

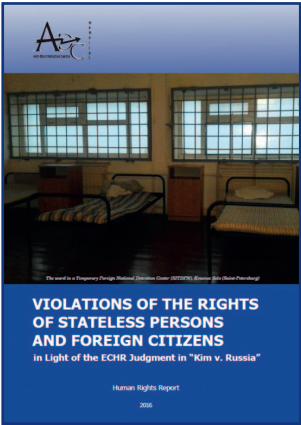
IMPRISONED STATELESS PERSONS IN RUSSIA: The Search for a Way Out of a Legal Dead End

Update to ADC Memorial's Report "Violations of the Rights of Stateless Persons and Foreign Citizens in Temporary Foreign National Detention Centers in Light of the ECtHR Judgment in "Kim v. Russia" (2016)

2017

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**A NEW STAGE OF JUDICIAL PROTECTION FOR STATELESS PERSONS:
the case of Noé Mskhiladze is with the RF Constitutional Court**

On 18 April 2017, the RF Constitutional Court considered the complaint of Noé Mskhiladze, whose interests were represented by attorneys with the support of ADC Memorial. The applicant is a stateless person who fell victim to loopholes in Russian laws, just like Roman Kim, the applicant in a case won in the European Court of Human Rights (ECtHR) in 2014. The judgment in Kim’s case has not been executed by the Russian Federation.

Noé Mskhiladze was born in Georgia in 1972. He moved to Leningrad before the breakup of the Soviet Union, where he was educated and got married. He has not left Russia since 1990. Mskhiladze was never able to exchange his Soviet passport for a Russian passport, even though he tried to resolve his status multiple times. Georgia never confirmed his citizenship. The first time Mskhiladze was in a SITDFN (specialized institution for the temporary detention of foreign nationals), he spent six months there (from 10 March 2015 to 30 August 2015): after Mskhiladze served his sentence for a criminal offense, the Ministry of Justice issued a directive on the undesirability of his stay in the RF, and a court issued a ruling to deport him and placed him in a STIDFN until the enforcement of this ruling. The second time Mskhiladze found himself in a SITDFN was in accordance with a ruling of Saint Petersburg’s Kirov District Court: on 15 December 2015, the court found him guilty of violating the regime of stay in Russia (art. 18.8.1 of the RF Code of Administrative Offenses) and imposed a punishment in the form of a fine and expulsion, with confinement in a SITDFN until expulsion. Mskhiladze remains in that SITDFN to this day. His attorney has repeatedly appealed the deportation ruling, but higher courts have refused to reverse the ruling and release Mskhiladze from the SITDFN. Court bailiffs, who could not enforce the applicant’s deportation, also applied to the court, but their appeal was also denied.





One of the main problems in a SITDFN is that sanitary regulations for cell size are not complied with, and the cells are frequently overcrowded. The SITDFN in Saint Petersburg is intended to hold 336 people but it is often overcrowded. Sometimes the shower and toilet are right in the cells and are separated from the main living space by only a curtain or short wall.



Currently each prisoner gets less than 2.5 m² of living space, since rooms of about 8–10 m² hold four people.



The cell of the SITDFN in Saint Petersburg does not have a sink or access to drinking water. The entire floor has only one toilet and one shower, which are used by several dozen people.



One of the floors of the Saint Petersburg SITDFN has prison cells that are always locked. People in them are not allowed to leave them and move around the floor.



Only the mice have complete freedom in the SITDFN — they run all over the cells and other rooms because there is no compliance with sanitary regulations or extermination. They're like household pets for the prisoners.

A directive on the undesirability of the stay/residence of a foreign citizen or stateless person in the RF can be adopted by various government agencies (RF Government Resolution No. 199 of 7 April 2003 establishes a list of 11 such agencies, including the Ministry of Foreign Affairs, the Federal Migration Service, the Ministry of Internal Affairs, the FSB, and the Ministry of Justice). Directives on the undesirability of the stay of a foreign citizen or stateless person serving a sentence in a detention facility are adopted by the Ministry of Justice (in accordance with Ministry of Justice Order No. 171 of 20 August 2007. After 1 May 2012, when provisions of Federal Law No. 400-FZ “On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Implementation of International Readmission Agreements of the Russian Federation” of 6 December 2011 entered into effect, deportation rulings have been issued in relation to foreign citizens and stateless persons serving sentences who have been found “undesirable” by the Ministry of Justice. These deportation rulings must be enforced immediately following the release of these people from detention centers (Article 4 of this law). Under this law, deportation is accomplished forcibly (people cannot leave on their own), and these people must be held in a SITDFN until deportation. While citizens of other countries may be deported, deportation is not possible for stateless persons, whose new confinement turns into a separate form of punishment not envisaged by Russian law.

In 2014–2016, the Ministry of Justice issued 29,614 rulings on undesirability of stay in the RF.

In 2014: 149 rulings were challenged, 27 were granted in part

in 2015: 337 rulings were challenged, 56 were granted in part

in 2016: 480 rulings were challenged, 43 were granted in part

(These statistics were made public by a representative of Ministry of Justice at the 18 April 2017 session of the RF Constitutional Court)

Mskhiladze’s attorneys challenged the constitutionality of two articles of the Code of Administrative Offenses in relation to the impracticability of expelling stateless persons: Article 31.7 “Termination of the Execution of a Decision to Impose an Administrative Penalty” (lack of the legislative ability to terminate administrative proceedings, since it is not possible to expel stateless persons and since this reason for terminating administrative proceedings is not included in the comprehensive list) and Article 31.9 “Limitation Period for Executing a Ruling to Impose an Administrative Penalty” (the limitation period for executing administrative expulsion is two years, but expulsion rulings do not indicate any specific period for confinement in a SITDFN – both foreign citizens and stateless persons are confined there with the vague wording of “until expulsion”). If the purpose of confinement in a SITDFN is to ensure expulsion, but this purpose is unattainable, then holding a person in custody, in prison conditions, without access to legal aid, and for an indeterminate period means violating each person’s right to human dignity (Article 21 of the RF Constitution), freedom and personal inviolability (Article 22 of the RF Constitution), and judicial protection (articles 46.1 and 46.2 of the RF Constitution) and violating the constitutional principle of the correspondence of Russian law to international law (Article 15.4 of the RF Constitution), the constitutional guarantee of human rights in accordance with international and universally recognized norms (Article 17.1 of the RF Constitution), and the constitutional principle of exemption from liability for actions that were not recognized as violations at the time of their commission (Article 54.2 of the RF Constitution).

The RF Supreme Court, the State Duma, the Federation Council, the Ministry of Justice, the Prosecutor General’s Office, and the dean of the Law Faculty at Voronezh State University provided written responses to the questions of Judge Rapporteur S.D. Knyazev. During the Constitutional Court session in Mskhiladze’s case, representatives of the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Federal Bailiffs Service, and the RF president’s Special Representative to the Constitutional Court spoke during the session.

The only author of these responses and expert opinions to recognize the complaint as justified was the dean of the Law Faculty at Voronezh State University, who cited ADC Memorial’s report on the case of Kim v. Russia.

“The complaint is justified, since the applicant does not hold citizenship of a country, which means that his expulsion from the territory of the Russian Federation is impossible and his confinement in a center for expulsion becomes open-ended, which is banned by Paragraph f of Clause 1 of Article 5 of the Convention on Human Rights and Fundamental Freedoms (signed in Rome on 4 November 1950) ...A stateless person must be released and issued the corresponding documents to prevent the possibility of being confined a second time in a specialized institution.”

Yu.N. Starilov, dean of the Law Faculty at Voronezh State University.

In their responses and oral presentations at the Constitutional Court session, representatives of all the government agencies refused to acknowledge a violation of the RF Constitution in this case, although they agreed that applicant Mskhiladze’s rights were violated and that a number of legislative acts need to be amended.

“By establishing a list of grounds for terminating enforcement of a ruling to impose an administrative penalty (Article 31.7) and limitation periods for executing rulings to impose an administrative penalty (Article 31.9), the challenged provisions of the Code create the same (equal) conditions for all the participants in proceedings for cases on administrative violations and do not limit the right to judicial protection guaranteed in Article 46 of the RF Constitution. Thus, they cannot be viewed in and of themselves as violating the applicant’s constitutional rights in the aspect indicated by him.”

A.A. Klishas, Chairman of the Constitutional Law and Nation Building Committee of the Federation Council

“...in light of the insufficient legal regulation of questions of expelling stateless persons from RF territory, articles 31.7 and 31.9 of the Code of Administrative Offenses do not in and of themselves contravene the RF Constitution.”

A.D. Alkhanov, Deputy Minister of Justice

In general, the representatives from government agencies took exceptionally rigid positions on stateless persons: they noted in both their responses and oral presentations that these people are first and foremost violators of migration laws and are located illegally in the RF. According to representatives from the State Duma, the Prosecutor General’s Office, and the Ministry of Justice, changes in laws must result in the appearance of the legal ability to expel these people from Russia.

“It must be acknowledged that the problem being considered lies not in the fact that the Code does not indicate a specific period of detention in a specialized institution, but in the fact that the matter of the administrative expulsion of stateless persons is not regulated by RF laws. The status of stateless persons does differ from that of foreign citizens, but these differences are not defined in Federal Law No. 115-FZ “On the Legal Situation of Foreign Citizens in the RF.” In our opinion, the questions connected with the stay of stateless persons in the RF, and, inter alia, administrative expulsion, must be resolved comprehensively in Federal Law No. 115-FZ, the Administrative Code, and, possibly, Federal Law No. 114-FZ “On the Procedures for Entering and Departing the RF.” Additionally, as we see it, the first matter to be resolved should be the possibility of the administrative expulsion of such people in principle and, in this connection, their terms of stay in specialized institutions, if necessary.”

T.V. Kasayeva, Special Representative of the State Duma to the RF Constitutional Court

“If there is a decision on undesirability of stay, these decisions must be executed. We are talking about the security of our state. And the mechanism [for execution] must be defined.”

T.A. Vasilyeva, representative of the Prosecutor General’s Office, oral presentation to the RF Constitutional Court, 18 April 2017

“The problem is how to execute a decision on the undesirability of stay in the RF. It must be executed. If it cannot be executed, we have to think about how to execute it. This citizen must have a status. A temporary residence permit is the first step, but a criminal record precludes this. It’s a vicious circle. But if we allow it – after all, the state is not interested in such a citizen.”

M.A. Melnikova, representative of the Ministry of Justice, oral presentation to the RF Constitutional Court, 18 April 2017.

“The failure to apply restrictive measures in the form of placement and confinement in a specialized institution for a period sufficient to execute the corresponding judicial act for persons subject to deportation from the RF allows these people to move freely around the RF, thus creating prerequisites for aggravating the crime situation and an additional threat to national security.”

A.D. Alkhanov, Deputy Minister of Justice

Representative of the Federal Bailiffs Service D.V. Zheludkov stated that he does not see any barriers to executing the expulsion of stateless persons, thus contradicting numerous examples from judicial practice. He called the application filed by bailiffs on the impossibility of expelling stateless persons the “personal opinion” of certain members of the service.

A discussion on the matter of providing documentation for stateless persons developed in the Constitutional Court. Chairman of the Federation Council A.A. Klishas noted that stateless persons are extremely vulnerable and must be assigned a special status and issued a special document (separate from a residence permit, which would make a future application for citizenship possible) that would allow them to live, work, and travel legally and to select their place of residence; however, they would be the subjects of strict monitoring by the police, including through the use of “technical equipment to control movement.”

The special representative of the RF president objected to establishing a procedure for legalizing stateless persons found undesirable and offered a bizarre proposal to find a country that would accept these people.

“The case file does not show that the applicant himself has ever taken any action to resolve his legal status in the RF or in Georgia. What is the Russian Federation supposed to do? Accept him as its citizen? No, he shouldn’t be held in a specialized institution. But there also can’t be a legal vacuum where he is legalized in a country where he was found to be undesirable. Russia should not allow such a legal regime. What are we supposed to do? Issue him a residence permit or a passport? I don’t think so. If he’s ready to go to Georgia, but Georgia won’t accept him, then he has to find another country that will accept him.”

M.V. Krotov, Special Representative of the RF President to the Constitutional Court, oral presentation to the Constitutional Court, 18 April 2017

Many speeches referred to the fact that work to change RF laws regulating confinement in a SITDFN is already in progress.

RF Government Order No. 2831-R “On the Approval of a Plan of Legislative Drafting Activities of the Government of the Russian Federation for 2017” establishes a deadline of September 2017 for submitting these changes to the RF government and a deadline of December 2017 for submission to the State Duma (paragraph 26 of the Order “On Amendments to the Code of the Russian Federation on Administrative Offenses (in regards to Establishing, Extending, and Suspending Deadlines for Holding People in Specialized Institutions for the Purpose of Administrative Expulsion and Deportation and the Procedure for Appealing these Decisions”).¹

The content of planned changes is set forth in greater detail in the Report on the Results of Monitoring the Enforcement of the Law in the Russian Federation for 2015: Annex No. 5. What follows is a list of judgments of the European Court of Human Rights in connection with which amendments must be made to laws of the Russian Federation (as of 20 August 2016):²

¹ http://www.consultant.ru/document/cons_doc_LAW_210136/

² http://www.consultant.ru/document/cons_doc_LAW_212801/6ca59ee452543987d3b0fd8fd7e8fc15b2906c2/

JUDGMENTS COMBINED INTO THE AZIMOV GROUP OF CASES

Between January 2014 and June 2015, the European Court issued seven judgments that raised the problems specified in the judgment of the European Court of 18 April 2013 in the case of Azimov v. Russia, complaint No. 67474/11, including in the judgment of 17 July 2014 in the case of Kim v. Russia, complaint No. 44260/13;

Among other things, the European Court established that the Russian government violated sub-clauses 1 and 4 of Article 5 of the Convention in connection with the applicants’ illegal confinement during the implementation of the procedure of administrative expulsion, which manifested itself in the fact that the court ruling did not specify timeframes for the applicants’ confinement in temporary detention centers for foreign nationals and in the applicants’ extended confinement in the corresponding institutions.

Moreover, the judgment points out that Russian laws lack norms stipulating timeframes for confinement for the purpose of administrative expulsion and deportation, as well as norms regulating the procedures for appealing the lawfulness of applying this measure.

At the same time, the Russian government’s arguments that the period for confinement in a specialized institution for the purpose of administrative expulsion is limited to the deadline established by Russian law for executing a ruling on an administrative violation were dismissed.

It was noted that in any case, this period of confinement in a specialized institution cannot be called proportional, since it can in actual fact exceed the maximum period for punishment in the form of administrative arrest and amounts to two years. In this connection, it was noted that the restrictive measure aimed at executing an administrative penalty should not be punitive in nature or be harsher than the maximum administrative penalty envisaging deprivation of freedom (administrative arrest).

This problem is systemic in nature and requires the adoption of general measures, specifically, amendments to laws of the Russian Federation.

Additionally, the European Court’s judgment of 17 July 2014 in the case of Kim v. Russia, complaint No. 44260/13 establishes a violation in connection with the applicant’s continued confinement in a temporary detention center for foreign nationals for the purpose of administrative expulsion, even though there are no grounds for the application of this restrictive measure in light of the impossibility of the applicant’s administrative expulsion.

Thus, as of now the European Court has formed a firm legal position in accordance with which confinement in a specialized institution for the purpose of administrative deportation is the equivalent of deprivation of freedom in the sense of Article 5 of the Convention and must correspond to the requirements set forth in it. These requirements include the validity and proportionality of the corresponding restrictive measure, the court’s mandatory establishment of a clearly reasoned timeframe for its application with account for the actual possibility of administrative expulsion or deportation, and the possibility of appealing the legality of the corresponding court decision.

With account for the conclusions of the European Court and with the participation of authorized government agencies, work was done to develop the question of the need to set confinement periods in centers for the temporary detention

of foreign nationals and stateless persons for the purpose of administrative expulsion, deportation, or readmission (henceforth—specialized institutions) and to regulate the procedure for appealing the legality of confinement in these institutions for the purpose of subsequent administrative expulsion (deportation).

Federal executive branch agencies, the Prosecutor General’s Office, and the Supreme Court have not reached a common position on the question of implementing these European Court judgments.

With account for the provisions of the report on the results of monitoring enforcement of the law in the Russian Federation in 2014, the Russian Federal Migration Service (before it was abolished) in cooperation with the Ministry of Justice, the Ministry of Internal Affairs, the FSB, the Federal Bailiffs Service, the Prosecutor General’s Office, and the Supreme Court also worked on the question of the need to amend Russian laws in terms of setting confinement periods in specialized institutions for people in relation to whom a ruling on administrative expulsion (deportation ruling) has been made, as well as the procedure for extending or suspending such periods.

It is now necessary for the Ministry of Internal Affairs (since it is taking over the Federal Migration Service’s functions) to prepare amendments to current laws with account for the European Court’s conclusions and the suggestions of authorized government agencies. The corresponding legislative proposals may be prepared separately or as part of comments on the draft of the Federal Law “Code of the Russian Federation on Administrative Offenses,” which was brought to the State Duma of the Federal Assembly of the Russian Federation by a group of deputies (Bill No. 957581-6).

The work of the Ministry of Internal Affairs, the Ministry of Justice, and the Federal Bailiffs Service in cooperation with the Prosecutor General’s Office and the Supreme Court should be organized to prepare amendments and additions to the Federal Law “Code of the Russian Federation on Administrative Offenses,”(by preparing a separate bill) or corrections of the Government of the Russian Federation to the draft of the Federal Law “Code of the Russian Federation on Administrative Offenses,” which was brought to the State Duma of the Federal Assembly of the Russian Federation by deputies with regard to establishing:

- maximum confinement periods in specialized institutions for the purpose of administrative expulsion and deportation;
- the grounds and procedure for setting, extending, or suspending confinement periods in these institutions;
- the procedure for appealing a decision to confine a person to a specialized institution for the purpose of administrative expulsion and a decision to extend the confinement period of a person in this kind of institution for the purpose of administrative expulsion;
- **the need for courts to consider alternate measures to confinement in a specialized institution and to render reasoned decisions if motions to place people in a specialized institution for the purpose of administrative expulsion (deportation) or to extend the confinement period at a specialized institution are granted, as well as the ability, grounds, and procedure for replacing the given restrictive measure with a more lenient measure unconnected with deprivation of freedom.”**

Thus, the process of amending Russian law, which should improve the situation for stateless persons, is proceeding at a snail’s pace: there are plans to introduce amendments to provisions of the Code of Administrative Offenses regulating expulsion and deportation in December 2017. This means that the possible adoption and entry into effect of these amendments should not be expected until mid-2018.

Additionally, beyond the framework of legislative reform, there continue to be problems with legalizing and documenting stateless persons, which makes the risk of a new prosecution for violating the migration regime entirely real.

Detention conditions for stateless persons and foreign nationals in SITDFNs, which were found to be inhuman and degrading by the European Court, have also not been a subject of discussion for state agencies, and no measures have been taken to improve the situation. Thousands of prisoners continue to suffer from overcrowded cells, the lack of walks, unsanitary conditions, and insufficient food, and are caught in an information vacuum without medical or legal assistance.

Urgent changes must be made to laws and practice, which violate the rights of confined stateless persons. First and foremost, all stateless persons in SITDFNs must be released.

The ruling of the Constitutional Court is pending...

HISTORY OF THE JUDICIAL PROTECTION OF STATELESS PERSONS: the case of Kim v. Russia and the European Court’s judgment (2014)

In 2013, ADC Memorial, in cooperation with the attorneys Olga Tseytlina and Yury Serov and the Human Rights Center Memorial (Migration and Law Network), instituted an action with the European Court for Human Rights. This action raised endemic problems with Russian law relating to terms, judicial oversight, and procedures and conditions for the detention of foreign citizens and stateless persons in SITDFNs (specialized institutions for the temporary detention of foreign nationals).

The applicant in this action was Uzbekistan-born Roman Anatolyevich Kim—a former citizen of the USSR who now has no valid citizenship. Like many other former citizens of the Soviet Union, Roman Kim was not able to acquire Russian citizenship (he had served time in prison) and was also not offered any other way to gain legal status in the RF. As a result, in 2011 he was placed in the Saint Petersburg SITDFN because he had no identification (a restrictive measure to execute an administrative ruling on expulsion). He was held there for over two years “until expulsion.” Even though it was established that Kim could not be expelled because the Republic of Uzbekistan did not recognize him as its citizen, Russian courts refused to review his complaint regarding his arbitrary, extended, and purposeless detention several times.

On 17 July 2014, the ECtHR issued a judgment in Kim’s case finding the Russian Federation guilty of violating Article 3 (inhuman detention conditions), part 1 of Article 5 (extended detention without the prospect of expulsion, lack of periodic judicial oversight of detention terms), and part 4 of Article 5 (violation of the right of SITDFN prisoners to appeal and to judicial oversight over the legitimacy and length of detention) of the European Convention on Human Rights. The ECtHR obligated Russia to adopt measures of a general nature to correct this situation in order to prevent similar violations in the future.

Such measures should have included amending laws to eliminate violations of the rights of people held in SITDFNs (ensuring oversight of terms and the legitimacy of placement in a SITDFN, improving detention conditions) and preventing stateless persons from ending up in these facilities (creating an effective procedure for providing legal status to stateless persons, including persons who have not been able to acquire legal status over the course of decades (generally former citizens of the USSR)).

Russia’s implementation of the measures prescribed in the ECtHR judgment could bring significant improvement to the lives not just of stateless persons like Roman Kim, whose ambiguous status violates the law, but also of foreign nationals in SITDFNs, since they also suffer from extended detention in inhuman conditions and cannot challenge this violation of their rights on their own or with the help of professional attorneys due to deprivation of any connection with the outside world.

In May 2016, the Anti-Discrimination Center Memorial and the Human Rights Center Memorial submitted a communication to the Committee of Ministers of the Council of Europe on the failure to implement the judgment of the ECtHR in the case of Kim v. Russia. This communication cited numerous examples of how the rights of stateless persons confined in SITDFNs continue to be violated in the absence of general.³

³ Communication from NGOs (Human Rights Centre «Memorial» and Anti-Discrimination Centre «Memorial») (26/05/2016) in the case of Kim against Russian Federation (Application No. 44260/13)<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069792c>

On 11 April 2017, the Russian Federation sent an action plan to implement a group of eight ECtHR judgments, which were combined under the name “Kim,” to the Committee of Ministers of the Council of Europe. This action plan describes individual measures that have already been taken and planned general measures.⁴ Specifically, it asserts that Roman Kim received compensation in the amount of 30,000 euro, that he was released, that he was not deported, and that there is no risk that he will be brought to liability for violating the migration regime. Thus, the RF has met its obligations to the applicant in full. In terms of general measures, the Russian government made assurances that the amendments to the Code of Administrative Offenses, which are meant to regulate the timeframes and procedures for appealing confinement in a SITDFN, would be submitted to the State Duma in December 2017.

Judicial practice after the ECtHR judgment in the case of Kim (2014–2017): stateless persons remain in a legal dead end

Unfortunately, the Russian government has not yet adopted any general measures to implement the ECtHR judgment in relation to stateless persons and other prisoners in SITDFNs. It has not made any systemic changes to laws or enforcement practices, while certain positive changes have turned out to be temporary and inconsequential.

On the one hand, agencies involved in deciding the fate of stateless persons have begun to acknowledge contradictions in the law. For example, bailiffs, who are charged with expelling stateless persons, have started to appeal to courts on their own about the impossibility of performing this action; prosecutors have noted in certain cases that people cannot be placed in SITDFNs “until expulsion,” i.e. for an indefinite period; and judges have released stateless persons from SITDFNs by reversing previous rulings in part.

On the other hand, judges do not want to force Russia’s migration service to issue stateless persons documents that would make it possible for them to live legally in the RF in order to prevent the likely possibility of their ending up in a SITDFN again. Courts leave stateless persons with this ambiguous status, and they also frequently replace “expulsion” with “independent controlled departure,” which is patently impossible (a person cannot leave the RF without documents), thus pushing stateless persons to commit a crime (illegal crossing of state borders, Article 322.1 of the RF Criminal Code, which is punishable by steep fines or forced labor / deprivation of freedom for a period of up to two years).

Upon release, which occurs under a court decision or simply upon the expiry of the maximum term set by law, stateless persons are still not issued documents that would enable them to stay legally in the RF, even though they also cannot leave the country without documents, thus increasing the already high likelihood that they will end up in a SITDFN again.

⁴ Communication from Russian Federation concerning the case of KIM v. Russian Federation (Application No. 44260/13), 11.04.2017, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680708107>

Problems raised in the Kim case:

Stateless persons are considered a part of the group “foreign nationals” in laws, as well as articles regulating expulsion/deportation from the RF. Expulsion/deportation rulings are issued in relation to stateless persons, even though there is nowhere to deport them.

In four Russian regions (Moscow, Moscow Oblast, Saint Petersburg, and Leningrad Oblast), the law prescribes a fine and mandatory expulsion for violations of the migration regime, while in other regions, judges may limit this to a fine, although such cases are rare).

To ensure expulsion, stateless persons are confined in specialized institutions without a specific term of detention using the phrase “until expulsion.” There is no opportunity for judicial control over the term or the advisability of confinement (even though courts regularly have control over pretrial restrictions for suspects in criminal cases).

The law allots two years for executing an expulsion ruling. Stateless persons spend this extended period (which can be even longer in practice) in conditions that the European Court found inhuman and degrading and that are in many ways worse than prison conditions (for example, people cannot use their own money and there are no stores, doctors, gyms, libraries, or places for extended visits). Free legal assistance is not provided to SITDFN prisoners, even though a public defender is appointed for people suspected of criminal offenses.

At the end of the confinement period of up to two years, stateless persons are released from the SITDFN, but are not issued any documents that would allow them to live legally in the RF. Therefore, many stateless persons end up confined in a SITDFN again for “violating the migration regime.”

The RF lacks any effective procedure for legalizing stateless person, and laws on citizenship are extremely strict. It has not been possible to overcome the problem of statelessness, which became relevant after the breakup of the Soviet Union, even though 25 years have passed since this time: the number of stateless people in the RF remains high (a minimum of 178,000).

The failure to implement the ECtHR judgment in the case of Kim leads to tragedies

Vepkhviya Sordiya, a stateless person born in Georgia, died on 8 October 2016 in a hospital after he—a critically ill person—was held in a SITDFN for almost a year “for the purpose of expulsion,” which was patently impossible. In fact, Mr. Sordiya was released and taken to the hospital only when it became clear that he had only several hours to live.

Sordiya’s attorneys repeatedly pointed out to the courts that it was pointless to confine in a SITDFN a stateless person who cannot be expelled or deported, since no country will accept him as their citizen, Judges were also informed of Sordiya’s serious health problems and of his need for urgent care (his cellmates testified that Sordiya could not sleep because of the constant pain). But on 16 August 2016, the Saint Petersburg City Court refused to cancel the expulsion: “The fact that V.M. Sordiya had an illness is not a ground for exemption from administrative expulsion imposed by judges of the district court.” Nothing changed even after the interference of the European Court of Human Rights, which asked the RF government about Sordiya’s health and the reasons for his detention in September within the framework of the urgent response procedure used when there is a threat to a person’s life or health.

Sordiya had been previously sent to a SITDFN for “violating the migration regime,” but was released in 2015 under a court decision that noted that “expulsion from Russia is not possible, and his confinement in a detention center for foreign nationals will become indefinite.” However, the court did require Sordiya to leave Russia on his own, which is impossible, since crossing a state border without the proper documents is a criminal offense. Meanwhile, the court refused to grant Sordiya’s attorney’s request to require the Russian government to provide documents for this stateless person. As a result, ADC Memorial’s client found himself in a catch-22 situation: he couldn’t leave Russia, but by remaining in Russia without documents, he put himself at constant risk of a new arrest and confinement. In October 2016, he was again confined to a SITDFN for failing to execute the inexecutable court decision.

UNWANTED PEOPLE

Life in a SITDFN through the eyes of a prisoner

“A new category of people has appeared — unwanted people! ...I think that one way or another the state must offer stateless persons the chance to reside legally in Russia. There isn’t a chance for this now, so stateless persons are subjected to repressions. People are held in SITDFNs for months and, in some cases, years! I think this is undesirable in and of itself and that it results in unjustified expenses from the state budget to keep these people in prison.”

Stateless person Viktor Nigmatulin, a prisoner at the Kemerovo SITDFN

The photographs and captions in this publication were made by Viktor Nigmatulin, a prisoner at the Kemerovo SITDFN (South-Western Siberia). He was found “undesirable” under a decision of the Ministry of Justice and imprisoned for the purpose of ensuring deportation, but his confinement extended for many months, since it was not possible to expel or deport him to any country.

Eighty-one SITDFNs are in operation in the Russian Federation. Violators of the migration regime — foreign nationals and stateless persons — are confined in these centers “until expulsion.”

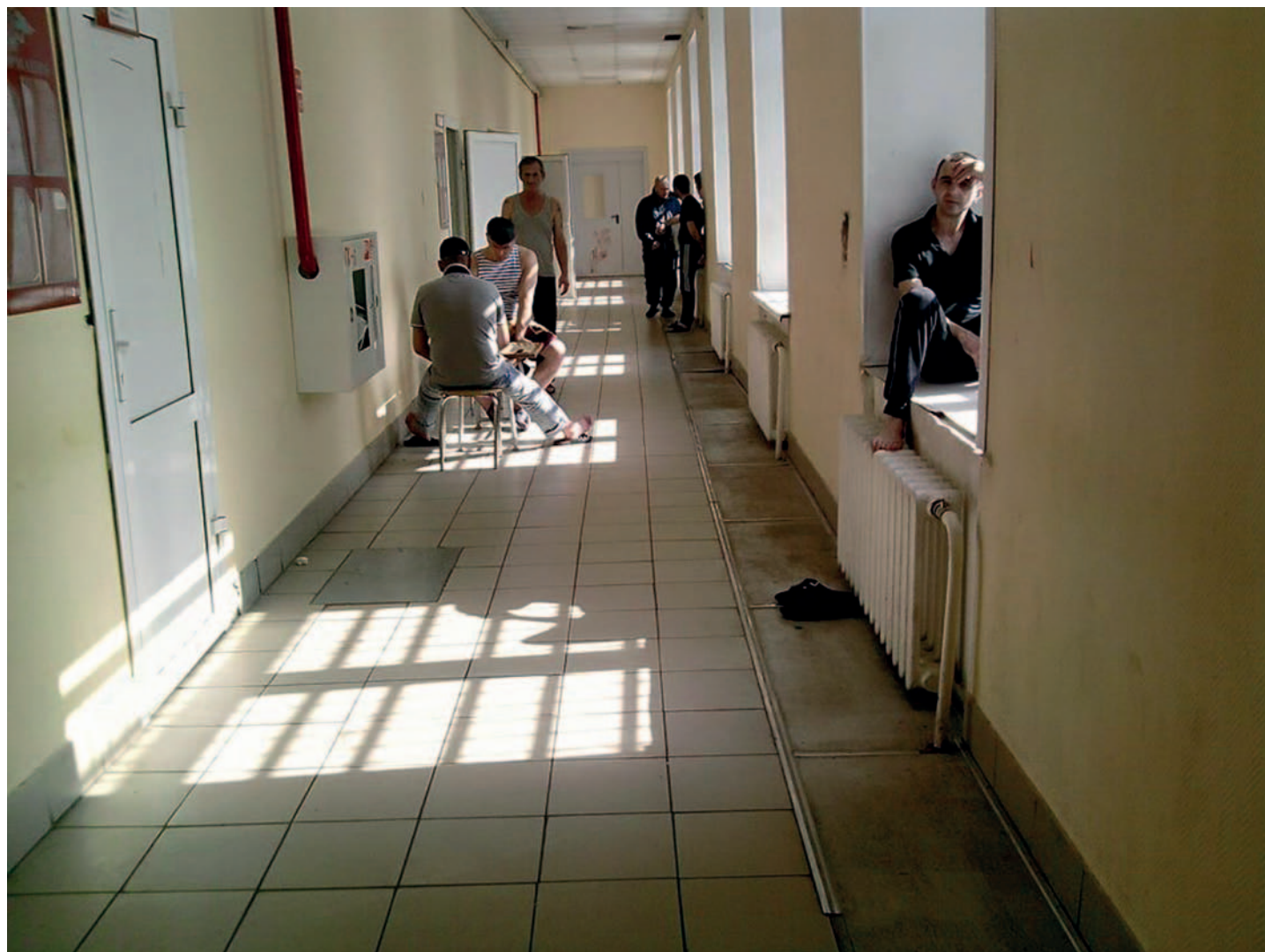
SITDFNs in Russia are designed for a total of approximately 8,000 people, but they are frequently overcrowded. In addition to foreign nationals awaiting deportation, each SITDFN also holds dozens of stateless persons who cannot be expelled anywhere.

According to the 2010 census, over 178,000 stateless persons live in Russia (their actual number is much higher). They are all potential SITDFN prisoners.

Detention conditions in SITDFNs vary from region to region: some provide a small courtyard for walking, while others only offer a prison cell for the rare opportunity to walk; some SITDFNs have cafeterias, while in others prisoners are served food in plastic containers through a window in an iron door and have to eat sitting on their beds; some SITDFNs allow prisoners to watch television, but in most centers, prisoners exist in complete information isolation. They don’t have the opportunity to use their own money, and they have no access to medical or legal assistance. SITDFNs are closed to human rights defenders, journalists, volunteers, and activists. Only attorneys with an order have access to prisoners.



I committed a crime in 2009, which I sincerely regret. I got the sentence I deserved and served my time. When I was released, I was immediately taken to a Foreign National Detention Center (FNDC), without even being given the chance to get a breath of fresh air. This was in May 2015, and I’m still here, in the FNDC (5 April 2017). This all happened because of my prior record and the directive of the RF Ministry of Justice “on the undesirability of my stay in the RF until 2023.” I tried to appeal this directive, but I was always denied. I am a stateless person who has lived in Russia for over 20 years and I have close relatives in Russia, so there’s just nowhere to deport me. The only thing I know right now is that stateless persons in the RF are not exempt from indefinite confinement without a crime or a sentence, even if they have served a full sentence under a court verdict and even if their records have been expunged.



So, what exactly is a SITDFN (Special Institution for the Temporary Detention of Foreign Nationals)?

It's a new kind of prison, for foreigners waiting for expulsion, as well as for stateless persons, who can be held there for years because there is nowhere to deport them. For example, the Kemerovo SITDFN. It's a one-story building located just outside the city. From above, this building looks like the number 6, or, rather, the letter 5. So, inside this "letter," there's a built-in yard for walking. There are six sleeping rooms in this building, one for women. A TV room, shower room, and cafeteria. Each sleeping room has a toilet and also surveillance cameras.



The rooms hold from four to 12 or 16 people. This SITDFN is meant for 37 people, but it "accommodates" up to 90. On average, there are 60 people here. The rooms are locked from 22:00 to 07:00. Then it's time to get up, shift change, that's when they count us, then breakfast from 09:00 to 10:00. And that's it. There's nothing to do all day except watch TV. They let us exercise for an hour and that's it. We spend our days "visiting" each other, and we spend the evenings in our rooms. And that's how it is day after day, month after month, year after year.... And life passes by... What do we need all of this for?



Even to the untrained eye it's clear that the requirements for square meters per person have not been complied with. In the women's room, there are six beds packed closely together. There are no chairs.



Room where men live



Portion of soup for lunch.

How simple our desires can be, and it would seem, totally within reach, but there are places where it's not like that! For example, today they brought us such an appetizing looking pea soup for lunch, but it was totally unsuitable for use—it had gone bad! Remarkably, this happens regularly, about once a month. Of course, no one ate this slop! Ah...when will they release me from here? I want pea soup.... Fresh pea soup.



Dinner, February 2016

Cost of three meals per day for a man – 415.00 rubles, for a woman – 401.67 rubles.

Breakfast is from 09:15–10:00, lunch from 13:00–14:00, and dinner from 17:30–18:15

Daily rations come in the following proportions: 30% in the morning (until 08:00 – breakfast), 40% in the afternoon, and 30 percent in the evening (until 13:00 – lunch, until 16:00 – dinner)

From the specifications for order No. 12674864 for the provision of services to organize three hot meals a day, including on weekends and holidays, for people held in the Temporary Detention Center for Foreign Nationals of the Main Directorate of Internal Affairs for Kemerovo Oblast in 2017.



So, when we have time, we're cultivating a small garden in our room. Garlic, dill, peppers :)



No activities are provided in the SITDFN. The only entertainment is the television.



The only place where it is possible to walk a little. Happy summer! Photo: Kemerovo SITDFN, exercise enclosure for 60–70 people.



Photograph May 2016. Prisoners can walk for one hour a day in the summer and 30 minutes a day in the winter.



An SITDFN prisoner slit his wrists as a sign of protest against the inability to buy necessary items. SITDFNs do not offer any way to earn money or spend it. Many people are imprisoned here for years.



Stateless persons in Kemerovo SITDFN. 3 April 2017 – 25 people (approximately one-third). Indefinitely – until expulsion. On the right is Yakushev Nikolay Nikolayevich, born 1951, in the center is his daughter Yakusheva Kristina Nikolayevna, born 1992. She is serving time with her father, she has never had documents and has been in Russia since 1995. Photograph taken in March 2016.



There's only one shower for all the residents of the FNDC. On average, you can take a shower once every two weeks. This is the stall where anywhere from 45 to 80 people have to shower. Showers can only be taken three days a week, from 07:00 to 22:00. One tank is only enough for three to five people. The hot water runs out quickly, and the boiler takes several hours to warm up. Then, it needs to be heated for about three hours. So think about it, how many people can wash in three days?



17 February 2016. Staff members of the local Federal Migration Service office came today and wrote a hurried report about my administrative violation for...a towel that has been hanging on the wall for over six months.



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