

# STATELESSNESS IN RUSSIA AND UKRAINE: possible ways to overcome the problem



## **Statelessness in Russia and Ukraine: possible ways to overcome the problem.**

Human rights report by ADC Memorial and CF «The Right to Protection», Ukraine.

On the cover photo: Anna Lakatosh outside her home. Outskirts of Saint Petersburg. Winter 2019.

# CONTENT

THE LAKATOSH CASE AS A REFLECTION OF THE PROBLEM OF STATELESSNESS IN RUSSIA AND UKRAINE.....	4
<b>The Case of “Lakatosh and Others v. Russia” (ECtHR, 2010).....</b>	<b>4</b>
STATELESSNESS IN RUSSIA AND UKRAINE: RECURRENT PROBLEMS AND NEW RISKS AND CHALLENGES .....	9
THE MILITARY CONFLICT BETWEEN RUSSIA AND UKRAINE AND ITS IMPACT ON THE SITUATION OF STATELESS PERSONS AND MIGRANTS .....	13
<b>The Problems of Documenting Residents of Territories of Donetsk and Luhansk         Oblasts not Currently Controlled by Ukraine .....</b>	<b>13</b>
<b>Registration of Children Born in Non-Government         Controlled Areas .....</b>	<b>16</b>
<b>Expulsion of Ukrainian Citizens from Russia into the Combat Zone .....</b>	<b>17</b>
<b>Issuance of Russian Passports to Residents of the Breakaway DPR and LPR         under a Simplified Procedure.....</b>	<b>20</b>
ATTEMPTS TO RESOLVE THE PROBLEM OF STATELESSNESS IN RUSSIA AND UKRAINE.....	24
ATTEMPTS TO ADOPT STATELESSNESS DETERMINATION PROCEDURE .....	24
LITIGATION AND ADVOCACY IN CASES OF UNENFORCEABLE EXPULSION AND THE MIGRATION-RELATED DETENTION OF STATELESS PERSONS.....	34
THE NEED FOR POSITIVE MEASURES IN RESPECT OF THE ROMA POPULATION.....	47
CONCLUSION.....	50

# THE LAKATOSH CASE AS A REFLECTION OF THE PROBLEM OF STATELESSNESS IN RUSSIA AND UKRAINE

In January 2019, two stateless persons—Anna Lakatosh and Aladar Forkosh, Romani people from Ukraine’s Zakarpattia Oblast—appealed to ADC Memorial for assistance. Without valid identity documents that would enable them to live and work legally in Russia, Anna and Aladar are living in extreme poverty in a makeshift shack in an industrial area on the outskirts of Saint Petersburg. They are constantly subjected to threats from the police and face the risk of being detained for violating migration rules and placed in a foreign national temporary detention center, even though they cannot be expelled to any other country.

These people would have become “just another client of ADC Memorial” dealing with problems typical for the Roma minority if not for one thing: both Anna Lakatosh and Aladar Forkosh were applicants in a strategic case of the European Court of Human Rights on the dramatic consequences of statelessness (2010). With assistance from an attorney and ADC Memorial experts, they were able to win a large monetary award for the violation of rights recognized by the Russian Federation.

How can it be that people who were once deprived of liberty for an extended period for violating migration rules and then won their case at the European Court of Human Rights have not been able to gain legal status in either Russia, their country of residence, or Ukraine, their country of origin, over the course of almost 10 years and remain in the same disenfranchised position?

Anna Lakatosh and Aladar Forkosh have found themselves hostage to unresolved systemic problems in Russian and Ukrainian laws, the military conflict between the two countries, a tightening of the border, and long-standing problems of the Roma minority typical of former Soviet countries. Their fate depends on whether or not Russia and Ukraine can change laws and practices that currently violate the rights of tens of thousands of stateless people.

## The Case of “Lakatosh and Others v. Russia” (ECtHR, 2010)

The dissolution of the Soviet Union took an enormous toll on the lives of the Roma—a minority living throughout the entire former Soviet Union. Family ties between groups of Roma, who were once separated only by the administrative borders of Soviet republics, were abruptly cut with the emergence of newly independent states and



*Anna Lakatosh and Aladar Forkosh. Outskirts of Saint Petersburg. Winter 2019.  
Photo by Gundula Peh*

travel restrictions. A whole series of problems related to civil status arose for people who were born, married, and had children in republics other than the ones in which they were located when the Soviet Union broke up. On top of this, many Roma, who even in Soviet times saw no real need for documents and were extremely lax about acquiring them, became stateless persons in the newly independent republics.

One of these groups is the Hungarian-speaking Magyar Roma group, most of whom live in Zakarpattia Oblast (Transcarpathia), specifically in the cities of Beregovo, Vinogradov, and Mukachevo. This territory, which previously belonged to Hungary, was annexed by the Soviet Union in 1945 and joined to Ukraine. In Soviet times, the majority of Transcarpathian Magyars were educated and worked in factories, plants, or traditional trades. The situation changed in the early 1990s, when many of them were not able to obtain Ukrainian citizenship following the breakup of the Soviet Union and the ensuing instability and confusion. This happened due to lack of awareness about the need to acquire a new citizenship, practical barriers (including fees), and discrimination in the citizenship application process. Romani people who had not registered their marriages or newborn children, who had lost their Soviet passports, or who had never applied for a Soviet passport in the first place also ended up as stateless people.

As a result of the serious economic crisis that rattled Ukraine in the 1990s, companies throughout the country shuttered, the unemployment rate shot up, and accordingly, the population became more impoverished. Transcarpathia was no exception. Having lost their jobs, most Magyars were forced to seek a livelihood by applying for low-profile and low-paid jobs like porters, janitors, and cleaners that could in no way satisfy the needs of traditionally large Magyar families. The situation was exacerbated by the fact that many Magyars lacked any kind of identity document required for employment.

In these conditions of dire need and inability to find work in a small region, Magyar Roma frequently migrated to large cities to earn money. In the mid-1990s, they also ended up in Russia, specifically the outskirts of Moscow and Saint Petersburg, where small groups of them still live today in extreme need and poverty in makeshift homes in industrial zones and on abandoned lots.

Some Magyar Roma have Ukrainian identity documents, but others have none at all (sometimes children's passports and birth certificates are destroyed during police raids or in fires at settlements). In any case, almost all these people have "illegal" status in Russia, so they cannot rent housing, get an official registration, get a job, or take advantage of medical and social assistance, and their children never go to school. In Russia, children are not given any citizenship at birth; instead, maternity hospitals issue a "verification of birth," which must then be submitted to a bureau of vital statistics to obtain a "certificate of birth." In most cases, Magyar Roma do not apply for birth certificates.

Aside from police abuse (extortion, threats, arson) and the risk of becoming the victim of neo-Nazis, Magyar Roma face the constant threat of prosecution for violation of migration rules and confinement in a foreign national detention center, which hold foreigners awaiting expulsion.

In 2009, stateless persons Anna Lakatos, Aladar Forkosh, and Pavel Gabor were detained by police officers in the settlement of Petro-Slavyanka, Leningrad Oblast, where they lived with other Roma migrants from Zakarpattia Oblast, Ukraine. All three were fined 2,000 rubles for violating residence rules in Russia and given an additional punishment of expulsion from Russia. They were placed in a remand center run by the Main Internal Affairs Directorate (at that time Russia did not have special detention centers for foreigner nationals who violate migration rules) until their sentence could be enforced. The detention conditions at the remand center were not intended for extended stays and the detention period could not exceed 15 days (the maximum penalty for administrative arrest). Thus, this remand center was not an institution specially designated to hold people subject to expulsion, but Lakatos, Forkosh, and Gabor spent a total of one year and two months in the center's extremely difficult conditions.

Here is the testimony of Anna Lakatos:

*My cell had a total area of 3m x 5m and was intended for four people. The cell walls were black, exposed, and grime flaked from the ceiling. The cell was like a dark stone bag. The floor was bare cement. Cold seeped in from the walls and the floor, so it was very cold, even in the summer. I was freezing.*

*The window was very high, right below the ceiling. It was 100 cm x 50 cm and had bars on the outside and also shutters that didn't really let fresh air or light through. It was not possible to open the window because it was nailed shut and too high anyway. There were no tables or chairs in the cell, so we sat, slept, and ate on our beds, which were covered with dirty mattresses. We bathed, cleaned the cell, and washed our clothes with only cold water. We were taken to the banya once every 20 days. The toilet was right in the cell and was a hole in the floor, there was no commode. This area was not screened off from the rest of the cell, so we had to go to the bathroom in front of our cellmates. We did partition it off by hanging up our own curtain. An unpleasant smell constantly came from this hole. The toilet was flushed using a tap in the wall, but it clogged every time we flushed. We also weren't given anything to disinfect or clean the toilet.*

*I suffered particularly from a little electric light in a cage that was always burning night and day. We couldn't turn it off because the switch was on the opposite side of the door, in the passageway. Only the guards could turn it off, but they never did, so I could never understand if it was day or night outside.<sup>1</sup>*

Ukraine, the applicants' country of origin, did not recognize the applicants as its citizens. In response to requests from ADC Memorial and the consulate, the relevant authorities in Ukraine reported that vital statistics offices did have entries regarding the birth of the applicants in Beregovo, but that they did not apply for Ukrainian citizenship. Thus, it was impossible to expel Lakatosh, Forkosh, and Gabor.

Over the course of a year, ADC Memorial staff and attorneys tried to achieve the release of these three people by filing complaints with courts and the prosecutor's office challenging their confinement in a remand center for the purpose of expulsion due to the fact that they could not actually be expelled from Russia. Unable to achieve effective judicial protection in Russia, in 2010 ADC Memorial attorneys filed an application with the European Court of Human Rights regarding instances of inhuman and degrading treatment and the failure to take measures to expel the applicants from the Russian Federation attended by extended deprivation of liberty. The application also complained that the applicants lacked the right to check the legality of their detention and were not provided with effective judicial protection in regard to inhuman and degrading treatment or in regard to deprivation of liberty.

The case of "Lakatosh and Others v. Russia" was heard by the ECtHR in 2011 as a priority case. The Russian government acknowledged that it had violated a number of articles of the European Convention, proposed a friendly settlement, and undertook to pay each applicant compensation in the amount of 30,000 euro, which the victims received in October 2011.

---

<sup>1</sup> "Lakatosh and Others v. the Russian Federation: Millions in Compensation for Inhuman Treatment. Collection of Materials for a Roundtable," Saint Petersburg: ADC Memorial, 2011, [https://adcmemorial.org/wp-content/uploads/lakatosh\\_sajit.pdf](https://adcmemorial.org/wp-content/uploads/lakatosh_sajit.pdf) [in Russian]



This recognition of violations in the case “Lakatosh and Others v. Russia” was the first example of effective international protection of the rights of stateless persons. This case should have helped achieve the strategic goals of stopping Russia’s attempts to expel stateless person and ending the practice of placing them in foreign national detention centers in violation of the provisions of the European Convention.

Following the Lakatosh case, another similar case—“Kim v. Russia”—was won at the ECtHR. In this case, the court ordered compensation for the victim and prescribed general measures that would prevent the pointless detention of stateless persons. These measures included amending laws, introducing judicial control over the terms and expedience of placing stateless persons in closed institutions, and issuing people without citizenship documents allowing them to live and work legally in Russia. Other cases have also been won by stateless persons at the ECtHR; in those cases, the court repeated the arguments it used in the Kim case.<sup>2</sup>

However, neither the Kim case and other similar cases at the ECtHR nor the judgment issued by Russia’s Constitutional Court in the case of Noé Mskhiladze (2017), which recognized the ECtHR’s arguments, did anything to fundamentally improve the situation of stateless persons in Russia. Amendments to migration laws, which passed a first reading in the State Duma, had not been adopted at the time of publication.<sup>3</sup> Even though there has been some progress and the judgments of the ECtHR and Russia’s Constitutional Court have had a positive impact on court decisions in individual cases, the rights of stateless persons in Russia continue to be violated: courts are still issuing decisions to expel stateless persons and placing them in foreign national detention centers for periods of up to two years. In addition, the problem of documenting stateless persons has not been resolved, even in the cases that won at the ECtHR.

The problem of stateless persons of Roma origin is systemic, and its solution requires efforts from the authorities in both Russia and Ukraine. The fate of Anna Lakatosh and Aladar Forkosh depends on whether these countries will be able to act quickly to bring laws and practice into line with international human rights standards.

---

2 Mainov v. Russia

3 Draft law No. 306915-7 “On Amendments to the Code of the Russian Federation on Administrative Offenses (concerning the detention terms of foreign nationals and stateless persons subject to forcible expulsion from the Russian Federation in the corresponding specialized facilities, the procedure for extending such terms, and the unique aspects of enforcing and stopping the enforcement of this administrative punishment). Website of the legislative activities of the RF State Duma: <https://sozd.duma.gov.ru/bill/306915-7>



# STATELESSNESS IN RUSSIA AND UKRAINE: RECURRENT PROBLEMS AND NEW RISKS AND CHALLENGES

"The right to nationality is often defined as the right to have rights. The right to nationality allows citizens to exercise their rights more fully and effectively than solely on the basis of international human rights norms. Nevertheless, citizenship is not a mandatory condition for the exercise of human rights. Under international law, stateless persons are also rightsholders. States must protect each person, including stateless persons, from human rights violations."

*Statement by Thomas Hammarberg at the 4th Conference of the Council of Europe on Nationality, Strasbourg, December 17, 2010*

At least 15 million people worldwide are not citizens or subjects of any country. However, the number of children being born into statelessness (up to 70,000 annually) exceeds the rate of decline in statelessness (according to worldwide UNHCR data for 2017, 56,500 stateless persons in 29 countries acquired citizenship).<sup>4</sup>

In recent history, one of the events that resulted in mass statelessness was the dissolution of the Soviet Union. Because former Soviet states took different approaches to the gain or loss of citizenship, and because of multiple defects and contradictions in the laws of these states, certain individuals and entire groups of people who never exchanged their Soviet passports for the passports of a newly formed state for one reason or another became vulnerable and, ultimately, stateless.

Many former Soviet countries, including Russia and Ukraine, still lack an effective procedure to legalize stateless persons who, without valid identity documents, are not only deprived of access to realize their rights, but are also prosecuted for violating the migration laws of the countries where they are located. The majority of stateless persons have grounds for acquiring Russian or Ukrainian citizenship on the basis of their territorial origin, but the formalization or inaccessibility of the procedure for doing this and defects in the corresponding laws of both countries trap stateless persons in a legal impasse on their path to citizenship. For many people, the old Soviet passport is the sole document that many stateless people have. For example, in 2018 91 people with Soviet passports turned to the Right to Protection charitable foundation for help obtaining a Ukrainian passport.

---

4 An overview and analysis of global statistics by ISI. Statelessness in numbers: 2018. [https://www.institutesi.org/ISI\\_statistics\\_analysis\\_2018.pdf](https://www.institutesi.org/ISI_statistics_analysis_2018.pdf)

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 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.<sup>5</sup> In another example, the ethnic clashes in southern Kyrgyzstan in 2010 had a 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 reissue 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.<sup>6</sup> The problem of these women, who have come to be known as “transborder brides,” is also typical of other post-Soviet countries in Central Asia (there is an especially large number of these brides in Sughd Oblast, Tajikistan<sup>7</sup>). 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).<sup>8</sup>

In most former Soviet countries, the conditions and procedures under which stateless persons are offered citizenship are within the competence of a country’s domestic laws, although some countries—Azerbaijan, Armenia, Georgia, Latvia, Lithuania, Moldova, Turkmenistan, and Ukraine—have acceded to the 1961 Convention on Statelessness and must take into consideration and implement generally recognized norms to identify and register stateless persons and provide them with the appropriate status.

According to data from 20 years ago (the most recent census of 2001), there were 82,550 stateless people in Ukraine. The majority of them lived in the Autono-

---

5 Alekseyev M.E., Kazenin K.I., Suleymanov M.S. Dagestanskiye narody Azerbaidzhana. Politika, istoriya, 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\\_-\\_Dagestanskije\\_narody\\_Azerbaidzhana.\\_Politika,\\_istoriya,\\_kul'tura.html](http://www.e-reading.club/bookreader.php/88844/Alekseev,_Kazenin,_Suleimanov_-_Dagestanskije_narody_Azerbaidzhana._Politika,_istoriya,_kul'tura.html)

6 Kyrgyzstan: Migrant Children and Victims may Become Stateless Persons in June, June 20, 2011 <http://www.fergananews.com/articles/6996>, data from 2010 are cited.

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

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

mous Republic of Crimea, Odessa, and Donetsk and Dnipropetrovsk oblasts. The next census will be conducted in 2020.<sup>9</sup> According to assessments made by the UNHCR on the basis of official data, in 2017 35,294 people who were stateless or at risk of statelessness were living in Ukraine,<sup>10</sup> while a 2017 report from the OSCE Office for Democratic Institutions and Human Rights states that only 78.1 percent of residents of Ukraine have identity documents.<sup>11</sup> These statistics are approximate, since stateless persons generally do not want to be identified because they fear the consequences of living in Ukraine in violation of the rules and also rarely have information about mechanisms for becoming documented.

Several million people have become internally displaced persons or have been forced to flee the country because they live in territories that are not controlled by the Ukrainian government due to the annexation of the Crimean peninsula and the military conflict in eastern Ukraine. This means that the risk of statelessness has become pressing for thousands of residents of these territories. There is particular concern for children born in these territories after the start of the conflict, since the very fact of their birth must be established in court. For example, of the 62,560 children born in territories outside of Ukraine's control from January 2015 to June 2016, only 20,891 acquired Ukrainian birth certificates through court proceedings from February 2016 through July 2018.<sup>12</sup>

In Russia, there is still no effective way to legalize the tens of thousands of stateless people who have spent years trying to become Russian citizens. According to published data, the number of stateless people in Russia is falling, but is still high: the 2010 Russian census reports that there were over 178,000 stateless persons in the country,<sup>13</sup> while data from UNHCR global reports show

---

9 Official website of the UNHCR in Ukraine, <https://www.unhcr.org/ua/%D0%BE%D1%81%D0%BE%D0%B1%D0%B8-%D0%B1%D0%B5%D0%B7-%D0%B3%D1%80%D0%BE%D0%BC%D0%B0%D0%B4%D1%8F%D0%BD%D1%81%D1%82%D0%B2%D0%B0>

10 Statelessness Index. Ukraine. <https://index.statelessness.eu/country/ukraine?fbclid=IwAR2C8g3Dl6DR1khjbMvOEtlx23Zekji91wOf5A3LG46TqqaZcpsujMdDdw>

11 Compendium of Good Practices in Identity Management in the OSCE Region, 2017, pg. 54 <https://polis.osce.org/compendium-good-practices-identity-management-osce-region>

12 According to data from Ukraine's Ministry of Justice, response to a request from UNHCR.

13 All-Russian Population Census, 2010. [http://www.gks.ru/free\\_doc/new\\_site/perepis2010/croc/perepis\\_itogi1612.htm](http://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm)

that there were 113,474 stateless persons in 2014,<sup>14</sup> 82,148 in 2017,<sup>15</sup> and 75,679 as of early 2019.<sup>16</sup> There is no doubt that the actual number of stateless persons in Russia is much higher.

Current Russian laws make no account for the special aspects of stateless persons and equate them with foreign nationals, even though the legal situation of these two groups could not be more different. Now stateless persons in Russia are arrested for “violation of migration rules,” sentenced to court-ordered expulsion, and then deprived of their liberty, to all intents and purposes indefinitely, since it is not possible to deport them to any country. They are released after two years (the maximum possible time to “secure deportation”), but they are not issued any documents that would allow them to remain in Russia legally. As a result, they are often imprisoned again as violators of migration rules.

Russia has not implemented the strategic decisions of the European Court of Human Rights (primarily in the case of *Kim v. Russia*, 2015) and the most important decision issued by Russia’s Constitutional Court (case of *Noé Mskhiladze*, 2017), which could fundamentally improve the situation of stateless persons in Russia. Even though the Russian Ministry of Internal Affairs developed a draft law two years ago envisaging that stateless persons would be issued identity documents giving them the right to reside in Russia, the right to work without work licenses and permits, and the possibility for former Soviet citizens to acquire Russian citizenship under simplified procedures, there is still no information that this draft is being considered by the State Duma.

On November 1, 2018, the Russian president approved a new framework for migration policy,<sup>17</sup> which prioritized actions to improve conditions for Russians living abroad to move back home, but said almost nothing about the need to provide identity documents for stateless persons.

---

14 UNHCR. 2014 in Review. <http://unhcr.org/556725e69.html>

15 UNHCR statistics for 2017: <http://www.unhcr.org/statistics/17-WRD-table-7.xls>

16 Data published during the International Conference on Statelessness for the Member States of the Commonwealth of Independent States, Minsk, 2018 <https://www.statelessness.eu/blog/joint-steps-end-statelessness-commonwealth-independent-states>

17 Roadmap for RF State Migration Policy for 2019–2025 <http://kremlin.ru/events/president/news/58986>

# THE MILITARY CONFLICT BETWEEN RUSSIA AND UKRAINE AND ITS IMPACT ON THE SITUATION OF STATELESS PERSONS AND MIGRANTS

The legal status of residents of Crimea and eastern Ukraine was dramatically complicated by Russia's annexation of the Crimean peninsula in February 2014, its declaration of Crimea as a part of Russia in March 2014 after a sham referendum that violated Ukraine's Constitution, and then the subsequent seizure of parts of Donetsk and Luhansk oblasts by pro-Russian armed groups and their proclamation as independent "people's republics."

UN Resolution 68/262 of (2014) affirms that Crimea should remain part of Ukraine under full Ukrainian sovereignty.<sup>18</sup> Under Ukrainian law, the Autonomous Republic of Crimea and Sevastopol are classified as temporarily occupied territories;<sup>19</sup> the same is true for the parts of Donetsk and Luhansk oblasts within which Russian armed groups and the Russian occupation administration have established and are exercising general supervision.<sup>20</sup>

## The Problems of Documenting Residents of Territories of Donetsk and Luhansk Oblasts not Currently Controlled by Ukraine

People who obtained passports on the territories of Ukraine that are not currently controlled by the Ukrainian government<sup>21</sup> and lost these passports have had difficulties confirming their Ukrainian citizenship and are thus at risk of statelessness.

To get new passports, Ukrainian citizens from territories not controlled by Ukraine must go through a procedure to establish their identities with Ukraine's State Migration Service. Under this procedure, the State Migration Service sends requests

---

18 UN Resolution 68/262 of March 27, 2014, [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/262](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262)

19 Article 3 of Law of Ukraine "On Guaranteeing the Rights and Liberties of Citizens and the Legal Regime in Temporarily Occupied Territories of Ukraine," <https://zakon.rada.gov.ua/laws/show/1207-18>

20 Law of Ukraine "On Special State Policies to Ensure Ukraine's State Sovereignty in Temporarily Occupied Territories in Ukraine," <https://zakon.rada.gov.ua/laws/show/2268-19/print>

21 For the remainder of this report, the term "territories not controlled by Ukraine" means the occupied territories of Donetsk and Luhansk oblasts, excluding the Autonomous Republic of Crimea.

to check documents and information provided by the applicant in writing to Ministry of Internal Affairs bodies, the National Police, the Ministry of Justice, offices of the State Tax service, academic institutions, military units, military registration offices, and correctional facilities. The information subsequently obtained from existing state and unified registers and other databases owned by the government or companies, institutions, and organizations, including photographs of faces, serve as evidence of identity.<sup>22</sup>

The fact that Ukraine's Migration Service does not have one electronic database of issued passports makes it difficult to check personal data. In general, there is currently no access to processed materials, archival data and card catalogues, or information about passports issued in non-government controlled territories because Migration Service offices in these areas have stopped their work. Valid information about the citizenship of people who have lost their passports may be obtained from the State Voter Register,<sup>23</sup> but the applicant or the Migration Service must submit the application (officials refused to provide information in response to requests made by Right to Protection attorneys).

In exceptional cases, relatives and neighbors listed in the applicant's written request may be questioned (when this person does not have a photo ID or checks have not produced results).<sup>24</sup> However, applicants generally do not have the opportunity to invite three relatives and/or neighbors who have moved from non-government controlled territories and can provide evidence on their behalf to Ukraine's State Migration Service. Thus, people from non-government controlled territories frequently cannot complete the identification confirmation procedure through the State Migration Service by administrative means and must resort to a more complicated and onerous judicial procedure.

According to explanations from the State Migration Service,<sup>25</sup> people from non-government controlled territories who have not received a certificate for internally displaced persons and do not have a residence registration for the non-government controlled territories must submit the documents required for a new passport to any

---

22 The Procedure for Processing, Issuing, Exchanging, Forwarding, Confiscating, Returning to the State, Finding Invalid, and Destroying Passports of Citizens of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 302 of March 25, 2015, Clause 43, <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

23 Ibid.

24 Ibid.

25 Official website of the State Migration Service of Ukraine, <https://dmsu.gov.ua/poslugi/pasport-gromadyanina-ukrajni/id-vidacha-pasporta-gromadyanina-ukrajni-u-formi-kartki-po-dosyagnennyu-14-richnogo-viku-vpershe.html>

local office of Ukraine's State Migration Service in Donetsk and Luhansk oblasts. However, people have problems passing through checkpoints along the way from Kharkiv to Luhansk Oblast, for example, without identity documents. On top of this, these people often do not have the financial or physical ability to travel to the region where they are registered, which makes it difficult for them to obtain a passport.

For its part, Ukraine's State Migration Service recommends that people from non-government controlled territories prove their right to Ukrainian citizenship by establishing their residence on the territory of Ukraine as of August 24, 1991 or November 13, 1991. This makes it hard to understand the right to nationality, since most people from non-government controlled territories first obtained their Ukrainian passports as people whose parent or parents were citizens of Ukraine at the time of their birth (Article 7 of the Law "On Citizenship of Ukraine") or were Ukrainian citizens in light of Article 3 of the Law "On Citizenship of Ukraine." Now they must also establish the fact of their residence or their parents' residence in Ukraine as of the above dates in court proceedings to confirm that they are Ukrainian citizens.

People who have been left without identity documents as a result of the conflict are particularly vulnerable and face the risk of statelessness. A report on the situation with human rights in Ukraine for the period of May 16, 2018 to August 15, 2018 prepared by the OHCHR describes a case where a person without any identity documents was repeatedly arrested by both sides along the line of contact.<sup>26</sup>

People who were imprisoned prior to the conflict and released in a territory not controlled by Ukraine are in particular danger of statelessness. In many cases, these people do not have valid documents, which restricts their freedom of movement and puts them at risk of arrest. The OHCHR report cited above describes a case where a man who was released from a detention facility and who did not have identity documents tried to cross the line of contact to territory controlled by Ukraine three times without success. During one attempt, he was arbitrarily detained on territory controlled by armed groups and was held in detention for approximately one week without any connection to the outside world and subjected to cruel treatment and torture. On top of that, he was repeatedly arrested for not having identity documents.<sup>27</sup>

People who left Ukraine after the annexation of Crimea and the conflict with Russia in the east of the country and lost their documents for some reason are also at a legal dead end. They are not able to return to Ukraine because they cannot confirm their Ukrainian citizenship or obtain a document about their Ukrainian citizenship

---

26 Office of the High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine 16 May to 15 August 2018, paragraph 62, [https://www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018_EN.pdf)

27 Office of the High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine 16 May to 15 August 2018, paragraph 58, [https://www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018_EN.pdf)



from the Ukrainian consulate. Even though the practice of the Ukrainian consulate in Russia is to send the corresponding request to Ukraine's State Migration Service, as noted above, the State Migration Service has stopped operating in non-government controlled territories and cannot confirm the Ukrainian citizenship of applicants.

In Resolution of the Parliamentary Assembly of the Council of Europe 2198 (2018) "Humanitarian Consequences of the War in Ukraine," the Assembly called on the Ukrainian government to develop a mechanism for guaranteeing the rights of citizens who left Ukraine after the start of the war in 2014 and to devote special attention to ensuring that they do not risk loss of citizenship.<sup>28</sup> In spite of this, this problem is still of vital importance and requires state regulation.

## Registration of Children Born in Non-Government Controlled Areas

Regulation of the legal status of children born on territories not controlled by Ukraine is still fraught with problems. The form providing medical evidence of birth issued in non-government controlled territories is not recognized by vital statistics offices of Ukraine. In 2018, the government adopted a law under which documents confirming the fact of birth in temporarily occupied territories in Donetsk and Luhansk oblasts are recognized as valid.<sup>29</sup> So far, however, the provisions of this law have not been implemented in administrative laws.

To receive a birth certificate for a child born in temporarily occupied territories of Ukraine, parents must now obtain a document from those territories confirming the fact of the child's birth. If they receive a written refusal to register the birth after submitting this document to any vital statistics office in a territory under Ukrainian control, they must file an application with a court to establish the fact of the child's birth. Obviously, few parents (or other representatives of the child) have the physical or financial ability to travel to a controlled territory to go through all the abovementioned steps to obtain a Ukrainian certificate of birth.

In these circumstances, it is not surprising that only 43 percent of children born in non-government controlled territories of Donetsk and Luhansk oblasts obtained

---

28 Resolution 2098 (2018) Parliamentary Assembly of the Council of Europe "Humanitarian Consequences of the War in Ukraine," <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en>

29 Law of Ukraine "On Special State Policies to Ensure Ukraine's State Sovereignty in Temporarily Occupied Territories in Donetsk and Luhansk Oblasts," January 18, 2018, <https://zakon.rada.gov.ua/laws/show/2268-19/print>

Ukrainian birth certificates.<sup>30</sup> The remaining 57 percent of children who do not have these certificates are at risk of statelessness because they will not be able to obtain the passport of a Ukrainian citizen. Thus, there is an acute need for an administrative procedure to register births in territories that are not controlled by Ukraine. This would relieve applicants of the need to appeal to a court.

## Expulsion of Ukrainian Citizens from Russia into the Combat Zone

In its practice, ADC Memorial has seen numerous cases where people from territories in Donetsk and Luhansk oblasts that are not controlled by Ukraine have been declared violators of residence and/or work rules for foreigners in Russia and charged under article 18.8 and 18.10 of the RF Code of Administrative Offenses, which stipulates penalties in the form of a fine with administrative expulsion from Russia and placement in a temporary detention center for foreign nationals. In many cases, courts that order expulsion commit various irregularities, including disregarding family ties and ignoring both the military actions in eastern Ukraine and the fact that many people from the Donbass region are applying for asylum in Russia.

*In September 2017, the Kalinsky District Court of Saint Petersburg issued two simultaneous decisions on the expulsion of V., a woman from Luhansk Oblast in Ukraine: one for violation of migration rules and one for performing illegal work activities in Russia. However, V. was never duly notified that there were two administrative cases against her.*

*The court that issued the decision did not take account for the fact that V. was the common-law wife of a Russian man who, as a cancer sufferer, was in need of her care, or for the fact that expulsion to Luhansk Oblast presented a threat to her life because of the continuing armed conflict there. V. was placed in a foreign national detention center to secure her expulsion.*

*One month later, V.'s attorney was able to successfully appeal this decision: in cancelling the decision, the Saint Petersburg City Court took into account Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 3 of the European*

---

30 UNHCR data, <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/10/2018-09-UNHCR-Ukraine-Statelessness-Update-FINAL-EN.pdf>

*Convention for the Protection of Human Rights and Fundamental Freedoms and found that the punishment of expulsion into a zone of military action was ill-founded and in contradiction to the principle of humanism and the requirements of international norms.*

*In the second case, however, the judge refused to extend the time to file an appeal, so V.'s attorney had to file an appeal with the deputy chair of the Saint Petersburg City Court, who recognized that there was a real threat to V.'s life and health due to the situation in eastern Ukraine and noted that in this particular situation expulsion would not be in line with the goals and principles of the punishment imposed and would also contravene international norms (the International Covenant on Civil and Political Rights, the Convention Against Torture, and the European Convention). In the decision, the judge noted that it was important to consider that V. had filed an application for temporary asylum in Russia in September 2017.*

*The second decision of the district court was only cancelled in November, so V. had to spend over two months in the inhuman conditions of the foreign national detention center. Her common-law husband, who came to court and begged for V.'s release, passed away without seeing his wife's release. Deprived of her liberty, V. was not even able to say goodbye to him.<sup>31</sup>*

Russian courts have also attempted to expel people from eastern Ukraine who were already essentially stateless persons:

*L., an orphan and former resident of a children's home, ended up in Russia immediately following the start of military actions in eastern Ukraine. When crossing the border, he lost his Ukrainian passport, which meant that he was not able to return to Ukraine when the period for his legal stay in Russia ended. In September 2017, a Saint Petersburg court adopted a decision to expel L. with preplacement in a foreign national detention center. The Consulate General of Ukraine could not confirm his citizenship, since Luhansk Oblast, where L. was registered, was not under the control of Ukraine. Thus, L. became a stateless person in all but name: his expulsion could not be realized and his deprivation of freedom in the detention center became indefinite, with no lawful or attainable goal.*

*L's attorney was able to appeal this decision, but L's expulsion was not cancelled and was instead replaced with "independent controlled*

---

31 ADC Memorial archives.

*departure.” The court ignored the attorney’s arguments that following the court’s instructions concerning independent departure would entail criminal liability for L. because of his lack of documents and that there would be a real threat to L.’s life and health in light of the continuing military actions in Luhansk. Instead, the court insisted that L. had to leave Russia.*

*L. was released, but without valid identity documents, he cannot gain legal status in Russia or leave the country. Stateless persons and de facto stateless persons continue to be caught in a legal impasse.<sup>32</sup>*

Of particular concern are cases where Ukrainian citizens are expelled directly to the territory of the breakaway “people’s republics,” even though Ukraine does not confirm the citizenship of people from non-government controlled territories who face expulsion. Information that the authorities of these “republics” issue certificates of return at the request of Russian authorized bodies similar to those issued by certain states for entry into their territory needs to be confirmed.

It should be noted that Russia is generally reluctant to grant refugee status and temporary asylum: as of January 1, 2018, only 592 refugees were registered in Russia; of these, 166 were from Ukraine<sup>33</sup> (this is the lowest indicator for Russia over the past 10 years). According to statistics as of January 1, 2018, the number of foreign citizens who received temporary asylum was much higher at 125,422 people,<sup>34</sup> most of whom were migrants from Ukraine (123,434 people), but this number is half of what it was in 2017.

Temporary asylum is only granted for one year. After this, people must apply to the Ministry of Internal Affairs for an extension—a complicated procedure that is basically the same as the initial application, and there is no guarantee that the extension will be granted. If a person is not successful in obtaining an extension, this person must leave Russia within one month. People who do not follow this requirement face expulsion under the law.

There is a special regime for Ukrainian citizens who want to obtain asylum in Russia; this regime is regulated by RF Government Resolution No. 690 “On Granting Temporary Asylum to Ukrainian Citizens in the Russian Federation under Simplified Procedures” of July 22, 2014. People who apply for asylum must have their finger-

---

32 ADC Memorial archives.

33 Summary table of the Federal State Statistics Service of Russia on the number of refugees in Russia, [http://www.gks.ru/free\\_doc/new\\_site/population/demo/tab-migr4.htm](http://www.gks.ru/free_doc/new_site/population/demo/tab-migr4.htm)

34 Summary table of the Federal State Statistics Service of Russia on the number of people granted temporary asylum, *Ibid*.

prints taken at the Ministry of Internal Affairs office for their place of residence and must also have a medical exam within ten calendar days of submitting their applications. A decision on temporary asylum is made by the local Ministry of Internal Affairs office for the location where the person submitted the written application within at least three business days from the date of the application's submission. After this, the applicant is issued a certificate of temporary asylum within one business day. There is a procedure for establishing an applicant's identity if that person does not have identity documents.

Migrants from Ukraine who cannot manage to complete the procedure for filing for temporary asylum or who do not file an application at all, but who have overstayed their time in Russia generally remain in Russia illegally because they cannot return to eastern Ukraine for various reasons.

## Issuance of Russian Passports to Residents of the Breakaway DPR and LPR under a Simplified Procedure

Soon after the recent presidential election in Ukraine, when Volodymyr Zelensky became head of state, President Putin signed an order concerning a simplified procedure for conferring citizenship and issuing Russian passports to residents of "certain areas of Donetsk and Luhansk oblasts of Ukraine" (Order No. 183 of April 24, 2019).<sup>35</sup> At a press conference on April 27, 2019, Putin announced his intention to simplify the procedure for granting Russian citizenship to all residents of Ukraine.<sup>36</sup> A subsequent order (No. 187 of April 29, 2019), however, pertains to limited groups of Ukrainian citizens and establishes a simplified procedure for obtaining Russian citizenship for natives and *former residents* of other regions of Russia—Crimea and Sevastopol—who *left these regions* prior to certain dates in 2014 and for *former residents* of "certain areas of Donetsk and Luhansk oblasts of Ukraine" *who are currently in Russia legally*. Order No. 187 also relates to citizens of Afghanistan, Iraq, Yemen, and Syria born in the RSFSR and holding Soviet passports.<sup>37</sup>

---

35 Order No. 183 "On Defining Categories of Persons who have the Right to Apply for Russian Citizenship Under a Simplified Procedure for Humanitarian Purposes," April 24, 2019, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_323356/942772dce30cfa36b671bcf19ca928e4d698a928/](http://www.consultant.ru/document/cons_doc_LAW_323356/942772dce30cfa36b671bcf19ca928e4d698a928/)

36 "Putin Allows for Simplified Granting of Russian Citizenship to Residents of Ukraine," April 27, 2019, <https://ria.ru/20190427/1553107786.html> [in Russian].

37 Order No. 187 "On Certain Categories of Foreign Nationals and Stateless Persons who may Apply for Russian Citizenship Under a Simplified Procedure," April 29, 2019, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_323819/](http://www.consultant.ru/document/cons_doc_LAW_323819/)

These two orders became an extension of amendments to Russian laws: previously, in December 2018, amendments to the Law on RF Citizenship were adopted (these entered into force on March 29, 2019), which somewhat expedited applications for Russian citizenship for participants in a program to resettle fellow Russians and which gave the Russian president the right *“to define categories of foreign nationals and stateless persons who have the right to apply for Russian citizenship under a simplified procedure for humanitarian purposes, as well as the procedure for issuing these people the corresponding applications and a list of documents to be submitted.”* Under these amendments, simplified procedure means that these people do not need to renounce their existing citizenship (in the context of this report, this means that they do not have to file an application to renounce their citizenship with the authorized agencies in Ukraine).

These two orders also define several new and different groups of Ukrainian citizens that have gained access to the simplified procedure: Order No. 183 refers to Ukrainian *citizens who are residents and natives of the self-proclaimed DPR and LPR* who are currently located on these territories, and Order No. 187 refers to a) *Ukrainian citizens and stateless persons who were residents and natives of the DPR and LPR and who, as of April 7 and April 27, 2014, respectively, had left specifically and only for Russia* and have a permit for temporary or permanent residence in Russia and/or are participating in a voluntary resettlement program, have refugee documents, or are asylum seekers; b) Ukrainian citizens and stateless persons who are natives or former residents of Sevastopol and Crimea in general, who left these areas prior to March 18, 2014 (the destination country is not specified, unlike the previous subclause, which specifies Russia); c) people of any nationality who themselves were deported from the Crimean Autonomous Soviet Socialist Republic or whose direct ancestors were deported from there. Notably, natives and former residents of the DPR and LPR who do not currently live in Russia, but in some other country, do not have access to the simplified procedure.

The fact that current and former residents of the DPR and LPR are mentioned in both orders and that these orders specify different requirements for applicants depending on their place of residence has already given rise to confusion about the application of the new rules and to discrimination against several groups of people who are not able to apply under the simplified process (given the overall offensive nature of these orders).

For example, Order No. 187, which concerns natives and *former residents* of the DPR and LPR *located in Russia*, stipulates more complicated requirements for applicants: along with a detailed list of documents, they must also supply a medical certificate attesting to the absence of drug addiction, HIV infection, and other diseases, which are the same requirements made of people applying for temporary or permanent residence (both under “general procedures” and “simplified procedures”). Order No. 183, which concerns people who currently live in the DPR and LPR, does not require a medical certificate from applicants (which is also not required under the regular procedure), and the list of required

documents is much shorter. At the same time, the media reports that the authorities of the self-declared DPR and LPR intend to deprive HIV-infected persons of access to the application procedure for Russian citizenship.<sup>38</sup>

The group of HIV carriers is not the only population group of these territories that has restricted access to the new procedure. In a special clarification, “the head of the Migration Service of the Ministry of Internal Affairs of the Donetsk People’s Republic” repeatedly stressed that applications for Russian citizenship would only be accepted from people who have “the passport of a citizen of the DPR” and that if these people are granted Russian citizenship and passports, they will not lose their “DPR passport.”<sup>39</sup>

It should be noted in relation to Order No. 183 (concerning applicants located on the territories of the self-proclaimed DPR and LPR) that the term “simplified procedure” and the reference to articles 13 and 14 of the Law on RF Citizenship are hardly applicable, since this term has a very specific meaning in the citizenship law, where it signifies a three-step procedure for becoming an RF citizen (temporary residence permit (one year) – permanent residence permit – citizenship). This differs from the “general procedure” only in terms of a shorter required period of residence (five years under the general procedure, immediately under the simplified procedure), while for a number of categories (voluntary resettlers, World War II veterans, and others) it also signifies a loosening of some conditions (for example, under the simplified procedure, participants in the resettlement program do not have to prove their knowledge of the Russian language or their income source). The generalized and simplified procedures for acquiring Russian citizenship are described in articles 13 and 14 of the Law on RF Citizenship. Order No. 183 gives residents of the self-declared DPR and LPR the right to apply for citizenship right away by bypassing the temporary and permanent residence stages. This path to citizenship is described in a completely different section of the law (Chapter VIII.1) that was added in 2012 specifically to resolve the problems of stateless persons who are former Soviet citizens and who, until certain dates in 2002 (the time when amendments were made to the law on citizenship), were on Russian territory but did not obtain citizenship following the established procedure.

Thus, if the letter of the law is followed, residents of the self-proclaimed DPR and LPR who apply for Russian citizenship under the “simplified procedure” (Order No. 183 cites Article 14 of the Law on RF Citizenship) must complete all three stages stipulated by this “simplified procedure,” albeit within a short period of

---

38 “An Expensive Russian Passport. Part of Donbass is Left Without Russian Citizenship,” May 5, 2019, <https://www.svoboda.org/a/29918808.html>

39 Clarification on the website of the “Migration Service of the Ministry of Internal Affairs of the Donetsk People’s Republic” (video clip), <https://mvd-dnr.ru/news/poryadok-polucheniya-grazhdanstva-rf-zhiteliam-dnr>



time. However, the new Order No. 183 contains a minimum list of documents for filing an application for Russian citizenship and does not contain requirements for applicants to obtain temporary or permanent residence. This means that the situation for residents of the self-proclaimed DPR and LPR actually corresponds to Article 41.3 of Chapter VIII.1 ("Conditions for Becoming a Citizen of the Russian Federation"), which unambiguously and clearly adds the wording **"without presenting temporary or permanent residence permits" to the "simplified procedure."**

The presidential orders have been unequivocally received by Ukrainian authorities as a new encroachment on Ukraine's sovereignty and as "passport aggression."<sup>40</sup> The Cabinet of Ministers of Ukraine has found Russian passports issued to residents of the self-proclaimed DPR and LPR invalid and called on other countries to boycott "fake passports."<sup>41</sup>

Amendments to citizenship laws have also caused dissatisfaction in Russia: a number of critical publications have pointed to the populist and ideological nature of these measures that give preference to residents of the self-proclaimed DPR and LPR, while former Soviet citizens who have lived in Russia for decades fight against the state system and cannot obtain Russian citizenship, even though they have the full right to it.<sup>42</sup>

---

40 "Statement of the Ministry of Internal Affairs of Ukraine in Connection with the Latest Illegal Decision of the Russian Federation Aimed at Simplifying the Procedure for Obtaining Russian Citizenship for Certain Categories of Ukrainian Citizens," May 1, 2019. Website of the Ministry of Internal Affairs of Ukraine, <https://mfa.gov.ua/ua/press-center/news/72215-zajava-mzs-ukrajini-u-zvjazku-z-chergovim-protipravnim-rishennyam-rosijskykoji-federaciji-spryamovanim-na-sproshhennya-proceduri-nabuttya-rosijskykogo-gromadyanstva-dlya-okremih-kategorij-gromadyan-ukrajini>

41 Україна не визнаватиме фейкових російських паспортів, що видаватимуть жителям окупованих територій, – Володимир Гройсман. Unified portal of Executive Branch Agencies of Ukraine, May 8, 2019, <https://www.kmu.gov.ua/ua/news/ukrayina-na-viznavatime-fejkovih-rosijskih-pasportiv-shcho-vidavatimut-zhitylam-okupovanih-teritorij-volodimir-grojsman>

42 "The Russian World, Export Edition," May 4, 2019, <https://www.novayagazeta.ru/articles/2019/05/04/80422-russkiy-mir-eksportnyy-variant>

# ATTEMPTS TO RESOLVE THE PROBLEM OF STATELESSNESS IN RUSSIA AND UKRAINE

The laws and practices regulating the situation of stateless persons in both Russia and Ukraine are flawed, although to different degrees. But both countries have seen positive trends that show the situation may be changing for the better: for example, bills that would allow thousands of stateless persons to regulate their status are awaiting approval (introduction of a procedure to recognize a person as stateless in Ukraine; introduction of judicial control over placement of stateless persons in detention centers, documentation for stateless persons in Russia). These amendments were advanced through years of work by human rights attorneys and experts. This work includes specific legal assistance for clients, analyses of laws and practices in analytical reports presented at the international and domestic levels, and strategic court cases.

The remainder of this report will look at problems requiring urgent resolution in Russia and Ukraine and at the achievements of human rights defenders in the area of strategic litigation and advocacy for the rights of stateless persons.

## ATTEMPTS TO ADOPT STATELESSNESS DETERMINATION PROCEDURE

Bill No. 9123 “On Amendments to Several Legal Acts of Ukraine Concerning Recognition of a Person as Stateless” was registered with the Verkhovna Rada on September 21, 2018.<sup>43</sup> The purpose of this law is to create a procedure for recognizing a person as stateless, which would then allow this person to obtain a stateless person certificate and a residence permit confirming their legal right to live in Ukraine.

Under this bill, stateless persons may submit an application to Ukraine’s State Migration Service to be recognized as a stateless person and present documents and facts confirming that they do not have citizenship of Russia or another country. The State Migration Service must review the application within six months and may

---

43 Draft law No. 9123 “On Amendments to Several Legal Acts of Ukraine Concerning Recognition of a Person as Stateless,” [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64673](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64673)

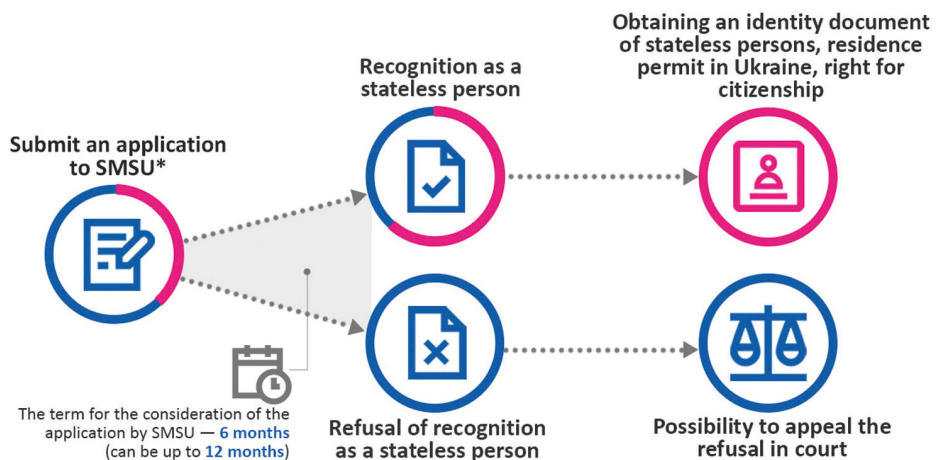
extend this period for up to one year. The bill stipulates that the State Migration Service must provide people who do not speak Ukrainian with an interpreter at no charge and must also handle the translation of documents. When reviewing applications, the State Migration Service must take all the necessary measures to collect information from the applicant's birthplace, countries and places where the applicant previously resided, and countries that the applicant's family members are citizens of.

While the application is being considered, the applicant is issued a temporary certificate confirming that the applicant can stay in Ukraine legally. After consideration, the State Migration Service may adopt a decision refusing to recognize the applicant as a stateless person, but the applicant may appeal this decision in court. Moreover, the bill stipulates that applicants do not have to pay any court fees or advance payments for the execution of judgments concerning an appeal to a State Migration Service decision to recognize a person as stateless. This simplifies access to the appeals procedure for this vulnerable category of people. The bill also specifies that stateless people who are temporarily or permanently residing in Ukraine but who do not have travel documents may be issued a stateless person certificate for travel abroad. This realizes the right to freedom of movement for stateless persons.

Finally, the bill also envisages the right to free follow-up legal assistance for applicants, as well as amendments to Law of Ukraine "On Employment of the Population" that would provide stateless persons with the opportunity to exercise their rights to labor and to an adequate standard of living.

## STATELESSNESS DETERMINATION PROCEDURE

in accordance with the draft law №9123



\*State Migration Service of Ukraine (SMSU)

The adoption of this bill will be the key that gives stateless persons access to social and economic rights. The introduction of this procedure is also important in terms of state security because people who are currently in the country illegally will be identified and documented and will become visible for state monitoring.

At the time of this writing, the bill was being considered by the Parliament. Its creation was necessitated by Ukraine's accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in 2013.

Ukraine does not currently have an effective procedure for identifying stateless persons, which is necessary for establishing identity and providing robust protection for stateless persons in the country, so a significant number of people living in Ukraine without documents cannot resolve this problem within the framework of existing laws. This refers not just to people who do not have grounds to acquire Ukrainian citizenship, but also to people whose countries of origin or whose parents' countries of origin and/or nationality do not recognize as citizens. These people may live in Ukraine for years with no chance of obtaining an identity document or permit to live in the country legally. They remain invisible to the state and cannot exercise their rights to education and medical care, claim an inheritance, open a bank account, register a marriage, or cross the border freely.

Below is a typical example of the legal morass in which stateless persons in Ukraine find themselves.

*Nina Islyamova was born in Kyrgyzstan, where her parents, who were ethnic Meskhetian Turks from Adjara, Georgia, were forcibly deported like many other members of Muslim minorities after the World War II.*

*Nina spent her childhood and youth in Jalal-Abad, then she and her future husband (also a member of a repressed and deported people—the Crimean Tatars) moved to neighboring Uzbekistan, where they later married and had two children. Their peaceful life came to an abrupt halt when ethnic clashes started as the Soviet Union broke up. In the summer of 1991, Nina, her husband, and their two infants had to leave Uzbekistan. They returned to her husband's historical homeland in Crimea, where they settled for good in Krasnoperekopsk. Over time, the children went to school and Nina worked hard where she could, mainly at the market (in the difficult post-Soviet times, it was hard to find official employment). When it came time to exchange her Soviet passport for a Ukrainian passport in 1998, Nina lost her Soviet passport, so she could not obtain a Ukrainian one. Even though she kept trying in subsequent years, she was not able to surmount the bureaucratic barriers.*

*In the winter of 2014, Nina went to Kiev to obtain a certificate attesting to her lack of Uzbek citizenship, which was required for becoming a citizen*



*of Ukraine. Once she received this document, however, she was not able to return home to her family because of Russia's annexation of Crimea. A border had appeared that Nina could not cross without a document confirming her status as a stateless person. Thus, Nina was left alone without any support from her family or close friends and without funds to live on. Obtaining the status of stateless person would help Nina receive a travel document for stateless persons, and she could return home to Crimea.*

Stateless persons also experience difficulties establishing the fact of their birth and residence in Ukraine at the time of the Soviet Union's dissolution.

The law "On Citizenship of Ukraine" specifies that all citizens of the former Soviet Union who were living permanently in Ukraine at the time Ukraine declared independence (August 24, 1991) and/or at the time when the law "On Citizenship of Ukraine" entered into force (November 13, 1991) are citizens of Ukraine.

People who arrived in Ukraine for permanent residence after November 13, 1991 and whose Soviet passports of that year were stamped "Ukrainian citizen" by internal affairs agencies of Ukraine are also recognized as Ukrainian citizens if they applied to have their citizenship registered.<sup>44</sup>

---

<sup>44</sup> Law "On Citizenship of Ukraine," <https://zakon.rada.gov.ua/laws/show/2235-14/print>

Old Soviet passports were deemed valid for a fairly long time after Ukraine declared independence: initially they were extended until July 1, 2002,<sup>45</sup> and then until September 1, 2002, December 1, 2004, and January 1, 2005. But far from all residents of Ukraine exchanged their passports before the deadline of January 1, 2005. This was due to lack of knowledge about the process of exchanging passports and the consequences of living with an invalid former Soviet passport, the lack of desire to exchange a passport for ideological reasons, and so forth. Thus, people who did not exchange their Soviet passports prior to the date established by law found themselves on Ukrainian territory without a valid identity document and with nothing to confirm citizenship.

Providing these people with legal assistance to obtain citizenship is extremely challenging because they can rarely prove that they were permanently residing in Ukraine as of August 24, 1991 or November 13, 1991 (they lost their Soviet passport, have no evidence of a residence permit). Without this written evidence, they must appeal to a court. Once they have a court ruling confirming the fact of their residence in Ukraine as of the abovementioned dates, then they can apply for a Ukrainian passport.

In addition to applications to establish evidence of residence in Ukraine as of 1991, attorneys providing legal assistance to stateless persons must also submit in separate proceedings an application to establish identity and an application to establish the fact of birth and recognition of motherhood, since the possibility of exercising the right to citizenship also depends on these circumstances.

A separate category of stateless persons who have a difficult time regulating their legal status are people who have historical and family ties to Ukraine and who want to acquire Ukrainian citizenship, but who previously lived in other countries (generally former Soviet countries) and have lost ties with these countries. These people have grounds for acquiring Ukrainian citizenship on the basis of territorial origin.<sup>46</sup> However, they still must confirm the legality of their

---

45 Resolution of the Cabinet of Ministers of Ukraine No. 79 "On the Period of Validity of Passports Held by Ukrainian Citizens Issued Using Blank Passports of the Former Soviet Union," [http://search.ligazakon.ua/l\\_doc2.nsf/link1/KP020079.html](http://search.ligazakon.ua/l_doc2.nsf/link1/KP020079.html)

46 People who, prior to August 24, 1991, were born or permanently resided or had at least one parent, grandparent, sibling, half-sibling, child, or grandchild born or permanently residing on a territory that became a territory of Ukraine under the law "On the Legal Succession of Ukraine," or who were born or permanently resided or had at least one parent, grandparent, sibling, half-sibling, child, or grandchild born or permanently residing on other territories that, at the time of their birth or permanent residence, were part of the Ukrainian People's Republic, the West Ukrainian People's Republic, the Ukrainian State, the Ukrainian Socialist Soviet Republic, Transcarpathian Ukraine, or the Ukrainian Soviet Socialist Republic, and are stateless persons or foreign nationals who submitted an obligation to terminate foreign citizenship and who submitted an application to acquire Ukrainian citizenship and their minor children shall be registered as citizens of Ukraine. (Article 8 of Law of Ukraine "On Citizenship of Ukraine," <https://zakon.rada.gov.ua/laws/show/2235-14/print>).

residence in Ukraine at the time they filed the corresponding documents with the State Migration Service. If they want to extend their residence in Ukraine, they must submit a document that confirms their identity.

Stateless persons often do not have identity documents. Until April 2018, a resolution<sup>47</sup> was in effect in Ukraine that gave the State Migration Service the authority to conduct a procedure for establishing the identity of foreign nationals and stateless persons. After this resolution lost force, however, the State Migration Service only had the authority to conduct this procedure for Ukrainian citizens.<sup>48</sup> As identity documents, the State Migration Service accepts a certificate from the country of origin's consulate concerning non-citizenship with a photograph of the applicant. However, Ukrainian laws specify a clear list of documents that establish identity,<sup>49</sup> and a certificate concerning non-citizenship is not one of them. At the same time, few consulates are willing to issue these certificates with a photograph of the person. In particular, the embassies of Russia, Georgia, Azerbaijan, Armenia, and Kazakhstan issue certificates of non-citizenship without a photograph. As a result, migrants from these countries cannot extend their legal stay in Ukraine, which drives them into a dead end as they try to acquire Ukrainian citizenship, even though they have this right under the law "On Citizenship of Ukraine."

It is a paradox that, in the age of digital technology, the possibility of acquiring Ukrainian citizenship depends on the form of the certificate and the presence of the applicant's photograph. Because of this, a number of Right to Protection clients, including migrants from Russia, cannot realize their right to citizenship of Ukraine.

Even for applicants whose consulates issue certificates with photographs, the process for extending legal residence and for applying for citizenship drags on for a long time:

***Nadezhda Zhukova, a native of the Tajik Soviet Socialist Republic moved to Ukraine in 1993 with her parents when she was still a child.***

---

47 Oder of the Ministry of Internal Affairs of Ukraine No. 320 "On the Approval of the Procedure for Processing and Issuing Ukrainian Passports," can be accessed following the link: <https://zakon.rada.gov.ua/laws/show/z1089-12>

48 Resolution of the Cabinet of Ministers of Ukraine No. 302 of March 25, 2015, which envisages a "procedure for processing issuing, exchanging, sending, confiscating, returning to the state, and destroying Ukrainian passports deemed invalid," <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF/print>

49 Law of Ukraine "On a Single State Demographic Register and Documents Confirming Ukrainian Citizenship, Identity, or a Special Status," Part 1 of Article 13 can be accessed following the link: <https://zakon.rada.gov.ua/laws/show/5492-17/print>





*When she turned 18, she found that she could not apply for a Ukrainian passport because her birth certificate was lost during the move from Tajikistan, and her mother, who did not understand how important it was to get a passport for her daughter, did not take care of this problem earlier.*

*When Nadezhda sought assistance at Tajikistan's Embassy in Ukraine in September 2015, she was told that she is not a citizen of the Republic of Tajikistan. The certificate she was issued to this effect did not have her photograph on it.*

*For her part, Nadezhda had grounds for acquiring Ukrainian citizenship on the basis of territorial origin, since her grandmother was born on the territory of modern Ukraine.*

*After she received a second certificate from Tajikistan's consulate—this time with a picture—Nadezhda filed an application with Ukraine's State Migration Service to acquire citizenship and receive a passport. However, the State Migration Service refused her citizenship and recommended that she obtain an immigration permit.*

*People who have the right to citizenship of Ukraine on the basis of territorial origin fall under the quota for an immigration permit.<sup>50</sup> Obtaining this*

---

50 Paragraph 3 of Part 2 of Clause 3 of the Procedure for Processing Applications for Immigration Permits and Applications to Cancel such Permits and the Implementation of Adopted Decisions, approved by Resolution No. 1983 of the Cabinet of Ministers of Ukraine of December 26, 2002 <https://zakon.rada.gov.ua/laws/show/1983-2002-%D0%BF>

*permit gave Nadezhda the opportunity to apply for permanent residence in January 2019. This was her first official identity document issued by a government agency of Ukraine.*

*By February 2019, Nadezhda had filed an application with the State Migration Service to acquire citizenship of Ukraine.*

In Russia, similar problems with establishing identity, confirming the fact of birth and/or residence on Russian territory, and proving the lawfulness of residence in the country mean that stateless persons cannot even become involved in the legalization procedure.

In spite of numerous amendments, Russian citizenship laws still do not contain a logical and accessible procedure for legalizing stateless persons. The first Law on Citizenship<sup>51</sup> was adopted on November 28, 1991 and envisaged a simplified procedure for acquiring citizenship of the RSFSR that was in effect until December 31, 2000. Under Part 1 of Clause 13 of this law, all former Soviet citizens possessing a permanent residence registration within the territory of the RSFSR were automatically granted Russian citizenship. Citizenship could also be acquired following the procedure of registration (that is, by filing a petition within one year after the law's entry into force). This procedure was available to citizens of former Soviet republics and other countries with historical and family ties to Russia, as well as to stateless persons.

In Russia, many people did not exchange their old Soviet passports for the same reasons as in Ukraine. Citizenship applications were not accepted without a residence registration, which many people could not execute for various reasons: some were in detention facilities and could not file the application, while others lived in remote regions and did not have access to information or know that they had to change their passports and acquire citizenship. In addition, the RF government resolution "On Approval of the Regulations on RF Passports, a Sample Form, and a Description of an RF Passport," which was approved in 1997, envisaged a phased exchange of Soviet passports for Russian passports until July 1, 2004.<sup>52</sup> For various reasons, many holders of Soviet documents put off exchanging them until the last minute, when the citizenship law had already been amended (2002). Without having even acquired any citizenship, these people became de facto illegal residents.

---

51 Law of the RSFSR No. 1948-I of November 28, 1991, <https://base.garant.ru/3969841/>

52 Paragraph 2 of RF Government Resolution No. 828 "On Approval of the Regulations on RF Passports, a Sample Form, and a Description of an RF Passport," of July 8, 1997, <http://ivo.garant.ru/#/document/5423647/paragraph/17479:0>

The Federal Law "On the Legal Situation of Foreign Nationals in the Russian Federation,"<sup>53</sup> which was adopted in 2002, established three types of legal residence in Russia: temporary stay, temporary residence, and permanent residence. This new law only applied to people who arrived in Russia after its entry into force. This meant that stateless persons who had lived in Russia since the dissolution of the Soviet Union could no longer obtain legal status, which blocked their access to the procedure for acquiring citizenship. The Federal Law "On RF Citizenship"<sup>54</sup> was also adopted in 2002. This law equates former Soviet citizens without Russian citizenship with foreign nationals and requires them to go through the three-step procedure "temporary residence permit – residence permit – citizenship." Even though the law established preferential treatment for these people in the form of a shorter waiting period for citizenship provided they have a residence permit, in actual fact the law bars access to temporary residence permits even for stateless persons because stateless persons do not have valid documents or the ability to establish their identity (the procedure to establish identity is not conducted or is drawn out for an extended period).

Over 80,000 former Soviet citizens who acquired RF passports that established the owner's identity but did not grant citizenship ended up stateless. These passports were officially issued in Russia from 1992 to 2002, but information from them was never entered into the appropriate databases, which meant that they were later confiscated and their holders were declared stateless persons. It was only after eight years that an amendment to the Federal Law "On RF Citizenship" was drafted to resolve this problem. In late 2011, the State Duma adopted the draft after its first reading, but then work on the draft stopped.

In 2012, Chapter VIII.1 was added to the law "On RF Citizenship" to regulate the status of stateless persons who were never able to obtain legal status. "Preferential" terms were granted to stateless persons who were former Soviet citizens, who arrived in Russia prior to November 1, 2002, and who fell into the abovementioned class of former Soviet citizens who received a Russian passport prior to July 1, 2002—which were later found to have been issued illegally—or were citizens of a different state, as long as they did not have a document confirming their right to live in another state. A simplified path to citizenship that only involved submitting an application for citizenship and bypassed the stages of temporary residence permit and residence permit was established for these categories of citizens. The new chapter also took people lacking any documents into account. To document these people,

---

53 Federal Law No. 115-FZ "On the Legal Situation of Foreign Nationals in the Russian Federation" of July 25, 2002, <http://ivo.garant.ru/#/document/184755/paragraph/485087:1>

54 Federal Law No. 62-FZ "On RF Citizenship" of May 31, 2002, <http://base.garant.ru/184539/>

state migration agencies had to conduct a procedure to establish identity within a period not to exceed three months (Clause 4.5 of Article 41). One of the most important changes was the new norm prohibiting the administrative prosecution and punishment of stateless persons applying for citizenship, even if these people had violated migration rules.

The introduction of Chapter VIII.1 to the law “On RF Citizenship” did not become a universal mechanism for solving the problem of statelessness. Even though it appears to encompass all the main categories of former Soviet citizens who are stateless, the new chapter does not envisage a simplified procedure for people who arrived in Russia after November 1, 2002; these people must still complete the entire three-step procedure for acquiring citizenship as any other foreign national (temporary residence permit – residence permit – citizenship). A special category of people missing from the new chapter are Uzbek citizens who came to Russia after November 1, 2002 for permanent residence and did not register with their country’s embassy within three years, resulting in their loss of citizenship.<sup>55</sup> This law also does not envisage any procedures for stateless persons serving a criminal sentence in Russia to become citizens. When they are released from detention facilities, these people are generally declared undesirable and cannot obtain any documents, since the law “On RF Citizenship” does not allow people with an unexpunged criminal record to become citizens.<sup>56</sup>

However, a simplified legalization process for stateless person did not follow in practice with the introduction of this new chapter. For most people who arrived in Russia prior to November 1, 2002, the terms for citizenship (bypassing the stages of temporary residence permit and residence permit, as long as there is documentary proof of arrival in Russia prior to November 1, 2002 and of residence in Russia after that date) remain unfeasible. Stateless persons without documents continue to face complications when submitting documents for citizenship. Without valid documents, they cannot legally hold jobs, so the requirement of Article 13 to have a legal source of income is impossible for them to meet. Residence registration is also difficult without documents, so this requirement also cannot be met. The procedure for establishing the identity of these people is either never conducted or is drawn out over an indefinite period. Holders of passports that were “incorrectly” issued in 2002 cannot prove that they are not officially Russian citizens. These people are required to prove that they do not have ties to a country of origin or the right to live there, which is absolutely absurd in their situation. In fact, these people must restart the citizenship process, but they cannot do this because the law “On

---

55 Clause 2 of Article 21 of Law of the Republic of Uzbekistan “On Citizenship of the Republic of Uzbekistan,” <http://www.lex.uz/acts/4880>

56 Federal Law No. 62-FZ “On Citizenship of the Russian Federation” of May 31, 2002, <http://base.garant.ru/184539/>

RF Citizenship” does not envisage any procedure for former Soviet citizens who entered Russia after November 1, 2002. The remaining stateless people who arrived after this date are in the exact same situation. Even though they officially have the right to submit documents for citizenship, they cannot even obtain temporary permanent residence because this requires a valid identity document and a document confirming legality of stay in Russia (a visa or migration card), which can be easily lost over years of living in Russia.

On July 4, 2018, the Central Migration Department of Russia’s Ministry of Internal Affairs announced that it was working on a bill<sup>57</sup> that, if adopted, will give the opportunity to obtain identity documents to people with an unregulated legal status and no documents, or who have a Soviet passport following the 1974 template or a Soviet birth certificate who do not fall under the effect of Chapter VIII.1. According to this draft, this document can be obtained from the Central Migration Department. In the future, this form of identification will be a ground for acquiring Russian citizenship. However, this bill has not yet been considered by the State Duma, even though the draft amendment was submitted and public hearings were held in August 2018.

## LITIGATION AND ADVOCACY IN CASES OF UNENFORCEABLE EXPULSION AND THE MIGRATION-RELATED DETENTION OF STATELESS PERSONS

While neither Russia nor Ukraine has a procedure for identifying stateless persons, which means that these people cannot obtain an identity document or regulate the lawfulness of their stay, the laws of both countries stipulate administrative liability for violating residence rules on their territories, i.e. undocumented residence or residence under invalid or expired documents. Thus, stateless persons and persons at risk of statelessness face administrative sanctions for reasons depending on the government and not on themselves (lack of a procedure to identify stateless persons, complicated administrative procedures, defects in the law).

In Ukraine, violation of residence rules entails a fine ranging from 100 to 300 tax-free minimum incomes.<sup>58</sup> In addition, stateless persons found to be violators face the risk of migration detention at a temporary residence center for foreign nationals and stateless persons.

---

57 <https://regulation.gov.ru/projects#npa=81993>

58 Code of Ukraine on Administrative Offences, <https://zakon.rada.gov.ua/laws/show/80731-10>

These centers hold foreign nationals and stateless persons:

- in relation to whom a court has adopted a decision concerning forcible expulsion from Ukraine;
- in relation to whom a court has adopted a decision on detention for the purposes of identification and forcible expulsion from Ukraine, including decisions adopted in accordance with international treaties of Ukraine on readmission;
- detained by the Migration Service or its local offices or subdivisions for the periods and following the procedures stipulated by law;
- detained under a court decision until consideration of an application to find a person a refugee or in need of additional protection in Ukraine.<sup>59</sup>

The detention period for foreign nationals and stateless persons in these centers is limited to 18 months and is subject to judicial control.<sup>60</sup> To extend this term, an administrative action must be filed listing the actions and measures taken by government agencies to identify a foreign national or stateless person, ensure execution of the decision on forcible expulsion (readmission), or consider an application to find that a person is a refugee or in need of additional protection in Ukraine.<sup>61</sup>

As of today, three of such centers are operating in Ukraine along the western, northern, and southern borders of the country: in Volyn Oblast (intended to hold 165 people at one time), Chernihiv Oblast (intended to hold 208 people at one time), and Mykolaiv Oblast (intended to hold 100 people at one time).<sup>62</sup>

However, Ukrainian laws also envisage alternatives to detention. These include bail posted by a company, institution, or organization, or by the foreign national or stateless person themselves. Bail cannot be applied to foreign nationals or stateless persons to whom this measure has been previously applied.<sup>63</sup>

---

59 Law of Ukraine "On the Legal Status of Foreign Nationals and Stateless Persons," <https://zakon.rada.gov.ua/laws/show/3773-17/print>

60 Law of Ukraine "On the Legal Status of Foreign Nationals and Stateless Persons" Clause 4 of Article 30, <https://zakon.rada.gov.ua/laws/show/3773-17/print>

61 Code of Administrative Proceedings of Ukraine, Clause 12 of Article 289, <https://zakon.rada.gov.ua/laws/show/2747-15/print>

62 Official website of the State Migration Service of Ukraine, <https://dmsu.gov.ua/pro-dms/struktura-ta-kontakti/punkti-timchasovogo-perebuvannya-inozemcziv-ta-osib-bez-gromadyanstva.html>

63 Code of Administrative Proceedings of Ukraine, Clause 19 of Article 289, <https://zakon.rada.gov.ua/laws/show/2747-15/print>

Ukrainian laws stipulate that foreign nationals and stateless persons have the right to receive a temporary residence permit after spending the maximum period in a temporary residence center by filing the appropriate application to obtain a residence permit.<sup>64</sup> In reality, though, this norm is not applicable: to obtain a residence permit, foreign nationals and stateless people must submit, among other things, a passport with the corresponding long-term visa and copies of pages of the passport containing this visa.<sup>65</sup> Most people in temporary residence centers do not have identity documents and are placed in these centers specifically for the purpose of identification. Thus, people remain undocumented after they leave these centers and are at risk of being arrested and imprisoned a second time. Right to Protection has recorded instances of this at the centers in Volyn and Chernihiv oblasts; in one case, the group established that the same person had been placed in a center three times.

Under Ukrainian law, foreign nationals and stateless persons detained for the purposes of identification and forcible expulsion have the right to free legal assistance from the time of their arrest<sup>66</sup> and do not have to pay court fees for submitting claims regarding their detention with a court.<sup>67</sup> Monitoring has shown that temporary residence centers do post information about centers providing free legal assistance and staff members do notify people being held in the centers of their right to seek free legal assistance at free follow-up centers.

At the same time, workers at government agencies do not always have sufficient skills to identify stateless people, which results in unjustified sanctions and violation of the rights of stateless persons by the government.

Tougher penalties are applied to violators of migration rules in Russia. These include fines and administrative expulsion, which involves placement in a foreign national temporary detention center for a period of up to two years (the period to enforce an administrative ruling). Russian law does not envisage judicial control over detention periods or the expediency of keeping stateless persons in these detention centers.

---

64 Temporary Procedure for Considering Applications for Temporary and Permanent Residence Permits, <https://zakon.rada.gov.ua/laws/show/z1335-13>

65 Law of Ukraine "On the Legal Status of Foreign Nationals and Stateless Persons," Clause 17 of Article 4, <https://zakon.rada.gov.ua/laws/show/3773-17/print>

66 Law of Ukraine "On Free Legal Assistance," Clause 8 of Article 14, <https://zakon.rada.gov.ua/laws/show/3460-17>

67 Code of Administrative Proceedings of Ukraine, Clause 19 of Article 289, <https://zakon.rada.gov.ua/laws/show/2747-15/print>



Russian law views stateless persons as part of a group of “foreign nationals.” For example, Clause 2 of Article 2 of the Federal Law “On the Legal Situation of Foreign Nationals in the Russian Federation” stipulates that “for the purposes of this law, the term ‘foreign national’ includes the term ‘stateless person,’ except in cases where federal law establishes special rules for stateless persons differing from the rules established for foreign nationals.” A similar provision is contained in Clause 2 of Article 2 of the Federal Law “On the Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation” and other statutes and regulations. However, not one Russian law contains special rules concerning stateless persons.

Absurd norms about the procedure for the administrative expulsion and detention of stateless persons in foreign national detention centers are a glaring example of defects in the law that have caused the rights of hundreds of stateless persons throughout Russia to be violated. For example, Article 34 of the law “On the Legal Situation of Foreign Nationals in Russia” regulates the procedure for administrative expulsion from Russia, which applies identically to foreign nationals and to stateless persons, Article 18.8 of the RF Code of Administrative Proceedings prescribes assigning “foreign nationals and stateless persons” fines “with expulsion or without” for violating migration rules, and RF government resolutions No. 1306<sup>68</sup> and No. 310<sup>69</sup> regulate the terms and procedures for confining “foreign nationals and stateless persons subject to deportation or forcible expulsion from Russia.” These legal acts do not make any account for the special status of stateless people, who, unlike foreign nationals, cannot be expelled to any country.

Nevertheless, courts continue to deliberately issue unenforceable decisions on expulsion in cases against stateless persons who have violated residence rules. A court may order expulsion in the form of independent controlled departure or in the form of forcible expulsion. In the case of forcible expulsion, stateless persons are confined in a closed facility until expulsion can be enforced. Paradoxically, the fact that the deportation ruling cannot be enforced because there are no countries to which these people can be deported is determined not during court proceedings, but only after a stateless person spends a certain period of time in a deten-

---

68 RF Government Resolution No. 1306 “On the Approval of Rules for the Detention (Stay) of Foreign Nationals or Stateless Persons Subject to Administrative Expulsion from Russia in the Form of Forcible Expulsion, Deportation, or Readmission in Specialized Institutions of the RF Ministry of Internal Affairs or its Local Bodies,” of December 30, 2013 [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_157232/](http://www.consultant.ru/document/cons_doc_LAW_157232/)

69 RF Government Resolution No. 310 “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, Deportation, or Readmission,” of April 8, 2013.

tion center, when attempts by court bailiffs to establish the person's affiliation with a country and execute a certificate of return home fail. In these cases, the consulate of the country where, in the court's opinion, the stateless person lived in the past refuses to provide confirmation of the possibility of deportation since it has no evidence confirming the stateless person's connection with this country. In this way, stateless persons become prisoners at foreign national detention centers until the expiry of the maximum sentence (two years) or until they have an opportunity to appeal the deportation ruling. Imprisoned stateless persons may rely on the help of human rights defenders or relatives, who may hire an attorney and attempt to appeal the illegal decision.

Even though Russian law views confinement in these facilities as a means of securing enforcement of a deportation ruling and not as a punishment, the conditions in these facilities are in most cases prison-like, and sometimes even worse. What follows is the testimony of Denis Li, who was put in a foreign national detention center in Abakan in July 2018:

*"The building where the center is located was previously a detention facility for people under administrative arrest. It is surrounded by a metal fence topped with barbed wire. The windows have bars on them. Within the center, there are 4 x 5 m cells, which are intended to hold four people and are locked during the day. They are all prison-type cells. We can't leave them. Only under guard. The cell holds iron bunks, a table, and a toilet. A camera that is on 24/7 hangs over the toilet. There's no cafeteria here, so they bring us food. The exercise yard is caged. According to the schedule, we have one hour a day to exercise, but this time actually ends when someone asks to go back in. This usually means we're corralled back in after 20 or 30 minutes. It's very hard to see relatives because visiting hours are only from 10am to 12pm Monday, Tuesday, Thursday, and Friday. So if your relatives work and they can't get time off, it's impossible to see them."*<sup>70</sup>

The second form of expulsion is independent controlled departure. This is generally ordered by higher instance courts after an initial appeal of a deportation ruling. Under this form of expulsion, people must cross the border within five days after the court ruling enters into force. Information from the Border Service about a person's departure is then forwarded to the Ministry of Internal Affairs and recorded in the person's migration record, which is evidence that the court ruling has been executed.

This form of deportation is even more absurd than forcible expulsion: not only can it not be enforced, but it also pushes stateless persons to commit a crime, since crossing the RF border without valid documents is a criminally punishable act under

---

<sup>70</sup> ADC Memorial archives.

Article 322 of the RF Criminal Code. At the same time, failure to enforce this decision means that the stateless person will be prosecuted a second time, issued another deportation ruling, and confined in a foreign national detention center.

*In 2014, Ilgar Alimuradov was arrested in Saint Petersburg, found guilty of violating residence rules, and confined in a foreign national detention center in Saint Petersburg, where he spent six months in very difficult conditions: the cells where he was held were overcrowded, and he was only allowed to exercise once a week for a total of 15 minutes. Bailiffs could not execute the deportation ruling because the court did not duly establish his identity or citizenship, did not determine if it would be possible to deport him, and did not take account for the fact that Azerbaijan's consulate could not confirm his citizenship. It was only through the efforts of attorneys and human rights defenders that the court's illegal decision was appealed and Alimuradov was released. However, execution of the expulsion ruling was not stopped but replaced with independent controlled departure, which also could not be executed. Two months after his release, Alimuradov was arrested again, this time for failing to execute the expulsion ruling. He was preparing to be confined in the detention center again, but the court refused to prosecute him, thus ending proceedings in his case. Later, in January 2019, the European Court of Human Rights issued a judgment in Alimuradov's case finding violation of a number of the Convention's articles: Article 3 (prohibition of torture and inhuman or degrading treatment), Clause 1 of Article 5 (right to liberty and security of person), Clause 4 of Article 5 (right to speedy court review of the lawfulness of detention).*

Judges are being held hostage to the absence of norms that account for the situation of stateless persons and are forced to issue expulsion rulings because they have no other mechanism for resolving the illegal residence of stateless persons in Russia. This is particularly true for courts in Moscow, Moscow Oblast, Saint Petersburg, and Leningrad Oblast, because violation of residence rules in these areas entails mandatory expulsion. Courts in other regions of Russia do issue expulsion rulings, but they can also order a fine without deportation.

In 2013, after years of work in Russian courts on the cases of stateless persons deprived of their liberty in a foreign national temporary detention center, ADC Memorial lodged a complaint with the ECtHR. 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. Upon his release, Kim found himself “illegal,” like many others who had not completed paperwork for documents prior to the dissolution of the Soviet Union and then spent an extended period in prison.

On June 9, 2011, stateless person Roman Anatolyevich Kim was detained in the Sestroretskie Kurortny district of Saint Petersburg for not having identity documents. Police officers wrote him up for committing the administrative offence stipulated in Part 1 of Article 18.8 of the RF Code of Administrative Offences ("violation of residence rules in the RF"). On July 19, 2011, a court issued a ruling finding Kim guilty of violating residence rules 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 of the Central Office of the Ministry of Internal Affairs for Saint Petersburg and Leningrad Oblast.

This Center is an eight-story building designed to hold 176 people that 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 with 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. There was only one toilet and one shower for the entire floor, which were used by approximately 40 people. Until March 2013, the applicant was allowed to spend 20 to 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 at the center 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 February 5, 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 July 23, 2013, i.e. for over two years.

Upon his release, Kim, following the ECtHR judgment, started 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. After repeated complaints from his attorneys, he was issued a certificate establishing his identity, but he is still a stateless person because he does not have valid documents confirming his right to legally reside in Russia.*<sup>71</sup>

On July 17, 2014, the ECtHR issued a judgment in Kim's case.<sup>72</sup> Under this judgment, they found the Russian Federation guilty of violating Article 3 (inhuman detention conditions), Clause 1 of Article 5 (extended detention with no prospect of expulsion), Clause 4 of Article 5 (violation of the right of prisoners to appeal and judicial control over the lawfulness and length of detention). The Court obligated Russia to take measures of a general nature to improve the situation in order to prevent similar violations in the future.

These general measures include amendments to laws that eliminate violations of the rights of people in foreign national detention centers (control over the length and lawfulness of confinement in one of these centers, improved detention conditions) and prevent stateless persons from being confined in these institutions (creation of an effective procedure for the legalization of stateless persons, including people who have not been able to acquire legal status for decades).

Unfortunately, however, the Russian government has not taken any general measures to implement the ECtHR's judgment. It has not made systemic changes to laws or law enforcement practice, while the individual positive changes it has made have been inconsistent and fleeting.

In an attempt to attain implementation of the Kim judgment and amendments to laws as part of the general measures specified by the ECtHR, ADC Memorial lodged a complaint with the Constitutional Court of the Russian Federation in the case of another stateless person – Noe Mskhiladze.

***Noe Mskhiladze, who was born in the Georgian Soviet Socialist Republic, has been living in Saint Petersburg since 1988. In December 2014, the RF Ministry of Justice adopted a decision about the undesirability of Mskhiladze's stay in Russia because of his several criminal convictions.***

---

71 The human rights report of ADC Memorial "Violations of the Rights of Stateless Persons and Foreign Citizens in Light of the ECHR Judgment in 'Kim v. Russia'" (2016) was devoted to Kim's case, <https://adcmemorial.org/www/publications/human-rights-report-of-adc-memorial-violations-of-the-rights-of-stateless-persons-and-foreign-citizens-in-temporary-foreign-national-detention-centers-in-light-of-the-echr-judgment-in-kim-v-russia?lang=en>

72 Judgement of the European Court of Human Rights in the case of "Kim v. Russia" (application no. 44260/13), <https://www.refworld.org/cases,ECHR,53c7957e4.html>

*On the basis of this decision, the director of the Federal Migration Service office for Saint Petersburg and Leningrad Oblast filed a request in court to permit Mskhiladze's deportation as required by Clause 11 of Article 31 of the Federal Law "On the Legal Situation of Foreign Nationals in the Russian Federation." The Krasnoselsky District Court of Saint Petersburg granted this request and, in March 2015, placed Mskhiladze in a foreign national temporary detention center. However, it was not possible to deport Mskhiladze to Georgia because there was no document confirming his Georgian citizenship. An official response was received from Georgia stating that Mskhiladze was not a citizen of this country.*

*Mskhiladze was released from the detention center six months later because he could not be deported, but, because he was still stateless, he was soon re-arrested for violating migration rules and again placed in a foreign national detention center.*

*Mskhiladze's defense attorney made numerous attempts to achieve judicial control over the lawfulness and reasonableness of his extended deprivation of liberty and attain his release, but none of these attempts were successful. Mskhiladze remained in the detention center, even though general jurisdiction courts established that he was a stateless person and that his expulsion could not be executed because no other state, including Georgia, recognized him as its citizen and thus there was no country in the world that he had the right to enter.*

In the appeal filed with the Constitutional Court, Mskhiladze's attorney noted that Russian law does not provide for the opportunity to review a ruling on administrative expulsion or to stop its execution, even if expulsion is not possible. This kind of indefinite deprivation of liberty violates fundamental human rights and freedoms; therefore, Article 31.7 (Termination of the Enforcement of a Decision to Impose an Administrative Penalty) and Article 31.9 (Limitation Period for Enforcing a Ruling to Impose an Administrative Penalty) of the RF Code of Administrative Proceedings should be acknowledged as contravening the RF Constitution.

In their responses and oral presentations at the Constitutional Court session, representatives of all the government agencies involved refused to acknowledge a violation of the RF Constitution in this case, although they agreed that applicant Mskhiladze's rights had been violated and that a number of legislative acts needed to be amended. Some responses rejected obvious and numerous facts from judicial practice: for example, a representative of the Federal Bailiffs Service stated that he does not see any barriers to executing the expulsion of stateless persons. He called the application filed by bailiffs on the impossibility of expelling stateless persons the "personal opinion" of certain members of the service.

Nevertheless, even though government representatives lack the desire to solve this problem, on May 23, 2017 the Constitutional Court found that norms on administrative violations that do not allow stateless people to appeal the grounds for their detention in a specialized facility for the purpose of administrative expulsion unconstitutional. In addition, the court ordered that amendments be made to the Code of Administrative Offenses that would ensure reasonable judicial control over the periods stateless persons subject to expulsion can be confined in specialized institutions. The Court also ordered that stateless persons should have the right to file an application with a court to check the lawfulness of their further imprisonment three months after the expulsion decision is adopted.<sup>73</sup>

A bill introducing amendments to the Code of Administrative Proceedings regarding the introduction of judicial control over foreign national detention centers was prepared and passed its first reading in the State Duma in December 2017,<sup>74</sup> but it has still not been adopted. Even so, the Constitutional Court judgment in Mskhiladze's case has already has an impact on the practice of Russian courts, which have been releasing stateless persons from detention centers with reference to this decision.

***On March 5, 2019, the Abakan City Court ruled to release Denis Lee, a stateless person who had been confined for nine months in a foreign national temporary detention center in Abakan "for the purpose of securing expulsion." Lee was represented by Valery Zaytsev with support from ADC Memorial.***

***Denis Lee is a native of Uzbekistan and an orphan who moved to his relatives in Abakan in late 1990. Several years later, Lee lost his Uzbek citizenship because he never notified the Uzbek consulate of his location, thus becoming a stateless person. Lee spent years seeking assistance from government agencies to acquire Russian citizenship, but he was refused even though he had children who were Russian citizens.***

---

73 Judgement of the RF Constitutional Court of August 23, 2017 in the case regarding a check of whether the provisions of articles 31.7 and 31.9 of the RF Code of Administrative Violations are constitutional, <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3337>

74 Bill No. 306915-7 "On Amendments to the Code of the Russian Federation on Administrative Violations (on Detention Periods in Corresponding Specialized Institutions for Foreign Nationals and Stateless Persons Subject to Forcible Expulsion from the Russian Federation, the Procedure for Extending these Terms, and the Special Aspects of Enforcing and Stopping the Enforcement of this Administrative Penalty), <http://sozd.duma.gov.ru/bill/306915-7>

On June 22, 2018, a court found Lee guilty of violating Clause 1.1 of Article 18.8 of the RF Code of Administrative Offences for overstaying his period of stay in Russia and imposed a punishment of a 3,000 ruble fine with administrative expulsion from Russia and confinement in the foreign national detention center in Abakan. When considering this case, the court mistakenly thought that Lee was an Uzbek citizen, even though he had no citizenship at all at the time of the court proceedings.

On July 20, 2018, bailiffs received a certificate from Uzbekistan's Ministry of Internal Affairs stating that Lee had lost his Uzbek citizenship and could not be documented to return to his native country. With this certificate, Lee was immediately able to file an appeal to the expulsion ruling and his illegal confinement in a detention center with the Supreme Court of the Republic of Khakassia. Lee cited the Constitutional Court judgment regarding an appeal by another stateless person, Noémshkiladze, whose defense was also supported by ADC Memorial. Because of this judgment, Russia created a mechanism for releasing stateless persons who have, to all intents and purposes, been deprived of liberty indefinitely.

In spite of confirmation of Lee's lack of citizenship and the impossibility of executing the court ruling, the court continued to treat Lee as a citizen of Uzbekistan and refused to grant the appeal.

Finally, on December 10, 2018, Lee's attorney Valery Zaytsev filed an appeal with the Abakan City Court requesting Lee's release. Zaytsev noted the impossibility of executing the expulsion ruling in light of Lee's lack of citizenship, which made his confinement in a foreign national detention center indefinite and violated his rights set forth in Part 4 of Article 46, Article 55, and Part 3 of Article 62 and contravened the position of the RF Constitutional Court.

After considering this appeal, the court acknowledged that, with account for the requirements of the Constitutional Court judgment, Lee's detention in a specialized facility entailed an unjustified restriction on his right to liberty and security of person and ruled to stop the execution of administrative expulsion and release Lee.

Denis Lee is currently free. He has received a conclusion on identification as a stateless person, which will allow him to start the procedure for acquiring Russian citizenship.

The European Court continues to issue judgments in the cases of stateless persons confined in foreign national detention centers in Russia. These judgments require that the corresponding restrictive measures be justified and proportionate and that



courts establish a clear and well-founded term for their application with account for the actual possibility of administrative expulsion or deportation. Examples are these cases are: “Sordiya v. Russia,”<sup>75</sup> “Mskhiladze v. Russia,”<sup>76</sup> “Mainov v. Russia,”<sup>77</sup> (2018 judgment), “Alimuradov v. Russia,”<sup>78</sup> and “Mardonsheyev v. Russia”<sup>79</sup> (judgment of 2019).

Strategic cases to protect the rights of stateless persons in Russia won at the European Court create a precedent for other Council of Europe countries, which makes international advocacy and dissemination of information an important part of human rights work. A number of successful cases handled by ADC Memorial have formed the foundation of several analytical human rights reports on the problem of statelessness and alternative reports submitted to UN bodies. The documents have also been used as a tool for further litigation.

For example, ADC Memorial’s report “Violations of the Rights of Stateless Persons and Foreign Citizens in Light of the ECHR Judgment in ‘Kim v. Russia’” (2016)<sup>80</sup> was dedicated to the problems of Russian migration laws and law enforcement practices caused by the failure to implement the European Court’s strategic judgment in this case. When considering the similar case of Mskhiladze, the RF Constitutional Court relied on the expert opinion of Yu.N. Starilov, a distinguished legal scholar and dean of Voronezh University, whose opinion widely quoted the Kim report and supported the arguments presented by ADC Memorial. There is no doubt that this report’s use in a profession expert opinion

---

75 Judgment of the European Court of Human Rights in Case No. 50462/16 “Sordiya v. Russia,” [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%2250462/16%22\],%22itemid%22:\[%22001-184890%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2250462/16%22],%22itemid%22:[%22001-184890%22]})

76 Judgment of the European Court of Human Rights in Case No. 47741/16 “Mskhiladze v. Russia,” <https://www.bailii.org/eu/cases/ECHR/2018/170.html>

77 Judgment of the European Court of Human Rights in Case No. 11556/17 “Mainov v. Russia,” <https://www.refworld.org/cases,ECHR,5afd74684.html>

78 Judgment of the European Court of Human Rights in Case No. 23019/15 “Alimuradov v. Russia,” [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-189638%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-189638%22]})

79 Judgment of the European Court of Human Rights in Case No. 8279/16 “Mardonsheyev v. Russia,” <http://hudoc.echr.coe.int/eng?i=001-189594>

80 <https://adcmemorial.org/www/publications/human-rights-report-of-adcmemorial-violations-of-the-rights-of-stateless-persons-and-foreign-citizens-in-temporary-foreign-national-detention-centers-in-light-of-the-echr-judgment-in-kim-v-russia?lang=en>

had a positive impact on the Constitutional Court's judgment in Mskhiladze's case, which, in turn should result in amendments to Russian laws on stateless persons in the future.

It is important to use tools of international advocacy to accelerate the process of legislative amendments. To this end, ADC Memorial has raised the problems of the rights of stateless persons in Russia in alternative reports for the UN Committee on Economic, Social, and Cultural Rights (2017)<sup>81</sup> and the UN Committee Against Torture (as part of a coalition report, 2018).<sup>82</sup> The recommendations these committees made to the Russian Federation in turn became tools for human rights advocacy.

ADC Memorial also uses the mechanism of the Universal Periodic Review of the UN Human Rights Council for its advocacy work. In 2018, the Council made important recommendations to Russia with account for a joint report by ADC Memorial, the Institute on Statelessness and Inclusion, and the European Network on Statelessness.<sup>83</sup> These recommendations included considering the matter of ratifying the 1954 Convention relating to the Status of Stateless Person and the 1961 Convention on the Reduction of Statelessness and adopting additional measures to reduce statelessness among members of minorities, enhance the implementation of policies to reduce the number of unregistered persons, particularly stateless persons, and guarantee registration at birth for all children born in the country, including stateless children and members of minority groups.

An important result of awareness work has been the improved legal literacy and personal interest of stateless persons in the battle for their rights. For example, photographs, commentary, and video recordings made by Viktor Nigmatulin, a stateless person confined in a foreign national detention center in Kemerovo, were included in ADC Memorial's report "Imprisoned Stateless Persons in Russia: The Search for a Way Out of a Legal Dead End" (2017).<sup>84</sup> In another case, when Denis Lee, a stateless person imprisoned in July 2018 in a detention center in Abakan, learned of

---

81 "The Russian Federation: Violation of the Economic and Social Rights of Vulnerable Groups. Alternative Report of ADC Memorial to the UN CESCR," <https://adcmemorial.org/www/publications/the-russian-federation-violation-of-the-economic-and-social-rights-of-vulnerable-groups?lang=en>

82 "Russian NGO Shadow Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2012 to 2018," [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/INT\\_CAT\\_CSS\\_RUS\\_31612\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/INT_CAT_CSS_RUS_31612_E.pdf)

83 [https://adcmemorial.org/wp-content/uploads/ENS-UPR-Submission\\_Russia.pdf](https://adcmemorial.org/wp-content/uploads/ENS-UPR-Submission_Russia.pdf)

84 <https://adcmemorial.org/www/publications/imprisoned-stateless-persons-in-russia-the-search-for-a-way-out-of-a-legal-dead-end?lang=en>

the Constitutional Court's judgment in the case of Mskhiladze, he wrote his own appeal against his extended confinement with no prospect of expulsion and filed it with the Supreme Court of Khakassia. The appeal was not granted, but journalists who learned of it notified ADC Memorial. As a result, Denis Lee received assistance from an attorney, was released, and even received a certificate establishing his identity.

## THE NEED FOR POSITIVE MEASURES IN RESPECT OF THE ROMA POPULATION

The question of documentation is particularly acute for Romani people—a separate category of the population in both Ukraine and Russia. Structural discrimination against this ethnic group involves extreme poverty, violation of the rights to housing, access to education, and social and medical assistance, and lack of personal documents. This means undocumented status and, accordingly, statelessness is widespread in Roma communities and is handed down from generation to generation.

To receive a Ukrainian passport, applicants must present the originals of documents confirming the citizenship and identity of one or both parents who were Ukrainian citizens at the time of the person's birth (to confirm the applicant's affiliation with Ukrainian citizenship).<sup>85</sup> Thus, current laws make a child born in Ukraine completely dependent on the status of their parents, which contravenes recommendations made by the Committee on the Rights of the Child: paragraph 38 of the Concluding Observations of February 3, 2011 issued by this committee recommended that Ukraine amend laws so that both laws and practice guarantee the right of the child to nationality (citizenship) and the right not to be deprived of citizenship under any circumstances and regardless of the parents' status.<sup>86</sup> This provision of the citizenship law also contravenes the Convention on the Reduction of Statelessness, ratified by Ukraine, which stipulates that states parties must extend citizenship to a person born on their territory who would otherwise be stateless.

Among the barriers Roma face on their path to documentation are a low level of education, poor knowledge of the Ukrainian and Russian languages, and lack of awareness of the need to register the births of their children and the importance of

---

85 Resolution of the Cabinet of Ministers of Ukraine No. 302 approving the "Procedure for Processing, Issuing, Exchanging, Forwarding, Confiscating, Returning to the State, Finding Invalid, and Destroying Passports of Citizens of Ukraine" of March 25, 2015, <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

86 Concluding Observations of the UN Committee on the Rights of the Child: Ukraine, February 3, 2011, [https://www.unicef.org/ukraine/ukr/UN\\_CRC\\_ConcludingObservations\\_Ukr.pdf](https://www.unicef.org/ukraine/ukr/UN_CRC_ConcludingObservations_Ukr.pdf)

obtaining a passport in terms of the future realization of their rights. Poverty frequently does not allow Romani people to pay for the services of a professional lawyer or attorney, while access to free legal assistance at state centers (regarding protecting and representing people's interests in courts, at other state agencies, and so forth, drafting procedural documents) is limited, since Roma people cannot prove they have the right to this assistance because they lack documents (recipients of assistance are determined by law<sup>87</sup>).

The fact that a child's status is dependent on their parents' citizenship also leads to an increase in incidences of statelessness among people in other vulnerable categories, like homeless people who have been released from prison. Even people who have been living a fully integrated life in Ukraine for years suffer from this defect in the law:

*M.A. was born in Kiev in 1998. She had health problems at the time of her birth and required a complicated operation. Her mother, M.E., has no citizenship: not of Kazakhstan, where she was born, nor of Russia, where she lived for a time, nor of Ukraine as the country where she resided for over 25 years. M.E. lost contact with her child's father and had to think about how to support and get treatment for her daughter. Around 2001, M.E. lost all her documents, including her Soviet passport. She was not able to have her documents reissued.*

*After many appeals to state agencies, Ukraine's State Migration Service responded that there was no legally recognized procedure to declare M.E. a stateless person or issue the document of a stateless person to confirm her legal status. Her daughter M.A. is currently 20. Before she reached the age of 18, M.A. was not able to obtain a passport because her mother lacked documents. Under Ukrainian law, people born in Ukraine to stateless persons living legally in Ukraine are citizens of Ukraine by birth. However, M.E. did not have any identity documents at the time of M.A.'s birth, let alone documents confirming the lawfulness of her stay in Ukraine. Thus, M.A. found herself in a legal vacuum: without identity documents, she could not obtain a degree, work legally, register a marriage, and so forth. In the future, M.A.'s unregulated legal status will be handed down to her children, giving rise to future cases of statelessness.*

The Roma population has similar problems with documentation in Russia, since the Russian government has not taken systemic positive measures to improve the situation of this ethnic minority. This situation becomes critical when the problems of

---

<sup>87</sup> Law of Ukraine "On Free Legal Assistance," <https://zakon.rada.gov.ua/laws/show/3460-17>

migration and statelessness are added to structural discrimination against Romani people in Ukraine and Russia. Because of these problems, natives of Ukraine's Zakarpattia Oblast Anna Lakatos and Aladar Forkosh, whose story began this report, ended up in Russia in an "illegal situation," without documents or access to basic rights. Their salvation requires not just general measures, but transborder cooperation between the governments of both countries.

# CONCLUSION

Even though decades have passed since the fall of the Soviet Union, the problems of statelessness, whose roots reach way back into the past, have yet to be overcome in either Russia or Ukraine. The laws and practices of both countries are unfriendly to stateless persons, most of whom are citizens of the former Soviet Union.

Ukraine now faces the challenges of adapting laws and practice to the Convention Relating to the Status and of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

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

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

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





## CF “The Right to Protection”

57, Shchekavytska Str., Kyiv, Ukraine

+38 (044) 337 17 63; +38 (093) 039 00 71

e-mail: [sta@r2p.org.ua](mailto:sta@r2p.org.ua)

[www.r2p.org.ua](http://www.r2p.org.ua)

Right to Protection (R2P) is a Ukrainian not-for profit organisation operating in Ukraine. R2P ensures the protection and human rights of refugees who find themselves in Ukraine due to dire circumstances, the internally displaced persons (IDPs), the stateless and those at risk of statelessness and the undocumented. Starting from June 2017 with support of UNHCR, R2P implements the program on legal assistance to stateless population in Kyiv, Kharkiv and Donetsk regions, Ukraine.

### What we do:

- **Provide direct legal assistance.** Starting from June 2017, we counselled 654 beneficiaries on birth registration, confirmation and acquisition of nationality so far. Moreover, the project team assisted in obtaining national passport for 97 persons, assisted in birth registration and obtaining birth certificate for 34 person and assisted in obtaining duplicate of birth certificate for 81 undocumented individuals.
- **Capacity building.** R2P conducts roundtables dedicated to the most immediate challenges of statelessness in Ukraine, with the involvement of the respective governmental authorities. On the regular basis, R2P project team conducts trainings for the lawyers and attorneys of free legal aid centers, for paralegals, for the employees of the Ministry of justice who provides primary legal aid to stateless population and to those at risk of statelessness.
- **Advocacy activities.** We identify the systematic gaps in legislation and law enforcement related to statelessness and address the identified problems to the respective state authorities and institutions with the proposals for changes. R2P in coalition with the other civil society organizations submitted alternative reports to the Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, and the Universal Periodic Review related to the issue of statelessness.



## ADC Memorial Brussels

26, Rue d'Edimbourg, 1050 Ixelles, Belgium

e-mail: [contact@adcmemorial.org](mailto:contact@adcmemorial.org)

[adcmemorial.org](http://adcmemorial.org)

Anti-Discrimination Centre Memorial is Brussels-based organization that works against discrimination of minorities and for protection of the rights of migrants in the countries of Eastern Europe and Central Asia. Central focus of all the activities of ADC Memorial has been the defense of the rights of minorities and vulnerable groups, opposition to racism, sexism, homophobia and all other forms of xenophobia.

Among priorities of work of ADC Memorial are the litigation of the rights of stateless persons who are being illegally kept in prison conditions in centres for temporary detention of foreign nationals (although deportation of stateless persons is not possible). ADC Memorial works a lot on the rights of Roma who continue to suffer from various forms of systemic discrimination. The report on the situation of Roma – victims of the war in Eastern Ukraine (2015) was supplemented in 2016 by a photo report “It seems they do not shoot today...”

### Strategic litigation and advocacy work of ADC Memorial

ADC Memorial is actively working to overcome statelessness in the strategic surface. In particular, by lodging complaints to the ECtHR and national courts, with further advocating the rights of the stateless people.

One of the most significant cases is “Kim vs Russia” (2015) where the ECtHR recognized, among other things, a violation of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely the right to liberty and security of a person.

In 2017, a strategic case of Noe Mskhiladze was won in the Constitutional Court of the Russian Federation; the amendments of the law are pending (on the stage of Parliament). If adopted, they would change the situation of stateless people and migrants detained in special facilities.