁵). The rules of transit institutions make no stipulations whatsoever for this category of children, so expenses for their stay in a shelter and transport to their country of origin are viewed as a “misappropriation of funds.”

For example, both the bylaws and the state task under which the Transit Shelter (Saint Petersburg) operates refer to transport within Russia and the CIS only for children deprived of parental care who have left their family or children’s institution without authorization.⁴⁶ Expenses for keeping the children of forcibly expelled migrants in a shelter and delivering them to their country of origin are sanctioned only because there is no other institution in Saint Petersburg for this category of children. According to deputy chair of Saint Petersburg’s Social Policy Committee Elena Fidrikova, “as of today, Transit is virtually the only place that can accept these children. But if we follow the letter of the law, we do not have this right, this is a misappropriation of budgetary funds. Only children who have left without authorization can be placed in this shelter.”⁴⁷

VIOLATION OF THE RIGHTS OF CHILDREN BY COUNTRIES RESPONSIBLE FOR THEM DURING TRANSIT

Participants in the transit of children follow its procedure, which includes violation of children’s rights conditioned solely by their migration status, such as separation from parents, placement in a closed institution for an extended pe-

45 In accordance with Resolution of the Government of the Russian Federation No. 769 of October 24, 2002.

46 The name of the state publication is “Management of the transport between constituent entities of the Russian Federation and within the territories of CIS member states of minors who left their families, children’s homes, residential schools, or special educational and other children’s institutions without authorization, pursuant to a regional list (classifier) of state (municipal) services and works of Saint Petersburg, approved by Order No. 254-r of the Economic Policy and Strategic Planning Committee of Saint Petersburg of December 1, 2017 (as amended by No. 301-r of December 26, 2017). Source: State task for the provision of services (work) to Transit social shelter for children for 2018 and the planning period of 2019 and 2020, <https://shelter-tranzit.ru/документы/>

47 Interagency report on matters related to holding children in special institutions, February 12, 2016. Report on the website of the Child Rights Commissioner for Saint Petersburg: “Children who do not Exist,” <http://www.spbdeti.org/id5793>

riod, and expulsion apart from their parents and in the accompaniment of transit institution workers. Individual links in this chain are regulated by the Chisinau Agreement.

Separation of Children from Migrant Parents, Separate Expulsion

Children from CIS countries who have been separated from parents found to have violated the migration regime and held in foreign citizen temporary detention centers comprise only a small portion of children in transit institutions (for example, according to data from the Child Rights Commissioner, in 2015 the Transit Shelter (Saint Petersburg) held only four children from this category, while a total of 87 children from the CIS were delivered to the center; there were no children from this category at Transit in 2016 or 2017).⁴⁸ However, many times the children of migrants awaiting forced expulsion in foreign citizen temporary detention centers stay with relatives or are placed in medical institutions after they are removed from their families. Reunifying these children with their parents and expelling them at the same time is problematic and only possible with significant effort, as in one case when a child was reunited with his mother only after the Child Rights Commissioner of Saint Petersburg intervened and members of the Tajik diaspora provided money for the ticket of the child, who was in a children's hospital.⁴⁹ For this reason, a significant number of children are delivered to their countries escorted by transit institution workers: for example, of the 73 children leaving the Transit Shelter in 2017, 42 were delivered to CIS countries by shelter workers, seven were delivered by workers of transit institutions in other CIS countries, 22 were handed over to their parents or other legal guardians, and two were turned over to other persons under a power of attorney.⁵⁰

On September 7, 2015, officers of the Federal Migration Service (FMS) arrested Uzbek citizen Dilafruz Nabotova, who was in her 40th week of pregnancy at the time, and placed her in a foreign citizen temporary detention center. Her young sons—eight-year-old Sarvarbek and seven-year-old Makhbuba — were arrested along with her. They were separated from

48 Report of the Child Rights Commissioner for Saint Petersburg for 2015-2017, <http://www.spbdeti.org/id4670>

49 Report of the Child Rights Commissioner for Saint Petersburg for 2016, the case of the expulsion of a Tajik citizen. Ibid.

50 This data is contained in the Report of the Child Rights Commissioner for Saint Petersburg for 2017. Ibid.

their mother and sent to the Transit Shelter. Two weeks after her arrest, on September 20, Nabotova was taken to Maternity Hospital No. 16 (one of the few in the city that accepts women in labor who do not have the documents required for regular births), where she gave birth to a son. She and the infant were sent back to the detention center, where she was placed in an "Isolation Cell" (that was the sign hanging on the door), which was most likely intended for people with infectious diseases. In response to a query from her lawyer, who worked on this case with ADC Memorial, E.V. Dunayeva, head of the Federal Migration Service Office for Saint Petersburg and Leningrad Oblast, stated that, prior to Nabotova's return to the temporary detention center after giving birth, the center had no items or funds required for caring for a child (the Red Cross later provided a crib and baby care products and the FMS office purchased a changing table) or supplemental food (workers at the detention center bought dairy products and fresh fruit with their own money). Dunayeva indicated that "current RF laws lack special norms regulating the procedure for holding pregnant women and new mothers" in foreign citizen temporary detention centers and that "the center's budget does not have a separate line for expenses to provide for pregnant women and new mothers, so financing of these expenses comes out of general funds."⁵¹ After almost one month of confinement in the center, Dilafruz Nabotova and her newborn son were expelled from Russia on October 15, 2015. Her other two young children spent over two months separated from their mother until they were expelled in the accompaniment of shelter workers. In response to weekly calls from the lawyer asking when the children would be returned to their mother, Transit workers stated that they were waiting for financing to pay for the passage of the children and the staff members accompanying them (as mentioned above, expenses for transporting the children of forcibly-expelled migrants are not provided for in the state budget and probably require special approval).

The practice of taking children from migrant parents during administrative raids and declaring these children "without parental care" is sometimes connected with the clearly illegal actions of involved structures and results in tragedy.

During a special raid on October 13, 2015, officers R.A. Panakhov and S.L. Orlov from the FMS Admiralteysky District Office in Saint Petersburg delivered Zarina Yunusova, a 21-year-old Tajik citizen, her 5-month-old

⁵¹ Response of E.V. Dunayeva to lawyer's query of February 29, 2016, reference no. 1/z-1001.

son Umarali Nazarov, and an underage relative named Daler Nazarov from the place where they were living to the 1st police precinct in Admiralteysky District. There, Inspector N.V. Alekseyeva took the newborn from his mother in the presence of two officials from the FMS office. While this was happening, Zarina Yunusova, who did not speak Russian, was not able to provide any explanations or clarify anything. No interpreter was present, and she was not asked any questions anyway. The newborn's grandmother brought his birth certificate and Zarina's documents to the precinct and asked to be given the baby. She was refused. Umarali spent some time at the precinct and was then taken by ambulance to Tsimbalin Hospital (a video camera recorded how doctors did not allow the father, Rustam Nazarov, to travel with them to the hospital). Forty-five minutes after his last feeding, Umarali Nazarov died under suspicious circumstances.

Zarina Yunusova was delivered to Oktyabrsky District Court of Saint Petersburg, which issued a decision to expel her separately from her child, without confinement in a foreign citizen temporary detention center. An interpreter was present during the hearing, but Zarina did not understand him since he spoke a different dialect and she was in a state of shock after her child had been taken away from her. She signed all the documents without really understanding what they meant.

Umarali's parents were notified by phone of their son's death only the following morning. For three days, the parents were not given any information about what happened with their child or the address of the morgue where the body was.

The ruling to expel Zarina Yunusova was appealed, but the Saint Petersburg City Court upheld it on November 12, 2015. Zarina executed the court decision on expulsion and left for Tajikistan with her baby's body. Umarali Nazarov was buried in Tajikistan.

A criminal case in the baby's death was only opened after seven days under Article 109(2) of the RF Criminal Code (infliction of death by negligence), but was later closed. Instead of conducting a proper investigation of this tragedy, performing a legal evaluation of the officers' actions, and establishing the real cause of the baby's death, the investigative agencies tried to institute criminal proceedings against Umarali's parents for failing to perform their parental duties.

The Forensic Medical Examiner's Office of Saint Petersburg concluded that the baby's cause of death was a "generalized cytomegalovirus infection." The victims were not informed of the results of the forensic examina-

tion until December 18, 2015. The scheduling of the forensic examination for October 30, 2015 violated the rights of the victims, who did not have the opportunity to pose questions or suggest an institution to conduct the examination, since they were only told about the examination after it had been completed.

The results of this forensic examination have raised doubts with both the parents and various observers. Most importantly, the opinion does not answer the most significant questions about the causes and circumstances of Umarali Nazarov's death, about how a disease could develop so rapidly without any symptoms and result in death within 45 minutes (medical documents show that Umarali was alive and healthy at 23:00 and was found without signs of life at 00.05 on October 14, 2015), or about the soundness of the actions of the doctors at Tsimbalin Hospital, specifically their failure to provide timely, quality, and comprehensive medical aid (if we assume that the child actually was sick).

The high-profile case of Umarali Nazarov allowed human rights defenders to bring out into the open the procedure of removing children from migrant families, whereby children are taken first to medical and then to transit institutions. Since it was found during the trial that the FMS and MVD officers acted lawfully, it seems likely that they have committed the following violations in other similar, but not so tragic situations:

The ground for taking the baby away from its mother was an "Act on the Discovery of an Abandoned or Lost Child,"⁵² written by Inspector N.V. Alekseyeva. This report should be deemed false: the baby obviously could not move around on his own (i.e. get lost) and he was not "abandoned" at the 1st police precinct. Instead, he was taken there with his mother from their apartment, and his grandmother was recorded on video presenting his birth certificate and other documents to the police. The baby's removal from Zarina was absolutely illegal: in accordance with clauses 80.1 and 80.2 of the "Instruction on the Organization of the Activities of Juvenile Affairs Units of RF Internal Affairs Agencies," approved by Order of the Ministry of Internal Affairs of Russia of 15.10.2013 No. 845⁵³, when an abandoned child is found, the authorities must identify its parents and no-

⁵² Act on the Discovery of an Abandoned or Lost Child of 13.10.2014. ADC Memorial archives.

⁵³ https://www.consultant.ru/document/cons_doc_LAW_158962/2c04e4f0621bf82c0e8e8ef65e99316349220a2b/

tify them. Forcible removal of a child is only possible in accordance with a court decision or in cases strictly defined by the law when there is an immediate threat to a child's life, and child welfare agencies must be involved.

The Return of Children Abandoned by their Biological Mothers to their Country of Origin

The Chisinau Agreement is declared as justification of the contentious practice of returning children to the country of origin of their mothers, who gave birth to them in Russia and abandoned them in maternity hospitals. Cases have been documented where such children were repatriated to Tajikistan and Kyrgyzstan.⁵⁴ It has also been reported that the so-called diasporas have lobbied to have “our blood” returned to the mother’s country of origin.⁵⁵

Laws on citizenship in Tajikistan, Kyrgyzstan, and Russia are quite similar, and, in theory, a child born in Russia to a mother of Tajik or Kyrgyz origin may acquire both the mother’s citizenship and Russian citizenship “by birth.” In particular, these three countries grant their citizenship to children regardless of their place of birth if one or both parents were citizens of these countries at the time of the child’s birth (and in other circumstances that migrant families could possibly face: for example, Russian citizenship is assigned to a child located on Russian territory if the child’s parents are unknown and do not appear within six months).⁵⁶ However, preference in this “citizenship competition” is given to the country of origin of mothers of abandoned children.⁵⁷

54 Older children with disputed citizenship have reportedly been repatriated to Moldova from Uzbekistan (according to staffers at the Ministry of Labor, Social Protection, and the Family of the Republic of Moldova, June 2017).

55 Reported by staff members of the ombudsman’s office in Kyrgyzstan, November 2017.

56 See Article 13 of “Acquisition of Citizenship of the Republic of Tajikistan by Birth” (Constitutional Law No. 1208 “On Citizenship of the Republic of Tajikistan” of August 8, 2015; Article 12 of “Acquisition of Citizenship of the Kyrgyz Republic by Birth” (Law No. 70 “In Citizenship of the Kyrgyz Republic” of May 2, 2007); Article 12 of Acquisition of Citizenship of the Russian Federation by Birth” (Federal Law No. 62-FZ “On Citizenship of the Russian Federation” of May 31, 2002).

57 One of the small children repatriated to Tajikistan in 2017 was a girl with an undeniably Slavic patronymic and surname (her personal information was published in the media). It is highly likely that her father was a Russian citizen and that the question of her citizenship was not all that obvious.

Even though mothers abandon their children without any intention of leaving them their name or citizenship, it turns out that information about the birth of children to Tajik and Kyrgyz citizens and their abandonment in maternity hospitals and other institutions is known to these countries' diplomatic missions in Russia. Moreover, Russian institutions where mothers leave their children act in an arbitrary manner: in some cases, they record information about mothers, including information about her citizenship, while in others they record children as "foundlings" and later help these children acquire Russian citizenship, which makes their subsequent adoption into Russian families possible.⁵⁸

Children abandoned by their mothers are registered by consulates as citizens of the corresponding country and repatriated without any real investigation into the second parent or attention to the wishes of mothers who do not want to reveal their personal information. In Kyrgyzstan, children are removed by workers from the Ministry of Labor and Social Development, while this task is handled by workers from MVD juvenile reception centers in Tajikistan. According to data from the Ministry of Labor and Social Development, from 2011 to May 2018, 85 children aged several months to five years were repatriated to Kyrgyzstan. Of these, 50 children were handed over for adoption, eight were reunited with their biological families, three were placed in foster care, and 24 were moved to residential children's institutions.⁵⁹ According to Umardzhoni Emomali, director of the MVD's press center in Tajikistan, almost 50 abandoned children were repatriated from Russia in 2016.⁶⁰

According to a representative of Tajikistan's embassy in Moscow, orphaned children are regularly repatriated to Tajikistan from Russia, including children for whom custody was arranged in Russia and who lived in a foster family.⁶¹

58 Confidential information from workers at a children's institution, Russia, 2016.

59 Official response of the deputy minister of labor and social development to a question regarding the repatriation of children in Kyrgyzstan, December 13, 2017, ADC Memorial archives. See also the media report "Iz Moskvy v Kyrgyzstan repatriirovany eshche 4 rebenka" [Another Four Children Repatriated to Kyrgyzstan from Moscow], May 30, 2018, <http://kabar.kg/news/iz-moskvy-v-kyrgyzstan-repatriirovany-eshche-4-rebenka/>; "Broshennye v Moskve kyrgyzstankami deti dostavleny v Bishkek" [Kyrgyz Children Abandoned in Moscow are Delivered to Bishkek], April 27, 2012, <https://kloop.kg/blog/2012/04/27/broshennye-v-moskve-kyrgyzstankami-deti-dostavleny-v-bishkek/>.

60 Media report: "MVD Tadzhiqistana: za god iz Rossii repatriirovani okolo 50 broshennykh tadhizskikh detei" [Tajikistan's MVD: Almost 50 Abandoned Tajik Children Repatriated from Russia this Year], December 14, 2016, <http://asiaplustj.info/ru/news/tajikistan/society/20161214/mvd-tadhizkistana-za-god-iz-rossii-repatriirovani-okolo-50-broshennykh-tadhizskikh-detei>

61 Media report: "Deportatsiia pod opekoi: Rossiiskaia sem'ia stolnulas' s zapretom inostrannogo usynovleniia" [Deportation under Guardianship: Russian Family Comes up against Ban on Foreign Adoption], September 21, 2016, <http://www.kommersant.ru/doc/3094832>.

In 2016, a case of an adopted child of Tajik origin being taken from his adoptive family was recorded. Not only was this a catastrophe for the young child and a personal tragedy for the adoptive parents, but it was also a blatant violation of the principle of the best interests of the child: this young boy was sent to an orphanage in Tajikistan instead of living in a loving family with familiar people who were attached to him. The parents, Moscow residents who were employed and financially secure, had created all the conditions for life and for raising a child and had taken special classes for adoptive parents. A court found that technical mistakes were made by child services during the adoption process, but the adoptive parents and especially the adopted boy were in no way to blame for these.

This boy, who was born in Moscow on March 11, 2016, was abandoned by his mother, Tajik citizen M.N. Kululayeva (this information was revealed in the media). Child services asked the Egorov family to take in the child. His guardianship papers were completed in April 2016, he was officially adopted by the Egorov family in May 2016, a birth certificate and Russian citizenship papers were issued for him, and he was given the Russian name Mikhail Egorov. However, child services made technical mistakes: specifically, the notification of guardianship was sent to Tajikistan late and the child's adoption papers did not list Tajik citizenship. A representative of the Tajik consulate announced that he did not agree with the adoption decision (since only Tajik citizens may adopt children who are Tajik citizens) and demanded that the child be returned home. On June 15, 2016, the Egorov family received a notification from the Dolgoprudnensky Social Protection Office stating that their adopted child would be sent to Tajikistan. The child services office — the Social Protection Office of the Northwestern Administrative District of Moscow — applied to the court to reverse the adoption. In court, representatives of the consulate stated that the child had a grandmother in Tajikistan who was prepared to take him in, but the Egorov's lawyer Aram Zakharov possessed a response from the Tajik Ministry of Internal Affairs stating that the boy did not have any relatives in Tajikistan. On September 20, 2016, the Butyrsky District Court in Moscow issued a ruling reversing the adoption and removing Mikhail Egorov from the family. In an open letter to Tajik president E. Rahmon, the adoptive mother Khilola Egorova wrote: "After long years without a child in the family, my husband and I had the desire to become parents to an orphan. We did not care about the child's nationality, age, or gender. We adopted the first child we saw. This child became the meaning of our life. We know that there is the law and that it cannot be broken. But I beg you please to allow our son stay in our family."⁶² This letter went unanswered.

62 Media report: "Mosckvichka prosit Emomali Rakhmona ostavit's ei usynovlennogo tadjhikskogo rebenka" [Moscow Woman Begs Rakhmon to Leave her Adopted Tajik Child], September 11, 2016, <http://news.tj/ru/news/tajikistan/society/20160922/231164>

On October 4, 2016, the baby was taken from his adoptive parents and placed in a children's institution in Moscow. In May 2017, he was taken to Tajikistan by workers from the MVD Reception Center in Dushanbe and placed in a children's home.

The removal of children from foster and adoptive families to orphanages (first Russian, then Tajik) contravenes the principle of the best interests of the child, which is promulgated in the Convention on the Rights of the Child. Clearly, the risk of deprivation, psychological trauma, and physical and psychological violence is higher in children's institutions than in foster or adoptive families, which undergo screenings, training, and testing, and are regularly monitored by child services. A child living with guardians abroad does not contradict Tajik law (Article 127 of the Tajik Family Code gives only Tajik citizens the right to adopt Tajik children, but guardians may be "competent adults" as long as a number of conditions are observed, none of which relate to citizenship (Article 148 of Tajikistan's Family Code)).

In court, representatives of the Tajik Ministry of Foreign Affairs asserted that the Chisinau Agreement was violated when Mikhail Egorov was adopted. In other words, they used an unjustifiably broad interpretation of the term "children left without care (i.e. "without monitoring by parents or legal guardians," "in a situation that puts the child's life and health in danger or that enables the child to commit crimes and other illegal actions" – Article 1 of the Agreement). Mikhail Egorov was adopted and there was no danger to his life or health. The Chisinau Agreement is also listed as one of the documents Kyrgyz state agencies are guided by when repatriating abandoned children, even when the question of their citizenship is not so obvious.

Issues of Monitoring Observance of the Rights of Children after their Return to their Families or Other Relatives

Returning children to a family environment is the stated purpose of the work of transit institutions. However, the practices of various CIS countries at this stage of transit raise questions.

On the one hand, requirements for children's living conditions in a family are unreasonably high. Most migrant workers rent housing and live poorly, in reduced circumstances. Instead of providing social assistance, the authorities frequently remove children from these families.

The authors of this report witnessed a visit between a mother — a migrant worker — and her two small children, who had been placed in a social services transit institution in Russia. It was clear that the separation was extremely hard on both the mother and the children. Workers at the institution claimed that even though the mother was a positive and attentive

woman, she could not create decent living conditions for her children and thus was not allowed to collect her children. To all intents and purposes, the children were deprived of their liberty and their family.⁶³

On the other hand, a cause for concern is the practice of turning children over to relatives (sometimes distant relatives) without sufficient monitoring of what happens to them in the future, even though they face the risk of becoming victims of various forms of violence and exploitation.

For example, social services in Moldova, where transit institutions have been eliminated, transfer children to their so-called “extended family,” including even to distant relatives (up to and including the 4th degree of relationship).⁶⁴ the MVD Transit Reception Center in Tajikistan operates in the same way and has the right to turn children over to “parents or other relatives.”⁶⁵ Human rights defenders have expressed concerns that Tajikistan gives children away to distant relatives and even acquaintances too easily, as long as they can present the child’s birth certificate.⁶⁶

The transit institutions of a number of countries (for example, Tajikistan) notify municipal bodies responsible for child welfare when children are transferred to parents or guardians. Some Russian transit institutions see their task as “coordinating inter-agency cooperation with regions of Russia, CIS countries, and other former Soviet countries with respect to post rehabilitation and social rehabilitation work.”⁶⁷ Members of civil society, however, believe that subsequent monitoring of the situation of returned children is insufficient.⁶⁸

63 Field information, ADC Memorial, 2013.

64 Remarks by Igor Kishke, an official from the Department for Policies Concerning Protection of the Family and the Rights of the Child at a roundtable on the problems of transit institutions organized by ADC Memorial in Kyiv on June 15, 2017.

65 Information received from the director of the Juvenile Reception Center in Dushanbe, May 2017.

66 Opinion of child’s rights experts from Tajikistan, October 2017.

67 Plan of Educational and Social and Rehabilitation Work of the Altufeyev Juvenile Social and Rehabilitation Center for 2016.

68 Opinion of child’s rights experts from Tajikistan, October 2017.

Thus, the primary subjects of the Chisinau Agreement are the procedural and financial aspects of the transit of children. Meanwhile, with the exception of a token mention of the Convention on the Rights of the Child and a stated concern for the well-being of children, the rights of the child remain outside the framework of the Chisinau Agreement. Furthermore, existing practices for the transit of children abound with violations of the rights of the child. These violations include extended stays in de facto closed institutions and deprivation of the right to education and a normal family environment.

NEED TO CREATE NEW LEGAL NORMS CONCERNING THE SITUATION OF MIGRANT CHILDREN

THE RIGHTS OF CHILDREN: GAPS IN MIGRATION LAW

Children are not properly represented as independent rights holders in national migration laws, and the Chisinau Agreement does not fill these gaps.

According to Svetlana Agapitova, the Child Rights Commissioner for Saint Petersburg, “the legal situation of young migrants currently remains unregulated in many ways, since **the fact the foreigners might have children is not even envisaged in the law in a number of cases.**”⁶⁹ The commissioner has come out with an initiative to add a separate chapter devoted to children to the Russian federal law “On the Legal Situation of Foreign Citizens.”

Unfortunately, attempts to add migrant children to RF laws have been driven not by the principle of the best interests of the child, but by a desire to resolve logistical and financial matters: to create legal grounds and acceptable conditions for placing children with their parents who have violated migration laws and are subject to deportation in foreign citizen temporary detention centers and to procure funds to expel children (for now, Russian laws only provide funds for expelling adult violators, but not children).

In this sense, a discussion that took place among Russian judicial agencies in 2016 is intriguing: the Child Rights Commissioner and interested agencies in Saint Petersburg filed a request with the Saint Petersburg City Court to introduce within the city the judicial practice of indicating in a court decision on forced expulsion that adults must depart the Russian Federation with their juvenile children. This practice exists in other regions (Moscow and Leningrad, Orel, and Chelyabinsk oblasts), where children are placed in special institutions with their legal guardians on the basis of such court decisions. However,

⁶⁹ Report of the Child Rights Commissioner for Saint Petersburg for 2017, <http://www.spbdeti.org/id4670>

the chairman of the Saint Petersburg City Court noted that this practice is illegal: young children cannot be found guilty of violating migration laws and cannot be placed in special institutions for this or be mentioned in a court decision.⁷⁰

The practice of separating children from their migrant parents who have been deprived of their liberty and are awaiting expulsion has been recognized as inhumane even by officials of repressive agencies, but attempts to change this practice in Russia have as yet been limited to several improvements to material and living conditions and proposals to reequip and adapt detention center premises for holding parents with their children. For example, Elena Dunayeva, the director of the Office of the Federal Migration Service for Saint Petersburg and Leningrad Oblast, proposed redesigning the “female” floor of the detention center and purchasing children’s furniture and toys. But these plans have not been realized because the foreign citizen temporary detention center is a federal, not municipal, institution, and no agreement could be reached on its remodeling.⁷¹

The need to create institutions for migrant violators with children is sometimes justified as a battle against child neglect:

Due to the significant number of detained unsupervised juveniles who are citizens of foreign countries or stateless persons, the question of creating special institutions for holding migrant parents who have minor children and have violated the regime of stay for the purpose of resolving the matter of their subsequent expulsion from the Russian Federation remains pressing. This results in serious adverse consequences, including the neglect of minors, which involves not just a lack of or weakened control over a child’s development of identity and behavior, but also the unsupervised movement of minors within the borders of one territorial formation and far beyond its boundaries.⁷²

70 This discussion is recounted in the Report of the Child Rights Commissioner for Saint Petersburg for 2016, <http://www.spbdeti.org/id4670>

71 Interagency report on matters related to holding children in special institutions, February 12, 2016. Report on the website of the Child Rights Commissioner for Saint Petersburg: “Children who do not Exist,” <http://www.spbdeti.org/id5793>

72 O.M. Doroshenko, A.A. Morukova. “Aktual’nye problem deiatel’nosti organov gosudarstvennoi vlasit Rossiiskoi Federatsii po kontroliu za sobliudeniem pravil migratsionnogo uchets nesovershennoleitnikh grazhdan Rossiiskoi Federatsii, inostrannykh grazhdan, i lits bez grazhdanstva” [Pressing Problems with the Activities of State Agencies of the Russian Federation in Respect of Controlling Compliance with the Rules of the Migration Registration of Minor Citizens Of the Russian Federation, Foreign Citizens, And Stateless Persons], *Migratsionnoe pravo*, 2016, No. 2, <https://elibrary.ru/item.asp?id=26192959>.

Meanwhile, the UN Committee on the Rights of the Child and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families “emphasize the harm inherent in any deprivation of liberty and the negative impact that immigration detention can have on children’s physical and mental health and on their development, even when they are detained for a short period of time or with their families.”⁷³

MIGRANT CHILDREN AND THE PROCEDURES OF EXPULSION, DEPORTATION, AND READMISSION

In the laws of the region’s countries, the forced return/removal of foreigners to countries of their permanent (primary) residence is described in different terms, entails different legal consequences, and is handled in different forms and time-frames.⁷⁴ The most common of these procedures are: **expulsion, deportation, and readmission** (we will not look at extradition here, since it is only applied to criminal offenders/suspects).

In Russian law and practice, these three forms of forced removal have much in common, particularly in terms of bans and restrictions on rights. For example, all three involve mandatory fingerprint registration, entail subsequent entry bans (for varying terms), and allow for the placement of persons to be removed in special institutions. Children can stay in these institutions only if they are accompanied by their parents/legal guardians; unaccompanied children cannot be placed there.⁷⁵ Foreigners in the procedure of readmission cannot be held with people assigned ex-

73 Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4–CRC/C/GC/23.

74 For a description of the deportation laws of different countries of the region see: Z. Brunarska, S. Mananashvili, A. Vernar. *Vozrashchenie, readmissia i reintegratsiia v stranakh Vostochnogo Partnerstva: Obzor* [Return, Readmission, and Reintegration in Eastern Partnership Countries: Overview]. CARIM-East RR2013/18, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2013.

75 Rules for the detention (stay) in special institutions of the Ministry of Internal Affairs of the Russian Federation or its territorial body of foreign citizens and stateless person subject to administrative expulsion from the Russian Federation in the form of forced expulsion from the Russian Federation, deportation, or readmission (approved by Resolution No. 1306 of the Government of the Russian Federation of December 30, 2013).

pulsion/deportation by a court (or other body), which presupposes the creation of separate humane and open institutions for “unpunished” foreigners (seeking asylum, awaiting a decision on refugee status). Russia, however, has very few such centers (three) in comparison to closed temporary detention centers for violators of the migration regime subject to expulsion, which exist in virtually every constituent entity of the Russian Federation. Conditions for holding families with children have not been created in these foreign citizen temporary detention centers.

Expulsion is an administrative punishment for violation of the migration regime that is assigned by a court in accordance with domestic laws. Children are generally not subjected to deportation in light of their age, but adolescents aged 16 to 18 fall into a risk group because they are already subject to administrative liability and can have administrative proceedings instituted against them for migration violations, including with deprivation of freedom in temporary detention centers for juvenile offenders.⁷⁶

Deportation is very similar to expulsion, but it is not a punishment (it is defined as a “mechanism of state influence” on a foreigner who is found to be undesirable or presents a danger). It is assigned by various agencies (in Russia these are the Ministry of Justice, the Federal Security Service, and others) in extrajudicial proceedings and is regulated by domestic laws.

Readmission is considered to be the most humane way to remove a foreigner whose presence within the territory of a given country has been found illegal. This is not a type of punishment — it is not regulated by domestic laws, but by international treaties, and a decision on readmission is made in extrajudicial proceedings.

The institution of readmission was developing rapidly in the region until recent times as international programs in this area were implemented and analytical materials were published.⁷⁷ The Russian Federation, the largest recipient of migration, entered into a number of bilateral readmission agreements, including with donors

76 Children aged 16 to 18 also face another legal conflict: pursuant to the RF Administrative Code (Part 3 of Article 1.3, Part 1 of Article 23.2), cases on administrative violations committed by juveniles are under the jurisdiction of commissions on juvenile affairs and the protection of child rights and must be heard in the presence of parents/legal representatives. Meanwhile, migration violations are heard by courts that issue expulsion decisions, and there are documented cases where children aged 16 to 18 have been expelled.

77 For example, *Rukovodstvo po readmissii dlia ekspertov i spetsialistov-praktikov*, v 2 tomakh [Guidelines on Readmission for Experts and Practitioners, in two volumes], Moscow, 2009 (created by experts from the Russian FMS and the International Organization for Migration as part of the joint program “Assistance to the Government of the Russian Federation in Establishing Legal and Administrative Framework for the Implementation and Development of Readmission Agreements,” with financing from the European Commission and the governments of Germany and Finland).

of labor migration (Uzbekistan, Kyrgyzstan). However, even though readmission is viewed as an effective means of combatting “illegal” and “unregulated” migration, Russia indiscriminately applies administrative expulsion, always with monetary fines and, frequently, with deprivation of liberty in a foreign citizen temporary detention center, to violators of the migration regime.

Deportation and expulsion should not be applied to children, since children cannot be held independently responsible for errors in documents that allow them to legally reside in another country. The most acceptable means for returning children to their country of citizenship/permanent residence may be readmission, but existing readmission treaties signed by several countries in the region do not treat children as a separate group.

A model draft of a readmission agreement was approved at a meeting of the migration agencies of CIS member states on September 9 and 10, 2008 in Cholpon-Ata, Kyrgyzstan and recommended as the foundation for negotiations between CIS countries.⁷⁸

Russia has signed readmission agreements with Armenia (2010), Belarus (2013), Kazakhstan (2012), Kyrgyzstan (2012), and Uzbekistan (2013) and has discussed agreements with Moldova and Tajikistan. Readmission agreements have also been signed between Kazakhstan and Kyrgyzstan (2016), Kazakhstan and Uzbekistan (2012), Ukraine and Moldova (2017), Moldova and Armenia (2016), Ukraine and Armenia (2011), and Moldova and Georgia (2014). Executive protocols regulating procedural matters are annexed to these agreements. There are also readmission agreements with interstate formations. For example, Russia, Armenia, Moldova, Georgia, and Ukraine have an agreement with the European Union; in this case, executive protocols are executed with individual EU countries, since their migration and other rules are sometimes not identical, even within the EU framework.

In essence, the Chisinau Agreement and the Dushanbe Executive Protocol regulate specifically the readmission of children and resemble the fairly standardized readmission agreements with executive protocols that some countries in the region have signed with each other and that do not specially regulate the process or readmission for children or properly describe the human-rights aspects of readmission.

78 The common standards of European migration policy, including readmission, were set by Directive No. 10737/09 of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (June 25, 2008). See: Andrichenko, L.V. “Problemy pravovogo regulirovaniia readmissii” [Problems with the Legal Regulation of Readmission], *Zhurnal rossiiskogo prava*, 2010, no. 3, <http://base.garant.ru/5858174/>.

WHAT CAN REPLACE THE CHISINAU AGREEMENT?

Human rights organizations that are part of the Child Rights International Network researched the application of the Chisinau Agreement in 2014 and concluded that it is in need of revision and that the national laws of CIS countries require amendments dictated by international standards for child rights. Many specialists working in the sphere of child protection and directly in transit institutions admit that the Chisinau Agreement has outlived its usefulness.⁷⁹

However, the situation in former Soviet countries and the world in general has changed so sharply since the time of this agreement's signing that revising this document would be ineffective. It would be much more promising to **execute new bilateral agreements specifically on the repatriation/readmission of children** with consideration for recent UN documents and initiatives to protect migrant children. Guidelines for the repatriation of children developed by some countries (Moldova, Kyrgyzstan) represent a step in the right direction in comparison with outdated CIS documents, but, since repatriation is a bilateral process, agreements regulating the obligations of both countries in the process of handing over and receiving children are necessary.

In recent years, the fight for the rights of migrant children has spread throughout the world with the support of civil society and international and state structures. In 2012, the global campaign Stop Immigration Detention of Children was launched,⁸⁰ which included the Parliamentary Campaign to End Immigration Detention of Children of the Parliamentary Assembly of the Council of Europe.⁸¹

In addition, important UN documents on the protection of migrants' rights have been recently adopted. These include the New York Declaration for Refugees and Migrants⁸² (approved by the UN General Assembly in 2016), the two abovementioned joint general comments of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and of the Committee on the Rights of the Child: No. 3 CMW/No. 22 CRC (2017) "On the General Principles

79 A participant in the roundtable concerning the problems of the transit of children organized by ADC Memorial in Kyiv on June 15, 2017 expressed the view that "we need a new Chisinau Agreement."

80 Website of the Stop Immigration Detention of Children: <https://endchilddetention.org/>.

81 The Parliamentary Campaign to End Immigration Detention of Children, <http://website-pace.net/web/apce/children-in-detention>

82 New York Declaration for Refugees and Migrants, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

Regarding the Human Rights of Children in the Context of International Migrations” and No. 4 CMW/No. 23 CRC (2017) “On State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return.” It is expected that another UN document — the Global Compact for Migration — will be adopted in 2018. These guidelines charge UN member states to amend laws and practices concerning child migration.

In addition to legislative and procedural changes, independent monitoring of the situation of migrant children that includes the participation of the child’s country of origin is required. There are practical guides for monitoring institutions where children are deprived of liberty due to their immigration status, for example, “Visiting places where children are deprived of their liberty as a result of immigration procedures. Guide for parliamentarians” (PACE, 2017)⁸³. More general guides on monitoring places where children are deprived of their liberty, published by EU member countries, can also be used to monitor the immigration detention of children.⁸⁴

For the countries of Eastern Europe and Central Asia that have been affected by the regional migration of millions, possible forms of monitoring include visits to juvenile transit institutions by human rights defenders, ombudsmen, and parliamentarians from children’s countries of origin.

83 Visiting places where children are deprived of their liberty as a result of immigration procedures. Guide for parliamentarians. Council of Europe, 2017.

84 Practical guide: Monitoring places where children are deprived of liberty. 2016; Manual for EU member states: How to ensure the rights of children in conflict with the law? 2018. This publication was the result of the projects Children’s Rights Behind the Bars and My Lawyer, My Rights, coordinated by Defence for Children International – Belgium.



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