



*The ward in a Temporary Foreign National Detention Center (SITDFN). Krasnoye Selo (Saint Petersburg)
Photo by ADC Memorial*

VIOLATIONS OF THE RIGHTS OF STATELESS PERSONS AND FOREIGN CITIZENS in Light of the ECHR Judgment in “Kim v. Russia”

Human Rights Report

2016

The Anti-discrimination Centre Memorial has spent many years defending the rights of people suffering from discrimination, and in particular the rights of migrants and representatives of vulnerable minorities. This report describes negative impact of non-implementation of the ECHR judgement in “Kim v. Russia” (2014) on the situation of stateless persons and foreigners detained for months and years in “specialized institutions for the temporary detention” (SITDFN) in order «to guarantee the expulsion». No access to legal aid, no judicial control of the term and soundness of deprivation of freedom, no legal opportunities of expulsion in case of stateless persons, inhuman conditions of detention in SITDFN – all this makes the life in “specialized institutions” a cruel punishment for people who did not commit any crimes.

The problem of stateless persons and migrants in irregular situation is important not only for Russia and ex-Soviet countries, but for contemporary Europe as well; the ECHR judgement in “Kim v. Russia” should be taken into account by the countries who are members of the Council of Europe and the European Union.

ADC Memorial is thankful to Viktor Nigmatulin, a detainee of SITDFN in Kemerovo (Siberis), for the materials provided for the report.

TABLE OF CONTENTS

Summary	3
Preface	
STATELESSNESS AS A RESULT OF THE COLLAPSE OF THE SOVIET UNION	6
I. STATELESS PERSONS IN SITDFN: LEGAL PROBLEMS	10
1. LEGAL PATHS TO PROVING THE ILLEGALITY OF CONFINING STATELESS PERSONS IN SITDFNS: ADC MEMORIAL POLICY CASES AT THE ECHR	10
The Case of Kim v. Russia: ECHR Judgment Prescribes the Adoption of General Measures Intended to Change the Situation for Stateless Persons	10
The History of the Fight for the Rights of Stateless Persons through the ECHR: the Case of Lakatosh and Others v. Russia	14
2. SYSTEM PROBLEMS WITH RUSSIAN LAWS RAISED IN THE CASE KIM V. RUSSIA AND REQUIRING IMMEDIATE RESOLUTION	15
2.1 LACK OF AN EFFECTIVE PROCEDURE FOR LEGALIZING STATELESS PERSONS IN RUSSIA	16
"Preferential" Procedure for Obtaining RF Citizenship for "Long-Standing" Stateless Persons and Difficulties with its Implementation.	16
Stateless Persons who Entered Russia after 1 November 2002: No Opportunity to Start the Legalization Process	19
Inability of Stateless Persons with Criminal Records to Obtain Legal Status.	21
2.2 INABILITY TO EXECUTE COURT RULINGS ON THE EXPULSION OF STATELESS PERSONS.	23
2.3 ABSENCE OF JUDICIAL REVIEW OF THE TERMS AND ADVISABILITY OF CONFINEMENT IN A SITDFN, DIFFICULTY ACCESSING LEGAL AID	24
3. FAILURE TO IMPLEMENT THE ECHR DECISION IN ITS TOTALITY AND INDIVIDUAL POSITIVE CHANGES IN ENFORCEMENT PRACTICES	25
II. VIOLATION OF DETAINEES' RIGHTS IN SITDFNS	30
1. STIFFENING OF MIGRATION LAWS AS A FACTOR INCREASING THE RISK OF CONFINEMENT IN A SITDFN	31
2. THE PROBLEM OF EXPULSION TO COUNTRIES WHERE THERE IS A THREAT TO LIFE, INCLUDING TO COMBAT ZONES	34
3. FEMALE DETAINEES IN SITDFNS	37
3.1 Trafficking Victims	37
3.2 Detention of Female Migrants who are Pregnant or Mothers to Young Children in SITDFNs.	38
3.3 Separation of Children from their Migrant Parents during Detention and Expulsion.	40

4. INHUMAN DETENTION CONDITIONS IN SITDFNS	42
Violation of Sanitary and Hygiene Standards	44
Violation of Nutritional Standards	44
Inability to Move Freely Around the Facility	46
Irregular Exercise and Poorly Equipped Exercise Enclosures	46
Lack of Qualified Medical Personnel	46
Violation of Rights to Meetings and Communication with Relatives and Appeals to Government Agencies.	47
Violation of the Right to Work and to Leisure Activities.	48
Arbitrary Behavior of the Administration and Inhuman Treatment of SITDFN Inmates.	48
5. THE PROBLEM OF ARRANGING PUBLIC OVERSIGHT OF SITDFNS	52
III. CONCLUSIONS AND RECOMMENDATIONS	53

SUMMARY

This report is devoted to violations of the rights of stateless persons and foreign citizens sent to specialized institutions for the temporary detention of foreign citizens (SITDFNs) by RF courts for “violating the migration regime” (Article 18.8 of the Code of Administrative Offences). In practice, these people are held in custody, deprived of their freedom, and subjected to the same restrictions as prisoners in jail, even though “placement in a SITDFN” is not considered administrative arrest.

Foreigners find themselves in SITDFNs for overstaying their time in Russia and for having expired or forged residence cards, work permits (a license or an agreement with an employer), or medical insurance papers. Stateless persons are sent to SITDFNs for lacking a valid passport or analogous document. The stated purpose for placement in a SITDFN is expulsion, which is patently impossible for stateless persons, who are not recognized as citizens by their countries of origin. The law allows people to be held in SITDFNs for up to two years (although longer periods have been reported). People held in these facilities are not offered free legal aid (even though people suspected of having committed a crime are assigned a public defender), there is no possibility for judicial oversight of the term and soundness of deprivation of freedom (even though courts monitor the pre-trial restrictions placed on criminal defendants on a regular basis), and detention conditions in SITDFNs are in many ways worse than in prisons (for example, people cannot use their money, there are no stores, no doctors, no gyms or libraries, and no places for extended meetings).

Upon release, which occurs under a court decision or simply upon the expiry of the maximum term set by law, stateless persons are 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.

This state of affairs obviously makes no sense in legal terms and is a gross violation of the rights of stateless persons who have been deprived of their freedom for absolutely no reason whatsoever, since people are placed in SITDFNs for the purposes of eventual expulsion—an impossibility in the case of stateless persons. Moreover, poor detention conditions violate the rights of all SITDFN prisoners, stateless persons and foreign nationals alike. Poor nutrition, infrequent and limited walks, the absence of any conditions for work or leisure, the inability to meet with visitors, and, most importantly, the failure of the state to provide free legal aid and ensure judicial oversight over detention terms turn life in a SITDFN into torture.

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. The claimant 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. He was held there for over two years. 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 and extended detention several times.

On 17 July 2014, the ECHR 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 ECHR obligated Russia to adopt measures of a general nature to correct this situation in order to prevent similar violations in the future.

It is our view that such measures should include 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 to prevent 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 ECHR 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.

However, the Russian government has unfortunately not yet adopted any of these measures to implement the ECHR 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.

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).

Part I of this report examines the problems of stateless persons in Russia, particularly the lack of any mechanism for their legalization, which leads them to SITDFNs with regrettable regularity; reviews the case of "Kim v. Russia" and the possibilities that the ECHR judgment in this case could open for the many thousands of stateless persons living in Russia; and provides an overview of judicial practices that demonstrate the absence of systemic changes in the situation for stateless persons.

Part II describes violations of the rights of all prisoners in SITDFNs. It provides an analysis of why migrants face such a high risk of being placed in these facilities, describes the situation of vulnerable groups like Ukrainian and Syrian citizens driven out of combat zones and women (trafficking victims, pregnant women, mothers of young children), and discusses the problem of children being separated from their parents, which sometimes even results in their deaths. It also provides a detailed analysis of the inhuman detention conditions in SITDFNs and the problem of public oversight of these institutions.

In the **Conclusions and Recommendations** section, ADC Memorial experts insist that the system for placing people in the inhuman conditions of SITDFNs for an extended, indefinite, and unregulated period, frequently without any reasonable necessity, and, in the case of stateless persons, without any possibility of achieving the stated goal (expulsion), must be changed without delay within the framework of the implementation of the ECHR judgment in the case of "Kim v. Russia." To this end, the Russian government must:

- end the persecution of stateless persons and create an effective mechanism for them to achieve legal status;
- create a mechanism for periodic judicial oversight of the need for detention, detention terms, and detention conditions in SITDFNs;
- end the discriminatory practice of placing pregnant women and the mothers of young children in SITDFNs and the practices of separating mothers from their children and expelling children separately, which have already resulted in tragedies;
- improve detention conditions in SITDFNs and create the possibility for families to stay there together;
- write laws to establish the provision of free legal aid to SITDFN prisoners;
- make these institutions more open to relatives, attorneys, human rights defenders, civil activists and volunteers, journalists, and other interested parties.

PREFACE.

STATELESSNESS AS A RESULT OF THE COLLAPSE OF THE SOVIET UNION

According to the UNHCR, there are currently almost 12 million stateless persons worldwide.¹ This legal status has emerged for the following reasons: the formation of new states (usually accompanied by military conflicts, the mass displacement of people, and their marginalization in other countries), state discrimination that restricts the right to citizenship for members of ethnic, religious, and other groups, the discrimination of women and children (in a number of countries children are only assigned the citizenship of their father), and defects in the law that do not allow stateless persons to acquire citizenship or attain another legal status.

The problem of statelessness has still not been overcome in countries formed after the Soviet Union broke up in 1991, in spite of the fact that 25 years have already passed since that time. Even though locally-registered residents are usually granted citizenship in new states, many former Soviet citizens did not “automatically” exchange their Soviet passports for new ones and become citizens of their new states. In fact, invalid Soviet passports are still the only document that thousands of people have. The current problem of statelessness has also been affected by post-Soviet events in former Soviet countries such as local conflicts resulting in the displacement of large groups of the population (1989 pogroms against Meskhetian Turks in Uzbekistan, the Nagorno-Karabakh conflict (1988-1990), the civil war in Tajikistan (1992-1997), armed conflicts in Transnistria (1992) and Abkhazia (1992-1993 and 1998), ethnic clashes in southern Kyrgyzstan in 2010, and many others) and mass labor migration in the region.

Approaches to providing citizens with passports of independent post-Soviet states have varied, as have the timeframes for exchanging Soviet passports for ones issued by the new state. For example, in Moldova this exchange continued until quite recently (1 September 2014) and significant funds from the state budget were allocated for this. Prior to this, Soviet passports were considered to be adequate identification documents for residents of Moldova, and their holders enjoyed every right, including the right to vote, and were able to get jobs, complete transactions, take out loans, etc. Anyone who did not manage to exchange their Soviet passports on time did not become a stateless person—they only had to pay for identity documents to be issued.²

In contrast, a large part of the population in newly-independent Latvia and Estonia did not automatically acquire citizenship of these countries but was instead granted a special status and special non-citizen passports that allowed them to live legally in these countries. (As of early 2016, non-citizens comprised 11.8 percent (about 257,000 people)³ and 6.1 percent (almost 82,500 people)⁴

¹ <http://unhcr.ru/index.php?id=44>

² Under Resolution of the Government of the Republic of Moldova of 24.03.2014 No. 210 “On Subsidies for Identity Documents,” Soviet passports were valid until 1 September 2014 and could be exchanged at no charge for new identity documents; approximately 65,000 people were not able to take advantage of the subsidies within the established period, and they had to pay for a new document they would need to undertake actions of legal significance. http://registru.md/news_2011_ru/169184/

³ http://www.pmlp.gov.lv/lv/assets/documents/statistika/IRD2016/ISVG_Latvija_pec_DZGada_VPD.pdf (in Latvian).

⁴ <http://estonia./about-estonia/society/citizenship.html>

of the populations of Latvia and Estonia and respectively.)⁵ Non-citizens are restricted in the full realization of many rights, and although their numbers have been steadily declining due to the gradual nationalization of people who want to become citizens (nationalization involves passing an exam in the Latvian or Estonian languages and complying with a number of formal requirements), the automatic granting of citizenship to the children of non-citizens born in these countries after independence (the result of amendments to laws), and natural attrition, the situation for non-citizens (who are mainly Russian-speaking) in Baltic countries and the related problems remain a *sine qua non* of what has been a charged political discourse between Russia, these Baltic countries, the European Union, and other actors.

In most former Soviet states, however, people who did not exchange their Soviet passports for identity documents from their new states became “legally invisible” and no effective legalization procedures were created for them. Without a valid ID, these people cannot exercise their rights and, under current laws, even face prosecution for being “illegal.”

The most vulnerable people in terms of statelessness in former Soviet Countries are members of ethnic minorities. For example, according to information from an NGO, the absolute majority of Lezgians living in dense communities in areas of Azerbaijan bordering Dagestan were not able to exchange their Soviet passports in time (by 2005). This made it impossible for them to receive foreign passports or communicate with relatives living on the other side of the border in Dagestan.⁶ In another example, the ethnic clashes in southern Kyrgyzstan in 2010 had a most detrimental effect on documentation. The victims of these pogroms lost not only their homes and property, but also their passports, and the archives that could have provided information to restore documents were destroyed. Seventy percent of stateless persons in Kyrgyzstan live in the south, and the majority of these are women from Uzbekistan with expired national passports or old Soviet passports who married Kyrgyz citizens.⁷ The problem of these women, who have come to be known as “transborder brides,” is also typical for other post-Soviet countries in Central Asia (there is an especially large number of them in Sogdiiskaya Oblast, Tajikistan⁸). In Tajikistan, the majority of the 19,000 stateless persons identified by late 2015 as part of a national program supported by the UNHCR live in the south of the country (these are mainly people who fled to neighboring countries during the civil war and then returned, but do not have valid documents).⁹

UNHCR activities in some regions have contributed to a reduction in statelessness in the former Soviet Union. Specifically, the UNHCR supports special programs and campaigns in Central Asian countries to reform corresponding national laws. For example, in 2007 and 2012, Kyrgyz lawmakers amended the law on citizenship and relevant regulations thereunder. According to the UNHCR, this made it possible for over 65,000 former Soviet citizens living in Kyrgyzstan to acquire citizenship papers for this country from 2009 – 2014. In Turkmenistan, over 4,000 stateless people identified during a special registration campaign gained citizenship from 2011 – 2014.¹⁰ However, experts have noted that even though authorities have put considerable effort into overcoming statelessness and cooperating with the UNHCR, new population groups at risk of statelessness continue to emerge in the region. In Kyrgyzstan, for example, these include the children of labor migrants whose parents have both renounced their Kyrgyz citizenship in favor of another citizenship (usually Russian).¹¹ In Kazakhstan, a new group

⁵ The status of non-citizens is regulated by the law of Latvia “On the Status of Citizens of the Former Soviet Union who are not Citizens of Latvia or Another State” (1995) www.ttc.lv/export/sites/default/docs/LRTA/Likumi/On_the_Status_of_those_Former_U.S.S.R._Citizens.doc and the “Law on Foreign Nationals” of the Republic of Estonia (1993).

⁶ Alekseyev M.E., Kazenin K.I., Suleymanov M.S. Dagestanskiye narody Azerbaidzhana. Politika, istoriia, kultura. 2008. For NGO data on these districts of dense Lezgian communities (Kusarsky and Khachmassky) see http://www.e-reading.club/bookreader.php/88844/Alekseev,_Kazenin,_Suleimanov_-_Dagestanskiye_narody_Azerbaidzhana._Politika,_istoriya,_kul'tura.html

⁷ <http://www.fergananews.com/articles/6996>, data from 2010 are cited.

⁸ According to the Tajik NGO Consortium Initiative (2011), these women cannot receive a response from Uzbekistan to their inquiries on the loss of their citizenship, which complicates their legalization in Tajikistan. <http://news.tj/ru/news/nevidimye-lyudi-tsentralnoi-azii>.

⁹ <http://www.unhcr.kz/rus/news-of-the-region/news/2520/>

¹⁰ “Resolving Citizenship Issues.” A background paper prepared by the UNHCR for the International Conference on Migration and Statelessness, June 23 – 24, 2014, Ashgabat, Turkmenistan. C.5.

¹¹ Interview with Hans Schodder, head of the UNHCR office in Kyrgyzstan (2011). <http://www.fergananews.com/articles/6996>. Kyrgyz law allows for dual citizenship (Article 6(2) of the law “On Citizenship of the Kyrgyz Republic”), which would ease the situation for thousands of labor migrants working in Russia if Russia took a similar approach, but Russia requires Kyrgyz citizens who want to become RF citizens to renounce their Kyrgyz citizenship. Interestingly enough, foreigners who are granted Kyrgyz citizenship can still retain their previous citizenship, with the exception of citizens from neighboring Tajikistan, Kazakhstan, Uzbekistan, and China, who must renounce their previous citizenship when adopting Kyrgyz citizenship out of national security concerns.

facing this difficulty is the Oralmans — ethnic Kazakhs who, as part of a government program, have returned to their historical homeland from Uzbekistan, Mongolia, Turkmenistan, China, Russia, Iran, and other countries. (These repatriated Kazakhs have lost their former citizenships but sometimes have not acquired legal status in Kazakhstan for various reasons.)¹²

Another factor that complicates the citizenship situation for residents in a number of countries relates to abrupt changes in political course. For dual nationals residing in Turkmenistan, such changes included this country's dramatic unilateral withdrawal from an agreement with the RF on dual citizenship in 2003 and then a ban on dual citizenship in the new Constitution (2008). In Russia, a number of restrictions were created in 2014 for dual nationals: they have to enter their names in a special register and their failure to do so can result in administrative and criminal prosecution.¹³

The mandatory exchange of old Uzbek passports for biometric passports has been a tremendous problem for Uzbek citizens living and working in other countries (primarily Russia and Kazakhstan). This exchange was due to end by 31 December 2015, however an announcement placed in the media stated that this period would be extended to 1 July 2018 (the announcement was unclear and did not indicate the last names or positions of officials).¹⁴ Beginning 1 July 2014, only holders of biometric passports could leave Uzbekistan,¹⁵ but a large number of labor migrants left for other countries before this time and have been living outside of Uzbekistan with their old passports (only certain categories of citizens can exchange their old passports for new ones at consulates abroad, so the absolute majority of labor migrants have to return home to do this). Many migrants who have attempted to leave their countries of stay since 1 January 2016 have found that their passports are invalid abroad and that they cannot return home with these documents because the Border Service will not let them out (instances of this have been recorded in airports in Moscow and Saint Petersburg). On 14 January 2016, the Uzbek Ministry of Foreign Affairs clarified on its Facebook page that holders of old passports could return to Uzbekistan if they receive a certificate for return home (*laissez-passer*) and that their passports would be valid for another two-and-a-half years, but only within Uzbekistan.¹⁶ Since Uzbekistan only has two missions in Russia (Moscow and Novosibirsk) to serve almost two million Uzbek migrants, long lines formed outside these missions. The migrants had to spend money not only on train or plane tickets, but also on the certificate itself, which costs \$60, and on housing and transportation while the certificate was being prepared. However, it is extremely difficult to pay for housing and transportation using an invalid document.¹⁷ One month later, on 12 February 2016, the Ministry of Foreign Affairs announced on its website that it would still be possible to use the old passports to return to Uzbekistan and that it had informed foreign states of this.¹⁸ Nevertheless, migrants have reported that in March 2016 Russian border guards continued to detain Uzbek citizens with old passports and demanded certificates from them. The lack of accurate information about the limitations and validity of old passports has caused a tremendous amount of stress for migrants and created a foundation for arbitrary behavior, corruption, and various kinds of provocations.¹⁹

¹² Commission for Human Rights under the RK President. Special report. "On the Situation with the Rights of Oralmans, Stateless Persons, and Refugees in the Republic of Kazakhstan." Astana, 2012.

¹³ <http://rg.ru/2014/06/06/grajdanstvo-dok.html>

¹⁴ For example, <https://www.gazeta.uz/2015/12/19/passports/>

¹⁵ Resolution of the RU Cabinet of Ministers of 6 February 2014 "On Measures to Improve Departure Procedures for Citizens of the Republic of Uzbekistan Travelling Abroad," http://www.lex.uz/Pages/GetAct.aspx?lact_id=2337294

¹⁶ At the time of this writing, this information was not on the page of the Ministry of Foreign Affairs; the posting mentioned was noticed by journalists.

¹⁷ <http://rus.ozodlik.org/content/article/27529021.html>

¹⁸ <http://rus.ozodlik.org/content/news/27553549.html>

¹⁹ For example, a clip was posted online showing a staff member of a certain Moscow-based organization called Dom Migrantov distributing false information and telling Uzbek citizens to leave "before 1 July" or they would be stripped of their citizenship, diplomatic missions would not accept them, etc. <http://rus.ozodlik.org/content/article/27603136.html>

It is also important to remember that peoples repressed during Soviet times have become more vulnerable in the post-Soviet period in terms of citizenship and passports. These include peoples of the Crimea (Crimean Tatars and others) and the Caucasus (Chechens, Ingush, Balkars, Karachai, Meskhetian Turks, Hemshin, Kurmanjis (Batumi Turks)), among others, who were deported from their places of residence to Soviet republics that became independent states after the breakup of the Soviet Union (Uzbekistan, Kyrgyzstan, Kazakhstan).²⁰

For this report, it is especially important to mention the special situation of Koreans in the Soviet Union and in post-Soviet countries (Roman Kim, who won a case at the ECHR, belongs to this minority). Koreans were the first repressed peoples in the Soviet Union—directives on the forced relocation of Koreans from border regions of Primorsky Krai and remote territories of Khabarovsk Krai date back to the late 1920s. The final fate of Soviet Koreans was determined by Resolution No. 1428-326ss of the Council of People's Commissars and the All-Union Communist Party (Bolsheviks) of 21 August 1937 "On the Expulsion of the Korean Population from Border Regions of Dalnevostochny Krai," which was signed by Molotov and Stalin, and the supplemental resolution of the Council of People's Commissars of 28 September 1937 No. 1647-377ss "On the Expulsion of Koreans from the Territory of Dalnevostochny Krai." Moreover, what was at stake here was not just the deportation of Koreans from the Far East, but also from other territories of the country. The stated goal of this deportation was stopping "the penetration of Japanese spies into Dalnevostochny Krai," and it was carried out in the shortest possible time span: on 25 October 1937, the People's Commissar of Internal Affairs reported that "the expulsion of Koreans from Dalnevostochny Krai has ended" and that 36,442 families numbering 171,781 people had been taken to Kazakhstan and Uzbekistan.²¹ The losses suffered by the Korean population caused by deportation were enormous. According to published data, a total of 172,500 people were deported and 28,200 people perished, resulting in a birth deficit of 17,300 people and a total demographic loss of 45,500 people, or 26.4 percent of the total number deported.²²

Free travel for Koreans from Central Asian countries became possible by the late 1950s, after Stalin's death, and increased after the breakup of the Soviet Union. However, Koreans started travelling not to the Far East, which they no longer had any connection with, but mainly to the European part of Russia. In this way, Koreans in the RF found themselves in a unique situation. Even though they historically belong to a distinct culture, they lost their native language and became Russian speaking. However, in Russia they face the same difficulties as many migrants like xenophobia, racism, and problems attaining citizenship or other legal status since they are stateless or citizens of Central Asian countries and members of a visual minority.

²⁰ <http://www.alexanderyakovlev.org/fond/issues/62150>

²¹ *Belaya kniga o deportatsii koreiskogo naseleniia Rossii v 30-40-kh godax*. Moscow, 1992; *Istoriia koreitsev Kazakhstana*. Sbornik arkhivnykh dokumentov. t. 1-3, Almaty-Seoul, 1998-2000; Kim G.N., Men D.V. *Istoriia i kultura koreitsev Kazakhstana*. Almaty, 1995; *Dorogoi gorkikh ispytani. K 60-letiiu deportatsii koreitsev Rossii*. Moscow, 1997.

²² Ediyev D. *Demograficheskiye poteri deportirovannykh narodov SSSR* <http://www.polit.ru/research/2004/02/27/demoscope147.html>

I. STATELESS PERSONS IN SITDFN: LEGAL PROBLEMS

“A SITDFN is a specialized institution for the temporary detention of foreign nationals. Right now anyone who doesn’t have documents or proof of residency in the Russian Federation is confined there. Let’s say someone was born somewhere in Kazakhstan. In 1992 or 1993, he gets a USSR passport there that does not indicate citizenship. He moves to Russia in the 1990s for permanent residency. But something doesn’t go right and he ends up behind bars. And this is where it all begins. What typically happens is the Ministry of Justice issues an order against a stateless person on undesirability of stay in the RF, and then a court issues a ruling on deportation and placement in a SITDFN. And that’s it. The circle closes. CIS countries will not generally accept people like this—after all, why do they need a criminal? As a result these people are imprisoned for an indefinite period. So we have two punishments for one crime, since Russia doesn’t want these people either. I think a new category of people has appeared—unwanted people, stateless people who have been released from prisons and are subject to deportation. There’s no way out. And it’s astounding that nothing is being done to resolve this situation. I can say something separately about confinement in a SITDFN.... When will the authorities adopt a reasonable solution for stateless persons? How long can this go on? There are many questions, but no answers.”²³

Viktor Nigmatulin, a stateless inmate of SITDFN in Kemerovo (Siberia)

1. LEGAL PATHS TO PROVING THE ILLEGALITY OF CONFINING STATELESS PERSONS IN SITDFNS: ADC MEMORIAL POLICY CASES AT THE ECHR

THE CASE OF KIM V. RUSSIA: ECHR JUDGMENT PRESCRIBES THE ADOPTION OF GENERAL MEASURES INTENDED TO CHANGE THE SITUATION FOR STATELESS PERSONS

In 2014 ADC Memorial lodged an application²⁴ with the ECHR. The applicant in this case was Roman Anatolyevich Kim — a stateless person and ethnic Korean born in Uzbekistan in 1962 and living in Russia since 1990, where he previously served time in prison. Kim’s personal fate, which made him into a stateless person and led to a SITDFN, was in many ways determined by the fact that he belongs to several vulnerable groups at once (as a member of the Korean ethnic minority repressed by the Soviet government, he is at a higher risk of statelessness because the republics to which ethnic Koreans were deported later became independent states;²⁵ Kim also has a criminal record).

On 9 June 2011, stateless person Roman Anatolyevich Kim was detained in the Sestroretske Kurortny district of Saint Petersburg for not having identity documents. Police officers wrote him up for committing the administrative offence stipulated in Article 18.8(1) of the RF Code of Administrative Offences (“violation of regime of stay in the RF”). On 19 July 2011, a court

²³ <http://fviltor77.livejournal.com/7732.html>

²⁴ Application No. 44260/13 of 17 July 2014.

²⁵ In this regard the situation was somewhat better for minorities that were forcibly moved within the confines of one state formation (for example, the deportation of Kalmyks in Siberia).

issued a resolution finding Kim guilty of violating his regime of stay in Russia and subjecting him to punishment in the form of a 2,000 ruble fine and expulsion from Russia. Prior to his expulsion (and without any indication of the date of its execution), Kim was placed in a foreign national detention center (FNDC) of the Main Office of the Ministry of Internal Affairs for Saint Petersburg and Leningrad Oblast.²⁶

This Center is an eight-story building designed to hold 176 people, but which actually holds at least 300 people and up to 400 in the summer and during special raids. The applicant was initially held in a cell of less than 10 square meters, which also held five or six other people. During the last 10 months of his confinement, he was kept in a cell with an area of 18 square meters, which he shared with four and sometimes seven other prisoners. These cells did not have sinks or access to drinking water. The floor had only one toilet and one shower, which were used by approximately 40 people. Until March 2013, the applicant was allowed to spend 20 – 30 minutes two to three times a week in a small yard outside. Also, prisoners were not able to participate in any meaningful activities: there was no access to television, radio, newspapers, or magazines.

Not one single response was received from any agency (Directorate of the Federal Migration Service, Directorate of the Federal Bailiffs Service, Foreign National Detention Center) to the numerous requests made by Kim's attorney regarding measures taken for his expulsion. It was only after Kim had been held in the FNDC for six months that the FMS office sent a query to the embassy of the Republic of Uzbekistan, whose citizen Kim was presumed to be. On 5 February 2013, a response was received that it would not be possible to issue Kim a certificate to return to Uzbekistan in light of the fact that he was not a citizen of this country. Even though it was confirmed that Kim could not be expelled, courts for the place of detention and for the place where the initial ruling was issued refused to consider this complaint, which was filed with account for new facts, and Kim continued to be held in the detention center without any legal grounds or any prospect of expulsion until 23 July 2013, i.e. he spent over two years there.

Upon his release from the FNDC, Kim followed the ruling of the ECHR and tried to start legalization procedures with the assistance of his attorneys and staff from human rights organizations. At his urgent request, in March 2015 he was invited to the FMS office, where documents were collected from him to establish his identity. At the time of this writing, Kim received a certificate on the establishment of identity, but he continues to have the status of a stateless person: he does not have valid documents confirming his right to reside in Russia.

In the case of Kim v. Russia, the European Court for Human Rights issued a policy decision which could improve the situation for thousands of stateless people if it is implemented and the general measures prescribed are adopted.

The Court found that conditions in a SITDFN are inhuman and degrading to human dignity and that they violate Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (torture ban): *“The Court finds that the applicant had to endure conditions of detention which must have caused him considerable mental and physical suffering, diminishing his human dignity. **The conditions of his detention thus amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention, even in the absence of any positive intention to humiliate or debase the applicant on the part of any domestic authority.**”*

The court also found a violation of Article 5 § 1 of the Convention in connection with the excessive length of imprisonment and the authorities' complete failure to act. Specifically, over the two years of the applicant's imprisonment, bodies of the FMS office for Saint Petersburg and Leningrad Oblast only sent two requests to Uzbekistan to confirm the applicant's citizenship and to issue him a certificate for return. The court concluded *“that the grounds for the applicant's*

²⁶ On 1 January 2014, Foreign National Detention Centers were transferred to the Department of the Federal Migration Service for Russia and renamed Specialized Institutions for the Temporary Detention of Foreign Citizens (SITDFN).

detention – action taken with a view to his expulsion – did not remain valid for the whole period of his detention due to the lack of a realistic prospect of his expulsion and the domestic authorities’ failure to conduct the proceedings with due diligence.” The court also noted the abnormality that detention in a SITDFN (a preventive measure used only to ensure the execution of expulsion) was much longer and stricter (over two years) than “punishment” measures used for administrative offences (administrative arrest of up to 30 days).

As the ECHR indicated, “Article 5 § 1 (f) does not demand that detention be reasonably considered necessary, for example to prevent an individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence (§ 48 of the judgment of 22 March 1995 in application No. 18580/91 *Quinn v. France*),²⁷ the detention will cease to be permissible under Article 5 § 1 (f) (see *Chahal v. the United Kingdom*, 15 November 1996, § 113, Reports of Judgments and Decisions 1996-V²⁸). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *A. and Others v. the United Kingdom [GC]*, no. 3455/05, § 164, ECHR 2009²⁹ ...§74 of the judgment of the Grand Chamber of 29 January 2008, no. 13229/03 *Saadi v. the United Kingdom*³⁰).

The court recommended “that the respondent State envisage taking the necessary general measures to limit detention periods so that they remain connected to the ground of detention applicable in an immigration context.”

An equally important achievement is the Court’s finding of a violation of Article 5 §4 of the Convention (right to speedy consideration by a court of the lawfulness of detention and the right to release if a court finds the detention is not lawful), i.e. an endemic problem of the absence of periodic judicial review of detention and the absence of the procedural ability to appeal detention in a SITDFN upon the expiry of a certain timeframe, which results in the impossibility of ending detention, even if expulsion is not possible due to the prisoner’s statelessness.

Having reviewed this endemic problem of Russian law, the ECHR stated that “the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention with a view to removal is from the outset, or continues to be, justified (see § 77 of the judgment of 12 February 2013 for application No. 58149 *Amie and Others v. Bulgaria*³¹, and § 68 of the judgment of 27 July 2010 for application No. 24340/08 *Louled Massoud v. Malta*³²),). In such circumstances the necessity of procedural safeguards becomes decisive. However, the Court has already established that the applicant did not have any effective remedy by which to contest the lawfulness and length of his detention, and the Government have not pointed to any other normative or practical safeguard. It follows that the Russian legal system did not provide for a procedure capable of preventing the risk of arbitrary detention pending expulsion (see §§ 153-54

²⁷ [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:\[«Quinn»\],>documentcollectionid2:\[«GRANDCHAMBER»,>CHAMBER»\],>itemid:\[«001-57921»\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:[«Quinn»],>documentcollectionid2:[«GRANDCHAMBER»,>CHAMBER»],>itemid:[«001-57921»])

²⁸ [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:\[«Chahal»\],>documentcollectionid2:\[«GRANDCHAMBER»,>CHAMBER»\],>itemid:\[«001-58004»\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:[«Chahal»],>documentcollectionid2:[«GRANDCHAMBER»,>CHAMBER»],>itemid:[«001-58004»])

²⁹ [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:\[«A. and Others v. the United Kingdom \[GC\]»\],>no.3455/05»\],>documentcollectionid2:\[«GRANDCHAMBER»,>CHAMBER»\],>itemid:\[«001-91403»\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:[«A. and Others v. the United Kingdom [GC]»],>no.3455/05»],>documentcollectionid2:[«GRANDCHAMBER»,>CHAMBER»],>itemid:[«001-91403»])

³⁰ [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:\[«auad»\],>documentcollectionid2:\[«GRANDCHAMBER»,>CHAMBER»\],>itemid:\[«001-106668»\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:[«auad»],>documentcollectionid2:[«GRANDCHAMBER»,>CHAMBER»],>itemid:[«001-106668»])

³¹ [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:\[«Amie and Others v. Bulgaria»,>no.58149/08»\],>documentcollectionid2:\[«GRANDCHAMBER»,>CHAMBER»\],>itemid:\[«001-116413»\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:[«Amie and Others v. Bulgaria»,>no.58149/08»],>documentcollectionid2:[«GRANDCHAMBER»,>CHAMBER»],>itemid:[«001-116413»])

³² [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:\[«Nº 24340/08 «Louled Massoud»\],>languageisocode:\[«ENG»\],>documentcollectionid2:\[«GRANDCHAMBER»,>CHAMBER»\],>itemid:\[«001-100143»\]](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#<fulltext>:[«Nº 24340/08 «Louled Massoud»],>languageisocode:[«ENG»],>documentcollectionid2:[«GRANDCHAMBER»,>CHAMBER»],>itemid:[«001-100143»])

of judgment of 18 April 2013 for application No. 67474/11 Azimov v/ Russia³³ ; Louled Massoud, cited above, § 71, and, mutatis mutandis, Soldatenko v. Ukraine, no. 2440/07, § 114, 23 October 2008³⁴). In the absence of such safeguards, the applicant spent the entire two-year period, that is, the maximum period the Russian law stipulates for the enforcement of an expulsion order, in detention.”³⁵

In light of a violation of Article 5 § 4 on the ground that the applicant was deprived of liberty pending his expulsion from Russia and could not institute a court proceeding to check the lawfulness of his detention, which could lead to his release, the Court ordered the RF Government to adopt general measures to prevent similar violations in the future: **“the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism which allows individuals to institute proceedings for the examination of the lawfulness of their detention pending removal in the light of the developments in the removal proceedings. The Court reiterates that although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see § 203 of judgment of the Grand Chamber of 19 February 2009 in application No. 3455/05 A. and Others v. the United Kingdom³⁶ , and judgment of the Grand Chamber of 22 May 2012 in application No. 5826/03 Idalov v. Russia³⁷).**”

Finally, the court noted that it is impermissible to allow stateless persons to remain undocumented, because this increases the likelihood of re-imprisonment in a SITDFN: **“The Court further notes that, in addition to being stateless, the applicant appears to have no fixed residence and no identity documents. The Court is therefore concerned that following his release, the applicant’s situation has remained irregular from the standpoint of Russian immigration law. He thus risks exposure to a new round of prosecution under Article 18.8 of the Code of Administrative Offences, cited in paragraph 23 above. The Court is therefore convinced that it is incumbent upon the Russian Government to avail itself of the necessary tools and procedures in order to prevent the applicant from being re-arrested and put in detention for the offences resulting from his status of a stateless person.”**

Thus, in its judgment in the case Kim v. Russia, the ECHR required Russia to adopt general measures to improve the situation in SITDFNs. These measures should include amendments to laws that would establish review of lawfulness and the terms of confinement in a SITDFN and would prevent stateless persons from repeated detentions and being placed there (i.e. an effective procedure must be created for legalizing stateless persons, including former Soviet citizens, who have not been able to obtain legal status for decades). System-wide improvements in detention conditions at SITDFNs are also necessary.

³³ [³⁴ \[³⁵ Here and elsewhere the ECHR decision in Kim v. Russia is cited.\]\(http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{{fulltext}}:{{2440/07}},documentcollectionid2}}:{{GRANDCHAMBER}},CHAMBER}}>itemid}}:{{001-89161}}}}\]</p></div><div data-bbox=\)](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{{fulltext}}:{{Azimov v. Russia}},no. 67474/11}}>documentcollectionid2}}:{{GRANDCHAMBER}},CHAMBER}}>itemid}}:{{001-118605}}}}]</p></div><div data-bbox=)

³⁶ [³⁷ \[13\]\(http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{{fulltext}}:{{Idalov v. Russia \[GC\]},no. 5826/03}},documentcollectionid2}}:{{GRANDCHAMBER}},CHAMBER}}>itemid}}:{{001-110986}}}}\]</p></div><div data-bbox=\)](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{{fulltext}}:{{A. and Others v. the United Kingdom [GC]},no. 3455/05}},documentcollectionid2}}:{{GRANDCHAMBER}},CHAMBER}}>itemid}}:{{001-91403}}}}]</p></div><div data-bbox=)

THE HISTORY OF THE FIGHT FOR THE RIGHTS OF STATELESS PERSONS THROUGH THE ECHR: THE CASE OF LAKATOSH AND OTHERS V. RUSSIA

The case of Kim v. Russia was not the first successful attempt to protect the rights of stateless persons at the European Court. ADC Memorial previously lodged an application with the ECHR in the similar case of Lakatosh and Others v. Russia,³⁸ however, a friendly settlement was reached between the RF government and the applicants, and this case ended without a decision on its merits.

On 29 September 2009, Anna Lakatosh, Pavel Gabor, and Aladar Forkosh, undocumented Roma from Beregovoy, Zarkapattia Oblast, Ukraine, were detained during an FMS raid of a Magyar Roma³⁹ settlement on the outskirts of Saint Petersburg. On 24 September 2009, the Kolpinsky District Court in Saint Petersburg found them guilty of violating the regime of stay for foreign nationals in the RF and sentenced them to a 2,000 ruble fine and expulsion.

Until their expulsion, which was not set for a specific date, these Roma migrants were placed in a temporary detention facility of the Main Internal Affairs Department for Saint Petersburg and Leningrad Oblast at 6 Zakharevskaya St., which at that time was serving as a foreign national detention center. Despite the fact that it was clearly impossible to execute the court ruling on expulsion due to the applicants' statelessness, they were kept in this facility for over one year in violation of the law, which at that time stipulated a maximum detention term of one year.

All the applicants were held in overcrowded cells. They did not have any personal hygiene items or sufficient access to sunlight and fresh air. The lights were always on in the cell and water was only provided once a day. The toilets were located directly in the cell and were not separated in any way from the beds, where the prisoners were forced to eat in the absence of tables. Their diet consisted of black bread, hot cereal, and tea. The rations did not provide any fruit, vegetables, fish, meat, or milk products. They were not allowed to prepare food or boil water.

This prison was also completely shut off from the outside world. The cells did not have radios or televisions and inmates were not allowed to use mobile phones or provided with books or newspapers. They were kept in their cells all the time and were allotted 25 minutes for a walk only in good weather. Meetings were only allowed with close relatives.

Staff members at the facility did not take sufficient measures to establish the identity or citizenship of these prisoners. In response to questions from ADC Memorial attorneys submitted in November 2009 – January 2010, the Consul General of Ukraine in the RF stated that it would not be possible to confirm Ukrainian citizenship since the detained Roma did not have Ukrainian passports. On 11 February 2010, an ADC Memorial attorney received a response from the detention facility's administration about the possibility of expelling these Roma migrants. This response stated that their expulsion from Russia was not possible due to the absence of information on citizenship and a lack of identity documents. Thus, the impossibility of establishing the identity or citizenship of A. Lakatosh, P. Gabor, and A. Forkosh was confirmed after they had been held for four months.

However, the detention facility's administration decided not to release these violators of the migration regime even though it could not execute the court ruling on expulsion. Instead, they were released upon the expiry of the one-year term with the same status of violators of the migration regime.

During the entire year of their detention, Ukrainian and Russian state authorities were not able to establish either the identities or the citizenship of these Magyar Roma due to their ineffective and

³⁸ The case of Lakatosh and Others v. Russia, application No. 32002/10.

³⁹ Magyars are a specific group of Roma that live in dense settlements, particularly in Zarkapattia Oblast, Ukraine; they speak Hungarian.

insufficient efforts. Even after their release, Lakatosh, Gabor, and Forkosh were still in violation of the migration regime. The year-long stay in conditions where these prisoners did not receive proper nutrition and were not able to attend to their physical hygiene took an enormous toll on their physical and mental health: Anna Lakatosh experienced bouts of epilepsy and Aladar Forkosh fell ill with tuberculosis; they all frequently felt faint from hunger. Over the year of their detention, these prisoners lived in an abject and depressed state. They were separated from their families and did not receive any of the care, protection, or support that is stipulated in such cases by international law.

At the end of their maximum period of custody, Anna Lakatosh, Pavel Gabor, and Aladar Forkosh were released in October 2010 with ruined health and without any hopes or guarantees of avoiding a second imprisonment. Due to their lack of documents, they will be in violation of the regime of stay in any country they happen to be in.

After all possible means of domestic protection were exhausted, ADC Memorial attorneys and the lawyer Olga Tsteytlina filed an application with the European Court for Human Rights in an attempt to appeal the conditions and advisability of their clients' detention. With support from the UNHCR, the case of Lakatosh and Others v. Russia was considered by the ECHR as a matter of priority and ended with a friendly settlement.

The Russian Federation acknowledged that it had violated the European Convention on the Protection of Human Rights and Fundamental Freedoms, thereby confirming that foreign nationals and stateless persons are held in inhuman conditions in temporary detention facilities without any periodic judicial review or the possibility of actually carrying out the expulsion. As part of the friendly settlement, Russia paid compensation in the amount of 30,000 euro to each applicant.

Unfortunately, Russia has not followed up with any fundamental changes to detention conditions or enforcement practices since this time. Foreigners and stateless persons began to be placed in specialized foreign national detention centers, which were created throughout the Russian Federation in 2013, but inhuman treatment was also encountered there, and judicial review of the term and the advisability of detention was never introduced.

2. SYSTEM PROBLEMS WITH RUSSIAN LAWS RAISED IN THE CASE KIM V. RUSSIA AND REQUIRING IMMEDIATE RESOLUTION

RF citizenship laws, like citizenship laws in other former Soviet countries, have changed repeatedly. Law No. 1948-I "On RF Citizenship" of 28 November 1991 envisaged an expedited registration procedure requiring only a petition for former Soviet citizens to obtain RF citizenship, and set a timeframe for registering citizenship (a three-year period, which was later extended to 31 December 2000). In 2002 Federal Law No. 62-FZ "On Citizenship of the Russian Federation" entered into force. This law basically equated stateless persons who were former Soviet citizens with "regular" foreigners; the only preferences they received under the so-called expedited procedure was that the period required for residence under a residence permit was shortened. Meanwhile the overall three-step process for becoming a citizen remained the same as the "general procedure." Finally, in 2012 Chapter VIII.1 was added to this law. This chapter is designed to regulate, over the next five years, the situation with stateless persons, who have long been unable to acquire legal status.

Unfortunately, numerous amendments to RF laws have not solved the problem of statelessness—the number of stateless persons remains large: according to the 2010 census, over 178,000 people⁴⁰ called themselves stateless. A 2014 UNHCR report on global trends put this number at 113,474

⁴⁰ http://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm

people,⁴¹ but the actual number of stateless persons in Russia is undoubtedly much higher. It's unlikely that all the stateless persons in the RF will acquire legal status by 1 January 2017, so new system amendments to the law are needed.

The practice of comprehensive discrimination against stateless persons has become entrenched in all spheres of public life in Russia. All stateless persons experience difficulties exercising their rights due to their lack of citizenship and, accordingly, valid identity documents: it is virtually impossible to document ownership, register a marriage, be legally employed, or get medical insurance. Moreover, since they do not have these documents, they are viewed as violators of current migration laws and the Code of Administrative Offences. Russia has not acceded to the Convention Related to the Status of Stateless Persons (1954) or the Convention on the Reduction of Statelessness (1961)⁴², but the RF Constitution and international treaties that are part of the Russian legal system do enshrine guarantees to observe human rights in respect of stateless persons that are equal to the rights of citizens. However, in their daily routines, government authorities are not guided by the principle of the direct effect of human rights and freedoms, but instead draw on various subordinate acts and formal requirements—including in respect of stateless persons, who are demonstrably more vulnerable than Russian citizens.

2.1 LACK OF AN EFFECTIVE PROCEDURE FOR LEGALIZING STATELESS PERSONS IN RUSSIA

A key problem for stateless persons living in the Russian Federation remains their inability to participate in the legalization process. The path to citizenship envisaged for stateless persons arriving in Russia prior to 1 November 2002 is laden with difficulties and the path to obtaining temporary residence permits, residence permits, and citizenship for newly-arrived “legal” migrants is closed to stateless people from the very start, since these former Soviet citizens do not have the valid identity documents or legal grounds they need to remain in the country.

“Preferential” Procedure for Obtaining RF Citizenship for “Long-Standing” Stateless Persons and Difficulties with its Implementation

Current RF laws on the possibilities for and paths to legalization divide stateless persons who are former Soviet citizens into two groups depending on when they entered Russia or when they received an RF passport that was later found to be illegally issued.⁴³ This division established for stateless persons in articles 13 and 14 of the “Law on Citizenship of the Russian Federation” was confirmed in Chapter VIII.1, which was added to the law of 12 November 2012⁴⁴. This chapter set “preferential” conditions for legalization for former Soviet citizens who arrived in the RF

⁴¹ <http://unhcr.org/556725e69.html>

⁴² Of the former Soviet states, Armenia, Azerbaijan, Georgia, Latvia, Lithuania, Moldova, Turkmenistan, and Ukraine have acceded to these Conventions at different times.

⁴³ This refers to a large number of people who, between 1992 and 2002, lawfully received RF passports, which were later found to be have been issued illegally (as of the end of 2011, there were 80,000 such passports). Paradoxically, these passports confirmed the owner's identity, but not his or her RF citizenship. Chapter VIII.1 of the law “On RF Citizenship” basically cancelled out the negative consequence of FMS mistakes for the holders of these passports and opened the path to legalization for these people (some sources even refer to this additional Chapter as “passport amnesty”). The history of protecting the rights of holders of “illegal” passports is set forth in greater detail in the Report of the RF Human Rights Ombudsman V.P. Lukin for 2012 <http://rg.ru/2013/03/29/lukin-dok.html>, as well as in his earlier special report “On the Practice of Confiscating Russian Passports from Former Soviet Citizens who Moved to the Russian Federation from CIS Countries” (2007) <http://rg.ru/2008/01/26/pasporta-doklad.html>

⁴⁴ https://www.consultant.ru/document/cons_doc_LAW_36927/4e420c3fbd4280d83c2c112d76ed9ae850b5bc2/

for residency **prior to 1 November 2002** and never became RF citizens,⁴⁵ and for former Soviet citizens who “were issued the passport of a Russian citizen **prior to 1 July 2002** which was later found to be issued illegally, who are citizens of a foreign country, if they do not have a valid document confirming their right to live in that foreign country.”⁴⁶

The “preferential conditions” for legalization established for the categories of stateless persons listed in Article 41(3.1.1) of Chapter VIII.1 give these people the right to bypass the temporary and permanent residence stages and apply for citizenship right away. The law also acknowledges that stateless persons in these categories may not have an identity document: Article 41(4.5) states that the procedure for establishing identity shall be conducted for stateless persons lacking identity documents (pursuant to Article 10.1 of the law “On the Legal Situation of Foreign Nationals,” this procedure shall be carried out within no more than three months by local migration authorities (i.e., the FMS); this time period is also stipulated in Article 41.5.3 of the law “On Citizenship of the Russian Federation”). Notably, the contents of Article 41.1.5 of Chapter VIII.1 prohibit the administrative prosecution of any stateless person applying for citizenship, even if that person has broken “immigration rules.”

In reality, though, stateless persons lacking identity documents encounter difficulties: FMS offices either do not conduct the procedure for establishing identity at all (and prosecute the applicant for an administrative offense), or allow this procedure to stretch on for an indeterminate period (nowhere does it say who bears what kind of responsibility for failing to conduct this procedure within the timeframe established by law). For example, the procedure for establishing Roman Kim’s identity lasted for over a year, even though the ECHR ordered his legalization. But even after being issued a certificate on the establishment of identity, Kim still continues to be deprived of the procedural ability to submit citizenship papers, since his criminal record has not been expunged or cleared.⁴⁷

Even FMS staff members admit that the procedure for establishing identity is not stipulated in the law. The legal ground presented for initiating this procedure is “to review the individual’s information as a violator of the law when the opportunity to establish identity arises as part of a prosecution for an administrative offence.”⁴⁸ Meanwhile, as noted above, Article 41.1.5 of the law “On Citizenship of the Russian Federation” prohibits the administrative prosecution of these stateless persons “for violating the rules of entry into the Russian Federation, the regime of stay (residency) in the Russian Federation, the illegal performance of work activities in the Russian Federation, or the violation of migration rules, if such violations were discovered in connection with applications to recognize these people as RF citizens, to grant them RF citizenship, or to issue them residence permits.”

The procedure for establishing the identity of a stateless person is also flawed because it does not envisage a special identity document for stateless persons. According to the testimony of a senior FMS official, the practice is to issue “a temporary identity document for an RF citizen, on which the words ‘RF citizen’ are crossed out.”⁴⁹ The validity of this document is established arbitrarily (for one month, for six months), stateless persons are rejected trying to prolong it.⁵⁰

In order to meet the conditions for the “preferential” legalization procedure, applicants must confirm that they are not citizens of another country. In this sense, the situation for holders of “illegally issued” RF passports is problematic: in these cases it is generally determined that the

⁴⁵ The “preferential category” also includes the stateless children (both minors and adults) of these stateless persons and adult dependents who are not legally competent.

⁴⁶ Stateless applicants must present a certificate that they are not citizens of another country. If it is found that an RF passport was issued to a stateless person “illegally” (in these cases it is generally confirmed that this person is actually a citizen of another country even if that person does not believe this to be true), then these applicants must confirm that they have lost their connection with their country of origin and do not have the right to live there (in practice, these could be documents on “removal from the records,” “removal from registration,” etc.).

⁴⁷ See below for more details on the problems of legalization for stateless persons with criminal records.

⁴⁸ Statement by Head of the Visa and Work Registration Office of the FMS A.A. Aksenova during a seminar hosted by Migration and Law and the Human Rights Center Memorial, 2010, pgs. 142 – 187. <http://memohrc.org/sites/default/files/old/files/552.pdf>

⁴⁹ Ibid.

⁵⁰ This information was received from attorneys working on the cases of stateless persons. ADC Memorial archives

applicant actually is a citizen of another country, even though he or she does not believe this to be the case. Such applicants must present confirmation that they have lost their connection with their country of origin and do not have the right to live there (in practice, these could be documents on “removal from the records,” “removal from registration,” etc.).

As far as information on the presence or absence of citizenship of another country or on lost connections with the country of origin is concerned, many consulates do not respond to requests and letters from the applicants themselves or from their attorneys, and the applicants cannot travel to another country for a certificate or have a power of attorney drawn up for their representative because they do not have a document to cross state borders or an identity document. In a number of cases even requests from FMS offices or the Court Bailiffs Service went unanswered.⁵¹ At the same time, there are no clear regulations about which state body should request and receive this information and what the timeframe is for doing this, or what liability exists for failing to act or violating the timeframe. A clarification letter signed by the deputy director of the Kaluga FMS office in 2010 states that local FMS offices should show initiative and send queries about the citizenship of stateless persons on their own,⁵² but this document is usually ignored in practice.

Article 41.6(d) of Chapter VII.1 of the law “On Citizenship of the Russian Federation” assigned local FMS offices the authority to establish that the applicant actually arrived in Russia prior to 1 November 2002 and resided in Russia until the date on which they applied for RF citizenship. Stateless persons frequently do not have documents confirming their arrival and residence in the RF during the given time period (these documents could be a house register, a residence registration stamp in a USSR passport, certificates from places of employment or schools, certificates of medical treatment, etc.). Existing enforcement practices connect a stateless person’s permanent residence in Russia and the exercise of their social rights exclusively with the presence of a residence permit, even though a person’s permanent residence can be confirmed by documents other than a residence permit, including a court ruling establishing the fact of residency. However, FMS staff generally consider these rulings to be just one piece of evidence and require additional documents like a taxpayer identification number, insurance and pension certificates, evidence of property ownership, close relatives, etc.

FMS staff members frequently misinform applicants by applying the wrong legalization algorithm to them. Below is the first-hand account of T., a stateless person born in Kazakhstan who spent almost her entire life in Saint Petersburg. She entered Russia prior to 2002 and has various documents confirming her residence in Russia. Therefore, she has the perfect right to bypass the stages of temporary and permanent residency and file for citizenship right away. The FMS, however, regards T. as a “new migrant” and requires a “new” migration card, which there was no way she could have:

“I was born on 16 July 1993 in the village of Barashki, Shemonaikhinsky District, East Kazakhstan Oblast, where I lived until 1998. That same year, my mother and I moved to Saint Petersburg for permanent residency. We didn’t register ourselves at our place of residence or fill out any documents. I went to school, where I studied for 10 years. When I went to get my passport, it turned out that I was stateless. This gave rise to an entire series of problems: I tried to enroll in the university, but they wouldn’t take me, I tried to go work, but, again, they wouldn’t hire me because I didn’t have documents. I started to go around to different agencies and collect certificates. So now I have a certificate establishing identity from the FMS office, an RF high school diploma, a birth certificate, certificates from kindergartens and schools. When I filed documents with the FMS for permanent residency, I was denied. They told me I had exceeded my term of temporary stay in Russia and that I needed to leave and re-enter to receive a migration card and register with the migration authorities. I can’t leave because I’m scared that I won’t be let back in without documents. I don’t know what I’m supposed to do. It’s a catch-22.”⁵³

⁵¹ This information was received from attorneys working on the cases of stateless persons. ADC Memorial archives.

⁵² It was not possible to find this document in public records. It was discussed during a seminar hosted by Migration and Law and the Human Rights Center Memorial, in which senior FMS officials participated (2010). See pgs. 142 – 187 of the published transcript: <http://memohrc.org/sites/default/files/old/files/552.pdf>

⁵³ From an appeal to ADC Memorial by stateless person T. ADC Memorial archives.

Stateless Persons who Entered Russia after 1 November 2002: No Opportunity to Start the Legalization Process

It follows from Chapter VIII.1 of the Law on Citizenship that the “preferential” procedure is not envisaged for former Soviet citizens who arrived in Russia after 1 November 2002 or who received an RF passport, later determined to be illegal, after 1 July 2002. In other words, they must start the process of obtaining citizenship from the very beginning in spite of their long-term residence in Russia. As we will see below, what this means in practice is that such people find themselves outside of any legal legalization procedure.

RF citizenship can be obtained following general procedures (Article 13 of the Law “On Citizenship of the Russian Federation”) or expedited procedures (Article 24 of the Law “On Citizenship of the Russian Federation,” which was introduced in 2002). Both procedures offer three stages for obtaining citizenship: application for a temporary residence permit; application for permanent residence after one year of temporary residence and upon confirmation of a legal source of income and place of stay; and application for citizenship after five years of permanent residence without leaving Russia (under the general procedure) or without this mandatory condition (under the expedited procedure). Applicants must have a legal source of means for subsistence and show that they speak Russian; some of the documents that must be submitted include a certificate of a clean criminal record and a medical certificate on the absence of HIV, drug addiction, or other infectious diseases included on a special list. Applicants must confirm that they have a place to live after three years residence in Russia. The law on the legal situation of foreign citizens (articles 7 and 9) establishes that permanent residency will be denied if the applicant has been repeatedly prosecuted for administrative violations, including for violating migration rules, or has been sentenced to expulsion or deportation more than once within the previous five years.

Former Soviet citizens who are now stateless (“persons who had Soviet citizenship, lived or live in states that were part of the Soviet Union, did not obtain citizenship of these states, and as a result remain stateless persons”) have the right to apply for RF citizenship under the expedited procedure (Article 14 of the Law “On Citizenship of the Russian Federation”).⁵⁴

However, even though they theoretically have the right to obtain RF citizenship under the expedited procedure, stateless persons who entered Russia after 1 November 2002 cannot start the legalization procedure and are rejected during the very first stage when they try to submit documents for temporary residence.

First of all, the list of mandatory documents includes a valid identity document and former or current citizenship. Some stateless persons simply do not have these kinds of documents, and a Soviet passport from 1974 is not recognized as valid in practice. Russian law does not envisage a special temporary identity document, while temporary or permanent residence permits are documents that are already part of the procedure and grant stateless persons full legal status.

Without valid documents, it is not possible to find work, so the requirement of Article 13 of the Law “On Citizenship of the Russian Federation” to have a legal source of means of subsistence is clearly not possible for stateless persons.

⁵⁴ In addition to these stateless persons, others who also have the right to use the expedited procedure include people who have relatives with Russian citizenship (parents, spouses, children—with various stipulations, for example, parents who cannot work); people who live in the Russian Federation, were born in the Russian Soviet Federative Socialist Republic and are former Soviet citizens; and several other categories (investors, entrepreneurs—with various stipulations). Additionally, since 2014 the expedited procedure has applied to people who reside legally in the RF and who have been recognized as “native speakers of the Russian language” (the so-called “law on native speakers of Russian,” Federal Law of 20.04.2014 No. 71-FZ “On Amendments to the Federal Law ‘On Citizenship of the Russian Federation’ and Certain Laws of the Russian Federation”). The expedited procedure also extends to participants in resettlement programs who have residence registrations in certain programs or RF regions. Prior to 1 July 2009, foreigners and stateless persons who were Soviet citizens and who entered Russia from former Soviet states and are registered in the RF as of 1 July 2002, or who have been granted temporary or permanent residence, can take advantage of the expedited procedure.

Second of all, stateless persons do not meet another “starting” legal requirement—legality of stay in the RF. FMS resources state that documents for temporary residence will not be accepted “if the applicant has been located in Russia in violation of the established procedure of stay (residence).”⁵⁵ This means that in order to apply for temporary residence, applicants need, in the first place, valid documents on crossing the border (a valid visa, migration card) and a valid migration registration for their place of stay or residence. In other words, this procedure is mainly intended for “new” migrants and not for people who have lived in Russia for decades.

Migration cards were introduced into effect on 11 November 2002.⁵⁶ It is not possible to request migration cards from stateless persons who are part of the “preferential” category of people who entered Russia prior to this date. But they are requested from people who entered Russia after this date, even though many stateless persons have simply lost these cards over the years and can only receive a new card if by leaving Russia and re-entering. Naturally, it is not possible to do this without valid documents: the illegal crossing of a state border results in criminal prosecution and punishment under Article 322 of the RF Criminal Code.

An order issued on 6 June 2006 by Deputy Director of the FMS Ledenev⁵⁷ allowed people who established their permanent residency in Russia for specific dates by presenting written evidence to a court to file documents for permanent residency without presenting a migration card (which eliminated the need to leave Russia) or a certificate of a clean criminal record in their country of origin (the corresponding check was delegated to Ministry of Internal Affairs bodies). However, experience has shown that not everyone can establish the fact of their residency in court, since they do not have written proof of residency. Furthermore, even when they have a court ruling establishing the fact of residency, they are not issued identity certificates and FMS offices still continue to demand migration cards from them.

Another barrier that immediately excludes the legalization of stateless persons trying to apply for citizenship from the very start under the expedited procedure is the assignment of quotas for temporary residence permits. Since there are no preferences for stateless persons who entered after 1 November 2002 (they are not part of the category that has the right to file for permanent residence outside of the quota), they are technically part of the quota, which is extremely low. Additionally, stateless persons in this category face competition from “new” migrants who entered Russia recently.⁵⁸

A final unique problem stateless persons face is that they have to confirm that they have housing and registration, even if these are temporary: they do not own their own residences and landlords almost never agree to registering tenants.

In addition to the grounds listed in the law for not accepting documents, local FMS offices frequently use arbitrary grounds not stipulated in the law to reject documents filed by stateless persons for temporary residence permits (for example, not having a spouse who is a Russian citizen, failure to comply with rules for housing area, etc.).⁵⁹

Thus, stateless persons who are provided by law with the opportunity to obtain Russian citizenship still experience difficulties due to this, and entire categories of stateless persons are completely excluded from the legalization procedure, which is complicated, contradictory, poorly explained, and therefore

⁵⁵ For example, <http://www.78.fms.gov.ru/gosuslugi/item/12896/>

⁵⁶ Order of the RF State Customs Committee No. 1189, RF Ministry of Internal Affairs No. 16531, RF Ministry of Transportation No. 143, RF Ministry of Railways No. 49, RF Border Guard Service No. 692 of 11 November 2002 “On the Introduction into Effect of Migration Cards.”

⁵⁷ http://refugee.memo.ru/For_All/law.nsf/2e0bb2fd8f6950cac3256b89007321e0/26ce915c64cee03bc32571a700346c5d!OpenDocument

⁵⁸ The government sets a quota for each constituent entity of the RF. The size of this quota is extremely low. For example, the 2014 quotas for Saint Petersburg and Moscow (the most attractive regions for migrants) were 1,500 and 2,000 permits respectively; <http://гражданство.рф/novosti-i-zakonodatelstvo/news/kvota-na-rvp-v-rf-na-2014-god-raspredelenie-po-regionam.html>. Former Soviet citizens born in the RFSFR, foreigners born in the RF, and several other categories (people whose have relatives who are RF citizens, soldiers, and investors—with various stipulations) may apply outside of the quota.

⁵⁹ Statements from lawyers working on cases of stateless persons in Saint Petersburg. ADC Memorial archives.

unattainable. Stateless persons face unresolvable conflicts between the law and the arbitrary practices of local migration offices, and the FMS makes unjustifiably harsh demands of stateless persons without investigating the actual situation of each specific applicant. This means that many stateless persons cannot obtain legal status in the RF for years or take advantage of social rights (obtain mandatory medical insurance and medical aid, start receiving a pension, enroll in a university, etc.).

Below is a typical account from stateless person M., a former Soviet citizen who previously lived in Ukraine:

“I tried to legalize my status for several years. To do this, I needed to receive documents from Ukraine, have them translated, and submit an enormous number of other documents. Unfortunately, I was never able to get any cooperation from the authorities on this matter. I was sent from one office to another, from one official to another. After two years without any success or positive result, I have lost all confidence that I can obtain any sort of legal status. It was only thanks to work done by attorneys at several organizations in conjunction with Red Cross volunteers that I was able to receive a residence permit.”⁶⁰

Inability of Stateless Persons with Criminal Records to Obtain Legal Status

When speaking of former Soviet citizens who are vulnerable in terms of status, special emphasis should be placed on prisoners and released prisoners (like Roman Kim). Some of them were imprisoned before the breakup of the Soviet Union and released in independent states where the law does not allow people who have criminal records to become citizens. Others were already stateless persons without valid identity documents when they entered prison. Both groups have very little chance of obtaining legal status: in terms of the Russian Federation, Article 16.1(h) of the law “On Citizenship of the Russian Federation” classifies unexpunged and outstanding convictions as grounds for rejecting citizenship applications and required a certificate on the absence of convictions from “new” migrants applying for temporary residence. The most absurd part is how these people end up in a legal dead end—the Ministry of Justice issues a decision on the undesirability of stay in Russia for a stateless person who is a former convict on the basis of which this person is immediately sent to a SITDFN upon his release from prison “until deportation”. However, deportation is clearly impossible since no country can accept a stateless person.

Stateless persons who are former convicts recognize the scale and seriousness of the problems they face and try to raise these issues on their own, but they unfortunately get no response from lawmakers. Viktor Nigmatulin, a prisoner at the Kemerovo SITDFN writes that

“...the FMS has a new category of people—unwanted people! These are stateless people who have served time and are automatically subjected to deportation from the RF. They are generally migrants from the former Soviet Union, and not one country will accept them, so they end up having to spend years (!) in specialized FMS facilities (SITDFNs). A Ministry of Justice order ‘on the undesirability of stay in the RF for a stateless person released from a prison’ is confounding for both stateless persons and the services that are supposed to execute it. Stateless persons are deprived of many rights and freedoms even though they have served their punishment. I think officials should take an individualized approach when adopting these decisions depending on a person’s specific situation, since many stateless persons lost contact with their relatives abroad years ago or don’t have any relatives at all abroad. Laws must be carefully thought through before they are adopted in order to avoid creating situations like this. 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. Many stateless persons subject to deportation and those who actually cannot be deported anywhere are legally competent and capable of supporting themselves. And therein lies the rub—they can’t work in Russia, but they can be a burden

⁶⁰ From an interview with M., a stateless person from Ukraine. ADC Memorial archives.

*on taxpayers! Many stateless persons have family in Russia, but even so, they are not allowed to see them. Is this absurd? No, it's the law! It's remarkable that they remain silent about this problem and try to hide it. But it is there. And no one cares except for human rights defenders cares.*⁶¹

What follows is the typical story of a stateless person destined for detention in a SITDFN after release (the details of his biography are given in the court ruling):

Stepan Sergeyevich Kuznetsov was born in 1983 in Alma-Ata. His nationality is Russian, but he is a stateless person who has been in Russia since 1997. He has a mother, sister, partner, and two children in Russia that he supports financially and he “does not have any closer relatives in Russia or Kazakhstan.” The court ruling lists his place of residence, which is the same as his mother’s. Kuznetsov served time in Penal Settlement No. 2 in Kemerovo Oblast from July 2014 to 14 January 2016 (1 year and six months imprisonment). On the day of his release, he was immediately confined in a SITDFN “until the execution of the expulsion ruling for a period of three months up until 14 June 2016” in accordance with a ruling of the Zavodsky District Court of Kemerovo on the basis of Ministry of Justice Order No. 10683-rn of 1 December 2015 finding his stay (residency) in Russia undesirable. On 13 February 2016, Kuznetsov left the SITDFN without permission and was “discovered” at his mother’s residence in Kemerovo Oblast by FMS authorities, who wrote up an administrative protocol on the violation of Article 18.8(1.1). Judge M.S. Marukyan of the Yashkinsky District Court of Kemerovo Oblast, citing international documents and the Constitutional Court’s position that a ban on entry “does not exclude the state’s considerable interference in the exercise of S.S. Kuznetsov’s right to respect of family life.” With consideration for Kuznetsov’s remorse, the fact that his violation did not cause any harm, and the fact that he had minor children, the judge ruled to find Kuznetsov guilty of violating the regime of stay in Russia and sentenced him to a fine of 4,000 rubles without expulsion.⁶² But the Russian and international norms declaring humanism and “respect for family life” cited by the judge did not help Kuznetsov remain free: after his aborted escape, he was again confined to a SITDFN. The court did not order expulsion, but “deportation,” which had been previously ordered by the Zavodsky court on the basis of “undesirability” was upheld, even though no one could say what country he would be deported to.

Instead of helping former stateless convicts return to normal life (which actually was possible in Kuznetsov’s case – he had a family, a place of residence, and was only sentenced to a short term), another term of de facto imprisonment only serves to marginalize them and increase the risk that they will commit violations and crimes.

Thus, the most painful consequence of the lack of mechanisms for legalization is deprivation of freedom in a SITDFN if a stateless person is noticed by repressive agencies. Documented biographies of stateless persons show that it is possible to get by in Russia without a valid identity document by working without being formally hired, renting housing without an official lease agreement, and taking advantage of support from “legal” relatives and friends, but only until one’s luck breaks. This could come in the form of a tip from neighbors or a document check that occurs randomly or during a police operation (for example, dozens of stateless persons who had lived in Sochi for years were placed in the local SITDFN after the city was “purged” of “suspect elements” in the run-up to the 2014 Olympic Games).⁶³ The risk of prosecution and confinement in a SITDFN is very high for stateless persons who are former prisoners: they become even more marginalized because they rarely have anyone to support them after their release and the path to legalization is closed for people with criminal records (thus, they are discriminated in the aspect of citizenship/status).

Overall, the policy of Russian migration agencies in respect of statelessness remains harsh and retains a system of repressive and unjustified rulings. It is abundantly clear that the state must adopt a more constructive approach to mobilizing itself to eliminate conflicts and defects in the law.

⁶¹ <http://zavtra.ru/content/view/nenuzhnyie-lyudi-litsa-bez-grazhdanstva/>

⁶² The court ruling was published by Viktor Nigmatulin, Kuznetsov’s cellmate in the Kemerovo SITDFN, on social media: <https://www.facebook.com/vfart?fref=ts>

⁶³ Report of the Southern Human Rights Center “The Legal Situation of Stateless Persons in Greater Sochi,” 2015. <http://opensochi.org/wp-content/uploads/2015/11/doklad-o-polozhenii-lbg-sochi.pdf>

2.2 INABILITY TO EXECUTE COURT RULINGS ON THE EXPULSION OF STATELESS PERSONS

Even though it is sometimes unjust to place foreign citizens who have violated migration rules in SITDFNs for a short period prior to expulsion to their country of citizenship, this practice is at least logical. But the confinement of stateless persons in a SITDFN is absurd, since stateless persons cannot be expelled to any country. Russian law, the Russian judicial system, and Russian record management systems, however, do not appear to acknowledge this contradiction—the set phrase “foreign nationals and stateless persons” is repeated over and over again in many laws, bylaws and official documents related to expulsion where these two different categories of people are viewed as a single unit. These documents include Article 18.8 of the Code of Administrative Offences, which stipulates fines for “foreign nationals and stateless persons” “with or without expulsion” or mandatory expulsion for violations of the migration regime; RF government resolutions of 30 December 2013 No. 1306 and of 8 April 2013 No. 310, which regulate the conditions and procedures for confining “foreign nationals and stateless persons subject to deportation or forcible expulsion from the Russian Federation,” and many others. Judges taking a by-the-book approach also invoke this set phrase (“foreign nationals or stateless persons”). For example, Judge Yu.N. Rusanova of the Saint Petersburg City Court wrote in her ruling in the case of N.G. Mskhiladze, a stateless person from Georgia, that “even though Mskhiladze does not have citizenship in any foreign state,” the possibility of his prosecution under Article 18.8(3) of the Code of Administrative Offences and his expulsion “would still be present, since the subjects of this offence are both foreign nationals and stateless persons.”⁶⁴

The fact that a ruling on expulsion in respect of stateless persons cannot be executed because there is no country to which these people could be sent is only clarified upon the expiry of a specific period of their confinement in a SITDFN and after unsuccessful attempts to establish that they are citizens of a certain country and to issue a certificate of return to their country. This does not mean that FMS officials send queries to all the countries in the world—only the country of origin or past residence of the stateless person falls “under suspicion,” and in legal documents and court rulings these people are paradoxically referred to as “stateless person of Georgia,” “stateless person of Tajikistan,” “stateless person of Ukraine,” etc.

Sometimes it is also impossible to expel foreign nationals due to changes in the situation in their country (for example, Syria, Somalia, Nepal, Ukraine). There are also frequent cases where the state of health of the person subject to expulsion changes during his or her confinement in the SITDFN, which prevents his or her departure or the granting of temporary asylum in Russia, etc. Citizens of foreign countries are also confined in SITDFNs for an extended period, since documents and queries may contain typos in the spelling of dates or first and last names and responses from countries of citizenship take a long time to arrive.

In some cases, judges are placed in a hopeless situation and, absurdly, cannot avoid prescribing the expulsion of a stateless person. This refers to what are essentially discriminatory norms setting the harsher administrative punishment of mandatory expulsion (no alternative sanctions presumed) for violation of the migration regime in Moscow, Saint Petersburg, and Moscow and Leningrad Oblasts (article 18.8.3 and 18.10.2 of the RF Code of Administrative Offences). This norm was introduced to limit labor migration in these economically attractive regions (aimed at labor migrants who are citizens of other countries), but, since RF laws automatically use the set phrase “foreign national and stateless person,” expulsion is prescribed for stateless persons arrested in these areas and prosecuted for being “illegal.”

Even more absurd is the replacement of expulsion with “controlled self-departure” from the RF, which the courts of higher instance prescribe in response to appeals to expulsions that cannot be executed. At first glance, these decisions appear to favor stateless persons (a judge agrees with an

⁶⁴ From the ruling of Judge Yu.N. Rusanova in the case of N.G. Mskhiladze, a stateless person from Georgia. 26 January 2016. ADC Memorial archives.

attorney's argument that an expulsion cannot be executed and understands that the detention is not legal if it does not have legal and achievable goal, which effectively means that the stateless person is released from the SITDFN). However, what the court is actually doing is obligating the stateless person to commit a crime by requiring this person to leave Russia without valid documents (Article 322 of the RF Criminal Code "illegal crossing of a state border".)

Thus, changes need to be made to the law that would make it possible to stop the confinement of stateless persons in SITDFNs. In order to avoid repeat confinement in a SITDFN for lack of documents, as mentioned above, stateless persons must be given identity documents and those who want Russian citizenship should be granted it.

2.3 ABSENCE OF JUDICIAL REVIEW OF THE TERMS AND ADVISABILITY OF CONFINEMENT IN A SITDFN, DIFFICULTY ACCESSING LEGAL AID

A stateless person can be pointlessly confined in a SITDFN for a maximum term of two years from the date on which the ruling on expulsion enters into force – this is the time period established in Article 31.9 of the RF Code of Administrative Offences beyond which "a ruling on the prescription of an administrative punishment is not subject to execution if this ruling was not executed" (and the expulsion of a stateless person cannot be executed). This term seems inordinately long and even exceeds punishments for many crimes, even though failure to comply with the migration regime cannot be considered a serious violation, especially for a stateless person who has lived in Russia for years and sometimes even decades.

In order to release a stateless person from a SITDFN, a new court ruling cancelling the ruling on expulsion must be issued. However, confinement in a SITDFN "until expulsion" is not subject to periodic judicial review. In other words, there is no mechanism for a court to review, on a regular basis, the need and advisability of imprisonment.

In connection with this, as far back as 1998 the RF Constitutional Court indicated in Resolution of 17 February 1998 No. 6-P that:

"It follows from Article 22 of the RF Constitution in conjunction with parts 2 and 3 of Article 55 thereto that confinement for an indefinite period cannot be viewed as an appropriate limitation on the right of each person to freedom and bodily integrity and essentially amounts to a denial of this right. Therefore...the provision...on confinement for the period needed for deportation should not be viewed as a ground for confinement for an indeterminate period even when it takes a long time to resolve the question of expelling a stateless person in light of the fact that no country will agree to accepting the expelled person. Otherwise, confinement as a necessary measure to ensure execution of a ruling on expulsion would transform into its own form of punishment not envisaged in RF laws that contradicts the abovementioned norms of the RF Constitution."⁶⁵

Even though 15 years have passed since the Constitutional Court issued this ruling, the judicial system still lacks effective legal review of the terms and advisability of confinement in a SITDFN, as well as a mechanism that would make it possible to stop the execution of a ruling on expulsion if expulsion is not possible and release the stateless person from the SITDFN. Judges refusing to release stateless persons from SITDFNs cite norms of the Code of Administrative Offences: "The defendant's reference to the fact that the court ruling does not set the term of detention in the SITDFN...does not imply that the appeal should be granted, since the ability of judges to set a specific term during which a foreign national subject to administrative expulsion in the form of forcible expulsion may be held in a specialized institution is not stipulated in the

⁶⁵ <http://www.memo.ru/hr/refugees/laws/Chapter7.htm>

norms of the Code of Administrative Offences.”⁶⁶ Thus, the deprivation of a stateless person’s freedom for an indefinite period “until expulsion” as a measure needed to execute the expulsion actually turns into an additional punishment.

The problem of review of confinement in SITDFNs could be easily resolved by analogy with recently introduced judicial review of detention terms in pretrial detention facilities in cases involving extradition. The procedure for extending detention terms for the purposes of extradition is now conducted only in court, with the participation of the parties and in compliance with procedures, even though it used to be that terms in extradition cases were not extended and the people subject to extradition were kept in pretrial detention facilities for up to 18 months with no judicial review. These changes in extradition procedures pursuant to Chapter 54 of the RF Code of Criminal Procedure became possible through numerous ECHR judgments against Russia, the Constitutional Court’s position, and the alignment of enforcement practices with the requirements of the RF Constitution and the European Convention on Human Rights and Fundamental Freedoms.

The risk of long-term confinement in a SITDFN grows because prisoners are not generally able to appeal a resolution on expulsion with the assistance of an attorney or on their own. Unlike criminal cases, where accused persons are provided with free legal aid at the expense of the state, violators of the Administrative Code (which includes SITDFN prisoners) do not receive such aid. The absolute majority of prisoners face financial difficulties and cannot pay for the services of an attorney. And foreign nationals and stateless persons cannot write complaints, applications, and requests on their own because they do not understand the law and usually do not speak Russian. Another barrier to legal aid is the closed nature of SITDFNs: even if the prisoners themselves have a legal education or funds for a lawyer, it is impossible to inform an attorney or human rights defender about the problems they face, send a letter to a state agency, or receive a response from that agency in conditions of complete isolation, without a telephone or other means of communication. The relevant services that hold the fate of SITDFN prisoners in their hands work very slowly or not at all, and it is not unusual for them to spend months on requests for confirmation of citizenship.

Thus, a legal mechanism needs to be created to ensure judicial review of terms, detention conditions, and the advisability of confinement in a SITDFN, and free legal aid must be made available to all SITDFN prisoners.

3. FAILURE TO IMPLEMENT THE ECHR DECISION IN ITS TOTALITY AND INDIVIDUAL POSITIVE CHANGES IN ENFORCEMENT PRACTICES

The judgment in the Kim case entered into force on 17 October 2014 and should have had a significant influence on the practice of confining foreign citizens and stateless persons in specialized institutions. However, no dramatic changes have occurred since the Russian authorities have not taken general measures to improve the situation. In terms of detention conditions, the system of specialized institutions for the temporary detention of foreign nationals (SITDFN) was introduced in 2014 in all 83 RF constituent entities to replace regional foreign national detention centers, but conditions in these new facilities remain unacceptable: the problems of poor nutrition, overcrowding, information isolation, lack of access to medical care and conditions for family stay persist. (See Part II of this report for more details about detention conditions in SITDFNs.)

There have also not been any real changes in respect of review of detention terms and the advisability of confining foreign nationals and stateless persons in SITDFNs or in respect of providing legal documents to stateless persons upon their release, so this problem remains endemic.

The only positive change has been that bailiffs who handle expulsions have, at their own initiative, started filing applications with courts to stop expulsion enforcement proceedings for stateless persons in connection with the fact that no country will accept the applicant. This is evidence that at least

⁶⁶ From the ruling of Judge Yu.N. Rusanova in the case of N.G. Mskhiladze, a stateless person from Georgia. 26 January 2016. ADC Memorial archives.

some people recognize the absurdity of confining a stateless person in a SITDFN “until expulsion” and sometimes evens leads to the release of stateless persons from SITDFNs (cases of this were recorded in Saint Petersburg, apparently because the ECHR judgment in the Kim case related specifically to the SITDFN there). However, courts continue to issue opposite rulings in similar cases—in this sense, the ECHR judgment has had no impact whatsoever on judicial practice and the release of stateless persons from SITDFNs still has to be won in courts of different instances.

There are also examples of times when bailiffs’ appeals to release stateless persons from SITDFNs were denied. For example, Uktar Khomrayev, a stateless person from Uzbekistan, was held in a SITDFN for two years on the basis of a ruling issued by the Nevsky District Court of Saint Petersburg on 1 December 2011, even though it became clear after six months that it would not be possible to expel him because Uzbekistan refused to deem him its citizen and admit him into its territory. The bailiffs in charge of implementing the expulsion and an attorney filed a request with the court to stop the execution of the ruling and release Khomrayev, but the court refused to grant this request, stating that the period for implementing the ruling on expulsion was two years and that this period had not yet expired at the time the court adopted its decision.⁶⁷

However, there have been cases when courts have stopped the execution of expulsion and released stateless persons from SITDFNs prior to the expiry of the two-year detention term in response to appeals filed by bailiffs. For example, on 13 January 2014, the Lomonosovsky District Court responded to a petition by bailiffs and stopped the execution of the administrative expulsion of stateless person K.N. Khudoyberdiyev as part of the procedure envisaged in the RF Code of Administrative Offences, citing articles 31.7(4) and 31.8 of this Code, and released the applicant from the SITDFN after 10 months of confinement, noting that *“Even though the two-year period in this case has not expired, Khudoyberdiyev does not have any documents and there are no grounds for his expulsion to Tajikistan. Since he has been in the SITDFN for an extended period awaiting expulsion, the court believes that the implementation of the ruling must be stopped in regards to the implementation of additional punishment in the form of expulsion.”*⁶⁸ Similar decisions were adopted by the Vyborg City Court,⁶⁹ the Oktyabrsky⁷⁰ and Kirovsky⁷¹ district courts in Saint Petersburg, and the Plesetsky District Court of Arkhangelsk Oblast.⁷²

Additionally, bailiffs have started, at the petition of an attorney or on their own, to apply to the courts within the framework of the procedure of the RF Code of Civil Procedure in accordance with Article 43(1)(2) of the Federal Law “On Enforcement Proceedings,” pursuant to which a court shall stop enforcement proceedings if “the ability to execute the enforcement document requiring the debtor to perform certain actions (refrain from performing certain actions) is lost.” Court rulings on these applications are also contradictory: first instance courts generally refuse to stop administrative proceedings without providing any clarification on how the bailiffs should act; these refusals then must be appealed, but the appeals as a rule are not granted.

For example, in January 2015 bailiffs applied to stop proceedings in the case of stateless person Vepkhviya Mirianovich Sordiya at the petition of his attorney and the Saint Petersburg City Court issued a decision to release him. Prior to this, the first instance court (Oktyabrsky District Court) refused to stop proceedings and allow release several times on the ground that there were no legal possibilities or grounds for stopping enforcement proceedings in accordance with Article 43(2)(1) of the Federal Law “On Enforcement Proceedings.”⁷³

⁶⁷ Ruling of the Nevsky District Court of Saint Petersburg of 16 August 2013. ADC Memorial archives.

⁶⁸ ADC Memorial archives.

⁶⁹ Case of Ivan Bogachev, a stateless person from Kazakhstan. ADC Memorial archives.

⁷⁰ Case of Vadim Gaydarenko, a stateless person from Estonia. ADC Memorial archives.

⁷¹ Case of Emil Alimuradov, a stateless person from Azerbaijan. ADC Memorial archives.

⁷² Case of Khurshed Mardonshoyev, a stateless person from Tajikistan. ADC Memorial archives.

⁷³ ADC Memorial archives. It’s remarkable that Sordiya who had spent in SITDFN almost 5 months (from 1.10.2014 till 24.02.2015), had unfortunately been confined to a SITDFN again (30.10.2015).

In August and September of 2014, the Oktyabrsky District Court of Saint Petersburg, having reviewed similar applications under the same norms of the Code of Civil Procedure in the cases of the stateless persons Emil Alimuradov and Alexander Nikanorov, refused to stop proceedings several times on the grounds that the period for execution had not yet expired and the bailiffs had not taken all possible actions. However, the court did not bother to indicate what specific actions should have been performed. The court also failed to be convinced by documents confirming that the country of origin of the persons subject to expulsion would not issue them certificates for return and would not admit them to their territory. These refusals were appealed with the Saint Petersburg City Court but the appeals were not granted. Nevertheless, Alimuradov and Nikanorov were released after an attorney worked further on their cases (the expulsion was changed to “controlled self-departure”).⁷⁴

The arbitrary nature of rulings issued by the Oktyabrsky District Court can be seen by looking at similar cases: in the examples above, this court refused to release stateless persons from SITDFNs, but in January 2015 the same court ruled to release Vadim Gaydarenko, a stateless person from Estonia.

In ADC Memorial’s experience, there have been cases where rulings on expulsion have been successfully appealed with the Saint Petersburg City Court in accordance with Article 30.17 of the RF Code of Administrative Offences (appealing a court ruling that has entered into force). It was on this ground that the deputy chair of the Saint Petersburg City Court overturned rulings on the expulsion of stateless persons and released applicants from SITDFNs several times, citing the European Convention: *“The applicant is subject to release. Since he is not a citizen of any state, his expulsion from the RF is not possible. This makes his confinement in an expulsion center indefinite in violation of Article 5 § 1 (f) of the European Convention”*⁷⁵

Even though the abovementioned court decisions in favor of stateless persons demonstrate that judges and bailiffs have at least some understanding that stateless persons cannot be deported or confined to a SITDFN for this purpose, stateless persons find themselves in even deeper trouble as a result of what would appear to be positive court decisions.

Since none of the changes proposed by the ECHR in the Kim case have been implemented, Russian courts have cited the rules of the Code of Administrative Offences ignoring either the European Convention or the ECHR judgment. In this way, the expulsion of stateless persons has been replaced, absurdly, with “controlled self-departure”, without any stipulation of how a stateless person can depart and which country they will travel to.⁷⁶ Naturally, it is not possible to depart for anywhere without valid documents and the right to enter another country. Moreover, in requiring stateless persons to leave the RF on their own, the courts are encouraging them to commit a crime: stateless persons do not have the right to cross a state border of the Russian Federation without valid identity documents connecting them to a country. This is a violation of Article 322 of the RF Criminal Code, which envisages high fines or forced labor / deprivation of freedom for a period of up to two years for violations. However, by failing to execute a court decision on “controlled self-departure” from the RF, stateless persons are committing an administrative violation under Article 20.25(3) of the RF Code of Administrative Offences, which will result in re-confinement in a SITDFN for an extended period. Thus, a stateless person can’t avoid the violation of the law within the current system.

What follows is a typical example of a ruling issued by the Saint Petersburg City Court on the release of a stateless person from a SITDFN and the replacement of forcible expulsion with “controlled self-departure”:

“...Z.I.’s Georgian citizenship could not be confirmed by the proper authorities and we do not have any information about his citizenship of another country, so it is not possible to expel Z.I. from the RF and his confinement in a Foreign National Detention Center will become indefinite.

⁷⁴ ADC Memorial archives.

⁷⁵ For example, the case of V. Sordiya, a stateless person from Georgia.

⁷⁶ An important reason for this hesitancy on the part of courts in cases that ADC Memorial has been involved in is that a violation of migration rules committed on the territory of regions of federal significance (Moscow, Saint Petersburg, and Moscow and Leningrad oblasts) falls under Article 18.8(3) of the RF Code of Administrative Offences, which is more repressive than in other regions and stipulates mandatory expulsion along with fines.

“In light of the above, I believe that punishment in the form of administrative expulsion from the RF should be changed from forcible expulsion from Russia to expulsion in the form of “controlled self-departure” from the RF, since forcible administrative expulsion from Russia cannot be implemented in respect of Z.I.”⁷⁷

Court decisions on “controlled self-departures” are remarkable for their arbitrary nature: sometimes the same judge issues different decisions in similar cases.

For example, in November 2015, Deputy Chair of the Leningrad Oblast Court D.A. Puchinin released Rakhman Suleymanovich Abramov, a stateless person from Uzbekistan, from a SITDFN and replaced his expulsion with “controlled self-departure” (which is demonstrably impossible and can be accompanied by criminal prosecution).⁷⁸ The same Judge Puchinin, however, refused to release another stateless person—Sergey Nikolayevich Kozorez,⁷⁹ a migrant from Tajikistan who had been previously confined to a SITDFN for the purposes of expulsion but who could not be expelled due to the impossibility of this procedure. Kozorez was released from the SITDFN, but he was not able to execute “controlled self-departure” legally, so he was confined to a SITDFN again with the same purpose, even though a court had previously found that expulsion was not possible.

The case of Kozorez demonstrates a superficial approach to justice where even obvious facts are rejected to the detriment of common sense: during the appeal of the ruling on “controlled self-departure”, Chairman of the Leningrad Oblast Court V.B. Shevchuk declined to overturn Kozorez’s deportation and release him from the SITDFN. In his decision he wrote:

*“... According to a copy of a letter from the Embassy of the Republic of Tajikistan attached to the complaint submitted to the Leningrad Oblast Court,...Kozorez Sergey Nikolayevich, born 2 February 1975, is not registered in the Republic of Tajikistan and **is not deemed a citizen of the Republic of Tajikistan...**”* In the next paragraph, the judge reaches the following conclusion: *“...Information in the Embassy’s letter **does not exclude the possibility that S.N. Kozorez is a citizen of the Republic of Tajikistan** and does not suggest that it is impossible to execute the punishment prescribed for him.”⁸⁰*

Repeat prosecution for an administrative offence for failing to execute “controlled self-departure” from the RF, which is by definition impossible to execute, is a widespread practice.

For example, V. Sordiya⁸¹, a stateless person from Georgia, was confined to a SITDFN on 1 October 2014 and released on 24 February 2015 after an appeal by his lawyer under a decision of the deputy chairman of the Saint Petersburg City Court. He was re-arrested in December 2015 and confined to a SITDFN for violating Article 18.8 (3) of the RF Code of Administrative Offences as a repeat offender since he could not execute his obligation of “controlled self-departure” without valid documents. At the time of this writing, he was still being held in the SITDFN.

Emil Alimuradov avoided a new detention in a SITDFN just because of an attorney’s efforts. Alimuradov, a stateless person who moved to Russia from Azerbaijan in 2002, who has not left Russia since then and never had Azerbaijani citizenship in the first place, who spent ten whole months beginning in January 2014 in a SITDFN, appeared to be at risk of a new detention. Alimuradov had been confined even though he had every right to become a Russian citizen and even though a response from the Consulate General of the Republic of Azerbaijan stated that he was not a citizen of Azerbaijan and thus could not be transferred there was received six months before the court adopted a decision on his release. His attorney’s appeal to the court ruling placing him in a SITDFN with subsequent expulsion noted that the court ignored consequences of legal significance to the case (the authorities did not properly establish the

⁷⁷ Ruling of 4 June 2015, case No. 4a – 516/2015. ADC Memorial archives.

⁷⁸ Ruling of 23 November 2015, case No. 4a-555/2015. ADC Memorial archives.

⁷⁹ Ruling of 13 November 2015, case No. 4a-556/2015. ADC Memorial archives.

⁸⁰ Ruling of 18 December 2015, case No. 4a-557/2015. ADC Memorial archives.

⁸¹ Ruling of 24 February 2015 No. 4a-137/2015. ADC Memorial archives.

applicant's identity and citizenship, look into the possibility that it might not be possible to execute the ruling, and ignored the fact that there was no country willing to admit him to its territory) and that the period of detention was not indicated.

On 25 November 2014, Alimuradov's attorney succeeded in having the ruling issued by the district court overturned. Alimuradov was released, but, since the court merely replaced expulsion and confinement in a SITDFN with "controlled self-departure", which was impossible due to his status as a stateless person, he was re-arrested on 2 February 2015 by police officers and accused of violating Article 20.25(3) of the RF Code of Administrative Offences (evading an administrative punishment).

However, Alimuradov hadn't been confined in SITDFN again, as the attorney of ADC Memorial O.P. Tsteytlina appealed the decision of law enforcement officers. After reviewing the case file, the court ruled that there was insufficient evidence to adopt a decision on his guilt: *"The court was not provided with information that Alimuradov is a citizen of Azerbaijan or any other country, or that he is a stateless person. As of now, his citizenship has not been established and he has not been explained the procedures and timeframes for executing the court ruling on controlled self-departure from the RF."* The court ruled to stop proceedings in the case, since Alimuradov's actions lacked signs of a violation under Article 20.25(3) of the RF Code of Administrative Offences.⁸²

The judgment in the case of *Kim v. Russia*, which the attorneys have cited in their appeals, has helped, sometimes after a long fight in courts of various instances, free dozens of stateless persons held in SITDFNs for extended periods without the possibility of expulsion due to the inability to confirm citizenship. All of the stateless persons released (for example, Zaza Zarkua and Vepkhiya Sordiya (Georgia), Vadim Gaydarenko (Estonia), Rudolf Bedjanyan (Armenia), Gamysh Ormoshchev (Kyrgyzstan), Kurbon Khudoyberdiyev (Tajikistan), Igor Ushakov (Uzbekistan), and Alexander Nikanorov (Ukraine)⁸³) are potential applicants to the ECHR, since their imprisonment did not have any legal purpose that could be implemented. The application of "stateless person from Azerbaijan" Emil Alimuradov was registered on 9 July 2015.⁸⁴

However, the inexecutable punishment of "controlled self-departure" is not the only reason why stateless persons are confined to a SITDFN for a second time. This can also happen because there has not been a solution to the problem of providing stateless persons with documents. Not one court decision has directly stipulated that stateless persons should be issued identity documents and be allowed to stay legally in the RF after their release.

⁸² <http://adcmemorial.org/www/10394.html>

⁸³ ADC Memorial archives.

⁸⁴ No. 23019/15, Alimuradov v. Russia.

II. VIOLATION OF DETAINEES' RIGHTS IN SITDFNS

The ECHR judgment in the case of *Kim v. Russia* should have improved life for both stateless persons and foreign nationals held in SITDFNs. These detainees are mainly labor migrants from Central Asian countries (Uzbekistan, Tajikistan, Kyrgyzstan), with a scattering of citizens from former Soviet countries like Ukraine, Kazakhstan, Moldova, Georgia, and Azerbaijan, as well as the “far abroad.” They were found to have violated the migration regime by failing to leave the Russian Federation at the end of their terms of stay (and, in the case of citizens from Ukraine and Syria, where military operations are in progress, because they are not granted refugee status or temporary asylum). Of particular concern is the situation for women held in SITDFNs. These include pregnant women (SITDFNs are not equipped to handle pregnancies), mothers separated from minor children (who are held in separate special children’s institutions), and victims of sexual slavery (whose complaints are not investigated).

These people are all subject to expulsion under court rulings. However, since these court rulings give no indication of any term of detention or deadline for expulsion, it is not uncommon to find people who have been held in SITDFNs for a year, a year-and-a-half, and even four to five years with short breaks. This occurs because of the absence of clear norms in migration laws on expulsion, the lack of professionalism among staff at the Federal Migration Service and the Federal Bailiffs Service, and, as noted above, Russia’s failure to implement the ECHR judgment and adopt general measures to change laws and enforcement practices.

This is a typical example of bailiff’s inaction in the situation of lack of control over the procedure of immediate expulsion even if all the documents for it are ready: Aleksandr Onofriyevich Siradze, citizen of Georgia, was detained into FNDC for not having personal documents. On March 6, 2013 FMS issued a certificate for return home valid till June 6, 2013, i.e. within period the bailiffs should implement the court ruling and expel Siradze to Georgia; besides, he was ready to pay for his travel home himself. Violating the law, the expulsion was not executed on time: the bailiffs did nothing for three months while Siradze was in detention up to the certificate for return home expired. After the attorney’s complaint, a new certificate was issued, and only on July 10, 2013 he was expelled.⁸⁵

Detention conditions in SITDFNs, which were found inhuman by the ECHR in the *Kim* case, are unfortunately not improving system-wide. SITDFN detainees continue to suffer from overcrowding, poor nutrition, and deprivation of freedom of movement and walks. They are not able to work or engage in meaningful activities, and there are no conditions for leisure activities, access to qualified medical and legal aid, or regular contact with the outside world.

Below is the first-hand account of Viktor Nigmatulin, an inmate at the Kemerovo Oblast SITDFN, which was published on a social network:

“People are under video surveillance round-the-clock. This violates the right to security of person. There are even cameras in sleeping areas. Meetings with relatives are not allowed, even though some people spend months and sometimes even years in detention! Phones and tablets are prohibited! This deprives people of their right to security of person by any available means! There’s no medicine. You can only take a walk according to schedule. It’s not possible to appeal a decision if you don’t have any money. This all violates many different human rights, but the authorities prefer to remain silent about these problems.”

⁸⁵ Archive of ADC Memorial.

*No escapes, riots, or hunger strikes will help. What can I say? There's even a disabled person here, already in his second year. No one needs him—not the social workers or anyone else.*⁸⁶

1. STIFFENING OF MIGRATION LAWS AS A FACTOR INCREASING THE RISK OF CONFINEMENT IN A SITDFN

Loopholes in the law, corruption, complicated procedures for gaining legal status and recovering lost documents, and unpredictable changes in procedures for entering and leaving Russia frequently force migrants to seek roundabout and admittedly dangerous paths to legalization.

Under current Russian law, foreign nationals must obtain all their residence and work permits within 30 days of their arrival. However, migrants are rarely able to meet this deadline due to the difficulty of completing this paperwork, long lines, and the need to appear before a medical commission and pass Russian-language exams at specific institutions with their own schedules. As a result, many migrants have been forced to rely on unscrupulous middlemen or employers, thus facing the risk of receiving invalid documents. This can result in the initiation of an administrative case against their holder (who usually does not know that they are fake) for violating his or her regime of stay in the Russian Federation. Moreover, foreign nationals who have arrived in Russia have a hard time tracking constant changes in the law (mainly in the direction of tightening), and the RF authorities clearly do not do enough outreach and awareness work to help prevent this.

Over the past two years, the State Duma of the Russian Federation has adopted numerous amendments to migration laws, mainly by stiffening regulations and enforcement practice. These changes have mainly affected the law “On the Procedures for Entering and Leaving the Russian Federation.” Under this law, beginning 1 January 2014, the period of stay in the Russian Federation for citizens arriving from “visa-free” countries was reduced to 90 days out of a possible 180 (previously, these kinds of migrants could extend their stay in the RF many times by leaving the country every 90 days and immediately reentering with a new migration card). Only people who had a proper work permit or license had legal grounds for long-term, uninterrupted stay in the RF (as of 1 January 2015, work permits for citizens from so-called visa-free countries have been cancelled—now these people can only work in the RF on the basis of a license; citizens from Eurasian Economic Union countries now receive employment preferences (see below for more on this)).⁸⁷

Because they had not been informed of the new procedures, many migrants continued to reside in Russia under the old rules and were consequently prosecuted for administrative offences and expelled to their native countries (the expulsions reached their peak in 2014). In terms of the possibility of long-term stay in Russia, the new law does not in any way regulate the right of the children and family members of labor migrants to stay in the RF legally, which results in the added risk of becoming an “illegal” (not to mention violates the rights of the child to education and to living in a family).

Another important amendment (23 July 2013 No. 207-FZ) concerns two articles of the Code of Administrative Offences: Article 18.8(3) (offenses related to entry rules and regime of stay in the Russian Federation) and Article 18.10(2) (illegal performance of labor activities in the Russian Federation by a foreign citizen). These norms are only applied in Moscow, Saint Petersburg, and Moscow and Leningrad oblasts. In addition to increased fines for these violations, they also prescribe mandatory expulsion. (In other regions, a “fine with or without expulsion” is stipulated for these offences.) Also, more grounds for refusing foreign national entry into Russia were added and the length of these bans was increased.

⁸⁶ <http://vk.com/klubreshetka>

⁸⁷ Article 13.3 “On the Legal Status of Foreign Citizens.”

Before these amendments entered into force, expulsion was also frequently prescribed by judges in Moscow, Saint Petersburg, and Moscow and Leningrad oblasts. However, since judges previously had the option of tailoring punishments and selecting one measure or another, there needed to be a compelling reason for expulsion. For example, when a person was prosecuted for administrative liability for the first time and his offence was minor (for example, exceeding the period of stay by several days, violating traffic rules, etc.), judges would usually issue a decision only on a fine. However, in the case of a repeat violation of the period of stay or extended residence in the RF without registration, judges would prescribe a fine with expulsion, which automatically included a ban on entry. Since the abovementioned amendments entered into force, however, foreigners who were not able to complete the required documents on time, who failed to report lost documents, or who exceeded their period of stay by just one day are now simply fined, thrown in a SITDFN, and deported to their native countries without the right to enter Russia for the next five years. Those who break the law repeatedly face even stiffer punishments. For example, foreign citizens who receive two or more rulings on expulsion or deportation will not be able to enter Russia for 10 years from the date of expulsion. As was the case with the amendment to the law “On Entering and Departing the Russian Federation,” many people were not properly informed of which specific offenses are covered by these articles or of the punishments that could ensue.

In practice, a fine, mandatory expulsion, and a subsequent ban on entry into the RF has become the standard punishment for any administrative offense from not having a medical insurance policy to overstaying one’s time in Russia by even just 24 hours. The following statistics show the sharp growth of expulsions in 2014 (139,000, which exceeds the same figure for 2013—82,413, by a factor of 1.7) and bans on entry (almost 683,000 versus 456,500 in 2013, an increase of 1.5 times).⁸⁸ It should also be noted that in 2014 entry was banned for 682,893 people, while the FMS issued fewer orders to ban entry (644,918). Thus, orders to ban entry originated not only with the FMS, but with other RF agencies as well (in addition to the FMS, the Ministry of Internal Affairs, the Federal Security Service, the Foreign Intelligence Service, the Ministry of Defense, the Ministry of Foreign Affairs, the Federal Drug Control Service, the Federal Customs Service, and the Federal Penitentiary Service are authorized to adopt “decisions forbidding entry”⁸⁹; the Ministry of Justice, the Federal Financial Monitoring Service,⁹⁰ the Federal Service for Supervision of Consumer Rights Protection and Human Welfare, the Federal Medical and Biological Agency and others may also adopt decisions on the undesirability of a foreigner’s stay in Russia).⁹¹ People may learn of an FMS entry ban by making a request following the procedure described in FMS public resources, but they can only learn of bans issued by other agencies through their own experience, i.e. when border guards do not let them through (the FSB’s border service is apparently the only service that has complete information on bans, but this data is not published).

⁸⁸ <http://www.fms.gov.ru/about/statistics/data/details/110975/>; http://www.fms.gov.ru/about/activity/stats/Statistics/Statisticheskie_svedeniya_po_migracionno/item/57508/57512/

⁸⁹ RF Government Resolution of 14 January 2015 No. 12 “On Procedures for Adopting a Decision to Forbid Entry into the Russian Federation for a Foreign Citizen or Stateless Person,” in accordance with part 3 of Article 25.10 of the Federal Law “On Procedures for Entering and Leaving the Russian Federation.”

⁹⁰ <http://www.fedsfm.ru/about/uy>

⁹¹ The fact that entry bans can be issued by different agencies creates a major disadvantage for migrants: information on the presence of a ban imposed by the FMS can be obtained through an online query (“legally significant information” is only issued to those who file an application in person at the local FMS office), but it is extremely difficult to determine what other agency could have banned entry, even for government agencies of the country of origin. For example, the State Registration Service of the Government of the Kyrgyz Republic states on its website that even when the FMS RF has not placed any barriers on a migrant’s entry into Russia, there may very well be an entry ban based on a “ban list maintained by the FSB.” Moreover, the website states that “the KR Ministry of Labor, Migration, and Youth only cooperates with the FMS RF” (<http://grs.gov.kg/ru/important/20-Iest-vozmozhnost-vykhoda-iz-chiernogho-spiska-Fied/>).

	2013	2014	2015
Reports on administrative offenses	2,530,443	2,324,912	2,225,017
Expelled and deported	82,413	139,034	117,493
FMS orders to ban entry for foreigners and stateless persons	459,337	644,918	490,893
Foreigners and stateless persons banned from entry	456,434	682,893	481,404

The story of Mindaugas Karbauskis, the artistic director of the Mayakovsky Theater and a Lithuanian citizen with a Russian residence permit, is a good example of how unexpected changes to migration law can disrupt the life plans of foreigners working in Russia. Prior to the time the stricter amendments entered into force, Karbauskis had always been able to fly into Moscow without any problem, but in early February 2014, he was stopped by border control at Vnukovo Airport. There he found out that he was banned from entering the RF due to several administrative offences he had committed (traffic and parking violations), even though he had paid the fines for these offences. Cultural figures came out in support of him, which was the only reason why the charges against him were dropped. He was able to return to Moscow several days later and continue his work with his theater.

This story became widely known only thanks to the victim's fame. But actually hundreds and thousands of regular people find themselves in the same situation every day. This is because they are not able to keep up with constant changes in the law on their own and because the FMS and other state agencies have absolutely no interest whatsoever in working to prevent administrative offences or in stepping up their efforts to inform foreign citizens of changes to the law. Instead, the FMS, the police, and other law enforcement agencies have adopted the practice of high-profile raids with typical names like "Migrant" and "Illegal." During these operations, dozens, hundreds, and sometimes even thousands of these "violators" are detained. Later, they are fined by a court, sentenced to administrative expulsion, and confined in a SITDFN for an indefinite period (up to two years from the time a court decision enters into force, but in practice for an even longer period, since, when appealed, the period for a decision to enter into force may be increased by anywhere from 10 days to six months).

Even the easing of the migration regime for labor migrants that has occurred within the framework of the recently created international structure known as the Eurasian Economic Union (EEU) has sometimes resulted in the expulsion of migrants and entry bans due to incomplete and confusing explanations of this regime.

On the positive side, citizens of Armenia and Kyrgyzstan, which joined the EEU in late 2014 and on 12 August 2015, respectively, received important preferences: it became possible for them to work in the RF without a license, documents on education obtained in either country began to be recognized in the RF, and the deadline for migration registration was increased from seven days after entry into the RF to 30 days after such entry. Finally, strict temporary restrictions on legal stay in the RF were lifted and now labor migrants and their families can legally stay in the RF during the period that the migrant's labor agreement is in effect. This gives the children of migrants the chance to live with their parents and attend educational institutions without any breaks in their studies.

However, the majority of labor migrants were not given specific information about changes in migration rules for migrants from EEU countries. For example, the media in Kyrgyzstan got ahead of itself several times and triumphantly announced that the new rules had entered into force before they actually had. This confused many migrants, who, following these false reports, did not execute

their permits correctly, thus violating the migration regime. This led to their ultimate expulsion from the RF.⁹² Also, most labor migrants from EEU countries did not immediately understand why they had to enter into a labor or civil law contract with employers to stay the RF legally.

ADC Memorial has even seen cases where FMS staff members themselves were not properly informed of changes to migration laws and thus provided incorrect information to migrants from EEU countries.

This kind of failure to provide correct information led to the confinement of G.E., an Armenian citizen who arrived in Russia on 19 September 2015, in a SITDFN and to his ultimate expulsion. When he was filling out documents for his migration card upon his entry into Russia, it was explained to him that as a citizen of Armenia (an EEU participant), he had the right to remain in Russia for up to one year. He decided to enter for six months. Both his migration card and migration registration listed a term of stay until 19 March 2016. Thus, G.A. assumed that he would need to leave Russia on 19 March 2016 and not upon the expiry of 90 days.

On 21 December 2015, G.E. was detained in Volosovsky District of Leningrad Oblast for violating the migration regime. Under a decision of the Volosovsky District Court of Leningrad Oblast dated 23 December 2015, he was found guilty of committing the administrative offense stipulated in Article 18.8(3) of the RF Code of Administrative Offences and sentenced to a fine in the amount of 5,000 rubles with administrative expulsion from the Russian Federation and confinement in a SITDFN without any indication of the specific term of his detention. His lawyer's appeal to this was not granted, since technically elements of an offense were present (even though G.E. exceeded his 90-day stay by only 48 hours). The appeal was complicated by the fact that FMS representatives submitted a statement from G.E.'s partner to the effect that he beat her. The claimant was expelled with a five-year ban on entry.⁹³

2. THE PROBLEM OF EXPULSION TO COUNTRIES WHERE THERE IS A THREAT TO LIFE, INCLUDING TO COMBAT ZONES

The most dramatic expulsions involve people being expelled to places where their lives will be in danger. Citizens of Ukraine, Syria, and Somalia have been sentenced to expulsion with no account for the fact that military operations are ongoing in their countries. Uzbek citizens have been expelled without any regard for the fact that they may be persecuted for religious reasons in their native country.

Even though the RF government has declared that it will protect refugees and asylum seekers from Ukraine⁹⁴ and says that it will soften the migration regime for people fleeing to Russia from war,⁹⁵ in reality the government has a completely different policy: dozens of Ukrainian citizens facing expulsion to combat zones for violating migration rules are being held in SITDFNs.

Rulings on expulsion to combat zones can only be reversed in higher instance courts. In December 2014, the Saint Petersburg City Court overturned a district court decision and ruled to release Ukrainian citizen A., a refugee from Donbass previously accused of violating migration rules (Article 18.8(3) of the RF Code of Administrative Offences) and sentenced on 4 May 2014 to a fine of 7,000 rubles and expulsion with confinement in a SITDFN. He spent over six months there, even though he had filed documents for temporary asylum in Russia. The Saint Petersburg City Court

⁹² Analysis of the Conditions of Stay and the Level of Functioning of Labor Migrants from the Kyrgyz Republic in the Russian Federation with Account for Changes in the RF's Migration Policy in 2014 – 2015. Monitoring report by the International Protection Centre and Bir Duino Kyrgyzstan, 2015.

⁹³ Case of Armenian citizen G.E. ADC Memorial archives.

⁹⁴ http://www.fms.gov.ru/press/news/news_detail.php?ID=12181

⁹⁵ <http://kremlin.ru/events/president/news/47519>

agreed with the defense's arguments asserting that the district court did not consider the events in southeastern Ukraine or the mortal danger A. would face if he were to be expelled when it issued its ruling. The city court's ruling of 16 December 2014 notes that given the complicated internal political situation in Ukraine, additional punishment in the form of administrative expulsion *"cannot be found to correspond to the purposes of punishment and the principles of sentencing."*⁹⁶

In another case, the Saint Petersburg City Court reversed a decision of the Kalininsky District Court to expel two Ukrainian citizens who came to Russia from Gorlovka, which was in the combat zone at that time. The brothers Danil and Denis Soldatov and their mother fled Gorlovka when combat operations started there and their house was destroyed. They all applied with RF FMS agencies for temporary asylum and have receipts attesting to this. However, their applications were apparently not reviewed properly, because each time they went to the FMS, they were told to "wait for a call." In June 2015, the Soldatovs were "exposed" as "illegal migrants" and confined in a SITDFN. The Kalininsky District Court ruled to fine them each 5,000 rubles and deport them back to Gorlovka.

In the appeal, which resulted in a partial reversal of the district court's decision, the Soldatovs' attorney, citing Article 3 of the European Convention and Article 3 of the Convention Against Torture, spoke about the immediate danger the Soldatovs would face in their country of origin. She stressed that the Soldatovs were in the process of receiving temporary asylum in Russia.⁹⁷ After their expulsion was reversed, one of the brothers was granted temporary asylum, while the other was denied it on the grounds that "he [supposedly] did not have close relatives in Saint Petersburg," even though his mother, brother, common-law wife, and children were granted asylum.

ADC Memorial knows of another similar court decision in the case of L., a Donetsk resident of Roma origin who fled the war. After a ruling was issued by a first instance court, L. was confined in a SITDFN until his expulsion. The city court of Sergiyev Posad, Moscow Oblast reversed the expulsion, but upheld the fine as a punishment for violating Article 18.8(3) of the Code of Administrative Offences. In its decision, the court noted that *"In addition to punishment in the form of an administrative fine, Article 18.8(3) of the RF Code of Administrative Offences also stipulates punishment in the form of administrative expulsion from the RF. However, L. has been permanently registered in Donetsk, Republic of Ukraine, where, as we all know, combat operations are in progress. On the basis of articles 2 and 15 of the Convention on the Protection of Human Rights and Fundamental Freedoms, considering the priority of human life and health over state interests, and cognizant that there is no information that would place L.'s right to security of person over the RF's public interests, the court orders punishment in the form of an administrative fine without administrative expulsion."*

Even though the decisions of the Saint Petersburg and Sergiyev Posad city courts saved the claimants from expulsion, they are nonetheless absurd in their essence: the fine for violating the migration regime was upheld, even though the courts recognized that the victims, who were fleeing real danger, were innocent.

But even Ukrainian citizens who have been granted temporary asylum in Russia have no guarantee that they will not be deported. For example, Sergey Popozoglo, who lost his temporary asylum documents, was detained at the local FMS department for Krasnogvardeysky District, Saint Petersburg, where he went in connection with this loss. Officials at the local department, who had access to the registration database for foreign citizens, were able to confirm that Popozoglo had been granted temporary asylum, but they still wrote up an administrative report. The court ignored the defense attorney's argument that loss of documents did not equal loss of status and the excerpt from the FMS database confirming the status of temporary asylum. Charging Popozoglo with lacking a passport (which the FMS had confiscated, in accordance with procedure, in exchange for the temporary asylum certificate), Judge I.E. Kalinina of the Saint Petersburg City Court upheld the district court's ruling.⁹⁸ Popozoglo was deported to Ukraine.

⁹⁶ This case file is in ADC Memorial's archives.

⁹⁷ This case file is in ADC Memorial's archives.

⁹⁸ Decision of the Saint Petersburg City Court of 11 August 2015. ADC Memorial archives.

Courts even adopt rulings and decisions on the expulsion of those Ukrainian citizens for whom the Russian government has acknowledged its responsibility. These include citizens who have openly stated their fear of being drafted into the Ukrainian army (even though President Putin maintained that he would protect them when he stated that “many people are already evading mobilization, they’re trying to come here to sit things out, and they’re doing the right thing because they’re just being used as cannon fodder”⁹⁹; as a matter of fact, the regime of stay for Ukrainian citizens in Russia was temporarily relaxed specifically for these people),¹⁰⁰ as well as citizens who have asserted that they have participated in combat operations on the side of the so-called DPR and LPR and who will face charges of terrorism and extremist activity and long prison sentences if they are expelled.¹⁰¹

Another group of refugees in Russia from another “hotspot” is made up of Syrian citizens. Some Syrians are recent refugees fleeing the Islamic State, while others came to Russia long before the military conflict. The RF has also treated them quite harshly and without any sense of responsibility, even though Russia’s participation in military operations has contributed to an escalation in the conflict and a surge in the number of refugees. Dozens of Syrian citizens are being held in SITDFNs throughout Russia for violating current migration rules (failing to leave Russia on time because of the changing situation in their country), but they cannot be expelled because, in accordance with international law, they must be recognized as “refugees sur place” and provided with unobstructed access to the procedure for being granted refugee status or temporary asylum. However, FMS data shows that a total of two (!) Syrians were recognized as refugees from 2009 to 2014, while 1,781 applied for this status. During the same period, 1,921 Syrian citizens were granted temporary asylum out of 3,343 applicants.¹⁰²

A telling example of this confusion is the story of Syrian citizen A.Kh., a student at Saint Petersburg Polytechnic University who was unable to extend his legal stay in Russia due to the war in Syria.

The university did not extend A.Kh.’s academic visa, which was due to expire on 8 April 2015, until 1 July 2015, which was the end of his academic contract, since his Syrian passport was about to expire. He sent his passport to Syria, but he did not receive the extended passport in time due to the ongoing civil war there.

In order to avoid administrative liability and a fine, the Polytechnic University issued an order to expel A.Kh. on 9 April 2015. When he received his extended passport, A.Kh. went to the local FMS office on his own and asked for help resolving this problem. However, instead of extending his period of stay, officials wrote him up for committing an administrative offence.

On 28 April 2015, a court found A.Kh. guilty of violating Article 18.8(3) of the RF Code of Administrative Offences and sentenced him to a 5,000 ruble fine and expulsion. He was confined in a SITDFN to execute this punishment without any indication of his term of detention.

The court ignored legally significant circumstances in the case like A.Kh.’s inability to extend his period of stay and the fact that he could not be expelled to Syria because of the ongoing civil war there and the slaughter of innocent civilians. With this decision, the court not only put this young man’s life in real danger, but also violated a number of norms of both Russian and international law: articles 19, 15(4), 17(1), and 38 of the RF Constitution, articles 3, 5(1)(f)

⁹⁹ <http://kremlin.ru/events/president/news/47519>, V.V. Putin’s meeting with students at Gorny University, 26 January 2015.

¹⁰⁰ For example, in September 2015 the Saint Petersburg City Court ruled to expel S.B., who stated that when he was in his own country, he repeatedly received calling-up notices. The court ignored the fact that S.B. had applied for temporary asylum in Russia and noted that “the Convention Against Torture...does not apply to S.B. because there are no grounds to assume that he will be subjected to torture or inhuman treatment in connection with his expulsion.” (ADC Memorial archives).

¹⁰¹ ADC Memorial learned that in September 2015 the Kolpinsky District Court refused to cancel the forcible deportation of Ukrainian citizen V.E., who asserted that he participated in combat operations in the militia of the so-called DPR near the village of Snezhnoye from January to July 2015. He has been held in a SITDFN since September 2015, and agencies of the Federal Migration Service Directorate have yet to visit him to conduct the procedure for determining temporary asylum.

¹⁰² <http://www.fms.gov.ru/fms/activity/stats/Statistics>

of the European Convention on the Protection of Human Rights and Fundamental Freedoms, and Article 3 of the Convention Against Torture, as well as procedural requirements stipulated in the Code of Administrative Offences.

A.Kh. was finally released from the SITDFN after his attorney filed an appeal.¹⁰³

There is no systematic solution to the problem of refugees and asylum seekers. In the case of a family of Kurdish refugees from Syria (Hasan Abdo Ahmed, his wife Gulistan Issa Shaho, and their four children), it was only public outcry and the involvement of the most senior FMS officials that enabled human rights defenders from the group Civic Assistance to help this. This family spent the period from 10 September to 20 November 2015 in the transit zone of Moscow's Sheremetyevo Airport while trying without success to receive refugee status. Moreover, the pre-trial measure selected for them during the criminal investigation was bail, i.e. they had the right to enter Russia and be in the country, but they were held in the airport's transit zone in inhuman conditions. On 23 September 2015, the Khimki District Court found Hasan and Gulistan guilty and sentenced them to the lowest possible fine of 5,000 rubles apiece for "the illegal crossing of a state border" (Article 322 of the RF Criminal Code), but sent them back to the buffer zone at Sheremetyevo, an area which lacks any conditions for living, especially with children. It was only through the efforts of human rights defenders that this family applied for refugee status a second time and was confined in temporary FMS accommodation center in Tver Oblast.¹⁰⁴

3. FEMALE DETAINEES IN SITDFNS

3.1 TRAFFICKING VICTIMS

Women who have been trafficked from their countries of origin are viewed by the police not as victims, but as violators of the migration regime subject to expulsion. Instead of providing assistance and support to these victims or investigating the crimes committed by the traffickers, law enforcement bodies aim to isolate the victims and open administrative cases against them. As in other cases, the only punishment for these kinds of cases is an administrative fine and expulsion with interim confinement in a SITDFN.

The story of Veronica Mandje, a citizen of Cameroon, is especially telling.¹⁰⁵ A victim of human trafficking, she spent almost four years in the Saint Petersburg Foreign National Detention Center (FNDC, later known as a SITDFN) beginning in 2010. She was confined there for the purpose of expulsion, but nothing happened for years. Despite the fact that the maximum term of stay in an FNDC in 2010 – 2011 was one year, both courts and bodies of the local FMS office conducted the illegal practice of "extending" detention: on one and the same day the court would issue a decision to terminate enforcement proceedings due to the expiry of the statute of limitations and then would proceed to adopt a new ruling finding Veronica guilty of violating her term of stay and sentencing her to expulsion and confinement in an FNDC. She did not spend one day of this time at liberty and naturally could not violate her regime of stay while she was in prison under the complete control of the authorities. When she was first detained in September 2010, Veronica stated that she was the victim of sexual slavery, but rather than investigate her assertions, the authorities kept her in prison in violation of every term and procedure.

¹⁰³ Case of Syrian citizen A.Kh. ADC Memorial archives.

¹⁰⁴ <http://www.novayagazeta.ru/news/1698123.html>

¹⁰⁵ <http://adcmemorial.org/www/8606.html>

In April 2012, the Vyborgsky District Court issued another ruling to expel Veronica and place her in an FNDC. This ruling indicated that Veronica was found at the address of 15 Smolyachkova St. (the location of the migration service); however, at the time the ruling was issued, she was located at the FNDC, where she had been confined under a ruling issued by the same judge one year before. At this point ADC Memorial attorneys took over her case and appealed this unprecedentedly long detention with the prosecutor's office and the courts. Finally, in October 2013, Veronica's case was heard by the Saint Petersburg City Court. During this hearing, several violations made by the Vyborgsky District Court when it issued its decision were uncovered: Veronica's identity was not established and the participation of an interpreter was not properly recorded. The court overturned the ruling against her and closed the case on her violation of migration rules due to the expiry of the statute of limitations.

But Veronica's misfortunes did not end there. After the court hearing, the attorneys lost contact with her. They suspected that she had most likely been "released" from the FNDC and deported to Cameroon. According to court bailiffs, 300,000 rubles were spent on her trial from 2010 until her expulsion. The disappearance of this amount of money required some sort of explanation, so the bailiffs stated that Veronica had to be returned to Russia from Turkey's transit zone several times; in actuality she had never left the FNDC all those years. Later it was learned that Veronica was in a center for expulsion again. Thus, over the entire course of this time, at least four decisions were adopted to place Veronica in a center for expulsion. The question of whether or not Veronica has been expelled remains open, since there has not been any contact with her, and her attorneys' requests for information about her fate from the local FMS office have gone unanswered.

A similar situation occurred with a different claimant and victim of sexual exploitation, Nigerian citizen I. In March 2013, Saint Petersburg's Kuybyshevsky District Court ruled to sentence her to a fine of 2,000 rubles and expulsion with confinement in an FNDC¹⁰⁶ for violating article 18.8 of the Code of Administrative Offences. The ruling expressly stated that I. worked as a prostitute and was found at the address 3 Kirova St. (the location of the FMS office for the Central District of Saint Petersburg), where I. went on her own volition because she had lost her passport and wanted to leave Russia (according to her, her employers withheld her passport from her). But instead of investigating her statement about being a sex slave, the court confined her in a FNDC without giving any reason for its decision or indicating how long she would spend there. ADC Memorial attorneys filed a supervisory appeal with the Saint Petersburg City Court to overturn the additional punishment of expulsion and (or) confinement in an FNDC until her administrative expulsion, but the appeal was not granted: I. was deported without any investigation of her time as a sex slave.

3.2 DETENTION OF FEMALE MIGRANTS WHO ARE PREGNANT OR MOTHERS TO YOUNG CHILDREN IN SITDFNS

The RF Code of Administrative Offences bans the administrative detention of pregnant women and mothers whose children are under the age of 14 (Article 3.9(2)). However, foreign women who have been sentenced to expulsion are regularly deprived of their freedom and confined in SITDFNs for a period of up to two years regardless of whether or not they have children and / or are pregnant. This discriminates against women who are not Russian nationals and violates the RF Constitution, which establishes equal rights for citizens and non-citizens.

Meanwhile, pregnant female migrants may spend an extended period in SITDFNs, which lack proper conditions even for strong and healthy people, without judicial oversight over this period or the necessity of depriving this person of her freedom. The European Court classifies this as inhuman treatment and a violation of articles 3 and 5 of the European Convention

¹⁰⁶ Foreign National Detention Centers (FNDC) were subsequently renamed SITDFN.

(judgment in the case of *Kim v. Russia*, 2014). SITDFNs lack even minimal conditions for supporting pregnant women, children, and, even more so, newborns and nursing mothers. They do not have dining halls, games rooms, or libraries, do not provide proper nutrition, do not provide access to general practitioners or specialists¹⁰⁷, do not have pharmacies, do not provide the opportunity for walks, make it difficult to use a shower and sometimes even a toilet, do not provide a place to wash or dry clothes, do not provide soap or feminine hygiene items or have a place to purchase them, and keep detainees in total information isolation without access to legal aid.

The work performed by ADC Memorial, which has repeatedly defended the rights of pregnant women and the mothers of young children confined in the Saint Petersburg SITDFN, reports from the Saint Petersburg ombudsman on the unacceptable detention conditions for women, and the documented first-hand accounts of human rights defenders and members of public monitoring commissions (PMCs) and community advisory boards under Federal Migration Service offices in various RF regions show that even when courts know that women are pregnant or that they have young children, they continue to place these women in SITDFNs throughout the entire country.¹⁰⁸

For example, the Volgograd SITDFN held 11 pregnant women with five children during the period of 1 April to 15 December 2014.¹⁰⁹ Members of the Kaluga PMC found a Ukrainian woman in the local SITDFN who was eight months pregnant; she was not allowed to leave the institution even in her condition and did not receive any special food.¹¹⁰ It was also found that the Ekaterinburg SITDFN did not provide special food for pregnant women.

A representative of the Migration and Law Network in Kaluga reported that:

"In winter 2014, pregnant Kyrgyz citizen A. ended up in the Kaluga SITDFN. After overstaying her registration in Moscow by seven days, she and her family tried to leave for Ukraine, but they were detained by officers from the Federal Highway Traffic Safety Administration. A court ruled to fine her and her mother-in-law and expel them both from Russia for violating migration rules. Both women were confined in the SITDFN in the village of Yakshunovo, Kaluga Oblast until their expulsion. Forty people were being held there at the time. However, the entire building had only one working bathroom, which did not have a bidet or a normal sink. The room where A. and her mother-in-law lived was a former classroom. It was locked at night, so she could not use the bathroom or the sink after 22:00. This made nighttime pure torture. In addition, the tap water in the building was not potable, and the only place to get drinking water was from the village well, to which neither A. nor any of the other detainees had access. During her three weeks at the SITDFN, A. suffered an acute respiratory infection, but she was not given any medical aid since the feldsher did not have any medicine. After three weeks, A.'s husband paid for plane tickets to Bishkek, thereby ensuring that A. was able to avoid a longer detention in conditions unfit for people."¹¹¹

¹⁰⁷ Resolution of the RF Government of 30 December 2013 No. 1306, which regulates the provision of medical aid in SITDFNs, does not prescribe that these institutions should have doctors, so in the best cases they have only feldshers.

¹⁰⁸ Report of the Saint Petersburg ombudsman: http://ombudsmanspb.ru/opyt_protivodejstvija_diskriminatsii_zhenschin_i_u.html; reports by representative member of the Migration and Law network L. Moseyeva-Elye on violation of the rights of pregnant women in the Kaluga SITDFN <http://7x7-journal.ru/post/64437>, <http://helier49.livejournal.com/205418.html>; report by PMC member A. Anikin on the lack of proper nutrition for pregnant women in the Ekaterinburg SITDFN <http://msalexandr17.livejournal.com/714949.html>.

¹⁰⁹ <https://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0CDwQFjAFahUKEwiog275PPGAhUJ2SwKHWJIBLs&url=http%3A%2F%2Fwww.fmsvolg.ru%2FloadFile.php%3Findex%3D187&ei=vTGyVeivJImyswHikJHYCw&usg=AFQjCNHgfG62Z-nvT7Wq06sqf2YGv0w&bvm=bv.98476267,d.bGg>

¹¹⁰ <http://7x7-journal.ru/post/64160>

¹¹¹ <http://helier49.livejournal.com/205418.html>

3.3 SEPARATION OF CHILDREN FROM THEIR MIGRANT PARENTS DURING DETENTION AND EXPULSION

An equally serious problem is the separation of children from their parents who have been confined in SITDFNs and the expulsion of these children separately from their parents. This practice violates human rights norms of Russian and international laws. For example, articles 9 and 10 of the UN Convention on the Rights of the Child forbid separating a child from his or her parents against his or her will and allow for such separation only on the basis of a court decision; the state must deal with cases involving entry into and departure from its territory in a positive, humane, and expeditious manner. The separation of children from parents is also a clear violation of Article 8 of this Convention, which guarantees respect for personal and family life. It also violates Article 54 of the RF Family Code¹¹², which enshrines the right of a child to the protection of his or her interests, all-round development, and respect for his or her human dignity, as well as other constitutional norms that guarantee the support and protection of the family from discrimination, including in the area of family life, based on respect for dignity of the person (Article 7; Article 17(1); Article 19(1) and (2); Article 21(1); Article 38(1) and (2); Article 45 (1); Article 46 (1) and (2)).¹¹³

An example of this practice of separating children from their parents is the case of Uzbek citizen A. and her husband H., who were both confined in a SITDFN under suspicion of having violated the rules of the migration regime.

The cause for their arrest and subsequent deprivation of freedom was a tip from an ambulance doctor whom the parents summoned to examine their seriously ill child. The case file also contains the statement this doctor—Elena Tyurina—gave to the prosecutor’s office. When this medical worker arrived at the apartment and found a sick child there, she decided that she should check the parents’ documents. She had doubts about their registration papers, which she hastened to share with the prosecutor’s office. The prosecutor forwarded her statement to the FMS, which proceeded to arrest the entire family. The child was sent to a hospital, while the parents were confined in a SITDFN.¹¹⁴

In another case, in September 2015, ADC Memorial and FIDH appealed to S.Yu. Agapitova, the human rights ombudsman for Saint Petersburg regarding the separation of Uzbek citizen Dilafuz Nabotova from her children.

On 7 September 2015, FMS officers arrested Ms. Nabotova and confined her in a SITDFN. At the time, she was in her 40th week of pregnancy. Two of her young children—8-year-old Sarvarbek and 7-year-old Mahbuba—were also detained and then separated from their mother and sent to the Tranzit orphanage. Two weeks after her arrest, on 20 September, 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 usually required at a birth), where she gave birth to a son. She and her newborn were returned to the Saint Petersburg SITDFN, where they were placed in an “isolation ward” (this was what the sign on the door said), which was most likely meant for holding people with infectious diseases. When questioned by Yu.D. Serov, an attorney assisting ADC Memorial with this case, head of the FMS office for Saint Petersburg and Leningrad Oblast E.V. Dunayeva responded that prior to Nabotova’s return to the SITDFN after she gave birth, this facility lacked any items or products needed for caring for a child (the Red Cross later provided a crib and care products, while the FMS office bought a changing table) and supplemental nutrition (SITDFN staff bought dairy products and fresh fruit at their own expense). Dunayeva noted that “current RF laws lack special norms regulating the procedures for holding pregnant women and new mothers” in SITDFNs, and also that “the SITDFN budget does not have a separate line for expenses to

¹¹² https://www.consultant.ru/document/cons_doc_LAW_8982/d97e3158b12d1907c420a43e1ce229d24956b2b9/

¹¹³ <http://www.constitution.ru/>

¹¹⁴ ADC Memorial archives.

support pregnant women and new mothers; this financing comes from general funds.”¹¹⁵ After almost a month in the SITDFN, Nabotova and her newborn son were deported from Russia on 15 October 2015. Her two young children spent over two months separated from their mother until they were deported in the company of orphanage staff members. Transit staff members responded to the attorney’s weekly calls to find out when the children would be returned to their mother by saying that they were waiting for financing to cover the cost of the trip for the children and the staff members traveling with them.

On 13 October 2015, a tragedy occurred as a direct result of the inhuman practice of separating children from their parents: 5-month-old Umarali Nazarov, who had been forcibly separated from his parents—Tajik citizens found to be “violators of the migration regime”—died in Saint Petersburg under suspicious circumstances.

During a special raid, officers R.A. Panakhov and S.L. Orlov from the FMS Admiralteysky District Office in Saint Petersburg delivered Zarina Yunusova, her 5-month-old son Umarali Nazarov, and an underage relative named Dalera Nazarova 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 without her child. This court issued a decision to expel her separately from her child, without confinement in a SITDFN. 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 the following morning. They went to Tsimbalin Hospital and asked to be shown the baby’s body. Without offering any explanations for the baby’s death, the doctors summoned a police squad, which arrested the baby’s father Rustam Nazarov and his uncle Abdulloyev and took them into the precinct. 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.

Umarali’s uncle spoke about this: *“When we were told where the baby was, I went to the morgue. The doctors asked me: ‘Should we prepare him for transport?’ I understood that he had been opened up. I asked why this was done without the family’s approval and who gave permission for it, but they just said those were their orders and that it wasn’t up to them. They said they were just doing their jobs.”*¹¹⁶

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

In an interview, Zarina Yunusova said: *“My baby wasn’t just removed, taken away, which is what they’re saying the press—he was forcibly ripped from my arms like predators tear up their prey. My husband will stay in Russia until the end of the investigation, but I was not given this chance. I’m sure this was done on purpose. I only want to know the cause of my baby’s death. Why did they do this to us?”*¹¹⁷

¹¹⁵ E.V. Dunayeva’s response to the attorney of 29.02.2016, outgoing No. 1/z-1001. ADC Memorial archives.

¹¹⁶ From an interview of the BBC Russian Service with the baby’s uncle: http://www.bbc.com/russian/russia/2015/11/151117_umarali_in_tajikistan

¹¹⁷ Ibid.

This case is a good example of how FMS and police officers routinely display flagrant indifference and cruelty and show complete disregard for the norms of the law. Zarina and her baby were taken to the police precinct by FMS officers, even though only police officers can do this. The ground for taking the baby away from its mother was an “Act on the Discovery of an Abandoned or Lost Child,”¹¹⁸ 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. 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. 845¹¹⁹, when an abandoned child is found, the authorities must identify its parents and notify 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.

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). 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 are trying to institute criminal proceedings against Umarali’s parents for failing to perform their parental duties. A pre-investigation check is currently in progress, but the victims’ representatives have not been informed of the results. The victim Zarina Yunusova and a witness named Daler Nazarov have not been asked to view a line-up. The only thing the investigative agency is doing is producing red tape, which could perhaps be evidence of efforts to conceal a crime.

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 examination until 18 December 2015. The scheduling of the forensic examination on 30 October 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 not breathing at 23:45), 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).

On 23 December 2015, the defense submitted a petition to schedule a repeat forensic examination, but the court refused. There has still not been any response to the complaint about the actions of the FMS and police officers.

4. INHUMAN DETENTION CONDITIONS IN SITDFNS

Until recently, in violation of procedural norms, violators of the migration regime—foreigners and stateless persons—have been held in institutions for the purpose of executing rulings on expulsion that are not intended for this purpose: remand centers, temporary detention facilities, and even drunk tanks (as was the case, for example, in Murmansk Oblast) have performed the functions of

¹¹⁸ Act on the Discovery of an Abandoned or Lost Child of 13.10.2014. ADC Memorial archives.

¹¹⁹ https://www.consultant.ru/document/cons_doc_LAW_158962/2c04e4f0621bf82c0e8e8ef65e99316349220a2b/

these foreign national detention centers, even though these facilities are not meant for this purpose. The conditions of stay in these institutions were as close as they could possibly be to prison conditions and did not meet the standards for holding detainees in places of detention.

As we saw in the example of the case “Lakatosh v. Russia”¹²⁰ (see Part 1 of this report), people who had not committed any serious crimes and were guilty only of violating migration laws were kept in these conditions for years. At the remand center affiliated with the Main Department of Internal Affairs for Saint Petersburg (6 Zakharevskaya St.), which served as a foreign national detention center until 2013, foreign citizens and stateless persons sentenced to administrative expulsion were forced to exist for many months in an oubliette-like space with insufficient ventilation, poor nutrition, a virtual lack of medical aid, and no absolutely no connection to the outside world. To make matters worse, their cellmates were frequently under investigation in criminal cases. Moreover, the migration services were in no hurry whatsoever to take measures to identify stateless persons and foreign nationals in order to deport them as quickly as possible. Sometimes migrants were forced to serve undeservedly harsh punishments due to a lack of urgency at the relevant agencies. At the end of their one-year terms, these migrants were sometimes simply escorted out of the center and onto the street, finding themselves left with the same status of violators of the migration regime, while any paperwork on them was closed out.

In 2013, RF constituent entities started to create separate foreign national detention centers (FNDC), which at that time were part of the Ministry of Internal Affairs structure. These centers were later transferred to the Federal Migration Service and came to be called specialized institutions for the temporary detention of foreign nationals (SITDFN). In terms of conditions, however, these centers are still more similar to prisons than to the family centers they were intended to be. In fact, they lack any conditions for family life: children are separated from their parents upon detention. Parents are placed in overcrowded, locked cells, while children are placed in special children’s institutions (like the Tranzit home in Saint Petersburg) or juvenile remand centers, where juveniles are held (for some reason, only minors over the age of 16 from former Soviet republics are sent to these centers; children from other countries are held in Tranzit until the age of 18).

ADC Memorial and other human rights organizations have repeatedly pointed out to the responsible entities that the detention conditions for inmates in these kinds of institutions are not compatible with conditions for long-term stay. As the European Court for Human Rights later indicated, long-term stay in such conditions can be defined as inhuman treatment in accordance with the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The procedures and grounds for confinement in these centers, the detention conditions, and the legal status of foreign nationals and stateless persons in these centers are regulated by the RF Code of Administrative Offences (Chapter 18, Article 19.27 of Chapter 19), Resolution of the RF Government of 30.12.2013 No. 1306 “On the Approval of the Regulation on Normal Conditions and the Procedure for Holding Foreign Nationals and Stateless Persons Subject to Deportation or Forcible Expulsion from the Russian Federation in Specialized Institutions of the Federal Migration Service,” the Regulation of the RF Federal Migration Service of the same name, Resolution of the RF Government No. 310 of 08.04.2013 “On the Approval of Requirements for Buildings and (or) Premises Transferred by RF Constituent Entities for the Purposes of Accommodating Specialized Institutions of the Federal Migration Service for Holding Foreign Nationals and Stateless Persons Subject to Administrative Expulsion from the Russian Federation in the Form of Forcible Expulsion from the Russian Federation, Deportation, or Readmission,” as well as other normative legal acts regulating the activities of these institutions.

Unfortunately, it is not always possible to find publicly available information on regulations for holding foreign and stateless persons in specific SITDFNs or on their actual situation. These institutions are closed to outsiders and it is extremely difficult for family members and even attorneys to gain access. Only attorneys who have orders are able to gain access to provide legal aid, but frequently administrators illegally demand that attorneys present an agreement on legal

¹²⁰ <http://adcmemorial.org/www/publications/the-publication-lakatos-and-others-v-russia-2011?lang=en>

aid or other documents. It is only recently that PMCs have been granted the right to visit SITDFNs. According to surveyed detainees, they are forced to obey “unwritten” rules that they learn about from “floor wardens” who cite verbal instructions of the administration. These rules change regularly and unpredictably, and there is no mechanism for their appeal.

VIOLATION OF SANITARY AND HYGIENE STANDARDS

One of the main problems in SITDFNs is that the area of cells does not meet sanitary standards. For example, the capacity of the Saint Petersburg SITDFN before it was transferred to the local FMS office was 176, and the capacity after the transfer was 336. Right now each detainee has less than 2.5m² of living space, since an 8-10m² room holds four people (in accordance with Clause 3(11) of the Rules for Holding Foreign Citizens and Stateless Persons in a SITDFN, the sanitary norm for each person in a cell should be 4.5m²). In violation of the requirements of Clause 40 of Resolution of the RF Government No. 1306, some detainees are not provided with sleeping accommodations and are forced to sleep on the floor on mattresses, which they roll up during the day. Violations of sanitary norms for cell area were also recorded in the Sverdlovsk Oblast SITDFN,¹²¹ and members of PMCs in other regions have noted the absence of sleeping accommodations in cells,¹²² the lack of ventilation, and other problems.¹²³

Foreign citizens and stateless persons in the Saint Petersburg SITDFN have made numerous complaints that they have not received proper clothes for the season or personal hygiene items (soap, toilet paper). When they enter the SITDFN, they can receive only soap and toothpaste (1 bar of soap and 1 tube of toothpaste per month). Each floor has three showers that can be used without restriction, but in late 2014 detainees complained repeatedly about problems with hot water (the water heater was broken). Complaints about the lack of hot water or the lack of regular access to a shower were received from SITDFNs in Moscow,¹²⁴ Kaluga,¹²⁵ and Ekaterinburg.¹²⁶

VIOLATION OF NUTRITIONAL STANDARDS

Nutritional standards in SITDFNs are set in the abovementioned Rules for Holding Foreign Citizens and Stateless Persons in a SITDFN. They are fairly meager and do not always meet the daily requirements for an adult (for example, they prescribe the use of bay leaves, but do not include fresh fruit). Rations for men and women are entered in different columns of the table (even though their differences are minimal and difficult to explain, men are for some reason allowed more of certain products), but there is no provision whatsoever made for special foods for pregnant women, nursing mothers, and people with dietary restrictions caused by health conditions (diabetes, ulcers). There is also no account for the fact that most people in SITDFNs are Muslim and do not eat pork.

¹²¹ <http://www.prison.org/content/oblaka-19052015>

¹²² Ibid.

¹²³ <http://7x7-journal.ru/post/38364>, <http://president-sovet.ru/events/visits/read/30/>

¹²⁴ <http://spb.onk.su/profile/42/blog/868.html>

¹²⁵ <http://7x7-journal.ru/post/38364>

¹²⁶ <http://www.prison.org/content/oblaka-19052015>

Food product	Unit of Measurement	Amount per person, per day		
		Men	Women	
Rye bread	Grams per day	300	200	
Grade B wheat bread		250	250	
Grade B wheat flour		5	5	
Various cereals		100	90	
Macaroni products		30	30	
Meat		90	90	
Fish		100	100	
Margarine products		35	30	
Vegetable oil		20	20	
Cow's milk		Milliliters per day	100	100
Chicken eggs			2	2
Sugar			30	30
Kitchen salt			20	15
Tea			1	1
Bay leaf	0,1		0,1	
Mustard powder	0,2		0,2	
Tomato paste	3		3	
Potatoes	550		500	
Vegetables	250		250	
Textured soy flour	10	10		
Fortified powdered kissel (dried fruit)	25(10)	25(10)		

Even these meager standards are not adhered to in practice. Detainees in the Saint Petersburg SITDFN told ADC Memorial that their meals consist of the following products: breakfast – semolina kasha or ground grits, a roll without butter, tea (not always with sugar); lunch – borscht “with almost no meat,” potatoes or rice with a fish cutlet (rarely with meat), black bread without butter, tea, kissel or compote; dinner – potatoes with fish, black bread, tea. According to detainees, it is virtually impossible to get enough nutrients with what they are fed. The people in the best situation are the ones that receive food from their relatives. The portions are normal size, but the food is monotonous, tasteless, and of poor quality. It is brought cold, in plastic containers. The detainees must eat it right in their cells because there are no designated places for eating in the facility. The amount allotted for food is 175 rubles per person per day. Electric kettles and immersion heaters cannot be used in cells, but a bucket with drinking water is available on each floor around the clock.¹²⁷

¹²⁷ Statements made by SITDFN prisoners. ADC Memorial archives.

INABILITY TO MOVE FREELY AROUND THE FACILITY

Detainees in the Saint Petersburg SITDFN cannot move freely around the floors—they are only allowed to walk in the hallway to the bathroom or shower room and back. They are not allowed to stand and talk in the hallway or visit other cells. The fourth floor has prison (closed) cells, which are always locked. Detainees are not allowed to leave them and move around the floor.¹²⁸

IRREGULAR EXERCISE AND POORLY EQUIPPED EXERCISE ENCLOSURES

Government Resolution No. 1306 of 31.12.2013 directs the administration of SITDFNs to maintain a well-equipped exercise area, exercise machines, and a well-equipped enclosure for walking, where detainees should walk for a minimum of one hour twice a day.

Unfortunately, the majority of SITDFNs have nothing like this at all. Time for walks in various institutions is set by the warden on the basis of an approximate (typical) daily schedule for specialized institutions, which was approved by the head of the FMS. In the Saint Petersburg SITDFN, detainees are allowed to walk no more than two to three times a week for no more than 15 – 20 minutes in a fenced off enclosure under an open sky without any type of covering or awning. Moreover, these enclosures lack any conditions for sports or leisure. Each cell has a schedule for walking. If it is raining during the scheduled time, then the walk is cancelled. When it is cold, detainees can only walk if they have their own warm clothes (many don't have warm clothes because they were detained in the summer), since SITDFNs do not provide them.¹²⁹

According to information from PMCs, foreign nationals held in the Moscow Oblast SITDFN are allowed to walk for only 30 minutes per day in an enclosure that does not contain any exercise or leisure equipment and does not have an awning, which prevents detainees from walking in bad weather.¹³⁰ These issues are typical for most institutions, specifically for SITDFNs in Irkutsk,¹³¹ Sverdlovsk,¹³² and Kaluga¹³³ oblasts. The SITDFN in Bashkortostan does not have any enclosure for walking, which goes against every rule and regulation.¹³⁴

LACK OF QUALIFIED MEDICAL PERSONNEL

According to reports from PMC members and detainees themselves, SITDFNs do not have qualified medical personnel—only feldshers work there. Generally, only the cheapest and most primitive medicines (analgin, aspirin, activated carbon) are used to treat sick people.

According to the first-hand account of a PMC in Bashkortostan:

“The institution’s medical office can’t really be called medical. It does not have the necessary equipment. It does not even have a kit for providing emergency medical aid. No medical supplies are delivered to the institution. If a foreign national in the facility falls ill, has a heart attack for

¹²⁸ Statements made by SITDFN prisoners. ADC Memorial archives.

¹²⁹ Statements made by SITDFN prisoners. ADC Memorial archives.

¹³⁰ <http://spb.onk.su/profile/42/blog/868.html>

¹³¹ http://copwatch.ru/otchet-nablyudateley/otchet-nablyudateley_45.html

¹³² <http://amigo3.livejournal.com/7557.html>

¹³³ <http://7x7-journal.ru/post/64160>

¹³⁴ http://sovetonk.ru/news/republic_of_bashkortostan/bsksuvsig/

example, a staff medic will not be able to help! There is no medicine. The reason given for this is lack of financing. Through their own efforts, senior administrators have used their own (!) money to buy some medicines, but this only creates the illusion of a medical service.”¹³⁵

According to regulations of the RF FMS governing standard conditions and procedures for holding foreign citizens and stateless persons in SITDFNs, elective care shall be provided for a fee. For example, according to a survey of foreign nationals being held in the Saint Petersburg SITDFN, special treatment for severe or chronic illnesses is not stipulated and medicine is not prescribed. That said, however, inmates undergo a so-called “medical inspection” every morning for injuries and bruises.

When PMC members visited specialized institutions in Bolshevo and Yegoryevsk in Moscow Oblast, they found that these facilities do not provide medical aid or medicines because of defects in legal regulations:

“In Bolshevo we encountered problems when someone had to be taken to a medical facility for a check-up. The provision ‘to enter into an agreement with local medical facilities’ needs to be added to the rules. Because if there are no agreements, the inmates will not be accepted or examined anywhere. Here’s another important clause: receipt of humanitarian aid. The Red Cross of Moscow Oblast wanted to provide humanitarian aid to Yegoryevsk in the form of medication, but they said: we won’t take it, it’s not in the rules. This must be enshrined in the rules.”¹³⁶

VIOLATION OF RIGHTS TO MEETINGS AND COMMUNICATION WITH RELATIVES AND APPEALS TO GOVERNMENT AGENCIES

As with the procedures for walks, there are no approved regulations on visits to SITDFNs, so the opportunity for meetings depends entirely on the administration. People who want to meet with their relatives and friends in the Saint Petersburg SITDFN must write a special letter to the warden. People who are not aware of this are forced to stand around on the street for several hours until they receive permission to see a detainee for several minutes. There is no special room designated for meetings with relatives and attorneys; at the Saint Petersburg SITDFN, all meetings are conducted in a room of 10 square meters, where several people, including migration service officials and attorneys, may be located at the same time. Extended meetings are not prescribed (according to regional PMCs, meetings at SITDFNs in Orenburg and Moscow Oblast (Yegoryevsk) last no longer than 30 minutes).¹³⁷

SITDFNs offer no opportunity for correspondence or Internet access and limited telephone communication. According to the PMC that inspected the SITDFN in the village of Sakharovo (Novaya Moskva), inmates are not allowed to call their relatives for weeks or months on end, and they need to write a special letter to the SITDFN inspector to receive permission for this.¹³⁸

According to one attorney’s testimony, “individuals in the Saint Petersburg SITDFN have extremely limited access to the telephone. They are only given their personal phones for several hours a day, from 15:00 to 19:00, and then their phones are taken away. They are not allowed to have their telephones in the morning, even though, for example, this is the best time of day to call government agencies.”¹³⁹

It is difficult for detainees to send correspondence, including letters to relatives and complaints, appeals and statements to courts, human rights organizations, and law enforcement organizations. Outgoing correspondence is not assigned a reference number, so it is very hard to track.

¹³⁵ From a report of PMC members after a visit to the SITDFN in Bashkortostan http://sovetonk.ru/news/republic_of_bashkortostan/bsksuvsig/

¹³⁶ From an interview with Liudmila Kravtsova, member of the Moscow Oblast PMC <http://www.prison.org/content/oblaka-19052015>

¹³⁷ <http://an-babushkin.livejournal.com/338414.html>; http://gulagu.net/profile/30/open_letters/5563.html

¹³⁸ From a report by PMC members on a visit to a Moscow Oblast SITDFN.

¹³⁹ From a report by an attorney representing a prisoner in the Saint Petersburg SITDFN. ADC Memorial archives.

VIOLATION OF THE RIGHT TO WORK AND TO LEISURE ACTIVITIES

SITDFN inmates spend months languishing without the opportunity to perform voluntary work, independent study, creative work, or any other meaningful activities.

Resolution No. 1306, which governs regulations in SITDFNs, expressly prohibits “the involvement of foreign citizens held in specialized institutions in work activities, including their involvement in serving food” (Clause 44).

In accordance with Clause 40(k) of Resolution No. 1306, SITDFN detainees have the right to play board games, read periodicals, watch television, and listen to the radio during set times. Unfortunately, this requirement, like many others, goes unfulfilled by SITDFN administrations. Inmates are not always given the opportunity to use the television and radios or read books, newspapers, and magazines without restrictions. For example, not one room in the Moscow SITDFN is equipped with a radio, and televisions are only located in staff rooms, which inmates cannot enter.¹⁴⁰ Inmates in the Irkutsk Oblast SITDFN have absolutely no access to radio or television.¹⁴¹ In the Saint Petersburg SITDFN, “*newspapers and magazines are all in Russian, board games are not prohibited, but they are also not provided by the administration. Every room has a radio and TV set, but they are not always working. There was a library until 2014, but the books were all in Russian. This library was closed in 2015.*”¹⁴²

ARBITRARY BEHAVIOR OF THE ADMINISTRATION AND INHUMAN TREATMENT OF SITDFN INMATES

It has been difficult for human rights defenders to monitor detention conditions in SITDFNs, and it was only in February 2015 that PMCs were granted the right to visit these institutions. The usual result of this closed nature is that the administration can behave in an arbitrary manner. The true extent of this behavior can only be guessed (PMCs only visit these institutions and publish reports in a few RF constituent entities).

As a rule, people held in a SITDFN are not able to make timely reports about the violation of their rights, which forces them to take extreme measures. On 17 February 2015, eight detainees in the Moscow SITDFN attempted mass suicide by cutting the veins in their arms and other parts of their bodies as a sign of protest against the violence and torture staff at this institution used against them. Human rights defenders received this information only one week later, and their visit to the SITDFN revealed flagrant violations of detainees’ rights:

“On 24 February 2015, Moscow-based human rights defenders started to receive messages that foreign nationals in the SITDFN of the Moscow EMS office (in the village of Sakharovo) were subjected to wide-scale and severe beatings by OMON troops, who had recently been called up to maintain security and order at this institution. On 25 February 2015, the attorneys Nadezhda Yermolayeva and D.V. Trenina visited this SITDFN and met with eight clients being held there. During their visit, they were able to confirm information that some of the victims of these beatings were applicants in ECHR cases won against Russia. These included Nabi Rakhimov (application No. 50552/13), Sokhib Khalikov (application No. 66373/13), Javohir Eshonkulov (application No. 68900/13), and Avazbek Nizamov, Khakim Dzhalalbayev, Olim Dzhalalbayev and Rakhmatullo Mukhamedkhodzhayev (applicants in the case Nizamov and Others v. Russia, applications nos. 22636/13, 24034/13, 24334/13, 24528/13). The ECHR found that the rights of all these citizens to freedom and personal security had been violated, and also found that these individuals would be subjected to torture if they were deported to Uzbekistan and that their forcible return to this country was not possible.”

¹⁴⁰ <http://dpdmitrov.ru/news.html?id=477>

¹⁴¹ http://copwatch.ru/otchet-nablyudateley/otchet-nablyudateley_45.html

¹⁴² From a report by an attorney representing a prisoner in the Saint Petersburg SITDFN. ADC Memorial archives.

“The witnesses questioned confirmed that the beatings started after a group of several inmates attempted suicide on 17 February. Beginning that day and until 24 February, OMON officers conducted daily midday cell ‘checks’ during which they beat practically everyone with nightsticks and helmets. This violence was completely random and was not elicited by any actions committed by the inmates, the absolute majority of whom did not participate in the unrest, put up any resistance, or present any danger.

“An atmosphere of bullying and intimidation reigns in the SITDFN. Attorneys have been denied confidential meetings and virtually all the people questioned were afraid to speak about the beatings in front of SITDFN staff and guards, instead explaining their injuries as simple accidents. However, when no one else could hear them, they all stated that they were beaten and that their injuries were caused by OMON officers. They reported that many foreigners suffered grave injuries—their arms were broken and their faces were smashed in. Over the five hours they spent in the block, the attorneys saw people with bandaged arms, people limping in casts being taken to the medical unit.

“The situation was aggravated by several factors. First of all, the medical personnel did not behave properly. The attorneys had to cause a real scene to get the inmates checked by the medic and to have the injuries entered in the examination register. The medic refused to file an examination act without giving any reason for this. Several staff members of the medical unit were rude, disdainful, and unprofessional. For example, during Rakhimov’s examination, the doctor, who appeared to be the most senior doctor for that shift (but who refused to give his name), spoke sharply and speculated that Rakhimov’s injuries were self-inflicted, shouting that no one would dispute him on this. Rakhimov reported that the day after the beating, he and other inmates tried to be seen by the doctor or summon the doctor, but that nobody came to them.

“Second of all, the behavior of seconded staff called up to bring order to the situation was unacceptable. For example, when Ms. Trenina, the attorney, tried to hand a statement about the crime committed against N.N. Rakhimov to the police major who had spent several hours in a row next to the room where the attorneys were questioning their clients, she was met with a sharp refusal to accept the statement or even hear her out. The major also stated cynically that she wouldn’t have any time at work if she ‘was going to react to every single little thing.’ She also said that all the injuries were self-inflicted and that there was nothing to investigate. As far as the attorneys could observe, her entire job consisted of walking back and forth in the hallway and chatting with her coworkers. This kind of behavior causes the few who are not scared to talk about these events to become convinced of the impunity of individuals who behave in an arbitrary manner and to feel fear and alarm for their own fates.

“It should be noted separately that the version that the injuries were self-inflicted does not stand up to criticism. The signs of injuries were located on their backs, the backs of their upper arms, and other places that would exclude the possibility of self-infliction. The bruises clearly have the shape of the nightsticks that OMON officers typically use.”¹⁴³

Commenting on this incident in an interview with Moscow-24, staff members from the press service of the Moscow FMS office said that the migrants were faking and stressed that this was just a way for them to try to delay expulsion. They also hastened to note that “the people subject to expulsion are being held in accordance with international requirements, a fact that is supported by representatives of human rights organizations and civil society who visit these institutions on a regular basis.”¹⁴⁴

However, human rights defenders who visited the SITDFN a week after these events confirmed that OMON troops had been brought in over several days but that there were no documentation confirming the need for this measure. The human rights defenders recorded instances where the troops beat a Vietnamese citizen who did not speak Russian and several other detainees as well.

¹⁴³ From a report on a visit to the Moscow SITDFN. <http://an-babushkin.livejournal.com/264608.html>

¹⁴⁴ <http://www.m24.ru/articles/66728>

Cases where OMON has been brought in for what actually amount to reprisal operations have also been registered in other regions. According to one inmate of the Saint Petersburg SITDFN, OMON troops visited on a regular basis in 2014. People were placed facing the wall and some were beaten in the area of their kidneys “as a preventive measure.”¹⁴⁵

Violence was also used on a large-scale against foreign nationals and stateless persons in the Ekaterinburg SITDFN on 14 May 2015. PMC members recorded the detainees’ accounts:

“We had an incident here recently. The men were beaten here and then criminal cases were opened against them. They were accused of attacking the staff. We don’t have any rights to anything here. How are we supposed to manage? They place us here under an article from the Code of Administrative Offences, but they take us away under an article from the Criminal Code.” “They don’t take us out for walks, they treats us like convicts. Today OMON troops flew in here and made us stand spread-eagled against the wall. They kicked one foreigner and dropped him to the ground. Their commander was drunk, he laughed in our faces.”¹⁴⁶

Commission member Larisa Zakharova stated: *“We came out here with an attorney and a human rights defender. We saw people shouting, hanging on the bars. They said that OMON visited their cells today. Several people were beaten. One was taken to a psychiatric hospital. They also said almost no one was given dinner today. The warden came to them in a drunken state. Almost everyone confirmed that he was drunk. Warden Balgodarev, the former deputy warden of correctional facility No. 2, said, according to them, that he would turn this place into another correctional facility No. 2.”¹⁴⁷*

Ministry of Internal Affairs and FMS officers and staff from private security companies that provide security at SITDFNs on a permanent basis also frequently and illegally employ penalties and corporal punishments that are not specified in any regulations against detainees who they believe to be “violators of the regime.” These punishments include confinement in a punishment cell, solitary confinement, or the so-called “glass,”¹⁴⁸ handcuffing, and beating with nightsticks. Instances of confinement in a punishment cell were recorded in Bashkortostan:

“During its visit, the PMC discovered a room on the second floor that resembled a so-called ‘concrete bag.’ This cell was almost 6 square meters in size. It held two people. The cell had a concrete floor, and popcorn¹⁴⁹ walls. There was no furniture. The toilet had no flushing mechanism. There was nothing to even sit on. One person was sitting on the floor in his coat, He had given his boots to his cell mate so that the cell mate could sit on them on the floor without freezing his genitals, etc. When they asked what kind of room this was, the commission members were told that it was a punishment cell!!!”¹⁵⁰

Confinement in a punishment cell as a way to pressure inmates is also practiced in the Saint Petersburg SITDFN, a fact implicitly admitted by E.V. Dunayeva, head of the FMS office for Saint Petersburg and Leningrad Oblast, in her 16 December 2014 response to an attorney’s complaint regarding the illegal confinement of his client, I.N. Bayramov, in a locked cell for refusing to sign a statement that he was a citizen of Azerbaijan (where he had never once been). In her response she noted that the move from the 7th floor to the 4th floor (where the locked cells are located) “was made for the exclusive purpose of compliance with the detention regime with account for I.N. Bayramov’s

¹⁴⁵ ADC Memorial archives.

¹⁴⁶ Interview with prisoners conducted by PMC members. <https://www.youtube.com/watch?v=DmVYOeWPU9c>

¹⁴⁷ From an interview with member of the Sverdlovsk Oblast PMC Larisa Zakharova. Ibid.

¹⁴⁸ The “glass” is a small, windowless room where a person can stand or sit, but not lie down. If several people are placed in the “glass,” they can only stand, sometimes for hours or days. This form of punishment is usually used by the prison administration as a measure of physical coercion against disobedient convicts.

¹⁴⁹ An uneven wall covering scattered with drops of dried plaster. People can scratch themselves on these kinds of walls, so they are unpleasant to lean against.

¹⁵⁰ From a PMC report after a visit to the Bashkortostan SITDFN: http://sovetonk.ru/news/republic_of_bashkortostan/bsksuvsig/

behavior and was not a form of punishment”¹⁵¹ (thus confirming the fact that the move was made “in connection with behavior”). In Bayramov’s own words, he was moved to “a cell for individuals who have violated the regime of stay in a SITDFN” for his refusal to sign a false confession to being a citizen of Azerbaijan. The detention conditions in this kind of cell are even worse than in other cells: inmates may not leave the cells, there is not enough light, and the toilet reeks. The other illegal punishment Bayramov received was the deprivation of his right to receive packages and visits from his common-law wife, who on that very day had been roughly thrown out of the SITDFN without being allowed to see her husband or give him a package.¹⁵²

Information about inhuman detention conditions in the Saint Petersburg SITDFN was confirmed by stateless person Emil Alimuradov, who spent almost ten months there from 7 February 2013 to 27 November 2014.¹⁵³

Inhuman treatment was also employed against A.L., who was in a SITDFN for expulsion from 18 April 2014 to 29 August 2014. He was held in solitary confinement for four months (in cell No. 412 from 18 April 2014 to 2 July 2014 and in cell No. 413 from 2 July 2014), which affected his psychological state. Moreover, he says that from 18 to 20 April 2014 he was held in the “glass,” standing, without the chance to sit or lie down, in handcuffs, and without access to water or a toilet.

His application, which was prepared by ADC Memorial attorneys in his case, was granted by the ECHR.¹⁵⁴ Citing the recommendations of the European Committee for the Prevention of Torture and the European Prison Rules (a recommendation adopted by the Committee of Ministers of the Council of Europe in 2006), the ECHR emphasized that solitary confinement must be accompanied by regular monitoring of the inmate’s physical and psychological states, that there must be special, valid grounds for this type of punishment, and that a professional evaluation of an individual’s physical and psychological ability to withstand long-term isolation must be conducted. In its judgment the Court also noted that the detention conditions of the applicant in conditions of restricted freedom, where he was not provided with food, drinking water, or access to a toilet, were inhuman and degrading to human dignity.

Sometimes posts made by detainees to social media networks provide information about the arbitrary nature of SITDFN administrations. Even though these kinds of appeals have little effect, they are still a valuable source of information when no other information is available about closed institutions. What follows is the first-hand account Stepan Sergeev, a detainee in the Kemerovo Oblast SITDFN, posted on social media:

“I am appealing to you in search of protection from the arbitrary will of officials. I have been held in the Kemerovo Oblast SITDFN since 14 January 2016. When I entered the facility, they confiscated 47,000 rubles from me, which I earned in the penal settlement, and gave it to the warden M.A. Gryaznov for safekeeping. On 5 February 2016, I submitted a letter to the warden requesting that some goods be bought for me with this money, but in response, the staff started to come up with different excuses like they didn’t have the keys to the safe, there was no gas to drive to the store, or the warden didn’t feel like it! In the end M.A. Gryaznov stated that he had spent all my money on fines that he had somehow imposed on me. This went on for a week. In response to his actions, on 11 February 2016, I turned off the camera in my room and, with the help of my roommate, barricaded the entrance to the room. On 12 February 2016 I wrote a statement to the oblast prosecutor’s office in Kemerovo about the actions of the SITDFN administration. That very same day we received a visit from the prosecutor for Zavodsky District in Kemerovo, but the problem was not resolved! What’s more, with the help of his staff the warden wrote three (!) false statements against me stating that I was allegedly smoking where I was not supposed to be. They wrote two (!) statements against

¹⁵¹ 16 December 2014 response of E.V. Dunayeva, head of the FMS office for Saint Petersburg and Leningrad Oblast, to an attorney’s question. ADC Memorial archives.

¹⁵² ADC Memorial archives.

¹⁵³ ADC Memorial archives.

¹⁵⁴ Case of “A.L. v. Russia”, No. 44095/14, judgment of 29 October 2015.

V.V. Nigmatulin. The local police officer came right away and wrote up protocols on fines for all the 'episodes.' When we refused to sign these papers, the police officer started to threaten that he would take me and Nigmatulin to the precinct and 'torment' us. Understanding that we would not be able to defend ourselves against slander, we were forced to sign all the papers. Since the SITDFN administration creates 'conditions' and prevents me from exercising my rights, I decided to escape, which I did that evening. I can't believe that these kinds of complaints receive no response at the oblast level; they just comply with the formalities of the paperwork, but the problems remain. I think the actions of these officials are unacceptable and that the administrative violations were made up out of nothing. On the basis of the above, I am asking you to get involved in this situation. Organize and conduct a check of this statement. Prosecute the guilty parties for violating the laws of Russia. Please take measures to restore my infringed rights."¹⁵⁵

The arbitrary employment of punishments for violating discipline (confinement in a punishment cell, solitary confinement, deprivation of the right to visits, and other penalty measures) and the use of violence with the involvement of special units must be immediately ceased.

5. THE PROBLEM OF ARRANGING PUBLIC OVERSIGHT OF SITDFNS

Amendments to Federal Law of 10 June 2008 No. 76-FZ “On Public Oversight of the Guarantee of Human Rights in Detention Facilities and on Assistance to Individuals Held in These Facilities” were adopted on 12 February 2015. With the introduction of these amendments PMCs were granted the right to visit SITDFNs and monitor compliance with human rights. Prior to this, only attorneys and representatives of the office of the human rights ombudsman had the right to visit these institutions.

It would appear that this law explicitly states the authorities and obligations of PMCs and the requirements for detention facilities to ensure that these commissions can operate. But the first attempts of members of PMCs in various regions to check SITDFNs showed that the new law was not being complied with and that wardens at these institutions continued to make arbitrary decisions that clearly exceeded their authority. For example, they barred PMC members from entering SITDFNs and prevented them from conducting their checks.

Requests from the Saint Petersburg PMC to visit the SITDFN there were repeatedly denied. Almost immediately following the date on which the amendments took effect, on 11 and 15 March 2015 Saint Petersburg PMC members Leonid Agafonov and Boris Panteleyev tried to enter the SITDFN in Krasnoye Selo, but the officer on duty denied them entry since “he had not received any instructions.”¹⁵⁶ On 9 May the commission was also denied visitation. Each time, the human rights defenders called the police and recorded a violation of the law. Boris Panteleyev reported that

“I have asked E. Dunayeva, the head of the Saint Petersburg and Leningrad Oblast FMS office, three times why she was obstructing the activities of PMC members by refusing to send a notification to the SITDFN. And each time she was less polite—‘I don’t recommend that you visit the SITDFN.’”¹⁵⁷ “If we calculate the cost of these three denials, we can see that Leonid Agafonov and Boris Panteleyev together lost six days off, about 1,400 rubles on transportation, 600 rubles on state fees to appeal the illegal actions of officials in court, plus time spent standing in lines at court agencies. Just to remind you, under FZ-76, we do not have the right to receive compensation for this activity and we assume responsibility for all expenses. What’s more, high-paid FMS lawyers paid for by taxpayers will go up against us in court. So you and I will have to ask lawyers that we know to help us however they can. That’s public oversight for you!”¹⁵⁸

¹⁵⁵ <https://www.facebook.com/vfart>, post published on 13 February 2016.

¹⁵⁶ <http://zagr.org/1537.html>

¹⁵⁷ <http://gulagu.net/profile/4118/blog/5486.html>

¹⁵⁸ From the report of PMC member Leonid Agafonov <http://7x7-journal.ru/post/64569>

When commission members attempted to visit the Saint Petersburg SITDFN on 11 July 2015, guards from the private security company Magistral did not even allow them to enter the duty room (even though anyone who wants to drop off a package or meet with relatives is allowed to enter this area). Commission members were only able to enter with the help of the police officers they summoned, but duty officer Petr Ivanovich Vlasyuk stated that the written consent of Dunayeva, head of the FMS office, was needed in order to for the commission to visit. The warden refused to sign a statement on obstruction of the commission's activities, but the duty officer for the Krasnoselsky District FMS office did come when he was called. Leonid Agafonov writes:

"I'm scared to even venture a guess about what they're doing to people in there since they decided to take these extreme measures. A total of nine people escaped from this institution between July 2014 and July 2015. And these weren't just freedom-loving people from the mountains—they were people of different nationalities from different countries: two citizens of Tajikistan, four citizens of Azerbaijan, two people from Uzbekistan, and one person from Moldova. I know there have been cases where stateless persons were pressured to profess citizenship of a country for deportation. Administrative detainees talk about how rudely the staff treats them."¹⁵⁹

After the PMC was denied entry to this SITDFN for the eighth time, Andrey Babushkin, chair of the Standing Commission to Further the Activities of Public Monitoring Commissions of the Human Rights Council under the RF president, arrived to support his colleagues. But even his presence was not enough for the civic activists to gain entry to this closed institution. The same was true for talks with Romodanovsky, head of the FMS, and Dunayeva, head of the FMS for Saint Petersburg and Leningrad Oblast, who for some reason proposed that the commission should visit SITDFN No. 2 in Gatchina instead of SITDFN No. 1 in Krasnoye Selo (commission members stood on the street for the duration of these five-hour telephone conversations).¹⁶⁰

According to information from the Migration and Law Network and the Human Rights Center Memorial, similar situations have been recorded in other regions. For example, on 27 February 2015 staff, citing Clause 8 of the Regulations of the Kaluga Oblast PMC, did not allow members of the Kaluga Oblast PMC into the SITDFN there (village of Yakshunovo, Dzerzhinsky Region); on 1 March 2015, members of the Irkutsk Oblast PMC received a verbal response that they could not visit the SITDFN in Angarsk because human rights defenders cannot visit SITDFNs on the weekend.

On 21 March 2014, an attempt was made to obstruct the work of a commission at the Bashkortostan SITDFN. The activists wrote the following report.

"The duty unit of the Bashkortostan SITDFN was notified in writing at 19:02, when a written notice was handed to the police officer guarding the site. Entry was granted at 20:51. Staff member Robert Sabiryaynovich Israfilov attempted to obstruct the commission's activities. He challenged the authorities of commission members and denied them entry onto the institution's territory. The commission chair stated that if the commission was not allowed to enter, the prosecutor on duty would be notified and that Israfilov would have to answer to the law for his illegal actions. Israfilov responded that 'I've seen plenty of bullies like you in my time and I could care less about this.' When the chair asked him to present his documents or at least give his name and position, he responded that 'I don't have to do this for anyone who comes along' (his name and position were established later). Commission chair Oleg Galin called the duty unit of Bashkortostan's Ministry of Internal Affairs to report that the commission's activities were being obstructed. After this, the guards received a command from Alexander Popov, deputy police chief for the maintenance of public order, to let the commission in. Israfilov tried to convince the officer in charge of access not to carry out this order. But thanks to the coordinated and timely efforts of the police the commission was allowed onto the territory.

¹⁵⁹ Ibid.

¹⁶⁰ <http://an-babushkin.livejournal.com/374154.html>

“When they entered the duty unit, commission members ran up against a new problem. Police officers had allowed them onto the territory, but people on duty in civilian clothes kept them from going any further. One person, who introduced himself as a senior administrator, stated that he did not have the authority to let the commission in to check the facility. The commission chair then read off provisions of Federal Law No. 76-FZ of 10 June 2008 on the commissions’ powers and the procedure for notifying the site of the check, but the commission was still not allowed to conduct its check. The chair suggested that the senior administrator invite senior officials of the administration. Deputy Warden Rim Museyevich Yakupov arrived twenty minutes later. After a conversation with this person, the commission was allowed to start its check.”¹⁶¹

Representatives of the Sverdlovsk Oblast PMC Larisa Zakharova and Svetlana Malyugina, director of the Legal Basis Association Aleksey Sokolov, and the attorney Roman Kachanov arrived at the SITDFN there on 15 May 2015 during mass unrest among the detainees and were not allowed into this facility. They were informed of this denial over an intercom and ended up having to speak with the inmates through the fence.¹⁶²

Since the activities of PMCs have continued to depend on the illegal actions and orders of SITDFN and FMS staff members even after important amendments to the law on public oversight were adopted, clauses establishing the liability of SITDFN administrations for obstructing PMC activities clearly need to be added to this law and to other regulations on oversight of SITDFN activities. These institutions must operate in a fully transparent and open manner.

Restrictions proposed in a bill¹⁶³ to ban the participation of representatives of NGOs listed in the “foreign agents” register may have a negative effect on the situation of all detainees in closed institutions. For quite some time now, human rights defenders have been sounding the alarm about how independent social activists are being squeezed off of PMCs and replaced with representatives of patriotic movements and veterans of the armed forces and law enforcement agencies who are loyal to the current system.

¹⁶¹ Report of members of the Bashkortostan PMC <http://www.antipytki.ru/activities/one/1863>

¹⁶² <http://pravo-ural.ru/2015/05/15/v-specialnom-uchrezhdenii-dlya-migrantov-opyat-volneniya-video/>

¹⁶³ <http://www.newizv.ru/politics/2015-11-23/230994-inoagentov-ne-pustjat-v-tjurmy.html>

III. CONCLUSIONS AND RECOMMENDATIONS

The problems connected with insufficient financing, poorly equipped facilities, poor nutrition standards, and the lack of adequate space that are frequently covered up by officials do not justify the inhuman treatment of persons held in SITDFNs. Officials from the institutions, the Federal Bailiffs Service, Federal Migration Service, Ministry of Internal Affairs (in spring 2016, Migration Service was subordinated again to the Ministry of Internal Affairs), and other special services should be guided in their activities by the requirements of the law and the Russian Federation's international obligations to observe human rights regardless of a person's nationality or legal status.

Pursuant to the ECHR's judgment in the case of *Kim v. Russia*, Russian authorities must take urgent general measures to improve detention conditions at SITDFNs, introduce periodic judicial oversight over terms of detention, introduce a mechanism for release from a SITDFN when expulsion is not possible, and create a legal mechanism for filing appeals to unjustifiably long stays in SITDFNs. After almost two years since the European Court of Human Rights adopted its decision on the case *Kim v. Russia*, no one of the above mentioned measures has been implemented.

To avoid holding people in custody for an extended period of time without a valid reason, periodic judicial oversight over the deadlines for executing a resolution on expulsion and the legality of detention in a SITDFN must be specified in the law (by analogy with articles 108 – 109 of the RF Criminal Procedural Code), and there must be a sharp reduction in periods for executing resolutions on expulsion and, accordingly, detention in SITDFNs, during which the competent authorities must establish the identity of the people in custody and create documentation for them.

As an example, the following regulation could be possible: a detained person is confined in a SITDFN under a court decision, not "until expulsion," but for a period of two months during which the competent authorities must perform all the actions necessary for creating their documentation. If this process is not completed within two months, the court must again decide to extend the period of detention for another two months or release the detained person due to the impossibility of establishing citizenship or the insufficiency of measures taken in this regard. The maximum period of detention would be set at six months (instead of the current two years) and the need to extend this period should be reviewed by a court every two months. Officials authorized to create documentation should be required to apply to a court on their own with a petition to release people in custody in cases where they have established that expulsion is not possible.

All legal acts and laws concerning expulsion, measures to guarantee expulsion, obligation to leave the country, considering someone's stay in Russia "undesirable" should be changed and no more relate to the stateless persons at all (as it is anyway impossible to expel a stateless).

Articles 18.8(3) and 18.10(2) of the RF Code of Administrative Offences, which are only in effect in Moscow, Saint Petersburg, and Moscow and Leningrad oblasts and which prescribe only expulsion, must be cancelled.

The procedure must be created to stop the deportation and to release the detained person, including at this person's own demand, if it is not possible to carry out the expulsion or there are other reasons or new circumstances (like lack of citizenship or the right to enter another country, combat or a natural disaster in the country of origin etc.).

A legal norm must be introduced that upon their release, stateless persons who cannot be expelled to another country or persons not subject to expulsion for other reasons must be issued valid IDs that would allow them to remain in Russia legally and start the process of legalization (for example, a residence permit without citizenship). If it is not possible to return to the country of origin because of combat actions or another danger, temporary asylum should be granted.

A legal norm must be introduced that people held in a SITDFN shall be provided with the free legal assistance in administrative cases from the time of their detention until their expulsion from the country, release from the SITDFN, or, in the case of release without the termination of administrative prosecution, until the end of the administrative case, while people who are released due to the impossibility of expulsion must also be provided with free legal assistance when they apply for permits for their legal stay in the RF.

Pregnant women, the mothers of young children, the elderly, sick people, and disabled people must not be confined in SITDFNs in accordance with the norms of administrative detention established by the RF Code of Administrative Offenses. If it is found absolutely necessary to detain women with children, then the institutions where they are held must be arranged like rehabilitation centers, which offer conditions for family life. An immediate end must also be put to the practices of removing children in the process of administrative proceedings, separating families, and expelling children separately from their parents. Children, including those over the age of 16 should not be separated from their parents and placed in remand centers or orphanages. Living conditions must be created in SITDFNs for detained people who are married.

It must be ensured that public monitoring commissions and other interested persons like relatives, friends, journalists, volunteers, human rights defenders, ombudsmen, lawyers, and attorneys are not prevented from visiting people held in SITDFNs. Rooms for meetings and appointments will have to be furnished so that people can meet there comfortably, and these rooms should have a corner for children in case detainees are visited by their children. Conditions for extended meetings must be created for visits from relatives.

RF authorities must take urgent measures to improve detention conditions in SITDFNs. Specifically, they must:

- end the practice of the arbitrary application of punishment for breaches of discipline. Bar the use of isolation cells and other forms of punishment and penalties against people held in SITDFNs;
- ensure that detainees have a connection with the outside world: allow them to use landlines and mobile phones, ensure that they have the opportunity to watch television and listen to the radio, create a free internet station, offer them the chance to file written appeals by mail or online, ensure that they can correspond freely;
- bar solitary confinement and confinement in locked cells (people should be able to walk out into the hallway or take a walk in the courtyard when they want); create conditions for unlimited walks and conversation, both during walks and at other times;
- arrange for high-quality and expeditious medical care that includes the possibility of hospitalization (increase the number of medical personnel in the SITDFN or enter into agreements with outside organizations to service the SITDFN); set up pharmacies;
- create the opportunity for the unobstructed use of shower and laundry rooms, provide detainees with all the necessary hygienic supplies, including soap, laundry detergent, clean linens, toilet paper, feminine hygiene products, warm clothing, changes of clothes, shaving and hair cutting items;
- create the opportunity to use money on the personal accounts of detainees for buying the things they need;
- set up stores in SITDFNs selling essential items, personal hygiene items, and food products;
- improve nutrition, include fruits and vegetables in the diet;
- create the opportunity for education and leisure activities for detainees: set up libraries, create conditions for study, conditions for exercising (equipment, space, gear);
- create the opportunity for voluntary or decently-paid work for SITDFN inmates.

To the Office of UNHCR in Moscow it is recommended to accept the UNHCR's Global Strategy "Beyond Detention" (2014-2019) in order to find alternatives to detention for asylum-seekers and refugees and to stop the practice of children-detention (all migrants and foreign citizens in the RF are to be included in a strategy).



The door of the ward in SITDFN. Krasnoye Selo (Saint Petersburg) . Photo by ADC Memorial