

CIVIC ASSISTANCE COMMITTEE

RUSSIA AS A COUNTRY OF ASYLUM

**Report on the implementation of the 1951
Convention relating to the Status of Refugees
by the Russian Federation**

**Moscow
2015**

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Authors:

E. Yu. Burtina, E.Yu. Korosteleva, V.I. Simonov

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INTRODUCTION

This report has been prepared by the Civic Assistance Committee as part of the “Right for Asylum” project (01.09.2014-31.08.2015). This project was completed thanks to a grant provided by the All-Russian public movement “Civil Dignity” on the basis of contract No. 268/2014/1 of 01.08.2014 and in accordance with Presidential decree № 11-RP of 17.01.2014 issued by the President of the Russian Federation .

The report describes Russia’s asylum system and analyzes its compliance to standards set out in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. In spite of the fact that Russia joined the 1951 Convention and the 1967 Protocol in 1992, and the system of asylum in the Russian Federation began to develop in 1993 when the The Russian Federation’s Law on Refugees was issued, such a report is published for the first time.

The fact that it was the Civic Assistance Committee (*the Committee*) that undertook the preparation of the report is to be quite expected. The Committee is the oldest Russian NGO that provides support to refugees. The organisation was founded in 1989 by a group of not indifferent Muscovites when the first wave since the Great Patriotic War flow of refugees (victims of the Armenian pogroms in Azerbaijan) flooded into Moscow. Until that time no state institutes working with refugees had ever existed either in the USSR or Russia.

Whilst protecting the rights of refugees and other groups of forced migrants the Committee had to interact with the Federal Migration Service (*the FMS of Russia*) and its territorial authorities on a regular basis. This interaction began from the very moment the FMS of Russia was created in 1993 and proceeds unto this day. The forms of interaction vary. The Committee sends, almost on a daily basis, inquiries and petitions on specific cases and regarding general questions about working with refugees both to the FMS and to its territorial

authorities. It also assists refugees in filing appeals against decisions taken by the bodies of the FMS of Russia while lawyers engaged by the Committee represent their interests in court sessions on the appeal of these decisions. The staff members of the Committee have made multiple trips to Temporary Accommodation Centres for refugees and displaced persons that are within the jurisdiction of the FMS of Russia where they have provided legal and humanitarian aid. In previous years representatives of the Committee participated in the activity of working groups developing laws in the area of migration and preparing Government Migration Policy. The chairman of the Committee, S. A. Gannushkina is still a member of the Government Commission on Migration Policy.

Consequently not only the work of the Committee in assisting refugees, but also the activity of the bodies of the FMS of Russia has been reflected widely and in great detail not only in the database of the Committee where all requests from refugees and other migrants for support are documented but also in several thousand documents (letters from the Committee, replies, decisions of FMS bodies, complaints to them, reports on the work of the Committee, and reports on trips to Temporary Accommodation Centres (the *TAC*) and many others) stored in the archive of the Committee.

Whilst representing refugees, the Committee had to contacts many other agencies: most often the Ministry of Internal Affairs, health care authorities, social services, and the education authorities. That interaction has also been reflected in the database and archives of the Committee.

Since 1996 the Human Rights Centre Memorial (the *Memorial*) has operated a Migration Rights program created to provide a network of free legal aid centres for refugees and other migrants in various regions across Russia. The Moscow centre of this network operates from the premises of the Committee as a public drop in centre. Consequently the lawyers from Memorial and the staff members at the Committee in fact work collaboratively.

Since 1998 the Committee is a partner to The Office of the United Nations High Commissioner for Refugees (the *UNHCR*). Long-term cooperation with the UNHCR (participation in trainings organised by the UNHCR, consultations on specific refugee cases and joint discussions on affairs, applying the methodical and regional geographic literature published by the UNHCR) has given the staff of the Committee an idea of the international standards of

working with refugees and enabled them to master the application of these standards.

Thus, in preparing the “Russia as a country of Asylum” report the Committee draws from a solid base of 25 years’ work in the field of protecting the rights of refugees, long term cooperation with the FMS of Russia and the UNHCR, as well as extensive factual and documentary material gathered as a result of this activity.

When writing the report we planned not only to use the materials already available to the Committee relating to the practical work of assisting refugees but also to make special efforts to collect data necessary to analyse and describe two major elements of the asylum system in Russia: access to the status determination procedure and the procedure for appealing decisions of the bodies of the FMS of Russia on granting asylum at court. For this purpose we decided to organise regular monitoring in two ways: 1) monitoring the work of the departments which are responsible for working with refugees (the territorial authorities of the FMS of Russia in Moscow and the Moscow region), and 2) monitoring the metropolitan area court sessions on complaints about refusals to grant asylum. In addition, we considered it necessary to observe at court sessions on cases where administrative sanctions by means of deportation were imposed on asylum seekers and refugees. Committee staff and lawyers from Memorial often accompany refugees to refugee departments of the Office of the Federal Migration Service of Russia in Moscow (the *UFMS – Migration Service of Moscow*) and the Office of the Federal Migration Service of Russia for the Moscow region (*the Migration Service of the Moscow region*). Furthermore, we constantly hear stories from refugees about their visits to these offices at the drop in centre at the Committee and, therefore, the Committee has abundant material about the work of these departments at its disposal. In addition, the lawyers of Memorial have been representing the interests of refugees in the Moscow courts for many years and we are well aware of legal practice regarding asylum cases.

Nevertheless, we considered it necessary to organise regular observations in refugee departments of the Migration Service and in courts, since the involvement of lawyers and the Committee staff in asylum request procedures or in judicial proceedings often doesn’t allow them to keep records of all the details of the process or allow them to be reasonably objective. Besides, we expected that monitoring in the Migration Service of Moscow and the Migration Service of the Moscow

Region would enable us to collect statistical information reflecting the accessibility of asylum seeking procedures.

Two documents were produced to organise monitoring in courts: the monitoring program (by V. I. Simonov) and a working document on its basis - the Diary of court sessions observations (by E.Y. Korosteleva). Work on court monitoring began on November 1, 2014 and proceeded until the end of August, 2015. During this time 47 court sessions were observed. We did not encounter any negative reaction to our work from judges or the court personnel. The results of court monitoring are presented in Chapter 5 of this report *Right to Appeal*.

The monitoring of the Migration Service involved observing during working days, making notes on the refugee departments reception waiting list along with conducting an express opinion poll with visitors leaving the office of the Migration Service. Four trial exits to the Migration Service of Moscow and the Migration Service of the Moscow Region were carried out in order to test the monitoring method and to draft instructions for observers. Observers didn't face any obstacles in the refugee departments of the regional migration service. But on their visit to the Migration Service of Moscow, the chief of this department, Y. A. Evdokimov, initially expressed his disapproval of our work and on a subsequent visit demanded, without any explanations, that observers leave the premises of the Moscow FMS.

On October 20, 2014 we addressed a letter in relation to this incident to the FMS of Russia where we informed them of the project and requested assistance in its realization. Their response as of 18.11.2014 signed by the Head of the FMS of Russia, N. M. Smorodin was unexpected as he stated that the Right for Asylum project had not been approved by the FMS of Russia, and in light of the inflow of Ukrainian refugees it stated that visits by Committee staff to the Migration service of Moscow were "inappropriate".

Consequently, the Russian FMS in essence forbade us to monitor the work of the refugee departments of Migration Services of Moscow and Moscow Region. To overcome this illegal counteraction, we addressed the Human Rights Ombudsman of the Russian Federation E. A. Pamfilova and the Chairman of the Presidential Human Rights Council M. A. Fedotov. We waited more than three months to receive a reply to this appeal. Meanwhile we were compelled to change the mechanism of monitoring of the Migration Service, not to disrupt the implementation of the project.

Using project funds we rented a minibus and organised one-day expeditions to the refugee departments of the Migration Service of Moscow and the Moscow Region. These expeditions pursued two objectives: to carry out monitoring of the departments' work and to provide access to asylum seeking procedure to several asylum seekers.

During these expeditions refugees were accompanied by lawyers, social workers, interpreters and volunteers of the Committee who not only provided help in accompanying the refugees, but also monitored the departments' work and the observance of refugees rights by Migration Service employees.

The minibus acted as an expedition headquarters. One of the most skilled staff members of the Committee was always present inside the bus and coordinated the work of colleagues, logged incoming information about the course of monitoring and accompaniment, and made decisions in difficult situations. Considering the fact that in 2014 and at the beginning of 2015 it was necessary to reserve a place in a queue at night in order to get an appointment at the Migration Service of Moscow, these expeditions often began late in the evening and proceeded during the most part of the next working day.

These expeditions allowed us to make many interesting observations, but with such monitoring organisation it was still impossible to collect statistical material about access to asylum procedures.

Only on March 10, 2015 did we receive a letter from the Russian FMS stating that the management of this department was ready "to consider" our project and to assist in its realization despite the fact that by law the Committee was not obliged to request approval from the Russian FMS and which was nonsensical 7 months after the project had commenced. In response we sent a copy of the contract between the Committee and "Civil Dignity" to the Russian FMS. We also requested access to a TAC to monitor the situation in these Centres and to assist the refugees who reside there.

Finally, on June 11, 2015 the head of the nationality and residence permits department of the Russian FMS V. L. Kazakova replied that her office was ready to participate in the Right for Asylum project, but refused any visits to TACs stating that this wasn't mentioned in the project description.

We couldn't accept the offer from the FMS to carry out monitoring in this office of the department: it was obvious that such "monitoring" couldn't yield reliable results. Furthermore, this consent was given

just two months prior to the end of the project and consequently was of no serious value. The Russian FMS understood this very well.

Whilst compiling this report, substantial help was rendered by employees and lawyers of the Migration Rights program run by Memorial. The data and materials provided by these lawyers, working in various regions across Russia, allowed us to present a more balanced, fuller and more objective account than it would have been possible to portray had we relied exclusively on the data gathered by the Committee and at the Moscow point of the Memorial Migration Rights network.

The report was drafted by E. Y. Burtina. Section 5.4 *Exercising the Refugee's Rights for Judicial Protection* in Chapter 5 was written by E. Y. Korosteleva.

The Committee expresses sincere gratitude to all those who assisted in the preparation of the report.

CLARIFICATION ON TERMINOLOGY USED

The standard use of the term “refugee” doesn’t coincide with the legal term given in the 1951 Convention relating to the Status of Refugees and which was included into the Russian *Law on Refugees* almost without any changes. Mass media and the public employ the term refugee to everyone who left the country, fleeing some serious threat (most often prosecutions and armed conflicts) regardless of whether these people were recognised as refugees by the authorities following special procedure.

The 1951 Convention initially provides a full and generally accepted legal definition of the concept *refugee*. In subsequent articles the 1951 Convention does not differentiate between refugees recognised as such following special procedure, not yet recognised, or already refused refugee status. The Convention employs the following terms in different articles: most often – simply *refugees*, less often – *refugees lawfully staying in the territory of the host country* and *refugees unlawfully staying in the country of refuge*. The Convention provides no concept of *the asylum seeker* and also refers to them as refugees.

On the contrary, the Russian Law on Refugees uses the term *refugee* extremely grudgingly: it is only present in the name of the law, in a short preamble and at Paragraph 1 Section 1 of Article 1 that gives

the definition of the concept *refugee*. This term is not used separately later on. In the law the term *refugee* is replaced with the term *person*: it is used separately and in various combinations: *A person with a stated wish to be recognised as a refugee*, *A person applying for refugee status*, *A person who has received a certificate confirming examination of an application for refugee status on the merit*, *A person recognised as a refugee*, *A person, who has been refused refugee status*, *A person who has lost refugee status*, *A person deprived of their refugee status*, *A person, granted temporary asylum*, *A person who has lost temporary asylum*, and *A person who has been deprived of temporary asylum*. Thus, even a refugee who has received refugee status is called *a person recognised as the refugee* but not *refugee* in Law.

We shall not undertake to define which document provides the better approach to this term: the 1951 Convention or the Law on Refugees. The different approach may be explained by different objectives: the Convention aims to formulate the main refugee protection standards, whilst the Law aims to establish rules for practical work on receiving refugees. But that is not the only issue. Behind the terminological problem lies a practical one: a huge diversity and inconsistency in the situations leading to fleeing and defining the position of the refugee in the host country.

However, considering the lack of fair refugee status determination procedure in Russia that allows the refugee to be distinguished, in terms of the concept given in the Convention and the Law on Refugees, from a foreigner who isn’t a refugee (we expect to show the lack of such procedure in the report), we have decided to adhere to the approach of the Convention concerning the use of the term *refugee* in this report. Speaking in general about those who arrived to Russia to seek asylum, we call them refugees irrespective of whether they have managed to apply for asylum, to receive and/or keep this status or not.

We also use the term refugees for those who unsuccessfully attempt to begin the asylum procedure, those who have been rejected, those whose appeal against negative decisions, those who have been deprived of refugee status or lost it, and those who appeal against decisions to be deprived of refugee status or decisions on the loss of refugee status. We call refugees not only those who are applying for refugee status (have received or didn’t receive it, appealed against refusal and so forth), but also those who have applied for temporary asylum (whether they received or didn’t receive it, appealed against refusal and so forth), and the so-called humanitarian status which

actually represents an alternative, and more realistic, opportunity to receive asylum in the Russian Federation.

Furthermore, we use a modern term which is uncharacteristic for the Convention -*Asylum Seeker*. However, where necessary, the terms of the Law on Refugees are applied.

CHAPTER 1. THE 1951 CONVENTION AND RUSSIAN LEGISLATION

Nowadays the 1951 Convention is viewed as a document from an earlier, rather remote era when the quality of life and observance of human rights standards were significantly lower. The requirements contained in the Convention are so moderate that their enforcement should not pose a baffling problem for a more or less developed modern state.

According to the Constitution of the Russian Federation, “the universally-recognised norms of international law and international treaties and agreements of the Russian Federation should be a component part of its legal system” and “if an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement should be applied” (Part 4, Article 15). However, the international standards are only rarely seen to be applied in Russian courts. To be applied by executive authorities, these norms have to be included in Russian Legislation. Furthermore, the 1951 Convention only establishes principle standards for refugee protection but neither provides mechanisms for them to be realized nor does it regulate all the matters connected with receiving refugees. As a result, the discourse on the implementation of the 1951 Convention by Russia should begin with clarification as to what extent the provisions of the Convention found their way into Russian legislation.

In 1993 the special Law On Refugees (the law No. 4528-I of 19.02.1993) was issued in Russia for the first time in history. In 1997 a new current edition of the law, which has already been modified more than once, was issued¹. The publication of the Law On Refugees was a direct consequence of accession to the 1951 Convention by Russia. The Law governs all the main issues connected with granting asylum:

¹ The history of Law development is outside our concern

criteria and procedures for granting refugee status and temporary asylum, the right and duty of foreign nationals and stateless persons under the status determination procedure as well as after obtaining refugee status or temporary asylum, the procedure for appeal of asylum refusal, and the powers of public authorities on law enforcement.

1.1. 1951 Convention rules that are implemented in the Law On Refugees

Comparison of the Law On Refugees and the 1951 Convention texts reveals that Article 1, which defines the term refugee (the so-called inclusion clause, § A2), the circumstances under which a refugee ceases to be considered as such (termination clause, § C), and the circumstances under which protection cannot be provided to a refugee (exception clause, §§ D, E and F) was translated into the law to the fullest extent possible.

The definition of the term “refugee” given in the Law On Refugees in Paragraph 1 Part 1 Article 1 reproduces the contents of §A2 Article 1 of the Convention almost letter for letter. According to the UNHCR, “the existing Law On Refugees contains a definition of the refugee that conforms to the Geneva Convention of 1951”².

The termination clause of the Convention (article 1 § C) in its full tract entered Article 9 of the Law On Refugees which contains the grounds for the loss and deprivation of refugee status. However, a number of additions to these clauses defy the spirit and a letter issued by the Convention which we shall discuss below.

The exclusion clause on persons who are under protection or assistance from other UN bodies (Article 1 § D) is reproduced in Paragraph 5 Part 1 Article 2 of the Law On Refugees. However, this provision does not include additional clauses contained in the Convention on the extension of the Convention on such persons from the moment they cease to be under the protection of other UN bodies. The exclusion clauses on persons who do not warrant refugee status for committing

² UNHCR remarks on the Russian Federation’s Law On Refugees and on a draft law “On introduction of amendments to Law On Refugees November 2001. p. 1 (<http://www.refworld.org.ru/category,POLICY,,NATLEGCOMMENTS,,4a8d5be12,0.html>).

crimes against peace, humanity and other especially serious crimes (article 1 § F) were included into Paragraph 1 Part 1 Article 2 of the Law On Refugees in full.

The contents of § E were included in the Law On Refugees in a remarkable manner. The 1951 Convention states: “this Convention shall not apply to a person who is recognised by the competent authorities of the country in which he **has taken residence** as having the rights and **duties** which are attached to the possession of the nationality of that country.”

In Paragraph 4 Part 1 Article 2 of the Law On Refugees this rule took the following form: “The provisions of this Federal Law shall not apply to a person who is recognised by the competent authorities of the State in which he **was a resident** as having rights and **obligations** which are attached to the possession of the nationality of that State”.

The UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status explains the meaning of the clause contained in § E, as follows: “This provision relates to persons who might otherwise qualify for refugee status and who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship”. The situation of refugees of German origin in the Federal Republic of Germany is given as an example³.

Usage of the “to reside” in a past tense (“resided”) instead of the present (“resides”), strengthened by the replacement of the word “duties” by “obligations”, completely distorted the meaning of the Convention rule and attached the opposite meaning allowing to leave practically any refugee out of the international protection, as there is no country about which it would be possible to say that it does not recognise any rights and more so obligations for the citizen who left its territory.

However, it should be noted that there are no recorded cases of application of this norm.

Thus, the fundamental provisions of the Convention concerning the definition of the term *refugee* were incorporated into the Russian Law On Refugees, but with some additions and changes contradicting a letter and the spirit of the Convention.

A number of the provisions of the Convention defining the legal status of refugees and their rights and duties were reflected in the Law On Refugees.

³ § 144; <http://unhcr.ru/index.php?id=92>.

Article 2 of the Convention obliges refugees to conform to the laws and regulations of the country in which they find themselves. Paragraph 1 Part 2 Article 6 and Paragraph 1 Part 2 Article 8 of the Law On Refugees contains the same requirement.

Article 12 “Personal Status” establishes that the contracting state must observe the rights previously acquired by a refugee and dependent on personal status, and more particularly, the rights attached to marriage, provided that the rights in question are recognised by the law of the host state.

The Law On Refugees provides no corresponding norm. It does, however, consider the possible family connections of a refugee: in the text of the law the refugee is not referred to as a single unit, but together with family members who arrived in Russia with him. Determination of refugee is assessed separately for each adult family member, but in case one adult family member does not correspond to the criteria for the concept of “refugee”, a member of family is also recognised as a refugee together with other members of the family, to ensure family reunification. (Part 4, Article 3).

Article 16 “Access to Courts” establishes the same treatment as a national of the country of asylum in matters pertaining to access to the courts, including legal assistance and exemption from legal costs. The Law “On Refugees” establishes a narrower rule regulating a procedure by which to appeal against rulings and actions (inaction) connected with performance of this law. Articles 46 and 48 of the Constitution of the Russian Federation which guarantee everyone the right for judicial protection and qualified legal aid, including free aid, also extends to refugees.

At the same time Part 3 Article 10 of the Law On Refugees conflicts with Article 256 of the Civil Procedural Code of the Russian Federation (the CPC). The Law On Refugees states that appeals against decisions of the Russian FMS bodies must be filed within one month from the moment of receipt of notice on the decision or 3 months from the day when a refugee became aware of the decision. While the CPC states that an appeal or complaint against rulings and actions of authorities must be filed within 3 months of the date when the applicant becomes aware of a violation of its rights. The requirement that refugees, for whom lodging a complaint represents a more difficult task than for Russian citizens, must submit an appeal in a much shorter time, contradicts the Convention.

Article 17 of the Convention (Wage-Earning Employment) provides the refugees “*the most favourable treatment*” concerning the

right for employment, and Article 18 (Self employment) accords “*perhaps more favourable*” treatment concerning business activity. In both cases the reservation is made that the position of refugees has to be “*not less favourable than that accorded to aliens generally in the same circumstances*”.

Paragraph 9 Part 1 Article 8 of the Law On Refugees contains a more precise formulation: “*A person recognised as a refugee, and their accompanying family members are entitled to employment or business activities as citizens of the Russian Federation*”. But it only applies to refugees who received official refugee status, while refugees awaiting a decision on their status (while also lawfully staying) the law only guarantees “*receiving assistance in the area of vocational training or job placement*” which doesn’t really make sense without the right for employment.

As for persons who are expecting temporary asylum status or have acquired it, their rights aren’t established in the law. Article 12 of the Law On Refugees only mentions the rights of persons who were granted temporary asylum: “*A person who obtains a certificate /upon receiving temporary asylum status/ is not subject to the provisions of Paragraph 1 of Article 6 of this Federal law regarding the use of a lump-sum cash benefit*”. The rights granted to refugees whose cases are under consideration are listed in Part 1 Article 6. Since reservation on exemption from the rights guaranteed by the Article 6 concerns only the right to a one-time allowance, we conclude that all other rights mentioned in this article extend to persons who were granted temporary asylum, but only “assistance” in retraining and employment, without the right for employment and/or self employment is specified there.

In Resolution No. 274 of the Government of the Russian Federation dated 9 April 2001 “On Granting Temporary Asylum in the Territory of the Russian Federation” which expands a little and elaborates on more than the brief rules contained in Article 12 of the Law On Refugees, the right of persons with temporary asylum are formulated in a very avaricious and vague way:

“14. *A person granted temporary asylum and his/her family members arriving with him/her shall:*

(a) *have the right to rent (sub rent) a dwelling, to be assisted in leaving the Russian Federation, and other rights as established by the legislation of the Russian Federation, international treaties concluded by the Russian Federation and the legislation of Subjects of the Russian Federation*”.

We can hardly call these rights and, in any case, the right for employment without permission and self employment is also not mentioned among them.

In 2002 the Federal law “On the Legal Status of Foreign Citizens in the Russian Federation” (No 115 -FZ dated July 25, 2002) established an authorization-based order for foreign citizens working in Russia and the category of persons to whom this order doesn’t extend was named. Refugees weren’t named among the persons exempted from an obligation to receive a work permit. Only in May 2014 refugees with refugee status and those who have been granted temporary asylum were included in the preferential list. But refugees whose cases are still under consideration are left in the basket.

The right for entrepreneurial activity is entrenched in Article 34 of the Constitution of the Russian Federation which states that “*Everyone shall have the right to free use of his abilities and property for entrepreneurial and economic activities not prohibited by law*”. “Everyone” means refugees too, but laws on entrepreneurial activity contain some restrictions for foreigners and provide no exceptions for refugees.

Thus, conventional norms on granting “the most favourable treatment” concerning the right for employment and self-employment, are only partially realized in Russian legislation: they do not extend to refugees who are legally in the country whilst awaiting a decision on refugee and temporary asylum status applications.

Article 21 “Housing” also demands from parties to the Convention that they provide “treatment as favourable as possible” to refugees but with the usual reservation: in any case, not less favourable than that generally accorded to other foreigners in the same circumstances.

Foreigners have no rights to state housing in Russia. This more than moderate Convention requirement is represented in the Law On Refugees in two ways: 1) granting refugees who are awaiting decisions on their applications and recognised refugees a right to accommodation in a Temporary Accommodation Centre (Paragraph 4 Part 1 Article 6 and Paragraph 4 Part 1 Article 8), 2) granting recognised refugees access to the right to use premises of the housing fund for temporary settlement (Paragraph 6 Part 1 Article 8).

As it was already mentioned, the rights guaranteed by Article 6 to refugees who are in procedure usually extend to persons who have temporary asylum status, therefore they can also receive access to the Temporary Accommodation Centre. While persons, awaiting a deci-

sion on granting temporary asylum, are deprived of such a right.

Thus, the Law On Refugees provides refugees, if not “perhaps [a] more favourable” situation in relation to housing, but in any case, more favourable, than to other foreigners living in Russia, although with some restrictions. The practical way these rights are exercised will be explored below.

It is not however the case when it comes to the right for education. The Convention abandons its usually moderate tone and in Article 22 “Public Education” demands to accord to refugees the same treatment as is accorded to nationals with respect to elementary education, while talking in a softer wording in respect to other kinds of education and, in particular, as regards to access to state subsidized higher education, the recognition of foreign school certificates, diplomas and degrees (“perhaps more favourable legal status”) and with the usual reservation.

The Law On Refugees on the contrary establishes certain limits. It guarantees not the right for education, but the right to “the provision of assistance in the placement of the children of a recognised refugee in state or municipal pre-school educational institutions and educational organisations, professional educational organisations, and educational institutions of higher education on a par with citizens of the Russian Federation” (Paragraph 11 Part 1 Article 8). The law does not guarantee even this kind of assistance to refugees who are awaiting a decision on their refugee status or temporary asylum applications, and those granted temporary asylum.

At the same time the Constitution of the Russian Federation guarantees to **everyone** the right for education, general access to and free preschool, secondary and higher vocational education and the right to get higher education free of charge on a competitive basis (Article 43). Article 5 of the Law On Education contains similar guarantees and, in particular, it specifies that “*the right for education in the Russian Federation is guaranteed regardless of sex, race, nationality, language, origin, property and social status, place of residence, religion, convictions, membership of public associations, and also of other circumstances*” (No. 273-FZ of 29.12.2012).

Therefore, although the Law On Refugees provides feeble and limited warranties in the field of education, Russian legislation in general establishes rather high standards of providing the right for education and doesn’t provide any restrictions for refugees.

Regulations on the social and labour rights of refugees are formu-

lated in the Convention in the same imperative style as those concerning the right to education (“Contracting states shall provide”). In Article 23 “Public relief”, the Convention demands to accord to refugees lawfully staying in the territory the same treatment with respect to public relief and assistance as is accorded to their nationals. Article 24 “Labour Legislation and Social Security” contains the same requirement for labour rights (remuneration, hours of work, paid holidays, minimum age of employment, women’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining, etc.) and social security (in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, etc.).

In the Law On Refugees the topic of state support and social security is present only in Paragraph 10 Part 1 Article 8 which guarantees “social protection, including social security, on an equal basis with citizens of the Russian Federation” to recognised refugees. Refugees who are awaiting a decision on refugee status or temporary asylum, or have been granted temporary asylum do not have the right to welfare benefits.

The Law On Refugees does not tackle labour issues at all. It is, however, compensated by the norms of the Constitution and Labour Code. Article 37 of the Constitution guarantees **everyone** the right to work in labour conditions conforming to safety and hygiene requirements, to labour remuneration without any discrimination whatsoever and to wages and salaries not lower than the minimum established by federal law, as well as the right to protection against unemployment, a fixed duration of working time, days off and holidays, and annual paid leave established by federal law. The Labour Code specifies and affirms these rights (Article 2) and imposes a ban on any forms of discrimination in the sphere of labour relations (Article 3).

Therefore the requirement of the Convention to provide social welfare to refugees is confirmed in Russian legislation only in relation to recognised refugees. In addition, labour rights are guaranteed to everyone, which means to refugees as well. The way this is actually implemented is another story which we will discuss below.

Article 26 “Freedom of movement” demands that each contracting state accords to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to foreigners generally in the same circumstances. The right for freedom of movement within the Russian Fed-

eration is not declared in the Law On Refugees, but also not limited. However persons recognised as refugees or granted temporary asylum are charged with responsibility to inform migration service about change in their place of residence, to be removed from registration and to be re-registered with the migration service in a new residence within 7 days of arrival.

At the same time article 14 of the Law On Refugees provides for the possibility to distribute refugees across regions of the Russian Federation in accordance with the quota for allocating such persons established by the Government of the Russian Federation and gives the Government of the Russian Federation the right to “determine” the place of refugees residence in the case of an emergency mass arrival of such persons in the territory of the Russian Federation. However, it is not stated in the Law that refugees who arrive in the Russian Federation as such, cannot leave a place of residence determined for them by the Government. There are also no instructions that refugees who arrive in any one region by quota should be refused the right to make an application to be recognised as a refugee or granted temporary asylum. Before the publication of Government Resolution No. 691 of 22.07.2014 “On the Passage of Distribution Over Regions of the Russian Federation of citizens of Ukraine and Stateless Persons Permanently Residing in the Territory of Ukraine and Arriving in the Territory of the Russian Federation in an Emergency Mass Order” the Government did not exercise the right to establish regional quotas for refugees. This resolution, as far as we know, led not to the restriction of the right of refugees to freedom of movement, but to the violation of their right to apply for asylum. We shall address this further below.

Article 27 of the Constitution of the Russian Federation guarantees **everyone who legally stays in the territory of the Russian Federation** the right to free travel, choice of place of stay or residence. At the same time Part 1 Article 11 of the law “On the Legal Status of Foreign Citizens in the Russian Federation” provides for this right only on the basis of the documents issued according to this law.

Thus, an absence in the Law On Refugees of a specific norm on the right for freedom of movement hardly creates in regards to this issue a definite legal situation.

Article 27 of the Convention (“Identity Papers”) requires the contracting states to issue identity papers to any refugee in their territory who does not possess a valid travel document. The article doesn’t mention that the norm should only apply to refugees who are legally

in the country. Judging by the fact that the following article, Article 28, deals specifically with the issue of travel documents to refugees lawfully living in the country, Article 27 implies that identity papers should be issued to any refugee without documents regardless of their legal status. Such a liberal approach existing in some countries, for example, in Switzerland, is uncharacteristic to Russian legislation.

The Law On Refugees provides for the issue of documents that replace identity cards, only to refugees who are staying in Russia legally. Thus, in the absence of other conditions, their stay in Russia becomes legal not from the moment of primary request for asylum, but from the moment when the application for recognition as a refugee or request for temporary asylum is accepted according to the procedure provided by the law. Persons who have submitted an application for recognition as a refugee are provided with a certificate stating that their application is being considered on the merit for the duration of the application process, that is for three months (Part 6-7 Article 4). A certificate of refugee status is granted to refugees who have received the status (Parts 7-8 Article 7). The certificate confirming examination of an application for temporary asylum is granted for 3 months to refugees who submitted applications for temporary asylum (Points 4 and 5 of Government Resolutions No. 274 of 09.04.2001). Persons who have been granted temporary asylum are provided with a certificate confirming that temporary status has been granted (Part 3 Article 12). These documents are issued not because a refugee lacks an identity card but as a replacement, as the document confirming their legal status in the Russian Federation. When receiving one of these documents a refugee is obliged to hand over his means of identity, if available, to the migration service.

Thus, there is an obvious distinction between the Law and the Convention in their approach to issuing identity cards to refugees.

Article 28 "Travel documents" requires the contracting states "to issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require" and also calls to "give sympathetic consideration" to the issue of such travel documents to refugees in their territory who are unable to obtain a travel document from their country of lawful residence.

In the Law On Refugees the issue of travel documents for refugees is developed in rather detailed manner. It is specified in Paragraph 13 Part 1 Article 8 that recognised refugees are entitled "to apply"

to the territorial agency of the federal executive body "to request a travel document for travel outside the territory of the Russian Federation". Besides, a substantial special Article 8.1 is devoted to travel documents and describes the procedure for issuing such documents in detail.

The law does not tackle the issue of travel documents for other categories of refugees lawfully staying in Russia: those awaiting decisions on refugee status or temporary asylum, those who have received temporary asylum, or those who are appealing against refusals to grant refugee status or temporary asylum.

Thus, Article 28 received incomplete reflection in the Law On Refugees.

Article 32 of the Convention ("Expulsion") contains three requirements:

1. not to expel a refugee lawfully in their territory, save on grounds of national security or public order, 2. the decision on expulsion shall be only made in pursuance of a decision reached in accordance with due legal procedure, 3. to allow such a refugee a reasonable period within which to seek legal admission into another country.

The Law On Refugees also forbids expulsions of refugees who are lawfully in Russia to their country of origin, but this ban concerns only four categories of refugees: 1) those whose application for refugee status is under consideration, 2) those who have been granted refugee status, 3) those who have lost the status of a refugee or have been deprived of refugee status while the circumstances specified in Paragraph 1 Part 1 Article 1 hereof are ongoing in a given country, that is danger of persecution for reasons specified in the definition of the concept of "refugee" (Part 1 Article 10). Besides, a person who has been granted temporary asylum cannot be returned against their will to the country of his nationality (Part 4 Article 12).

Nevertheless such a direct ban is absent in relation to the following categories of refugees who are lawfully in Russia: 1) those who appeal against a decision refusing to examine their application on the merit, 2) those awaiting a decision on granting temporary asylum, 3) those appealing refusal to grant/extend refugee status or those appealing a decision on the loss or deprivation of temporary asylum.

The content of Part 5 Article 10 of the Law On Refugees, which requires that refugees appealing against refusal of refugee status or a decision on the loss of refugee status or deprivation of refugee status leave the territory of the Russian Federation within three working days

from the date of receipt of notice of rejection of the appeal, implicitly points out that deportation before this term is not intended. Even such indirect instructions are absent from the law in relation to refugees awaiting a decision on the provision of temporary asylum, appealing decisions on the refusal to grant temporary asylum, and deprivation, or loss of temporary asylum. A refugee who has lost temporary asylum or is deprived of temporary asylum is obliged by the territorial agency of the federal executive body, to leave the territory of the Russian Federation within one month (Part 7 Article 12).

What is more, article 13 of the Law On Refugees provides for extrajudicial expulsion (deportation) for the following categories of refugees:

- not exercising their right to appeal the decision not to consider an application on the merit or refusal of refugee status or loss of refugee status or deprivation of refugee status and refusing to leave voluntarily,
- receiving a rejection after appealing decision not to consider their application on the merit or refusal of refugee status or loss of refugee status or deprivation of refugee status, and having no other legal grounds to stay in the territory of the Russian Federation and refusing to depart voluntarily,
- deprived of the refugee status or temporary asylum status in connection with their conviction for a crime committed in the territory of the Russian Federation shall be subject to expulsion (deportation) from the territory of the Russian Federation after serving their sentence,
- having lost temporary asylum or been deprived of temporary asylum due to other circumstances, while having no other legal grounds to stay in the territory of the Russian Federation and refusing to leave voluntarily.

Thus the law doesn't contain any explanations on what voluntary departure means and how the fact of refusal to depart voluntarily should be established. Making decisions on expulsion without judicial procedure does not provide any guarantees that the absence of an "other legal basis" to stay in the Russian Federation and the fact of refusal of voluntary departure will be objectively established, which creates the possibility of expulsion of refugees who are legally in the Russian Federation.

Besides, article 32 of the Convention allows the expulsion of refugees only for reasons of state security and public order, while the Law

On Refugees provides for deprivation of refugee status or temporary asylum for any crime (Paragraph 1 Part 2 Article 9 and Paragraph 1 Part 6 Article 12). In this way the law allows refugees who are deprived of asylum to be expelled without judicial proceedings even for the most insignificant crimes and for those who aren't posing any threat for state security and public order.

The Law On Refugees or other regulations of the Russian Federation don't provide refugees for whom the decision on expulsion was made sufficient time for departure to another country.

Thus, requirements of Article 32 of the Convention are only partially reflected in the Law On Refugees. Guarantees of non-refoulement of refugees who are lawfully in Russia do not extend to all categories of refugees and are undermined by the norms on non-judicial deportation; creation of conditions for departure of refugees concerning whom the decision on expulsion to the country of origin is passed is not provided.

Article 34 "Naturalisation" reads that the parties to the 1951 Convention "*shall as far as possible facilitate the assimilation and naturalisation of refugees*" and "*shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings*". This norm found reflection in Point 14 Section 1 Article 8 of the Law On Refugees which accords to recognised refugees the right to "*apply for granting the right of permanent residence in the territory of the Russian Federation or the acquisition of citizenship of the Russian Federation*".

However, the Law On the Legal Status of Foreign Citizens in the Russian Federation provides no possibility for refugees to apply for residence permits or to obtain permission for temporary residence outside of the quota. Therefore refugees have no privileges in obtaining permission for temporary or permanent residence. At the same time, under the Law On Citizenship of the Russian Federation, refugees can apply for Russian citizenship under an accelerated procedure, meaning one year after obtaining the refugee status (Section 2 Article 13).

For those who have temporary asylum, there are no privileges to naturalisation.

Thus, the procedure for obtaining nationality to recognised refugees provided by the Law On Citizenship complies with the requirements of the Convention, but the problem lies in its realization, which will be discussed below.

1.2 Norms of 1951 Convention that correspond to Russian legislation

Some articles of the Convention were not reflected in the Law On Refugees, however the relevant standards are present in other Russian laws and extend to refugees.

First of all, it is necessary to highlight Part 3 Article 62 of the Constitution of the Russian Federation that covers all situations that aren't mentioned in the Law On Refugees: *“Foreign nationals and stateless persons shall enjoy in the Russian Federation the rights and bear the obligations of citizens of the Russian Federation, except for cases envisaged by federal law or international agreement of the Russian Federation”*.

Article 3 “Non Discrimination” states that the contracting states will apply the provisions of the Convention to refugees *“without discrimination as to race, religion or country of origin”*. Absence of the relevant article in the Law On Refugees is compensated by Article 19 of the Constitution of the Russian Federation that guarantees an equality before the law and courts and bans *“all forms of limitations of human rights on social, racial, national, linguistic or religious grounds”*. Nevertheless, absence of a non-discrimination rule in the Law On Refugees is a serious gap, rendering, as it will be shown below, negative influence on practice of granting asylum in the Russian Federation.

Article 4 “Religion” requires the contracting states to accord to refugees treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children. Such article isn't present in the Law On Refugees, but there is Point 18, Paragraph 1, Article 8 which guarantees to recognised refugees *“enjoyment of other / not mentioned in the law/ rights under the laws of the Russian Federation and the international treaties to which the Russian Federation is a party, as well as the legislation of the Russian Federation”*. Therefore, all rights guaranteed by the Constitution of the Russian Federation to each person within the Russia Federation also extends to refugees, including the right to freedom of conscience as established by Article 28 thereof: *“Everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with others any religion or to profess no religion at all, to*

freely choose, possess and disseminate religious and other views and act according to them”.

The Law On Refugees doesn't accord any other rights to refugees who are still awaiting decisions on their status or to those granted temporary asylum. Nevertheless the Constitutional rule extends to these categories of refugees as well.

Article 13 “Movable and Immovable Property” accords to refugees treatment as favourable as possible and, in any event, not less favourable than that accorded to foreigners generally in the same circumstances, as regards the acquisition, leases and other contracts relating to movable and immovable property. Absence of a similar provision in the Law On Refugees is compensated by Article 35 of the Constitution which states: 1. *“The right of private property shall be protected by law. 2. Everyone shall have the right to have property, possess, use and dispose of it both personally and jointly with other people”*. At the same time the Russian legislation contains a number of restrictions on the purchase of land by foreigners and no exceptions are made for refugees.

Article 15 “Right of Associations” indicates the requirement to provide refugees lawfully staying in Russia, the most favourable treatment accorded to nationals of a foreign country in the same circumstances as regards non-political and non-profit-making associations and trade unions. The Law On Refugees accords not very definite eligibility to *“participate in public activities”* but only to recognised refugees (Paragraph 15 Part 1 Article 15). However, Part 1 Article 30 of the Constitution of the Russian Federation guarantees **everyone** *“the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed”*.

Federal Laws On Public Associations (of 19.05.1995 N 82-FZ) and On Freedom of Conscience and Religious Associations (from 26.09.1997 N 125-FZ) also guarantee to foreign citizens the equal right to take part and found such associations (except for persons, in the relation to whom the decision on undesirability of their stay (residence) in the Russian Federation is made). The Law On Labour Unions, their Rights and Guarantees of Activity (of 12.01.1996 N 10-FZ) allows foreigners living in the Russian Federation to enter labour unions. The last requirement can be an obstacle for participation in labour unions of refugees who have status or temporary asylum, but do not have registration at a place of residence as this is usually con-

sidered to be proof of residence in the Russian Federation. Any special norms facilitating association of refugees in associations isn't provided by Russian legislation.

Article 29 "Fiscal Charges" provides that contracting states *"shall not impose upon refugees duties, charges or taxes, other or higher than those which are or may be levied on their nationals in similar situations"*, except for charges for the issue of identity papers.

The issue of taxation of refugees isn't raised in the Law On Refugees, but is settled by the Tax Code of the Russian Federation. Article 224 establishes a rate of a tax on the income of individual person (the income tax), for those who are not tax residents of the Russian Federation of 30%. For the recognised refugees and persons having temporary asylum for whom, as well as for citizens of the Russian Federation the rate is set at 13%. At the same time the labelling of refugees with refugee status and temporary asylum as non-residents is illegal as they meet the condition for recognition as residents contained in Paragraph 2, Article 207 of the Tax Code of the Russian Federation: *"As tax residents shall be deemed natural persons actually staying in the Russian Federation for at least 183 calendar days within 12 months"*.

1.3 Convention norms that do not have an equivalent in Russian legislation

A few articles of the Convention have no correspondence with Russian legislation, some of them have become obsolete (Article 10 "Continuity of Residence", Article 20 "Rationing"), while others concern private matters (Article 11 "Refugee seamen", Article 30 "Transfer of Assets" and others). However, among them are two, that are of significant value.

Article 31 "Refugees unlawfully in the country of refuge" states:

"1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such

refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country".

The Law On Refugees takes into account the fact that refugees fleeing prosecution can cross the Russian Federation border with violation of the established rules. Paragraph 3 Part 1 Article 4 of the Law provides such refugees with the possibility to apply for asylum at a border crossing check point or outside it, but allows only one day from the moment of crossing the border to submit an application. However there is a reservation in the law which states that *"if circumstances beyond the control of the person prevent their timely submission of the application, this term may exceed one day but not longer than the duration of the circumstances that have arisen"*.

The Law On Refugees does not however specify that refugees who arrived in Russia illegally and declared their intention to apply for asylum won't be brought to criminal trial. But there is a note to Article 322 of the Criminal Code of the Russian Federation "Illegal crossing of a frontier": *"The present Article shall not extend to cases of arrival in the Russian Federation in breach of the rules for crossing the State Border of the Russian Federation by foreign nationals or stateless persons, for the use of the right to political asylum, in accordance with the Constitution of the Russian Federation, unless the actions of these persons contain a different corpus delicti"*.

In the absence of the reference to the Law On Refugees, the reference to the Constitution makes it clear that it actually refers to the currently inoperative institute of political asylum established in Part 1 Article 63 of the Constitution and provided by decree of the President of Russia. In any case, the note to Article 322 of the Criminal Code of the Russian Federation does not extend, in practice, to refugees specified in Paragraph 3, Part 1, Article 4 of the Law On Refugees.

Holding refugees liable for illegal border crossing leads to violation of their right to apply for asylum, since according to Paragraph 1 Part 1 Article 5 of the Law On Refugees criminal prosecution within the Russian Federation is basis for refusal of an application for asylum.

According to the UNHCR, the establishment of a deadline to apply for asylum contained in the Law On Refugees contradicts Articles 31 and 33 of the 1951 Convention: "The UNHCR holds the opinion that

in principle the person seeking asylum has to submit the application for asylum immediately. However under no circumstances the access to the procedure should be barred by the time restrictions. Justification of such situation implied from the following argument: it can lead to violation of the fundamental principle of non-refoulement. /.../ The obligation of the states that joined the 1951 Convention to observe the principle of non-refoulement under Article 33 exists irrespective of the observance by the foreigner of formal requirements even in case he arrived to the country illegally”.

According to the UNHCR the opportunity to prolong the 24-hour term established by the law doesn't rectify the situation, as identifying the existence or absence of circumstances which do not depend on the refugee is carried out without consideration of the asylum application on the merit, and “there is no guarantee that a decision to refuse an application won't be made concerning a genuine refugee whose expulsion will contradict both Article 33 of the 1951 Convention and Article 3 of the European Convention”⁴.

The Law On Refugees does not provide for any possible restriction of a refugee's freedom of movement if they have arrived in Russia illegally. In reality, this does not prevent the restriction of a refugee's movements by holding them in airport transit zones, or in a pre-trial detention centre whilst a criminal case for illegal border crossing is under investigation. Neither does it prevent refugees being held in deportation centres that are nowadays called SUVSIG (Special Temporary Detention Centres for Foreign Citizens) in connection with a decision on deportation or expulsion. Access to the asylum procedure for refugees is significantly limited in all these cases.

Neither the Law On Refugees nor any other regulations of the Russian Federation provide for illegally arrived refugee “sufficient term and all necessary conditions for receiving by them right for entry into other country” as demanded by Part 2 Article 31 of 1951 Conventions.

Thus, the absence in Russian legislation of guarantees for refugees not to be prosecuted if arriving in Russia illegally in order to seek asylum does not only form a violation of the 1951 Convention in itself but also leads to violation of the right to seek asylum and the principle of non-refoulement as formulated in Article 33 of the 1951 Convention.

Article 33 “Prohibition of expulsion or return (“refoulement”)” states:

1. No Contracting State shall expel or return (“refouler”) a refugee

⁴ “UNHCR Remarks...” p. 7.

in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

The Article presents an explicit ban on expulsion of refugees to the country in which their life or freedom could be threatened irrespective of their situation in the country of asylum. An exception to this rule is provided only concerning persons who pose a threat to the safety of that country or who have committed an especially serious crime.

As it was already said, Russian legislation does not contain guarantees of non-refoulement even for each category or refugees lawfully in the country and also provides for the deportation of refugees who have lost their legal status in extra judicial order. Absence in the Law On Refugees and other legal acts of an explicit ban on expulsion in the sense of Article 33 of the 1951 Convention corresponds to Russian legislation's approach to the principle of non-refoulement. Needless to say such an approach contradicts the 1951 Convention.

1.4. Correlation between the Convention and other provisions of the Law On Refugees

We will now refer to those provisions of the Law On Refugees, that have no equivalent in the 1951 Convention or do not reflect on its standards and shall review how they correspond to the spirit and a letter of the Convention.

As it was already mentioned above, the definition of the concept “refugee” of article 1.1.1 of the Law On Refugees fully complies with the definition provided by the Convention. However, in the subsequent paragraph of the Law a definition for the term “the person applying for recognition as a refugee” is provided. Is this a refugee? No, in accordance with the legal definition a refugee is “a person who is not a citizen of the Russian Federation and states a desire to be recognised as a refugee under the circumstances provided for in Paragraph

1 Part 1 of this Article” from among foreign nationals and stateless persons “who came or who wants to enter the territory of the Russian Federation or who is residing in the territory of the Russian Federation on legal grounds”.

Therefore, from the first article of the Law On Refugees the concept of a “refugee” is split: according to the logic of the law “the persons applying for recognition as refugee” aren’t refugees yet. Furthermore, the law sets out the procedure for the “recognition as a refugee” but does not provide for obtaining the status of the refugee. Thus, according to the logic of the law, a refugee becomes or doesn’t become one, following a decision taken by the migration service. Accordingly, the law doesn’t consider as refugee those who were denied refugee status those who lost status or were deprived of refugee status and calls them “persons who have received a certificate” of denial for their application to be examined on merit, certificate or notice of denial of refugee status, or notice on loss or deprivation of refugee status. The article on deportation of such “persons” without a court order is a logical consequence of such an approach: after all these “persons” either didn’t become, or have already stopped being refugees.

Such an approach differs from the approach of the 1951 Convention which albeit makes a distinction between the refugees who were lawfully in the country of asylum and illegal refugees, but regards them all as refugees. In the “Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status” published by the UNHCR, it is specified: “A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee.” (§ 28).

On the one hand, the division of the concept “refugee” is caused by the need to define a status of a foreigner within the asylum procedure and is caused by the need of practical application of the Law On Refugees. On the other hand, such a “technical” substitution of the concept “refugee” poses the danger of losing the humanitarian sense of the institution of asylum and the Law On Refugees fails to contain sufficient means to counteract this danger.

In 2000 UNHCR experts analysed the Law On Refugees and concluded that a number of provisions therein contradicted the 1951

Convention. The results are presented in the UNHCR remarks on the Russian Federation’s Law On Refugees and on a draft law “On the Introduction of Amendments to the Law On Refugees” which we have already mentioned earlier. We will outline the UNHCR’s remarks concerning the most essential discrepancies between the Law On Refugees and the 1951 Convention provisions.

Part 2, Article 2 of the Law On Refugees excludes from the purview “foreign citizens and stateless persons who have left the country of nationality (his former habitual residence), for economic reasons or because of famine, epidemic or emergency situations of natural and man-made disasters”. Such regulation is absent from the 1951 Convention. According to the UNHCR, its forceful wording could lead to refusal of asylum applications from genuine refugees as in the context of serious internal and international armed conflicts, human rights violations are often followed by marginalization of economy and therefore the real reason of flight can be combined. In such difficult cases applications should be considered on the merit, and not rejected at a stage of preliminary consideration⁵.

Article 5 of the Law On Refugees enumerates cases where a refugee’s application for asylum can be refused at the preliminary stage of procedures, without all the circumstances of the case being explored. This article caused serious criticism from the UNHCR as it actually expands the exhaustive list of exception clauses contained in the 1951 Convention.

Paragraph 5 Part 1 of this article permits authorities to refuse to consider an asylum application on the merit “if the person arrived from a foreign country in whose territory he had the opportunity to be recognised as a refugee”. The UNHCR considers that the answer to the question of whether it is a third-party country from which a refugee has arrived is safe for him, requires close examination on an individual basis, and strongly recommends revision of this norm⁶.

The UNHCR also considers it necessary to exclude the following provision in Paragraph 6 Part 1 Article 5 for the possibility to refuse examination of an asylum application on the merit: “If the person left the country of his nationality (sojourn)... for fear of incurring, in accordance with the laws of the state, penalties for illegal departure from its territory or for the commission of an offence therein”. The

⁵ Ibid p. 10-12

⁶ Ibid p. 12

UNHCR specifies that disproportionately cruel punishments for illegal departure and other offences which can develop into prosecutions, and can also be combined with them, are practised in some countries, therefore the rejection of an asylum application at a preliminary stage in such cases is inadmissible, they require full consideration on the merit⁷.

Paragraphs 9 and 10, Part 1, Article 5 of the Law On Refugees permits authorities to reject an asylum application submitted by a refugee who has had opportunity to obtain permanent residence in the Russian Federation (that is residence permit) due to marriage to a citizen of the Russian Federation, and also to persons who already hold permanent residence in Russia. The UNHCR rightly specifies that a residence permit doesn't protect from expulsion, besides, both a marriage and a residence permit could be a temporary circumstance, while the need for protection could remain. Therefore the UNHCR recommends that this provision be excluded from the Law On Refugees, as well as Paragraph 1, Part 1, Article 9 that stipulates that refugee status is lost once permanent residence in the Russian Federation has been obtained.

The UNHCR also points out that the formulation of Part 3, Article 5 of the Law On Refugees leads to violation of the right to appeal guaranteed by the Convention and the law itself. It requires refugees who have applied for asylum at a border check point, having arrived in the Russian Federation illegally, to leave the territory of the country within 3 days of obtaining a certificate of refusal for consideration of an application on the merit and thus leaves neither time nor opportunity to appeal. This creates a threat of expulsion to the country of origin which is prohibited by Article 33 of the Convention.

According to the UNHCR that, Paragraph 1, Part 2, Article 9 of the Law On Refugees allows for the deprivation of refugee status following conviction of a crime within the territory of the Russian Federation, contradicts the Convention. The UNHCR notes that the 1951 Convention contains an exhaustive list of the grounds for termination of refugee status, and committing a crime in the country of asylum is absent from that list. The UNHCR believes that refugees convicted of committing a crime in the country of asylum should be required to serve sentence in that country and only refugees who committed especially serious criminal offences and who pose a threat to society should be expelled, according to Part 2, Article 33 of the Convention.

In addition to the UNHCR remarks concerning Part 2, Article 9, it

⁷Ibid p. 12

is necessary to take note of Paragraph 2 of this Article.

Paragraph 2 provides for the withdrawal of refugee status if a refugee "reported false information or produced false documents which were the basis for the recognition of their refugee status or otherwise violated the provisions of this Federal Law". If withdrawal of the decision on providing the status based on false data or false documents can be considered justified, deprivation of the status for "other violation" of the Law On Refugees doesn't correspond with a letter and spirit of the 1951 Convention. How can a refugee break the Law On Refugees? Obviously, only by neglecting those duties which are assigned to him in Part 2, Article 8.

The first paragraph of this article requires a refugees to observe the Constitution and laws of Russia. For violation of this duty, refugees, as well as all Russian citizens, bear responsibility according to the law. Introducing additional punishment in the form of deprivation of refugee status is unjustifiable, as it breaks the constitutional principle of equality before the law. All other duties concerning observance of house rules in the Temporary Accommodation Centres and records of refugees, and their violation is not a crime. The deprivation of refugee status that involves deportation or expulsion for similar violations seriously contradicts article 1C of the 1951 Convention that contains a termination clause and also leads to violation of Article 33 "Prohibition of expulsion or return ("refoulement")".

In 2010 Part 2, Article 9 was supplemented by Paragraph 3 allowing for deprivation of refugee status of those "*administratively liable for committing an administrative offence of illicit trafficking in narcotic drugs, psychotropic substances and their precursors, plants containing narcotic*". Illicit drug trafficking is certainly a serious criminal offence, but acquisition, storage, production of drugs and psychotropic substance without sales objective, that is for personal use holds a person administratively liable in Russia (Article 6.8 and 6.9 of the Code of Administrative Offences of the Russian Federation). Russian citizens are punished by a penalty of 4 to 5 thousand roubles or administrative detention for 15 days. For foreign citizens and stateless persons more serious responsibility is set: a penalty with expulsion from the Russian Federation. The Law On Refugees greatly strengthens this responsibility for refugees, depriving them of the status. Thus, the rule contained in Paragraph 3, Part 2, Article 9 is discriminative and contradicts Article 19 of the Constitution of the Russian Federation, article 1C of the 1951 Convention and leads to violation of Article 33

since an administrative offence for which refugees can be expelled by means of status deprivation, does not correspond to the provision of Part 2, Article 33 on the possibility of expulsion of refugees only if they pose a threat to national security or are condemned of committing an especially serious crime.

Similar norms contradicting the Convention are contained in Part 6, Article 12 of the Law On Refugees. They allow deprivation of temporary asylum status for for any crime committed in the territory of the Russian Federation, violation of the Law On Refugees and being liable for administrative crime for the use of drugs and psychotropic substances.

1.5. Positive provisions of the Law On Refugees, that do not have equivalents in the 1951 Convention.

In addition to the negative discrepancies between the Law On Refugees and the 1951 Convention mentioned above, we should also underline the positive ones. Among them are the description of the asylum process, the introduction of the institute of “temporary asylum” and some additional rights provided for refugees.

Right now we will only list these additional rights, but the way these and other rights are implemented in practice will be discussed separately later on. The rights of the refugees whose cases are still being processed are set out in Part 1, Article 6, the rights of recognised refugees are set out in Part 1, Article 8 of the Law On Refugees.

Both articles guarantee refugees with “*the provision of interpreting services and access to information on the procedure for recognition as a refugee, their rights and duties, as well as other information*” (Paragraph 1, Part 1, Article 6 and Paragraph 1, Part 1, Article 8). It is certainly important that the state assumes the duty to provide interpreting and information services to refugees, however these services can hardly be considered rights: they are rather necessary conditions for carrying out the status determination procedure and for the work of the migration service when dealing with refugees.

In the same way the provision of “*assistance in obtaining documents for entry into the territory of the Russian Federation*” in case such persons applied for asylum outside the territory of the Russian

Federation in a third country (Paragraph 2, Part 1, Article 8) can hardly be called a right, as paperwork in these cases is the obvious responsibility of the authorities.

The right for “*the provision of assistance in securing travel and luggage to the place of residence*”, provided both for refugees in procedure and for recognised refugees (Paragraph 2, Part 1, Article 6 and Paragraph 3, Part 1, Article 8) is a different matter. Such assistance means purchase of one way tickets for example from Moscow where refugees often arrive to the Temporary Accommodation Centres located in other regions. For refugees who don’t have means of living, especially for families, it can be of real help.

To refugees whose cases are under consideration “*a one-time monetary allowance for each family member in the manner and to the extent determined by the Government of the Russian Federation, but not less than 100 roubles*” is provided (Point 3, Part 1, Article 6). If it were not for the insignificant size of the benefit, this could be considered a real right.

Escort of refugees to TACs by the staff of migration service and ensuring protection in such Centres (Paragraph 5, Part 1, Article 6 and Paragraph 5, Part 1, Article 8) can also be identified as the obligation of the migration services connected with the running of TACs rather than as rights.

The most substantial right which is guaranteed by the Law On Refugees to refugees whilst their applications are under consideration as well as recognised refugees, is the right for “*medical and medicinal care*” (Paragraph 7, Part 1, Article 6 and Paragraph 7, Part 1, Article 8) which isn’t provided by the Convention. Though it isn’t specified in the law whether this medical and medicinal care should be **free**, but there should be no doubts as for receiving paid medical services and purchase of medicines, as well as any other goods and services - such a right isn’t required.

Refugees whose applications are under consideration and recognised refugees “*shall receive assistance in employment or in the area of vocational training at the temporary accommodation*” (Paragraph 8, Part 1, Article 6 and Paragraph 8, Part 1, Article 8). The value of the right for vocational training is reduced as it is only designated for refugees who reside in Temporary Accommodation Centres, and the right for assistance to employment, as it was already mentioned, makes no sense for refugees who are awaiting decisions as they have no right to work.

Besides, only recognised refugees are granted the right to assistance with the migration service “*in obtaining information about the relatives of the person recognised as a refugee, living in the country of his citizenship*” (Paragraph 12, Part 1, Article 8) and “*participation in public activities as citizens of the Russian Federation, except for cases stipulated by the laws of the Russian Federation and the international treaties to which the Russian Federation is a party*” (Paragraph 15, Part 1, Article 8).

The fact that the rights of refugees include the right to “*voluntary return to the country of nationality*” (Paragraph 16, Part 1, Article 8) and “*departure for their place of residence in a foreign country*” (Paragraph 17, Part 1, Article 8), is bewildering as realization of these “rights” depends not on Russia, but on other states. Of course if we do not proceed from the absurd assumption that Russia could interfere with the departure of refugees from its territory. In the same way it is difficult to contemplate how the right to apply for consideration of an asylum application to be ceased could appear in the list of the rights for refugees during the process (Paragraph 9, Part 1, Article 6).

The most important innovation of the Law On Refugees in comparison to the Convention is the introduction of the institute of “*temporary asylum*”. The law defines “temporary asylum” only as a “*possibility for a foreign citizen or stateless person to stay temporarily in the territory of the Russian Federation*” (Paragraph 3, Part 1, Article 1). This opportunity can be provided to foreigners in two cases, if they:

1) *are eligible for refugee status, but limit themselves by submitting a statement in writing with a request for an opportunity to stay temporarily in the territory of the Russian Federation;*

2) *have no reason to be recognised as refugees under the circumstances provided for by this Federal Law, but for humanitarian reasons cannot be expelled (deported) from the territory of the Russian Federation.*” (Part 2, Article 12).

Except for an opportunity to stay temporarily in the territory of the Russian Federation, temporary asylum status provides the same limited set of rights that is provided to refugees awaiting a decision from the migration service on their asylum application (with the exception of the one-time cash allowance). Eventually it has been extended to include the right to work without permission and the right for free health insurance.

The term for which temporary asylum can be granted isn't specified in the law but is defined in the Government Resolution “On Granting

Temporary Asylum in the Territory of the Russian Federation” adopted on 9 April, 2001, Resolution 274” and comprises up to 1 year with the possibility to apply for extension. (Point 12).

The institute of temporary asylum is poorly developed, only Article 12 is dedicated to it and there are occasional references to it in other articles. The government resolution No. 274 specifies only procedural matters of granting an extension of temporary asylum, but can't go beyond the law.

Nevertheless, temporary asylum with its limited term and volume of rights appears to make granting asylum more acceptable for the state. For this reason a considerably larger number of refugees could receive temporary asylum than the refugee status.

To summarise the observations made during this review, it is possible to state that the relationship between the 1951 Convention and the Russian legislation is rather complex. In some fundamental issues the position of the Law On Refugees and the Convention coincide (definition of the concept “refugee”), in others they considerably clash (the principle of non-refoulement), while in many others they coincide only partially. Concerning the rights granted to refugees, the law does not always “reach the benchmark” of the Convention, but sometimes rises above it. Absence of some rights in the Law On Refugees in some cases is compensated by standards of the Convention and other laws. The most serious shortcomings of the Law in comparison to the Convention are connected with the inconsistently applied principle of non-refoulement and lack of social guarantees for most refugees.

Both documents, the 1951 Convention and the Russian Law on Refugees are imbued with minimalist spirit, but this minimalism is of different nature. If the Convention represents high-flown rhetoric of providing minimum (and therefore acceptable for many states) standards of protection of the refugee rights, the law rather cares for minimization of the state's efforts to receive refugees.

Recommendations

To the Legislative authorities of the Russian Federation

I. To bring the Russian Federation Law On Refugees in line with the 1951 Convention:

1. To take into account the UNHCR recommendations stated in the “Remarks on the Russian Federation's Law On Refugees and on

a draft law “On the Introduction of Amendments to the Law On Refugees.

2. To bring the formulation of Paragraph 4, Part 1, Article 2 of the Law On Refugees in compliance with norm § E of Article 1 of the Convention.

3. In accordance with Article 32 of the Convention, to extend the direct ban of expulsion contained in Part 1, Article 10 of the law to all categories of refugees who are lawfully in the Russian Federation, including: 1) appealing the refusal to consider an asylum application on the merit, 2) awaiting a decision on a temporary asylum application, 3) appealing refusal to grant temporary asylum, and also decisions on loss or deprivation of temporary asylum.

4. In compliance with article 32 of the Convention to introduce into the law the rule of providing the refugee in regard to whom such a decision has been taken with a sufficient term for departure to the third country.

5. To exclude Article 13, that provides for extra judicial expulsion of refugees from the Law as it contradicts Article 32 of the Convention.

6. To introduce into the Law On Refugees a norm similar to article 33 containing the fundamental principle of non-refoulement of refugees.

7. To exclude from the law Paragraphs 1 and 3 of Part 2, Article 9 and Part 6, Article 12 that allow deprivation of refugee status for committing any crime as contradicting §F of article 1 of the Convention (exception clause), and leading to violation of Part, 2 Article 33 of the Convention (possibility to expel only refugees who committed especially serious crime) and Article 19 of the Constitution of the Russian Federation (equality before the law).

8. To exclude from Paragraph 2, Part 2, Article 9 of the Law On Refugees any reference to the deprivation of the refugee status for “other violation” of the Law On Refugees, leading to violation of Part 2, Article 33 of the Convention (possibility to expel only those refugees who have committed especially serious crime) and Article 19 of the Constitution of the Russian Federation (equality before the law).

9. To exclude from the Law On Refugees Paragraph 1, Part 3, Article 10 contradicting Article 16 of the Convention (the equal right for an appeal to the court), Article 19 of the Constitution of the Russian Federation and article 256 of the Code of civil procedure of the Russian Federation.

10. To include in the Law On Refugees a norm similar to that contained in Article 3 of the Convention “Non-Discrimination”.

11. In the Law On Refugees to accord refugees granted temporary asylum equal rights with recognised refugees.

12. In the Law On Refugees to provide to refugees who have received a certificate confirming consideration of temporary asylum application, the equal rights with refugees who have received a certificate confirming examination of an application for refugee status.

13. To include in the Law On Refugees a norm similar to Article 27 of the Convention on issuing identity documents to refugees without documents, irrespective of their legal status.

14. In compliance with Article 22 of the Convention and Article 43 of the Constitution of the Russian Federation to capture in the law the fully-fledged and equal right for education for all categories of refugees, including refugees who are part of the temporary asylum procedure.

II. To bring the following standards of Russian legislation in compliance with the 1951 Convention:

1. In accordance with Article 34 of the Convention, to provide in the Law “On the Legal Status of Foreign Citizens in the Russian Federation” a possibility for recognised refugees and persons who were granted temporary asylum to apply for a residence permit without obtaining a temporary residence permit first.

2. In accordance with Article 17 of the Convention, to include persons awaiting a decision on refugee status and temporary asylum status in the list of categories of foreign citizens accorded the right to work without obtaining a work permit or patent contained in Part 4, Article 13 of the law “On the Legal Position of Foreign Citizens in the Russian Federation”.

3. In compliance with Part 1, Article 31 of the Convention, to include in the Criminal code of the Russian Federation and the Code of Administrative Offences of the Russian Federation regulations on release the refugees arriving from the country where their life was threatened by in danger, from criminal and administrative liability for illegal border crossing and illegal stay in the Russian Federation on condition of their immediate request for Asylum.

CHAPTER 2. ACCESS TO ASYLUM PROCEDURE

The right to seek asylum from persecution in other countries is entrenched in Article 14 of the *Universal Declaration of Human Rights adopted by the United Nations General Assembly on the 10th of December 1948*.

The 1951 Convention doesn't mention the issue of the procedure of access to asylum, as the need to declare the right for such access wasn't recognised by the founders of the Convention. Most likely they did not perceive it as a separate problem: if a state assumes the obligation to accept and assist refugees, it was taken for granted that a chance to apply for asylum to the representatives of that state would be granted to the asylum seekers without question.

Despite the absence of a rule in the text of the Convention regarding the right of a refugee to access the asylum procedure, this right is a necessary part of the execution of the Convention requirements. As it was already mentioned, the Convention provides a rather difficult definition of the concept "refugee" (the inclusion clause), cessation and exclusion clauses, and their application is impossible without a thorough consideration of the circumstances of the applicant's case. Therefore, the standard procedures of the Convention generally exclude the possibility to immediately reject refuge.

The Russian Law On Refugees does not contain special guarantees for access to the procedure, and at the same time also does not provide a possibility of denial of access to the asylum procedure. Some asylum applications can be rejected after preliminary examination. However the law does not sanction denying the asylum seeker at least an opportunity to submit an application for recognition as a refugee, or an application for temporary asylum.

Nevertheless, the lack of unrestricted access to the asylum proce-

dures constitutes one of the main problems of the asylum system in Russia.

The following table refers to the official statistics of the Russian FMS. The data for 2010-2014 presented in the following table was received in response to an inquiry of the Civic Assistance Committee.

Table 1

	2010	2011	2012	2013	2014 (as of December 1 st)	
					All	Includ- ing non Ukrainian citizens
Applied for temporary asylum	1702	1023	1077	2733	245402	2132
Granted temporary asylum	1040	648	656	1648	225170	1763
% of applicants granted temporary asylum	61	63	61	60	92	82,7
Registered as granted temporary asylum by end of period	3726	3036	2415	2826	217672	3521
Applied for asylum	2181	1265	1243	1967	6834	1110
Granted asylum	125	114	94	40	231	13
% of applicants granted asylum	6	9	8	2	3	1,2
Registered as recognised refugees by end of period	801	800	763	632	808	581

As you see from this table the share of refugees who received refugee status went from 9% to 2 % from the number of "applicants" during these years, and the share of refugees who were granted temporary asylum from 2010-2013 fluctuated between 60 and 63%, and in 2014 when refugees from Ukraine flowed to Russia the percentage rose to 92%. So according to this data, the percentage of people granted refugee status in the Russian Federation isn't such a small number, and the percentage of people granted temporary asylum is actually very high.

At the same time, if we pay attention not to the percentage of those

who applied and were granted asylum, but rather to the quantity, these figures (except for in 2014) are surprising.

The Table 2 presents the UNHCR data on the number of recognised refugees registered worldwide for the end of 2013 and 2014⁸.

Table 2

Country	Population in mln. persons	Number of recognised refugees at end of 2013	Number of recognised refugees at end of 2014
Russia	146	3 458	218 280
Belgium	11,2	25 633	29 179
Germany	80,8	187 567	216 973
Egypt	82	230 086	236 090
Iran	78,4	857 354	982 027
Lebanon	4,2	856 546	1 154 040
Malta	0,4	9 906	6 095
The Netherlands	16,8	74 707	82 494
Pakistan	188,4	1 616 507	1 505 525
Poland	38,5	16 438	15 741
Tajikistan	8,2	2 048	2 026
Turkey	74,9	609 938	1 587 374
Sweden	9,7	114 175	142207

How to explain the fact that in Russia, one of the biggest countries in the world and not an undeveloped one, before 2014 and the arrival of Ukrainian refugees, the number of recognised refugees who enjoyed the special protection of the Russian authorities was less than in the tiny Republic of Malta just 316 sq.km and with a population of 423,000 people?

Let's combine the amount of those that "applied" for the refugee status and temporary asylum. (It isn't quite correct since the same person who applied for refugee status, after being refused could apply for temporary asylum within a year, however for the sake of presentation we will dare to neglect it). It results that, according to the Russian FMS, the total number of "applicants" for asylum prior to the Ukrainian crisis was as following: 3,883 applicants in 2010, 2,288 applicants in 2011, 3,044 applicants in 2012 and 4,700 applicants in 2013.

⁸ UNHCR global trends 2013, 2014 at <http://www.unhcr.org/>

How to explain that in Russia, a country situated in such close proximity to countries experiencing refugee exodus (Afghanistan, Uzbekistan, Iraq, Syria), with the most extended overland border, in a country where according to the Russian FMS 15-17 million foreigners arrive annually, only 3 to 4,000 apply for refugee status?

A comparison of data provided by the Russian FMS, on the amount of applicants for asylum compared with the number of refugees who annually approach the Civic Assistance Committee in Moscow, causes bewilderment.

Table 3

		2010	2011	2012
Number of applicants to The Russian FMS (families/persons)	For refugee status	1646/2181	1026/1265	997/1243
	For temporary asylum	1282/1702	797/1023	834/1077
Number of refugees approaching the Civic Assistance Committee (families/persons)		644/1633	885/2005	951/1923

How to explain that in one year only twice the number of refugees applied for asylum to the territorial bodies of the Russian FMS located in each of the 85 subjects of the Russian Federation, than approached one Moscow reception centre of a small public organisation?

However, by saying that the data of the Russian FMS concerning the number of applicants for asylum is surprising, we don't suggest at all that we consider these data false. On the contrary, we don't doubt the reliability of this data. The question here is what it actually means.

On June 26 of 2015, in response to our inquiry, the Head of the Nationality and Residence Permit Department of the Russian FMS, V. L. Kazakova, reported that the statistical data of the Russian FMS on the number of "applicants" includes only those who submitted "to the territorial bodies of the Russian FMS and diplomatic missions of the Russian Federation, written asylum applications in the form approved by the Russian FMS Decree № 352 of August 19, 2013, as the Annex 3 to Administrative Regulations of the Russian FMS "On providing the state service on examination of asylum applications and applications for temporary asylum in the territory of the Russian Federation" in the form approved by the Russian FMS Decree N 81 of March 25, 2011".

Therefore only those who submitted asylum applications in the established form to the bodies of the Russian FMS are included in the statistics of the Russian FMS, while those who made their applications orally or written in a free form are not included. This means that the Russian FMS statistics do not reflect the real number of asylum applications.

The Law On Refugees provides three ways to apply for asylum: to the territorial authorities of the Russian FMS in the Regional Subjects of the Russian Federation, at the border checkpoints of the Russian Federal Border in the case of both legal and unavoidable illegal border crossing, and at the diplomatic missions of the Russian Federation in third party countries. In practice there is also the fourth option or a variation of the first one: to appeal to the territorial authorities of the Russian FMS from places of imprisonment.

Let's analyse the problems encountered by refugees attempting to use each of these options (except for applications to the diplomatic missions of the Russian Federation for which we have no data). However first we will note the absence of readily available information for asylum seekers on these possibilities, which presents the first obstacle on their way through the asylum process.

2.1. Information for persons arriving in Russia seeking asylum.

The Law On Refugees contains the description of procedures of reception and consideration of asylum applications and temporary asylum applications in the Russian Federation, but this description is very brief and vague. A more detailed description of these procedures is provided in the "Administrative Regulations of the Russian FMS on providing the state service of consideration of asylum applications in the territory of the Russian Federation, and applications for temporary asylum in the territory of the Russian Federation", approved by the Russian FMS Regulations No. 352 of August 19, 2013 (Regulations). The Regulations are a multi-page guide for the Russian FMS employees responsible for work with refugees and asylum seekers.

The procedures for providing information about the delivery of state services are listed in Point 3 of the Regulations: information is

available at the offices of the territorial authorities of the Russian FMS, via official websites of the Russian FMS and its territorial authorities in federal entities, www.gosuslugi.ru, "Common Government Services Portal of Russian Federation", and at the Multi-purpose Centres (MPC) for providing the state services. However airports, stations, border check-points, the points of arrival of refugees seeking asylum in Russia, aren't featured in the places where the information for refugees who are seeking asylum should be distributed or provided, but where such information is most necessary.

"Convenience and accessibility" are among the requirements regarding the quality of information in the Regulations. However, one of the main conditions of accessibility of information is not listed: that it should be provided in a language understandable to the person who is seeking asylum, that is in the most widespread international languages (English, French, Arabic), and in languages of the countries from where the majority of refugees currently arrive.

Information on the websites of the Russian FMS and its territorial bodies is provided only in Russian and in such specific "bureaucratese" that not even each citizen of the Russian Federation can understand. In some departments of the territorial bodies of Russia responsible for work with asylum seekers, information in other languages is displayed on information stands. For example, some time ago announcements in Dari intended for Afghans could be seen in the relevant departments of the Migration Service of Moscow and the Moscow Region. But in general, the provision of information in languages understandable to refugees at the offices of the territorial authorities of the Russian FMS is rarely seen.

On the web site of "Common Government Services Portal of Russian Federation" and on the sites of the MPC of Moscow and several other big cities, no information for asylum seekers is provided even in the Russian language.

As a result, refugees arriving to Russia are forced to try to seek information about places where they can apply for asylum from strangers on the street, casual acquaintances, compatriots, or other foreigners living in Russia and speaking a language understandable to them. All these people usually have no real idea where to apply for asylum.

For example Africans having descended from a plane in one of the Moscow airports, rush to black people on the street; francophones try to start conversation with Muscovites in French. Eventually they get into the circle of persons of African descent and over time find out the

address of the UNHCR office in Moscow where they receive information about where they can apply for asylum for the first time. However many months can pass between their arrival in Russia and obtaining such information.

We know of some dramatic stories concerning refugees who arrived in Moscow and spent time trying to reach the office of the Migration Service of Moscow.

Ivorian F. B. arrived in Moscow in June 2009 with 4 Euros in his pocket. He was lucky at first: a compassionate woman at the airport gave him money for a trip to a station. He spent 4 days there, unsuccessfully trying to buy food for 4 Euros, and occasionally some people gave him food. He was beaten at the station and someone tried to take his bag. At last he met an African who offered him a wallpaper hanging job in Podolsk, a small city situated near Moscow. There he worked for 2 months for food and lodgings. Then F. B. returned to Moscow, went to an Internet café at the PFUR (Peoples' Friendship University of Russia), where many Africans study. For 150 roubles it is usually possible to spend a night sitting in there at the café. Students from Cote d'Ivoire gave him money for lodgings for the night. The weather was already cold and F. B. caught a cold, so the same students sent him to the Moscow Protestant Centre. There he was given clothes and a representative of the centre brought him to the UNHCR, and from there he was sent to the Migration Service of Moscow. With no knowledge of the city, without money, for nearly a month he had been looking for the FMS office that he finally found more than 3 months after his initial arrival in the Russian Federation.

At the end of November 2009 an employee of the Moscow Patriarchy social service brought Kh. K., a Kurd from Turkey, to the Civic Assistance Committee. The staff of this service had found him half-conscious on the street while picking up the homeless in Moscow by bus during the night. Kh. K. entered Russia illegally through Azerbaijan. In the FMS of Dagestan he wasn't accepted and was sent on to Moscow. With no knowledge of the Russian language Kh. K. couldn't find the Migration Service of Moscow and was already dying from hunger and cold when he was picked up by the social services bus. The Civic Assistance Committee managed to arrange with the Perm FMS his reception in TAC in Ocher town, where he was able to finally apply for asylum 10 months after his initial arrival in Russia.

Refugees who arrive in Russia with reliable contacts among the representatives of their diaspora are in a slightly better position. In this

case they most likely receive information on how to reach the UNHCR office or migration service. This usually happens to Afghans who have a long established and developed community in Russia. However certain diaspora representatives do not always provide accurate advice and guidance: having had negative experiences whilst communicating with the migration services themselves, they quite often discourage newcomers from approaching them, or advise not to tell the truth there, provide with "stories", etc. Quite often "beginners" slip into dependency on the more experienced compatriots who host them. For example, some Russian businessmen of Syrian origin, employing Syrian refugees and accommodating them at their enterprises, don't allow them to leave workplaces to apply for asylum, and settle problems with police officers and the Russian FMS by means of bribes.

Therefore, an absence of accessible information regarding asylum, even if it doesn't completely deprive new coming refugees of an opportunity to exercise their right to request protection, nevertheless delays, sometimes for long term the exercise of this right, and creates the threat of expulsion for illegal residence.

2.2. Access to asylum procedure at the territorial bodies of the Russian FMS

As it was already mentioned, refugees are received by the territorial bodies of the Russian FMS which are now called Offices of the Russian FMS (UFMS) in one or the other Federal Subject. Every such office has a department responsible for work with refugees and is located in the main city of a Federal Subject. Two of these departments are located in Moscow: the Office of the Russian Federal Migration Service for Moscow, and the Office of the Russian Federal Migration Service for the Moscow Region (we agreed to call them the Migration Service of Moscow or the Moscow MS and the Migration Service of the Moscow Region or the Moscow Region MS). According to the Russian FMS statistics, the staff of the two departments process 40-50% of all asylum applications annually.

Refugees, who have recent or past experience of applying for asylum to these departments can approach the Civic Assistance Committee reception centre, open three times a week. In more than 20

years of work Committee staff has listened to hundreds of refugees' stories about their visits to the MS of Moscow and that of the Moscow Region. In addition, Committee employees regularly accompany refugees to these departments and have gathered their own observations about the departments' work. Through this the Committee has abundant material depicting work with refugees of the metropolitan area migration services at their disposal. These materials allow us to conclude that almost every refugee applying for asylum to the Migration Service of Moscow and that of the Moscow Region face obstacles in access to the procedure. The nature of these problems has changed over time. We attempt to depict the contemporary situation here.

Queues

At the Migration Service of Moscow the initial reception of refugees is conducted by a duty officer who, after a brief conversation with a refugee, having established a reason for the application and having checked an identity card, makes a decision as to whether or not admit an applicant to the status determination procedure. If the decision is positive, then the refugee is fingerprinted and an MS caseworker is appointed. Subsequently the caseworker shall accept an asylum application or temporary asylum application from the refugee, that is to conduct an interview with the refugee and complete a questionnaire and forms. Denials of access to the procedure will be discussed later. Sometimes phone numbers of some refugees are taken with a promise to invite them some other day, but it is extremely seldom that this promise is kept.

The duty officer begins reception at 10 in the morning. A queue to the room is formed every day, often it is quite long and consists of 30 to 40 people. Within 1 to 2 hours the duty officer manages to receive several visitors, redirects 3 to 5 visitors to caseworkers conducting interviews, sends others away, or gives consultations and discontinues the reception saying that all caseworkers are already occupied.

At approximately 12 pm the duty officer at the reception is replaced by caseworkers conducting interviews with refugees. At 1 pm interviews are usually interrupted for lunch, after lunch they continue for 1 to 2 more hours. That brings them almost to the end of the working day, and the FMS caseworkers then have no time to carry out interviews with additional refugees.

This means that only the first 5 to 10 people registered in the queue

are usually received. The rest should leave and repeat their attempts another day. For this reason it is necessary to start queuing at night or early in the morning, the problem being that public transport doesn't run at such times to make it possible to be outside queuing before the doors of the MS office open. Only a few can make it and during the winter months it is possible only for those who have acquaintances with cars ready to give a lift to the office and to offer the chance to wait in the car for the doors opening.

There are days when a queue is not so long and then refugees who use public transportation can be received. But before they get lucky, refugees could camp on the doorstep of Russian FMS for months. Many don't get through and stop trying.

Recently, after our appeals to the Russian FMS, the Migration Service of Moscow resumed reception of refugees for 1 to 2 hours after lunch, although not for the status determination procedure but for consultations and the settlement of other questions. Therefore, no serious changes in the work with refugees of this service have yet occurred.

In the Migration Service of the Moscow Region the queues are not so long and the reception of visitors is organised during the whole working day. Nevertheless it is absolutely impossible to apply for asylum or temporary asylum on the day of the first visit: at best the duty officer will arrange an appointment with a refugee, usually in 2 to 3 months time. More often refugees are advised to come some other day or get one of those refusals which we will discuss later.

The problem of queues in the metropolitan FMS became worse in 2013 with an inflow of refugees from Syria. In order to help refugees to receive access to the asylum procedure the Civic Assistance Committee staff began to assist them in composing written statements of their intention to apply for asylum, with a request to appoint an interview date with an interpreter. Under the law, state institutions are obliged to reply in writing to all written correspondence within a month. In addition, a copy of the statement with the FMS stamp confirming the reception of the letter serves as proof of asylum application and can be used in case the refugee is held administratively liable for an illegal stay in the Russian Federation.

In this second sense these written statements played a useful role in certain cases, but in general and in each individual case it had no noticeable impact on the situation in terms of access to the application procedure. The Russian Migration Services give a standard response

to the refugees: due to the shortage of interpretation services he/she is added to the interview waiting list, but nevertheless he/she can attend the Migration Services during the standard reception hours. The possession of such a reply does not increase the refugee's chances to obtain an interview at all. Here are some examples.

In August 2013 Kh. Kh., a Syrian national, submitted a written statement of intention to apply for temporary asylum to the MS of the Moscow Region. In September he received a reply stating that he should attend the refugee department at the end of October to agree on the date of asylum application. He visited several times but the interview date wasn't appointed. In February 2014 at the request of Kh. Kh. the Civic Assistance Committee filed an appeal to the Head of the Migration Service of the Moscow Region. In March we received a reply to this appeal in which Kh. Kh. was advised to attend the refugee department once again "to decide on the interview date". However we did not manage to contact the refugee to inform him of this reply: it appeared that he became tired of waiting and left Russia, or was deported for illegal residency.

A. P. S., a Copt from Egypt, was not successful at entering the asylum procedure at the Migration Service of the Moscow Region and in December 2013 he sent an asylum application by mail with a request to appoint a date for a status determination interview. The next day he brought a copy of the application to the refugee department where the fact of his application was registered. For 8 months he was then waiting for the invitation to an interview. Not having received any replies, he turned to the Civic Assistance Committee. The Committee appealed to the Russian FMS, which in August 2014 instructed the Migration Service of the Moscow Region to "organise reception" of A. P. S.

A. M., a Syrian national, submitted a written asylum application to the Moscow MS in January 2014, and received a reply that he had been added to the interview waiting list. In May, not having received an invitation, he came to the refugee department of the Moscow MS. An Arabic interpreter told him that his application "was outdated", and made him complete a new one. After that, without waiting for a call, A. M. started visiting the office of the migration service on a regular basis until his temporary asylum application was eventually accepted in June.

In January 2014 Y. O. S, a Sudanese national, having failed to be received at the Migration Service of Moscow, sent them a written

temporary asylum application specifying that he speaks Arab, English and Russian and providing them with his phone number. He received no reply, and in August 2014 visited the Civic Assistance Committee. Only after an appeal from the Committee to the Russian FMS did he receive a call from the migration service and was invited for an interview in October 2014.

This common practice of dealing with refugees that developed in the metropolitan migration services contradicts the Regulations. Point 11 obliges the staff of the migration services to receive foreign citizens from 10 am to 5 pm, not to allow queues to form, to accept asylum or temporary asylum applications on the day of attendance, to postpone an interview for the next day only in the case of an absence of an interpreter, or the absence of an applicant's family members who arrived with him in the Russian Federation, or an applicant's identity card.

The Committee has repeatedly drawn the attention of the Russian FMS to these violations. In many cases the Russian FMS gave instructions to receive refugees, but no significant changes have occurred in the work of refugee departments of Migration Services of Moscow and that of the Moscow Region.

In our opinion, the problem of queues is caused by objective reasons: staff shortage which in turn is probably caused by insufficient funding. It is certainly necessary to increase the number of employees in metropolitan migration services. However it should be possible to eliminate or at least to reduce queues at the Migration Service of Moscow without any additional expenses: for example, by increasing the number of duty officers handling the queues in the first half of the day before interviews are carried out. Very often the people queuing alongside the persons seeking asylum came with other questions: to get a consultation, to receive decisions, to register or to be removed from the registration list, etc. These people are also compelled to stand in queue waiting for their turn to be received. Two to three duty officers working in the first half of the day could resolve these issues, and after lunch conduct interviews with those who want to apply for asylum. The Regulations provide for possible asylum consultations by phone and via the Internet. It should also be possible to arrange appointments this way, having allocated a separate day for work with people who arranged an appointment by phone or via the Internet. This could also lead to the reduction of queues. However communication with refugees by phone or via the Internet is not provided by the Migration Service of Moscow nor that of the Moscow Region. In the

Moscow FMS the phone number specified on the Internet is simply never answered when called.

The fact that it is quite possible to reduce queues in the MS of Moscow is demonstrated by the experience of monitoring the work of the refugee and displaced persons department which was carried out by staff of the Civic Assistance Committee in the course of the preparation of this report. In the presence of observers, the work of the department improved considerably: most of the refugees standing in queues were received; technical issues that forced refugees to visit the MS of Moscow office repeatedly (obtaining decisions, certificates, etc.) were quickly resolved.

Queues not only lead to violation of the right for access to asylum procedure, not only devour people's time, they are also a mark of shortage, and shortage creates an opportunity for corruption. However the heads of the Moscow and Moscow Region MS, as well as the Russian FMS don't make any noticeable efforts to reduce queues. There are two possible reasons, simply the Russian officials' disregard of people, or some interest in preserving the existing situation.

Denial of access to the asylum procedure

The Russian FMS regularly responds to appeals against denials of access to the asylum procedure to refugees that "The Federal Law On Refugees doesn't provide any grounds to deny receipt of an application for asylum (or temporary asylum) in the territory of the Russian Federation". Refugees are constantly rejected anyway. The format and content of these denials varies from "friendly" advice not to waste time, to threats to hand applicants over to police for deportation. These are the most widespread reasons for denial.

Consultation and advice

Employees of Migration Services often give refugees consultations intended to divert them from applying for asylum; usually they tell a refugee that there is no point in applying for asylum since it won't be granted because, for example, it is currently granted only to Ukrainians (before they were saying that the status is granted only to Syrians), or because everything is currently stable in the applicant's country of origin (even Syrians were told that). Often such consultations are given in a lobby or in a corridor as informal friendly advice which is especially convincing if a compatriot interpreter offers it.

Denial due to the non-possession of a passport

Despite the fact that denials of access to the asylum procedure due to the lack of an identity card have no legal basis, and that the procedure includes personal identification of a refugee, migration services constantly refuse to receive refugees without passports. The issuing of the Regulations reinforced this practice because it was specified that at the application for asylum or temporary asylum foreign citizens and stateless persons must provide an identity card (Point 24). Here is one of the examples of the consequences of this.

Sh. D., a refugee from Syria living in the Murmansk region, has Russian family: a wife and three small children. However he has no passport and it is practically impossible to obtain one at the Syrian Embassy in the Russian Federation. He wanted to apply for asylum but the Migration Service of the Murmansk region demanded that the Migration Service in Apatity city where he lives first established his identity. When he followed the instructions, the Migration Service of Apatity city delivered an ultimatum to Sh. D: an identity certificate for 10 days would be provided to him, meanwhile he would have to go to Moscow and obtain a passport at the Embassy; otherwise he would be expelled from the Russian Federation. Sh. D.'s spouse phoned the refugee department of the Migration Service of the Murmansk region and they confirmed that they will receive her husband's temporary asylum application only under the condition that he comes with a passport. The family were panicking. Only after the Civic Assistance Committee contacted the Russian FMS, the latter issued an order to accept Sh. D's asylum application and the refugee was accepted for the asylum procedure.

Denial due to the lack of documents confirming legal right to stay in the Russian Federation

Absence of a visa, a migration card, or a migration registration certificate often serves as a reason for denial of access to the asylum procedure to a refugee. Thus in January 2015 the MS of the Moscow Region refused to receive two young Syrians from Aleppo, A. A. K, 18 years old and V. A., 24 years old, due to lack of registration.

Unfortunately, the reason for such refusals is created by Article 4 of the Law On Refugees. It mentions that two categories of foreign citizens apply to the territorial authorities of the Russian FMS for asylum: 1. those who are staying in the Russian Federation legally and 2. those who arrived to the Russian Federation illegally. The former are

obliged to apply for asylum within a day of the moment of arrival or within a longer period if valid reasons exist.

As mentioned previously, the UNHCR has criticized this rule and under the influence of this criticism the Russian FMS issued Instructive Letter No. KP-1/6-21242 dated 10.11.2008. In particular, it specified that the requirement of Paragraph 3 Part 1 Article 4 of the Law On Refugees relating to the one day period for applying for asylum in the case of an illegal border crossing, does not extend to the refugees who arrived in the Russian Federation legally and subsequently lost their legal status. However this fact is often ignored.

In addition refugees holding valid visas are often recommended by FMS employees to apply for asylum after their visas expire.

Denial with the recommendation to apply for asylum in other regions

By law refugees must apply for asylum and temporary asylum in their place of residence, that is in that Federal Subject where they currently live. Therefore, having found any connection with another region in refugee's documents, staff of the MS of Moscow and that of the Moscow Region refuse to receive them and recommend that they apply for asylum in that region. Most often the existence of a visa issued on the basis of an invitation from an organisation or an individual from another region, or the existence of registration in other region could be provided as a reason for such denials. Arguments that an applicant actually lives in Moscow or the Moscow Region rarely work.

Quite unusual cases also occur. In March 2015 V. M., an elderly Afghan, a single father raising a daughter who is a citizen of the Russian Federation, applied for temporary asylum to the MS of Moscow. The girl's mother, a Russian citizen, who suffered from alcoholism, lost custody of her daughter. FMS employees refused to accept his application and recommended to apply to the Migration Service of the Novgorod region where his daughter and the former wife were registered. V. M.'s application was accepted in Moscow only after an appeal to the Russian FMS.

Denial due to the lack of documents proving residence in the region

Currently this is the most common reason for the denial of access to asylum procedure. Without any legal reasons refugees are asked to provide a rental contract for the accommodation where they currently

live, otherwise they are refused to be received.

In March 2014 an employee of the MS of Moscow during an interview with K.A., a Syrian national, unexpectedly interrupted the procedure and declared that the refugee had to provide proof of his residence at the provided Moscow address. Two days after K.A. came to the MS with his landlady, however her testimony didn't help.

In March 2015 an employee of the MS of the Moscow Region asked G. I., a Syrian national to submit a rental contract. He brought a contract that was issued in the name of the compatriot who they lived together with, and also a copy of a landlord's passport, a citizen of the Russian Federation. It didn't satisfy the MS employee; he said that the contract had to be issued in G. I's, name and refused to receive him.

From March to June 2015 S.A., a Syrian national, unsuccessfully tried to apply for temporary asylum to the MS of the Moscow Region. At first they requested a rental contract, which he presented to them. Subsequently they announced that a copy of the landlord's passport was also required. S. A. could not fulfil this requirement: the landlord refused to give a copy of his passport to a foreigner.

The amount of appeals against these kind of denials, illustrates that it is not just one of standard methods of reducing the amount of asylum applications. We gain the impression that the staff of the migration services have received some kind of instructions to obtain documented confirmations from refugees regarding their location. The fact that Syrian refugees complain most frequently about the request for rental contracts, suggests that it is fair to assume that these instructions were given by the FSB whose employees show keen interest in Syrians. However it is also impossible to exclude an assumption that these instructions were caused by the aspiration of police or the Russian FMS to raise figures concerning administrative prosecutions of foreigners, and of the citizens of Russia who rent their accommodation to them.

Refusals to receive applications for the extension of temporary asylum

According to *Resolution 274 of the Government of the Russian Federation of April 9, 2001 "On Granting Temporary Asylum in the Territory of the Russian Federation"*, the persons who were granted temporary asylum can apply for an extension of their temporary asylum one month before the termination of its term (Point 12). However to apply for an extension of temporary asylum at the metropolitan mi-

gration services is almost as difficult as to gain access to the primary asylum procedure.

Firstly, the requirement to apply for an extension of temporary asylum 1 month prior to the termination of its term is usually not explained to the status recipients, therefore refugees often miss the deadline, and FMS staff refuse to accept an application for extension, although neither Resolution No. 274 of the Government, nor any other normative documents provides any basis for such refusal.

Secondly, the Moscow MS employees request a registration document as a strictly adhered to condition for accepting an application for the extension of temporary asylum. The staff members of the Civic Assistance Committee and lawyers of Memorial on numerous occasions filed appeals against refusals for such failings of the Russian FMS and it usually helped: replies from the FMS usually stated that the Law On Refugees “doesn’t contain any reasons for refusal to receive an application on the extension of temporary asylum”, “the requirement of employees of the Migration Service of Moscow to submit registration documents as a condition for acceptance” of such applications is “illegal” therefore the Federal Migration Service instructs “to organise the receipt and consideration of an application from a specified person” (the letter of the Russian FMS of 21.11.2014 concerning refusal to accept an application from Kh. M., Syrian citizen is quoted).

However, in April 2015 a letter of appeal to the Russian FMS concerning obstacles presented by them to hinder Syrian B. M.’s attempts to apply for an extension of temporary asylum, was unexpectedly replied to on the contrary. It was specified in the appeal that when B.M. came to MS to submit his application three weeks prior to the termination of his temporary asylum term, he was told that he should come later bringing with him the document migration registration document. In the response letter of April 6, 2015 signed by the head of the Department for Citizenship Issues V. L. Kazakova, it was said that B. M. applied for asylum after the deadline, and that the requirement to submit the registration document (migration registration) is lawful, as people granted temporary asylum are obliged to register.

The Committee was bound to object to V. L. Kazakova that persons granted temporary asylum don’t file an application for extension for a reason: because FMS employees don’t inform them of the requirements surrounding the extension application. We also called her attention to the fact that this answer contradicts numerous explanations of the Russian FMS about the illegal refusal of the receipt of an applica-

tion for the extension of temporary asylum term due to the lack of the registration certificate.

On June 3, 2015 V. L. Kazakova replied to the Committee’s objections that in the case of refusing to receive an application for the extension of temporary asylum the applicants have to apply in due time and in writing through a registry at the Russian FMS, having attached a copy of the certificate of migratory registration. Thus, the head of the nationality department of the Russian FMS confirmed the requirement to present a registration certificate which had earlier been said to be illegal.

Refusal to accept repeated asylum applications

A large number of refugees who were earlier refused asylum (often unjustifiably) reside in Russia illegally and at the same time are afraid to return to the country of origin. After years of residence in Russia many have lost links with their countries, some have started families with Russian citizens. Reapplying for asylum in the Russian Federation is the only solution for them.

The Law On Refugees doesn’t contain a ban on repeated applications for refugee status or temporary asylum, but territorial migration services often don’t accept such applications, and sometimes refusals are accompanied by threats to call the police or migration services for deportation.

To ensure a repeated application for asylum or temporary asylum will be accepted is possible, having obtained the support of the Russian FMS. However it is obvious that a repeated asylum application has to be seriously supported. It is useless to refer to the former decisions being poorly judged, the Russian FMS has a strong counterargument: if you didn’t agree with the decision you could appeal, if you didn’t appeal it is your fault, if you appealed and the court dismissed the appeal, then it means that the migration service decision confirmed by the court was correct.

The only argument capable to convince the Russian FMS of the need to accept the repeated asylum application is an emergence of new circumstances in the refugee’s case: it can be emergence of new threats in the country of origin, new documents confirming old threats, change in personal circumstances of the refugee which create the risk of persecution in the case of returning to their home country, a decision of the European Court of Human Rights on a ban on expulsion from the Russian Federation, etc.

However even the Russian FMS consent that they will receive a repeated asylum application isn't a guarantee of access to the procedure.

In October 2013 the Committee appealed to the Russian FMS to accept a repeated temporary asylum application from Kh. D. M., an Afghan national, in connection with an emergence of new threats for him in his country of origin. The Russian FMS agreed with our arguments and they instructed the MS of the Moscow Region to accept his temporary asylum application.

In the middle of December Kh. D. M. was invited to the refugee department of the regional office, however his application was refused. The Committee reported this to the Russian FMS and received the curious reply that Kh. D. M. had not attended the MS of the Moscow Region. In February 2014 Kh. D. M. with his wife and two young children attended the refugee department accompanied by a Memorial lawyer E. Rayeva, and wasn't received again. Next day the deputy chair of the Civic Assistance Committee, E. Burtina, went to the migration service together with this family. She managed to convince the head of the department A. I. Muravyev to accept their application for temporary asylum, but he decided to firstly accept an application of Kh. D. M's wife who had not applied earlier, and subsequently his application.

In March 2014 Kh. D. M's spouse submitted an application for temporary asylum, in June she and her children were granted asylum for 11 months. However Kh. D. M.'s application wasn't accepted until the corresponding instructions were given to the MS of the Moscow Region after the appeal of the Committee to the Russian FMS in October 2014, already for the third time. Thus, for the whole year the migration service sabotaged the execution of the Russian FMS order to accept the refugee's repeated asylum application.

Detention at the moment of applying for asylum

Attending the Civic Assistance Committee drop-in centre, refugees repeatedly report that the staff of refugee departments of the metropolitan migration services threatened them with deportation when they attempted to apply for asylum. Unfortunately these are not empty threats. In March 2011 P. I. S., an Afghan national, accompanied by Memorial lawyer E. Taubulatov, turned to the Moscow MS with an application for asylum. Previously P. I. S. had lived in Russia for several years as a labor migrant and in 2007 he was deported for violation of the rules of stay. Having returned to Kabul, he began to work as a

reporter in a local newspaper and after a while he became an object of persecution for his professional activity. As the 5-year ban on entry into Russia hadn't yet expired, he was compelled to return to Russia illegally.

During the interview in the MS of Moscow, P. I. S. informed them of his deportation. This information confused the MS caseworker and the Acting Head of Department M. G. Kapustina was invited to settle the question of further work with the applicant. She warned E. Taubulatov that after the interview she would call the migration services to deport the applicant. Thus, the head of a department of the Moscow MS openly declared an intention to violate Article 10 Part 1 of the Law On Refugees, protecting the persons who are seeking asylum from deportation. The lawyer deemed it reasonable to take P. I. S. away from the MS office and decided to return only after securing firm guarantees from the Russian FMS that as this was a case of a repeated application for asylum the refugee would not be sent for deportation. (Nevertheless later the Moscow MS carried out deportation anyway when P. I. S. attended to receive the decision on refusal of temporary asylum).

As this case shows, there is a real danger that individuals are detained whilst applying to the bodies of the Russian FMS to be deported if a deportation decision concerning their case has already been issued. However this is a risk not only for them.

We know about the case of O. A. O., a refugee from Sudan, with no previous administrative penalties, who was detained and sent for deportation at his primary application for asylum to the Moscow MS. Fortunately O. A. O. managed to inform his lawyer about the detention. The next day a lawyer of Memorial I. Biryukova, managed to convince the judge in the Izmaylovsky district court of Moscow of the illegality of the MS employees' actions. This happened in February 2014.

It is likely that similar cases are quite rare. Nevertheless, the rumors spreading among refugees have a great psychological effect discouraging many of them to apply for asylum. Perhaps, such an effect is also a motivation for these acts.

Corruption

In the report dedicated to the asylum system in Russia, it is impossible to bypass the topic of corruption, including concerning access to the asylum procedure. Refugees constantly talk about corruption as an unavoidable part of access to the procedure. We know the names

of some racketeers, their tariffs, and mechanisms of extortion and transfers of bribes. Moreover, we know from this the names of some refugees who received refugee status and temporary asylum status for bribes. We possess a considerable amount of data and some indirect “proof”, but we can’t provide the direct proof without endangering our refugee-informers, therefore we can’t hold extortionists responsible or even publish these data. All that we can do is to provide a general description of the problem.

Above we were talking about the most widespread types of refusals for access to the asylum procedure. It is necessary to add that in many cases these refusals are used as the mechanism for putting pressure on the refugee for the purpose of extorting a bribe. Making various, sometimes impracticable demands, FMS employees try to make the refugee believe that there is no other way, except to pay. If no money is paid, the receipt of the application is postponed infinitely on various pretexts, or even without any reason given.

Here is the story of one of the Syrian refugees who attempted to submit a temporary asylum application at the MS of Moscow.

At first he applied to MS with a request written at the Civic Assistance Committee to appoint a reception day with the participation of an Arab interpreter. Four months later he was invited to the refugee department and told that the address specified in his statement was incorrect (it was the address of the Civic Assistance Committee), and ordered to provide another one. A week later he returned with another address but was told that it was necessary to provide the landlord’s phone number which was unknown to the refugee at that time. However one week later he returned with the phone number. An interpreter told him that she was busy and that he should come another day.

For two months the refugee visited the migration service every week. Then for nearly two months he visited it every day. At last the interpreter provided him with a phone number and said: “Call me, I will tell you when you should come”. He called and she asked him for 30,000 rubles. The refugee answered that he did not have such money. The interpreter agreed to reduce the amount by 5,000. He refused to pay and began again to frequent the migration service every day. He observed the following: the interpreter exited to the hall and asked: “Who spoke with me on the phone?”. Those who raised hands were invited to the room, the rest were asked to come next time. He noticed one Syrian who often visited the migration service and brought several passports to the office where the interviews were conducted.

Eventually the employees of the MS became “fed up” with our refugee, and he was called for an interview. A person entered in front of him having said that he only had one question. Our refugee became angry, and began to shout in outrage. The interpreter said: “Shout, shout, until you are taken away and put in jail”. She took the documents of the person that had gone ahead of our refugee to the room where fingerprints are taken. The refugee began to shame her about the unfairness but she only laughed about the situation. He was refused temporary asylum.

The story of the stubborn Syrian illustrates the extortion mechanism where an interpreter, at least in the initial stages, is usually the key figure. However this story was written down more than a year ago. Since then “tariffs” have more than doubled, and additional links in the corruption chain have appeared. Previously interpreters and even some migration service specialists would negotiate bribes with refugees. They have become more careful recently and work through intermediaries who aren’t connected with the MS and therefore cannot be prosecuted for extortion. In certain cases the role of such intermediaries is carried out by representatives of the diaspora concerned.

According to our observations, not every group of refugees serves as an object of extortion. Ukrainian citizens, who are on special regulations, certainly are not asked to pay for access to the procedure and for receiving status. Africans also complain quite seldom about extortion from the refugee department’s personnel. However Afghans and Syrians are convinced that it is possible to get asylum in the Russian Federation only for money.

Why do these groups become the main objects of extortion at the application for asylum? Perhaps, two interconnected factors matter here: existence of a steady Diaspora and financial solvency.

The Afghan community began to form in Soviet times, and is the oldest, the largest, and the most organised diaspora from the countries outside the former Soviet Union. Syrian diaspora is younger and smaller, but as well as Afghan diaspora, it consists of many people who work in business, therefore are not poor.

Diasporas are always interested in maintaining good relations with officials; therefore serve as convenient means of corruption networking. At the same time, wealthy members of a community can help their poor compatriots (certainly, not without profit) to pay off officials, thus putting them in a dependency.

The “flourishing” of corruption in recent years was aligned with the

mass application for asylum by Syrian citizens. The asylum applicants were usually labor migrants from Aleppo, who worked in numerous sewing sweatshops in the Moscow region, and as a result of events in their home country became “refugees sur place”, and of their relatives and acquaintances fleeing war. At the end of 2012 the Russian FMS gave their territorial authorities some sort of signal about the possibility of granting temporary asylum to Syrians. For the first time in many years corrupt officials in the territorial authorities of the Russian FMS received not just exclusive, but mass “demand”. At that time, according to refugees’ stories, the Arab interpreter in the Moscow MS was openly announcing that granting asylum was a “paid service”.

Under the Russian laws, the only way to catch and hold the bribe taker liable is to give him “a controlled bribe”. However none of refugees ventured to put up a fight against the migration service. However the Civic Assistance Committee couldn’t stand by and watch the current developments indifferently. In October 2013 the Committee addressed to the head of the Moscow MS, O. E. Kirillova, a letter which openly reported about the corruption in the refugees department under her control, and asked her to put an end to it. This letter infuriated the staff of the department. The Head of the Department Yu. A. Evdokimov, phoned the Committee and threatened to file a charge against the Committee for slander. An employee of the Committee answered: “OK. We will meet in court”. The summons to court didn’t follow, however a short reply with the recommendation to approach the authorities for law enforcement came from the MS. So the letter informing the MS office didn’t yield any result.

In 2014 the position of the Russian FMS concerning granting asylum to Syrians changed (despite assurances of the contrary): they began to receive negative decisions on the granting and extension of asylum. Refugees with the Moscow MS decisions’ to refuse the extension of temporary asylum started coming to the Committee, and among them were many refugees who were in fact residing in the Moscow region. It turned out that the staff of the Moscow MS, in violation of the law and without using their usual pretexts for redirection of the refugees to other regions, had accepted asylum applications from Syrian citizens living in Moscow Region in great numbers. According to refugees, their employers had driven entire groups of refugees to the FMS of Moscow, having personally agreed on everything, and later withheld quite considerable amounts of money from their salaries. They received their certificates on temporary asylum. The implication of these facts is obvious.

Access to the asylum procedure in other regions of Russia

The situation regarding access to the asylum procedure in other regions of Russia varies. In some regions, according to the lawyers of the Migration Rights Network of Memorial there are no problems with access to the asylum procedure, places such as Voronezh and Vladivostok for example. In other places, for example Tambov, Bryansk, Kaluga, long queues make access harder. In some regions, for example in Krasnodar and Blagoveshchensk, only Ukrainian citizens have the possibility to file an asylum application, and in St. Petersburg only refugees from Ukraine who have close relatives living in the northern capital are accepted. In Rostov-on-Don and Smolensk the application for asylum to the local FMS could result in administrative prosecution and deportation.

In most locations it was only possible to gain access to the asylum process with the assistance of lawyers. In Ivanovo, thanks to hard work of the lawyer I. Sokolova, Syrians are now able to make asylum applications and can be granted asylum. For this reason some began to move to Ivanovo from the neighbouring regions in order to seek asylum.

In Blagoveshchensk refugees from Democratic People’s Republic of Korea are accepted only if accompanied by the lawyer L. M. Tatarts and with the UNHCR letters confirming that their resettlement is planned in a third country.

We have no data on the impact on corruption levels that access to the procedure outside the metropolitan area has had, with the exception of Dagestan.

In April 2014 a volunteer of the Civic Assistance Committee, Syrian journalist Muiz Abu Aldzhadayel living in Moscow, visited Makhachkala. This person is well known among Syrians, many compatriots who reside in Russia approach him with their problems. Muiz travelled to Makhachkala after we received disturbing information that a possible deportation of Syrians was being considered.

Syrian citizens residing in Makhachkala complained to Muiz Abu Aldzhadayel that the local MS was not accepting their asylum applications and in the exceptional case of refugees managing to submit their applications, they were receiving refusals, with five people already having been sentenced for deportation. Compatriots also informed Muiz that an intermediary was operating in Makhachkala, offering to resolve the issue by arranging temporary asylum for 30,000 rubles.

In the Office of the Federal Migration Service of Russia in the Re-

public of Dagestan, Muiz Abu Aldzhadayel met with Imamagomedov I. S., the Head of the Department of Labor Migration and Integration Assistance of Immigrants and Refugees, who insisted that there were no problems concerning the possibility of Syrians gaining access to the asylum procedure in Dagestan, but rather that Syrians did not apply for asylum.

The following day 35 Syrian citizens arrived at the MS with written asylum applications, accompanied by Muiz Abu Aldzhadayel. 16 people together with Muiz were allowed entry into the MS office by security, managing to submit their applications. Subsequently the security guard escorted Muiz from the MS premises, accusing him of shouting at the Head of the Department. Muiz had not however even seen the Head of the Department that day. Other Syrian citizens did not manage to submit their applications. During this time an intermediary was lingering in the vicinity of the group visiting the MS office. Making reference to the fact that Muiz had been forced to leave the FMS office he explained to the refugees that he was the only person who could help them gain asylum, but for a fee.

As a result of this trip the Committee sent several letters to the Russian FMS with a request to remedy the situation regarding their work with the refugees attending the FMS in Dagestan. The list of 33 refugees (excluding children) wishing to apply for asylum was attached to this letter. The Russian FMS replied stating that “no violations of the Russian Federal law had been committed through the actions of employees of the Office of the Federal Migration Service in the Republic of Dagestan” (letter No. MC-3/39485 of 22.07.2014 signed by the Head of the Russian FMS Department for Citizenship Issues V. L. Kazakova). No Syrian citizens who we had informed the FMS about, were subsequently allowed to apply for asylum.

2.3. Access to the asylum procedure from detention facilities

The Law On Refugees doesn't provide any reasons for the rejection of an application for asylum or temporary asylum to persons who are being held in detention facilities. Paragraph 1 Part 1 Article 5 provides for the refusal of an asylum application considered on the merit

due to a criminal record being held in the territory of the Russian Federation, but only after a preliminary consideration of the application. No restrictions are mentioned concerning applications for temporary asylum. Similarly there is nothing prohibiting the receipt of asylum applications and temporary asylum applications from persons convicted of administrative offenses who are staying in SUVSIGs under the authority of the Russian FMS.

Judging by the Russian FMS statistics (see table № 4), there are a certain amount of asylum applications submitted from detention facilities, but these statistics reflect only asylum and temporary asylum applications made in the established form with a questionnaire and a personal interview with an employee of the FMS visiting the detention centres or SUVSIGs. The Russian FMS statistics do not include applications from persons who expressed their wish to apply for asylum in some other form but did not receive the visit of an FMS expert from a refugee department.

Table 4

	2010	2011	2012	2013	2014
Applied for asylum	35	60	84	70	88
Applied for temporary asylum	6	12	18	30	50

According to the poll conducted with Memorial lawyers working in various regions of Russia, it is impossible to submit an asylum application from detention centres without a lawyer's assistance. There are three problems facing applicants.

Firstly, unlike at a pre-trial detention centre, the administrators of many SUVSIGs refuse to accept statements regarding asylum applications and to transfer them in the necessary way. The situation has considerably deteriorated since the detention centres and centres for the care of foreign citizens were reorganised into SUVSIGs and were put under the control of the Russian FMS; previously they were the responsibility of the Ministry of Internal Affairs. These changes have led to the situation whereby the persons held often can't transfer a statement of intention to apply for asylum to the FMS without a lawyer's assistance.

Secondly, having received such statements by whatever route, the management of the FMS does not work hastily to send a caseworker to places of detention in order to proceed quickly with the refugee status or temporary asylum application. Of course the timing often plays a crucial role in such cases, especially for persons already sentenced to deportation, as the application has an effect on the deportation procedure. The fact of an asylum application having been made, if established by the FMS, can be used to appeal a deportation decision. After refugee status or temporary asylum application has been accepted, and a certificate confirming examination of application has been issued, it is possible to fight for the abeyance of a deportation decision that has already come into effect. Without the intervention of a lawyer, the instruction from the FMS expert to the SUVSIG to process an asylum application would either not take place at all, or be postponed for a long time and eventually become irrelevant as a deportation would have already been carried out.

The third problem is the lack of procedures in place to terminate the execution of deportation decisions once an application or a statement of intention to apply for asylum has been presented. Despite the Law on Refugees providing non-refoulement guarantees from the moment the request for asylum is made, the receipt of an asylum application does not lead to an automatic termination of the applicant's deportation order in force. Neither the Russian FMS nor bailiff service are responsible for providing non-refoulement guarantees to the persons who are seeking asylum. Besides, the law does not define the jurisdiction of cases of suspension or of the termination of a deportation decision, so even lawyers are often unable to prevent the deportation of persons seeking asylum but who have already been sentenced to deportation.

2.4. Access to the procedure of asylum application at a border checkpoint

The Law on Refugees provides a possibility to apply for asylum directly at a border checkpoint or at a police department to refugees who arrive in Russia legally, and to those who were forced to cross the border illegally.

For those arriving legally this norm is irrelevant, they usually apply for asylum at the territorial authorities of the Russian FMS.

Those who crossed the border illegally and managed to reach the Russian inlands unchecked, also usually apply for asylum with the authorities at the FMS. In this case, as a general rule, they can't fulfill the law requirement to apply for asylum within one day of arriving. However the law provides for a possible extension of this term in the presence of circumstances making a request for asylum within one day not possible. In the aforementioned instructive letter from the Russian FMS No. KP-1/6-21242 of 10.11.2008, it is explained that "the applicant's disorientation in both a new country and an unfamiliar situation, caused by his illiteracy, ignorance of the Russian language and the Russian legislation, in particular the existing requirements on the set time period for asylum application" can be viewed as such circumstances. However the Russian FMS also recommends when asylum applications are being processed that long periods of illegal stay in the Russian Federation without a request for asylum having been made, can be considered as a circumstance which can call into question the sincerity of the applicant's intentions.

For those who were detained by border control authorities for crossing the border in violation of Russian legislation, an appeal to the border control is the only possibility to apply for asylum. This appeal should be made within one day, or if made within a longer period time good reasons must be provided. Under the law, border control is obliged to accept asylum applications from a refugee and to transfer the application to a territorial body of the Russian FMS within three days. However in practice events commonly develop according to one of the following scenarios.

Scenario 1: "Return to where you came from!"

If a refugee arrives by plane, he is not permitted into the country, detained at the airport transit zone, and returned to the country where they arrived from on the next available flight. In 2008 immigration check points in transit zones were abolished, and now refugees can only apply for asylum at border control. However their applications are often ignored. If a refugee or his relatives manage to inform a local UNHCR office or any human rights organisation about his arrival, there is a chance that they will successfully draw the Russian FMS attention to this situation, and an expert of the territorial authority of the Russian FMS will be sent to a transit zone to organise the receipt of an asylum application from the refugee. They must then wait for a

decision regarding their asylum application at the airport transit zone, a place lacking elementary facilities. If the decision is positive, after obtaining a certificate granting temporary asylum, the refugee will be allowed to finally enter the country. However prior to entry being allowed, his support team has yet to overcome the resistance of border control, as the certificate granting temporary asylum is not among the documents allowed to cross the Russian Federation state border.

However such a series of events is rare. Most often refugees are returned, without the chance to apply for asylum.

At the beginning of January 2014 A. Z., a Syrian national, arrived at the Moscow Vnukovo airport with the intention to apply for asylum. Border control claimed that they found discrepancy between his visa and the purpose of his arrival (it is unclear how, since the border guards could not discuss the issue with him, having no knowledge of the Arabic language) and detained him at the transit zone with the intention to make him return on a later flight to Damascus. A. Z. tried to explain in Arabic that he wished to apply for asylum, however the border guards were not able to understand him. From a stranger's mobile phone A. Z. managed to contact his brother who was waiting for his arrival, and he was able to explain the situation to him. According to A. Z., three more Syrians were being held in Vnukovo airport at the same time, in similar situation. Having learned about this from the brother of A. Z., the Committee called border control and the offices of the FMS at Vnukovo airport, and tried to convince them to establish contact with A. Z. and the three other refugees, and to provide them with the necessary help to apply for asylum. Unfortunately the attempts were unsuccessful: all four were returned to Syria on the next flight.

Scenario 2: "Take the punishment you deserve!"

A refugee is detained and brought to trial for illegal border crossing (Article 322 of the Criminal Code of the Russian Federation). They are placed at a pre-trial detention centre where they must wait some months before their court hearing. If a refugee is able to submit an asylum application at the pre-trial detention centre, according to Paragraph 1, Part 1, Article 5 of the Law On Refugees, within 5 days he will receive a refusal to examine the application on the merit. The court usually imposes a penalty in the form of imprisonment for a term not exceeding the time which violator has already spent in the pre-trial detention centre. From the courtroom the refugee is either released and given an opportunity to apply for asylum at the territorial body

of the Russian FMS, or taken to the airport transit zone from where he was originally collected and taken to the pre-trial detention centre. Once these events start developing according to the first scenario with the only difference that having already spent some months in a detention facility, a refugee normally no longer wishes to be granted asylum in the Russian Federation preferring instead to leave for another country (if the opportunity exists), or even to return home.

In August, 2014 A. M. A., a Syrian national, was detained at Moscow Sheremetyevo airport with a fake passport and was subsequently sent to a pre-trial detention centre. In December the Khimki Municipal Court granted the possibility of release on bail of 200,000 rubles. Then instead of being returned to a prison cell, he was taken to an airport transit zone. In March 2015 the court found him guilty of an illegal border crossing attempt, but taking into account his repentance and the time that he had already spent in the pre-trial detention centre, he was made exempted from further punishment. A. M. A. left immediately for Turkey after his trial. While in the pre-trial detention centre, A. M. A. had sent his statement of the intention to apply for asylum to the Migration Service of the Moscow Region with the help of a lawyer. By the time the MS replied to this statement A. M. A. had already left Russia.

Even more dramatic scenarios are possible for refugees from countries such as the Democratic People's Republic of Korea and Uzbekistan.

In April 2013 NN, a refugee from the Democratic People's Republic of Korea illegally arrived in Russia near Blagoveshchensk, having travelled through China. He made himself known to the border control and tried to explain that he wished to seek asylum. Criminal charges were launched against NN and he was placed in a pre-trial detention centre. There NN went on hunger strike for his asylum application to be accepted. MS officials visited him in the pre-trial detention centre, accepted his asylum application, however immediately refused to examine the application on the merit. NN had no personal identification documents, which led his caseworker to send an inquiry to the General Consulate of the Democratic People's Republic of Korea in Khabarovsk. There a new passport was issued in NN's name and a request for his extradition to the Democratic People's Republic of Korea was received.

In July 2013 the Blagoveshchensk Municipal Court imposed a symbolic sentence on NN and released him from custody. However

staff of the Korean intelligence services were already waiting for NN at the courthouse. His lawyer, L. M. Tatarets, managed to take NN from the courthouse building, hiding him at acquaintances, later sending him to Moscow. In this way the lawyer managed to rescue the refugee from kidnapping.

2.5. Access to the asylum procedure for Ukrainian citizens

The situation regarding access to the asylum procedure for refugees from Ukraine has a specific nature and therefore it is necessary to discuss it separately.

Russian authorities declared their intention to receive Ukrainian refugees even prior to the beginning of their mass exodus. Reception and assistance to these refugees was in fact organised on an unprecedented scale. Hundreds of temporary accommodation centres (the *TACs*) were created and food, medical, and other aid was provided. Asylum applications were received directly at the TAC or in the territorial bodies of the Russian FMS, which had never previously been the case. As a result, by December 1st 2014 temporary asylum had been granted to 223,407 citizens of Ukraine and 218 more people had been recognised as refugees (generally the military personnel of the “Berkut” battalion, public prosecutors, etc.). Concurrently among nationals of other countries, only 13 people received refugee status and 1,763 people received temporary asylum in 2014.

Nevertheless, many Ukrainian refugees also faced difficulties in access to the asylum procedure. At the beginning these problems were just long queues at the migration services. To cope with the inflow of Ukrainian refugees the Migration Service of Moscow opened an additional office for their reception and the Migration Service of the Moscow Region appointed special employees to deal with the numbers. To accelerate the procedure the Moscow MS began handing out questionnaires to Ukrainian refugees to complete independently (this had never happened concerning other groups of refugees), and to appoint a date of reception for the refugees to attend with their completed questionnaires. Initially this date was appointed for two to three months after their arrival, and then the waiting times increased, until

by July 2014 refugees were receiving appointments for April 2015.

On July 22, 2014 the Government of the Russian Federation issued two separate acts: Resolution No. 690 massively simplified the temporary asylum procedure for Ukrainian citizens which was authorized to be completed within 3 days (not 3 months as established by the Law On Refugees), and Resolution No. 691 approved federal subjects’ quotas for the receiving and placement of Ukrainian refugees. Subsequently, a “zero” quota was established for Moscow, the Moscow region, St. Petersburg and the Leningrad region, the Rostov region, the Chechen Republic, the Crimea and Sevastopol.

After the publication of these resolutions the Moscow and the Moscow Region MS stopped receiving refugees arriving from Ukraine. The special MS office in Moscow continued to work for several more months, simply to inform the refugees about the new quotas and to recommend that they apply for asylum in other regions of the country, or to apply for the Compatriot Resettlement Program operating in other regions. Those who managed to submit their applications for temporary asylum before August 1 2014 received temporary asylum status, however those who had only received a questionnaire, were no longer able to apply. Many only learned about this after several months, having attended the migration service on their originally appointed day, or they heard about the changes indirectly from acquaintances. Until this stage they had patiently waited for their appointment to submit an asylum application, and did nothing else to settle their legal status in the Russian Federation. In fact these people had been misled.

The termination of the receiving of asylum applications in the metropolitan region had no legal basis. Article 14 of the Law On Refugees allows the government to establish regional quotas for placement of the recognised refugees and persons who were granted temporary asylum and also to determine the locations in which asylum seekers arriving in masses during emergency situations should reside. However this article doesn’t cancel out the rule of Paragraph 4 Part 1 Article 4 of the same Law which states that asylum application can be submitted at the place of residence of a foreign citizen within the territory of the Russian Federation. This article provides the right of a foreign citizen to apply for asylum at a place of sojourn, and the migration service of that location are obliged to ensure the implementation of this right.

Not all refugees were able to follow the FMS officials’ advice to move to other regions. Some lived in Moscow and the Moscow region with relatives or friends, others had already found work, some

had been admitted into universities. Obviously these people could not give up housing, jobs, studies and move to another region where they would once again have to begin a new life.

In September 2014 the elderly couple K from Gorlovka came to the Moscow region where their daughter resided. The man arrived without his passport which had been lost in a fire during military operations. Without his passport K could not complete migration registration, his application for a temporary residence permit was not accepted, and this meant that free medical care was not provided. K was also unable to apply for temporary asylum because of a zero quota in place. Only after an appeal of the Committee to the Russian FMS, was his application for temporary asylum accepted.

As an attempt (although not really consistent) to remedy this situation, the government issued Resolution No. 1036 of 09.10.2014 where it was specified that the provisional rules approved by Resolution No. 690 “didn’t extend to the persons who submitted the application for temporary asylum in the territory of the Moscow region and Moscow, except for the persons living at the specified subjects of the Russian Federation with relatives (parents, children, grandfathers, grandmothers, grandsons, brothers, sisters) who are citizens of the Russian Federation, foreign citizens or stateless persons having the right of residence in the Russian Federation.”

Firstly, from this resolution it follows that Ukrainian citizens living in the metropolitan area can still submit temporary asylum applications outside of the provisional rules in the standard way, as set out in Article 12 of the Law On Refugees and Government Resolution No. 274 of 09.04.2001, and secondly that applications for temporary asylum from Ukrainian citizens living in Moscow and the Moscow region with close relatives, should be considered according to these provisional rules, in the simplified order. However, the resolution set aside other regions with a “zero” quota.

In practice it led to the situation whereby the Migration Service of Moscow and that of the Moscow Region began to accept temporary asylum applications solely from Ukrainian citizens living in Moscow and the Moscow Region with close relatives, the remaining were still recommended to leave for other regions.

The situation was not just such practice; the general position of the Russian FMS was also unstable and contradictory. After the publication of Resolution No. 1036, in reply to the Committee’s requests on the receipt of temporary asylum applications from various Ukrainian

citizens in the metropolitan region, the Russian FMS still made references to a “zero” quota and the right of Ukrainians to apply for temporary asylum in any other territorial subject of the Russian Federation.

Such an answer was received for example in relation to A. D., a 24-year-old native of Ukraine, who had been residing in the Moscow region since he was 10 years old. Now living in a domestic partnership with a Russian citizen, a Muscovite (their marriage is not registered as A. D. does not possess a passport) with whom he has a newborn child.

In November 2014 the Committee sent a letter to the Head of the Russian FMS, K. O. Romodanovsky, regarding this case, with the developed arguments of the illegality of the practice of refusing access to asylum in regions with a “zero” quota to the citizens of Ukraine. In response to the letter of January 13, 2015 the Deputy Head of the Russian FMS, N. M. Smorodin, reported that the instructions regarding “prevention of unreasonable refusals” to Ukrainian citizens applying for asylum, had been sent out to the territorial bodies of the Migration Service of Moscow, the Moscow region, St. Petersburg and the Leningrad region

Nevertheless, the Ukrainian refugees continue to face refusals in access to the asylum procedure in the metropolitan area.

O. M. with her mother and child arrived from the Donetsk region to the Moscow region to live together with her husband who had traveled to Russia for employment prior to the beginning of the conflict. After the family had arrived O. M.’s husband was admitted into hospital with a serious illness. O. M.’s family decided to submit their application for temporary asylum to the Moscow Region FMS, however their application was refused and they were advised to approach another region. In response to an appeal by the Committee, the Russian FMS gave an order to the Moscow Region MS to accept the application for temporary asylum from O. M.’s family. In June 2015 O. M. attended the Moscow Region MS with the letter from the Russian FMS. There she was told that they did not receive orders from the Russian FMS and suggested she return again in November.

At the Moscow MS Ukrainian citizens who wish to apply for asylum are advised to read information on a noticeboard, where rather illegible information is posted, reminding citizens of Ukraine that there is a “zero” quota for Ukrainian refugees and recommending that those with close relatives living in Moscow should apply for temporary asylum at the MS of Moscow. (For more details about the Ukrainian refugees status see Annex 1, for the notice mentioned see Annex 2)

2.6. Problems with access to the asylum procedure: the position of the Russian FMS

As illustrated in the previous narrative, there are very serious problems with access to the asylum procedure in Russia. How to estimate the non admission scale, what share of people wishing to apply for asylum can not gain access to the asylum procedure?

As part of the preparation of this report the Committee planned to carry out monitoring of the work of the refugee departments of the Moscow and Moscow Region MS. The main aim was to collect data on the ratio of the number of persons successfully gaining access to the asylum procedure and of those who failed to gain access. With this intention we planned to monitor the work of the refugee departments during working hours, and to conduct short anonymous visitors' surveys.

However at an attempt to carry out monitoring the staff members of the Committee faced not only furious resistance from the Head of the Refugee department of the Moscow MS, but also persistent counteraction from the management of the Russian FMS (see introduction for more details). Therefore the Committee did not manage to collect statistical data allowing an estimation regarding the scale of non-admission to the asylum procedure.

Regardless of the negative reaction of the Russian FMS management at the attempts to carry out such monitoring obvious conclusions can be drawn. It appears that it is well known in the Russian FMS that only a small minority of refugees can get access to the asylum procedure in Russia.

The important question is the position that the management of the Russian FMS takes in relation to this situation.

In this chapter we have reported several cases of the violation of the right of access to the asylum procedure and in the majority of these cases appeal to the Russian FMS yielded positive results.

During the preparation of this report we put together a register of the appeals against the violations of refugees' rights for access to the asylum procedure sent by the Committee to the management of the Russian FMS and also to Heads of several territorial bodies in 2014, and the first half of 2015. This register contains 69 appeals, the majority sent to the Russian FMS. A majority of 40 appeals were satisfied, and orders to eliminate the violations of the rights of refu-

gees for access to the asylum procedure were issued. 16 appeals received negative or evasive replies, the remaining have still not been answered.

However, despite regularly instructing territorial authorities to accept certain refugees, the management of the Russian FMS do not take measures to make changes to the general situation regarding access to the asylum procedure, despite the obvious deficiencies of the system, even with the number of appeals made. The question is why?

Furthermore, why do Heads of the refugee departments, who we complain about to the Russian FMS, continue to behave in the same way despite the Management of the FMS deeming these appeals lawful? Would they continue to risk their official positions if they thought that the Russian FMS is genuinely dissatisfied with them?

The answer seems quite apparent. It seems that employees of the territorial bodies are aware that the replies of the Russian FMS to the written appeals from NGO's, lawyers, and the UNHCR, in general to everything that is intended "for the external use" is one issue, however the real policy of the Russian FMS is absolutely another: and this is the exact policy put into practice by the territorial authorities of the Russian FMS. Therefore, despite the large number of appeals, there is no need for the FMS employees to fear for their official positions for violation of the refugees' right of access to the asylum process.

Conclusions

1. In many territorial bodies of the Russian FMS the rights of refugees for access to the asylum procedure are systematically violated. This shows non-execution by the Russian Federation of the obligations accepted by the signing of the 1951 Convention.

2. A serious obstacle to realising the right to seek asylum in the Russian Federation is due to the inaccessibility of information to foreign citizens regarding the ways in which asylum can be requested.

3. Queues, unreasonable refusals, and corruption, form obstacles in gaining access to the asylum procedure outside of the territorial authorities of the Russian FMS. There are cases of detention and deportation of refugees at the time of applying for asylum which are a gross violation of the principle of non-refoulement.

4. At the border checkpoints the right of access to the asylum process is broken because of non-performance by the staff of the FSB border control of Russia of Paragraph 3 Part 1 Article 4 and Part 4 Article 4 of the Law On Refugees regarding requirements on the receipt and

transfer of asylum applications to the bodies of the Russian FMS. This also leads to violation of the non-refoulement principle.

5. At places of detention, in particular in SUVSIGs, the right for access to the asylum procedure is violated because of refusals by the administration to transfer statements of the intention to apply for asylum to the relevant departments of the territorial bodies of the Russian FMS. There is also an untimely response to these statements by the management of the departments and a lack of interaction between the Russian FMS and bailiff service for the purpose of the termination of the execution of deportation decisions concerning the persons who filed asylum applications.

6. Satisfying the appeals of certain persons relating to their refusals to be admitted to the asylum procedure, the Russian FMS doesn't take effective measures to end such violations of rights; this leads us to conclude that the initial restriction of access to the procedure is authorized by the Russian FMS.

Recommendations

To the Russian FMS

1. To organise an information display on asylum procedures and phone numbers of departments of the territorial bodies of the Russian FMS that are responsible for work with refugees in English, French and Arabic languages (in other languages as well if necessary) in places of the usual arrival to the Russian Federation of persons who are seeking asylum (airports, stations, border check points).

2. To undertake effective measures to terminate systematic violations of the right to access to asylum procedure at the territorial authorities of the Russian FMS which are repeatedly reported:

- to achieve mandatory observance of points 11, 43, 44 of Administrative Regulations on the receipt of asylum applications on the day of the application or other day coordinated with an applicant and on avoiding queue formation:

- to exclude the facts of careless consultations and unreasonable refusals in reception to persons seeking asylum: to oblige staff of territorial bodies to conduct all communication with visitors at a workplace only, to present themselves to the visitors, to engage an interpreter if necessary, to maintain an electronic database of consultations and to record a summary of the recommendations given to the visitor, to print this and provide the visitor with a signed copy of this;

- to categorically exclude facts of detention of persons seeking

asylum at the stage of asylum application to the territorial authorities of the Russian FMS: to send out to territorial authorities a special explanation of this issue and to bring employees and heads of the territorial authorities who allowed such violations to disciplinary responsibility;

- to take real measures to eliminate corruption within the territorial bodies of the Russian FMS: to conduct audio and video recordings of consultation with visitors, as a response to all appeals against extortion, to carry out serious functional audit checks by conducting confidential surveys of persons who became objects of extortion and granting them guarantees of protection against prosecution from extortionists.

3. To take measures to realise the right for access to the asylum procedure from places of imprisonment:

- to oblige heads of SUVSIGs to accept statements on the intention to apply for asylum from foreign citizens contained in SUVSIGs and to immediately transfer these to the heads of the territorial authorities of the Russian FMS, immediately send experts to a pre-trial detention centres and SUVSIGs for the reception of asylum applications,

- to establish relations between the territorial bodies of the Russian FMS and bailiffs service in order to end forceful deportations concerning persons who have applied for asylum.

4. To take measures to realise the right for access to asylum at the border:

- establish cooperation with the staff of border control of the Russian FSB concerning reception of asylum applications (in any form) from refugees who are held in a transit zone,

- after receiving a statement of intention for asylum application from a border check point, to immediately send an expert of the Russian FMS to a transit zone to accept an asylum application,

- at the non-performance by border control staff of their duty to accept and transfer an asylum application to the authorities of the Russian FMS, to send an expert to a transit zone on the basis of information about asylum seekers coming from other sources (UNHCR, NGO, relatives and acquaintances).

5. To take measures to terminate violation of the Ukrainian citizens' right for access to the asylum procedure at territorial subjects of the Russian Federation where Government Resolution No. 691 of 22.07.2014 established "a zero quota" on reception and placement of refugees from this country.

CHAPTER 3. QUALITY OF PROCEDURE

3.1. Normative Regulations

As it was already mentioned, the 1951 Convention doesn't contain any requirements concerning the asylum decision making procedure, leaving it completely to the discretion of Member States. The main standards of the procedure are established in the "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status" published by the UNHCR.

Three articles of the Law On Refugees are devoted to the description of the procedures for the acceptance and examination of asylum applications: Article 3 "The Recognition of a Person as a Refugee", Article 4 "An Application by a Person for Refugee Status and the Preliminary Consideration of this Application", and Article 7 "The Examination of Applications on the Merit".

Point 1 of Article 3 states: "*The recognition of a person as a refugee shall be effected in the order defined by the present Federal Law*".

Point 2 establishes the sequence of actions for the acceptance and examination of asylum applications and presents a two-step procedure for recognising a person as a refugee: preliminary consideration of the application for recognition as a refugee and consideration of the application on its merit.

Point 3 is the only provision of the law which contains a detailed description of the asylum process, here we will cite it in full:

"A decision on the issue of a certificate or the recognition as a refugee and a decision on the refusal to examine the application on the merit, or the refusal to recognise a person as a refugee, shall be made as a result of a full survey of a person, drawing up a questionnaire on the basis of individual interviews, and also as a result of the verification of the authenticity of information about the given person and their family mem-

bers, the checking of the circumstances of their arrival in the Russian Federation, and of the grounds for their stay in the Russian Federation, after a comprehensive study of the reasons and circumstances which are set forth in their application. Additional interviews may be held in order to clarify the facts presented by the person concerned.

A person who files an application seeking refugee status and who stays in the territory of the Russian Federation shall undergo personality identification procedures in accordance with the legislation of the Russian Federation, including the mandatory state fingerprinting registration at the place of submission of the application".

Considering the uniqueness and importance of this article it is important to note several elements of the procedure:

- the survey and process for interviewing an applicant
- verification of the authenticity of information supplied by the applicant
- comprehensive research regarding the reasons and circumstances for the asylum application as stated in the application
- personal identification of the applicant.

Point 4 establishes that the procedure for recognising a person as a refugee is carried out separately for each family member who has reached 18 years of age.

Points 5-7 concern the details regarding the recognition as refugees of unaccompanied minors, children of refugees born in the Russian Federation, and also disabled persons who are seeking asylum.

Article 4 notes the organisational issues of the preliminary examination of asylum applications: establishing what authorities and on what terms asylum applications are to be accepted and examined (or redirected), issuing decisions in the case of certificates of the examination of an application, defining the status of this document.

Article 7 establishes the terms by which the bodies of the Russian FMS shall consider asylum applications on the merit, deal with the issue of refugee certificates and decisions regarding refugee status refusal, define the status of a refugee certificate, and also contains a description of the consequences of denial of refugee status.

Thus, the Law On Refugees emphasises organisational and technical issues of the status determination procedure; while the content of this procedure is poorly developed, the procedure quality requirements are touched upon stating that the examination of the reasons and circumstances of the case must be "comprehensive".

The humanitarian status (temporary asylum) determination proce-

ture is even less developed. Only Article 12 of the Law is devoted to the institute of “temporary asylum”, and only the first point describes the procedure. It states that firstly, the order for granting temporary asylum is defined by the Government of the Russian Federation, and secondly that the decisions on granting temporary asylum are made by the territorial bodies of the Russian FMS where the corresponding application was made. Therefore, unlike asylum applications, temporary asylum applications cannot be submitted at a diplomatic mission, a border check point, or at a police station, but only to the migration service.

The procedure for granting temporary asylum is established by Russian Federal Government Resolution No. 274 of 9 April 2001. However the Resolution adds little to the Law On Refugees concerning the temporary asylum procedure: besides the term for examination of the applications and the requirement to conduct fingerprinting, only point 7 contains further clarifications. It states: *“The decision to grant temporary asylum shall be taken in the presence of grounds for recognizing the person as a refugee after verification of information about this person and their family members arriving with them, including the circumstances of their arrival in the territory of the Russian Federation, or details regarding the humanitarian reasons necessitating this person’s temporary stay in the territory of the Russian Federation (e.g. health status), so long as such reasons exist or the person’s legal status is unchanged.”*

Following from this norm, in the course of the consideration of temporary asylum application, both an identification of the humanitarian reasons for the non-refoulement of the applicant, and also examination of the reasons for his recognition as a refugee shall be carried out. The procedure should be similar to the asylum procedure.

The Law On Refugees does not establish the term that temporary asylum can be granted for. It is defined by the Russian Federation Governmental Resolution No. 274 of 9 April 2001 “On Granting Temporary Asylum in the territory of the Russian Federation”. Point 12 of the Resolution in the current edition states:

“Temporary asylum shall be granted for a term of up to one year. The term of temporary asylum may be extended each following year at the decision of the territorial migration authority where the person is registered, on the grounds of the person’s written application for the extension of temporary asylum and in the continued presence of the circumstances that served as the original grounds for granting temporary asylum to the person concerned .

“An application should be submitted no later than 1 month before the

end of the valid term of the temporary asylum. In the presence of valid reasons for missing the date of application, the term may be extended, for a maximum of 1 month.”

Thus, the term of temporary asylum can be extended if the circumstances, which served as the reason for temporary asylum being granted, have not changed. The description for the extension of the temporary asylum procedure is only mentioned at the above-stated Point 12, and also with the condition contained in the last edition of Point 6, that applicants who underwent a compulsory medical examination within the last year do not have to repeat it. It seems that the rest of the process is similar to the initial consideration of a temporary asylum application.

A considerably more detailed description of asylum and temporary asylum procedures are contained in the “Administrative Regulations of the Russian FMS on providing the State Service for the Consideration of both asylum applications and temporary asylum applications within the territory of the Russian Federation.”, approved by Decree of the Russian FMS No. 352 of 19 August 2013. The regulations are not a statutory act, but they should nevertheless be considered, as they serve as practical guidance for the staff of migration services working daily with asylum seekers.

We will outline the most essential additional requirements, when compared with the Law, of the asylum procedure contained within these regulations:

- upon receiving an asylum application an FMS employee must inform the applicant of their rights and duties (Point 72).
- status determination procedures involve the creation of three or four types of documents: 1) an application for refugee status in the form approved by the Russian FMS, 2) a completed questionnaire in the form approved by the Russian FMS, 3) a record of personal interview regarding the reasons for their asylum application, 4) records of additional interviews conducted if necessary to confirm the facts reported by the applicant (Points 70, 71, 74, 75).
- interpretation during the asylum process is provided by the Migration Service (Point 75).
- asylum applications, questionnaires and records are completed in the Russian language; if an applicant does not understand Russian, the application, questionnaire and records are completed by an employee of the Migration Service in the applicant’s own words and with the participation of an interpreter (Points 70, 71, 74, 75).
- the application and each sheet of the questionnaire are signed

by both the applicant and an interpreter; at the end of a personal interview a Migration Service caseworker or an interpreter reads out the records made to the applicant to add any further clarifications; each page is signed by the applicant and an interpreter (Points 70, 71, 74,75).

- the documents submitted by the applicant in support of the application are filed in relation to the case; individual documents are returned to the applicant after photocopies have been made; documents in a foreign language are translated into Russian (Points 32, 26);

- on the day an asylum application is received, an identification of the applicant including his fingerprinting and photography is carried out (Point 73).

- in the case of the refugee and temporary asylum determination procedure, employees of the FMS use the country of origin information received from the federal executive authorities, and also information received from individuals and organisations necessary for verification of the data reported by applicants (Point 82).

- apart from inquiries to the FSB bodies and the Ministry of Internal Affairs for clarification of the possible reasons for the refusal to consider an asylum application on the merit, sanctioned by Point 1 of Article 5 of the Law On Refugees, an inspection of the records of the Russian FMS and its territorial authorities and also the Ministry of Internal Affairs Main Information and Analysis Centre (FTI “MIAC of MFA of Russia”), and the regional information centres of the Ministry of Internal Affairs and Fingerprinting Records (Points 83,84) are carried out at the stage of the preliminary examination of the application for the identification of repeated asylum applications, confirmation of an applicant’s identity, and verification of evidence presented as justification for an asylum application.

- the absence of a reply to such a request shall not be considered a reason for refusal in the consideration of an asylum application on the merit (Point 87).

- an applicant has the right to submit additional documents and materials at the point that the asylum or temporary asylum application is being considered (Point 60).

- an applicant has the right to review the materials of the case at the stage that their case is being considered if it does not affect the “interests of other people and if the specified documents and data do not contain national security information or information protected by Federal Law” (Point 60).

- the Migration Service preliminary decisions regarding an asylum application, the decision based on the consideration of the asylum application on the merit, and also statements on the granting of temporary asylum shall consist of an introduction, descriptive, analytical, and concluding parts (Points 86,98,121).

The requirements for the temporary asylum procedure given in the Decree are similar to the requirements for the procedure of recognition as a refugee. Thus, the Administrative Regulations provide a much more detailed description of the asylum procedure than the Law On Refugees.

Meanwhile the Regulations contain no recommendations on the criteria of application for status determination and no requirements for the quality of the procedure. Such recommendations and requirements are contained in the “Handbook on Procedures and Criteria for Determining Refugee Status” published by the UNHCR, but the impact of this document on the Regulations is very marginal concerning the requirements for the procedure. They can only be noticed with the instruction regarding the necessity for carrying out additional interviews with an applicant for the clarification of certain facts.

The following principles and methods for carrying out the asylum procedure, formulated in the UNHCR “Handbook”, are not reflected in the Regulations, as well as in the Law:

- the burden of providing proof rests on the applicant, however the requirement to produce evidence should not be too strictly applied in view of the difficulty of providing such proof owing to the special situation in which an applicant for refugee status finds himself. Sometimes a caseworker of the country of asylum therefore, needs to make independent efforts to collect the necessary evidence in support of the application.

- if it is not possible to collect evidence, however the applicant’s account appears credible, he shall be taken to be providing the truth, unless there are good reasons to assume the contrary.

- it is necessary to establish trust between an interviewer and a claimant, for “full disclosure of sometimes sensitive and personal information”;

- asylum seekers’ applications are confidential and an applicant should be informed that their data will be treated in the strictest confidence.

- for the adequate assessment of the validity of the applicant’s fears, the facts provided by the applicant shall not be considered separately, but handled as a whole.

- an authorized representative of the country of asylum should consider the facts of the applicant's case "in the spirit of justice and understanding"», without allowing personal feelings towards the applicant to influence the conclusions.

- applications from unaccompanied minors and persons with mental disabilities require special methods of interview.

Absence in the Law On Refugees and the Regulations of these requirements that are filled with the spirit of humanity, is unfortunate as they could have had a positive impact on the quality and results of the asylum procedure in the Russian Federation.

The asylum procedure naturally separates into two stages: 1. the asylum application 2. the examination and assessment of the evidence presented by the applicant, and decision making.

3.2. The Asylum Procedure

Interview

The first stage begins with the personal identification of an applicant who is fingerprinted, photographed, and checked in the databases of the Russian FMS, FSB and the Ministry of Internal Affairs. Subsequently an interview and the completion of an asylum application form and questionnaires are carried out. The templates are provided as appendices No. 3 and 4 to the Regulations.

The application is a one sheet document with a template request for asylum in the territory of the Russian Federation, just filling in the applicant's surname, name and middle name, nationality, date of birth and birth place, and the personal data of any underage family members who arrived together with the applicant. The application is concluded with the following statement which the applicant is required to sign: "Myself and a member of my family (a person who is under my guardianship) who has not yet reached the age of 18 years, are informed about the rights and obligations determined by the Federal Law On Refugees". However we have not heard of any cases in which asylum seekers were informed of their rights and obligations at this stage: it usually happens after the end of the interview, if at all.

It is likely that MS employees make this violation without any bad intention, and just simply because they consider the introduction of rights as a mere formality that would be a waste of time at the beginning of,

perhaps, a rather long interview. However this omission is not as harmless as it can appear at first sight.

Firstly, the fact that an application is handed over to the applicant for signing without an introduction of the rights and obligations, within the first few minutes of an interview has created a practice of mechanical signing by the applicant of case documents that constitute the basis for the decision making to take place regarding their case.

Secondly, having been informed about the rights at the very beginning of the interview, an applicant would feel more confident, the relations between an applicant and a caseworker conducting the interview would be on a more equal level, which could promote a fuller and more open account by the applicant of the circumstances of their case.

In addition, being aware of some of the rights, an applicant could use some of them immediately, for example, the right to be directed to the Temporary Accommodation Centre (TAC). Considering that the process of finding accommodation in the metropolitan region takes at least 2 weeks, the opportunity to declare a desire to be placed in the TAC on the day of the making of an asylum application, is very important for a homeless refugee.

A questionnaire consists of 53 questions divided into several blocks. It includes questions regarding the applicant's personal information, questions regarding family members, questions regarding education, work, military service, health issues, criminal prosecutions, criminal records, previous asylum applications, circumstances regarding their arrival to the Russian Federation, the reasons for departure from the country of nationality or residence, and the reasons that they are unwilling to return to that country, and a number of additional questions.

This questionnaire allows the possibility to find out a lot of information about the applicant that is necessary for the decision-making process, but also has a number of shortcomings.

1. As mentioned previously, a questionnaire is filled out in Russian by an MS caseworker in the applicant's own words. This kind of interaction sets a "question-answer" tone to the conversation from the outset, not providing room for any initiative on the applicant's part, and not giving the chance to recite their story consistently. This results in the applicant's story being related as a number of unconnected separate fragments, spread over different parts of the questionnaire. The logic of the succession of events is lost, and important details are lost because there is no suitable question in the questionnaire that leads to a comprehensive full account of events.

2. The majority of the questions in the questionnaire are on the applicant's biographic data. These questions require precise and short answers and don't provide space for any detailed information. Questions about persecution appear at the beginning of the questionnaire (question 11 "Applicant's Data" section) and at the very end (questions 47-50). The first question about persecution of the applicant requires a short and general answer, assuming that the applicant will be able to provide more details at a later stage. A general answer to such a difficult question is usually hard for the applicant to formulate; as specified in the UNHCR "Handbook", "The expression "fear of persecution" or even "persecution" are usually foreign to a refugee's normal vocabulary" (§ 46). An applicant usually answers this question awkwardly, not directly to the point, or they outline an element of persecution which is often not the most crucial, and this may later be used as a reason for a negative decision on his application. By the end of the survey the applicant has become used to providing short answers. It is difficult at this later stage for them to re-adjust and begin telling the story of persecutions in details, especially since MS caseworkers, generally, do not give any indication that it is the time when the applicant has the opportunity to do so.

3. The questions of the form are formulated in bureaucratic language which is not always clear to applicants. For example, an important question, No. 19 whether "the applicant has ever been involved in violent incidents?" can lead to confusion as to how to answer. Many refugees don't understand this question and answer negatively just to remain safe in their answer, even when they have in fact been exposed to persecution with the application of violence; some think that the question suggests that they applied violence themselves, other assume that it is a question about sexual violence. Most of the MS caseworkers conducting the interviews do not consider it necessary to explain to refugees the meaning of the questions.

The Regulations provide for a "personal interview" after the completion of the questionnaire, and also for "additional interviews" if necessary on other days (but with no more than 2 day intervals). The carrying out of such interviews would help to correct the shortcomings of the questionnaire. However, personal interviews are not always conducted, while additional ones are a rarity, and if they are carried out, the same questionnaire style is used, the only difference is that the questions are formulated by an MS caseworker. The applicant is not given the opportunity to independently state his case or to make additions to his answers to the questions. If the applicant is proactive and insists on making addi-

tions, the MS caseworker has a choice to include them (usually happens in the presence of a representative) or to refuse to do so. However, it does not occur to most of the applicants to insist on making additions; they believe that the MS caseworker has better knowledge than them of what should be included. As a result only the facts that the FMS employee deems necessary to ask, are recorded

Denying refugees the right to independently choose the type of asylum

As mentioned previously, the Law On Refugees established two types of asylum: refugee status and temporary asylum. The refugee status is the full asylum status, it is timeless, and with it a large range of rights are provided. Temporary refugee is a humanitarian status, and is provided to persons who correspond to the criteria of a "refugee" however restrict themselves by requesting a temporary status, and can also be provided to persons who do not correspond to these criteria, however for humanitarian reasons they cannot be expelled from the country. Temporary asylum provides a very limited range of rights and is granted once for a period of up to one year (with the possibility of extension).

Usually persons who are seeking asylum initially submit an asylum application, and later, having been refused, they submit an application for temporary asylum. However, neither the Law On Refugees nor any other regulations limit foreign citizens in their right to independently choose the type of asylum they wish to apply for.

Regardless, there are known cases where MS employees have forced persons seeking asylum to opt out of applying for asylum, and to first submit temporary asylum applications.

In February 2014 Sh. A. D., a citizen of Afghanistan, was invited to the Moscow Migration Service after an appeal by the Committee about the denial of access to the procedure because they had a student visa at a higher education institution in Rostov. During an interview an MS employee demanded that the applicant sign an application where it was stated that he did not complete military service, was not a member of PDPA and was not seeking political asylum. He did not wish to sign the application, not understanding what consequences could follow. However the FMS employee began to threaten that if he failed to sign the application, he would be placed in a closed detention centre and deported. He therefore signed the application. He was not given any certificate relating to the interview. He had

no understanding of the situation that had occurred. The Committee sent an appeal to the Russian FMS regarding this situation. From the reply it became clear that the employee of the Moscow MS, having forced Sh. A. D. to sign a statement of abandonment for the request of refugee status, had accepted his temporary asylum application.

When refugees from Syria flooded the territorial authorities of the Russian FMS, their temporary asylum applications were accepted even without informing them of their right to apply for refugee status. The same situation later occurred with refugees from the Ukraine. Meanwhile in some regions of Russia, temporary asylum applications are not accepted before a refugee has taken part in the full asylum procedure. This was the problem, for example, in the Voronezh region until a lawyer of Memorial V. Bityutsky managed to achieve an end to this illegal practice.

Interpreting

As specified in the Regulations, the engagement of an interpreter for participation in the procedure is the responsibility of the Migration Service. However the bodies of the FMS and of the Russian FMS do not always fulfil their responsibility

Recently the number of refugees complaining that they were made by the Moscow FMS to find an interpreter independently almost ceased, however in former years it had been usual practice; only refugees from Afghanistan had few problems in receiving assistance, as there were two Dari interpreters among the staff of the Moscow MS refugee department. Refugees from other countries had to search among their Russian speaking compatriots, asking one of them to help to translate at the Migration Service. Currently the Moscow MS invites independent interpreters, however the lack of funding allocated for their services often leads to refugees waiting for months until they are able to organise their reception with the participation of an interpreter.

The Moscow Region MS, in contrast, only uses the services of an interpreting agency employed by the FMS, and do not allow participation in the procedure of interpreters provided by refugees or the NGOs assisting them. As a result even the refugees who have a qualified interpreter able to accompany them, are compelled to wait in a queue for a reception day.

Outside the metropolitan area the scarcity of the interpreting serv-

ices is felt even more severely, not only owing to financial problems, but also due to the lack of interpreters. How, for example, to find an interpreter of Pashto in the Arkhangelsk region if not a single interpreter in the entire region has knowledge of this language? In such cases it is necessary to be content with the services of an unskilled interpreter who speaks the basics of the language of the refugee, or an interpreter of another language which the refugee has a basic spoken knowledge of. In our example it will either be an Afghan who speaks Dari and has some understanding of Pashto, or a native of Tajikistan, as Pashtuns usually speak at least a little bit of Dari.

Using unskilled interpreters leads to the defective reflection of an applicant's story in the case materials. We are aware of cases when the translation was so approximate that it transformed the statement of a refugee almost beyond recognition.

Below we give a list of the most serious contradictions between the biographical facts stated by D. N. M., a citizen of the Republic of Congo, during a consultation at the Committee, and the data contained in the negative decision of the Moscow MS on their asylum application.

		Moscow MS decision, October 2009	Interview with the Civic Assistance Committee
1	Community Involvement	“Was never involved with any NGOs, political, or religious organisations.”	“In 1996 joined the ruling party UPADS (The Pan-African Union for Social Development) and received the equipment and medical supplies from this party for the treatment of military personnel in his clinic”
2	Nature of Prosecution	“During the interview couldn't specify any facts regarding the new Congolese authorities' violence against him.”	In January 2002 police officers searched and vandalised the premises of his clinic. Having found weapons left by the military of the former political regime, they brought D. N. M. in “Camp of July 31” where for 2 weeks he was subjected to daily interrogations with beatings, torture with the deprivation of food, water, and sleep. The fact of the torture is confirmed by the Independent Examination Bureau Versiya.

		Moscow MS decision, October 2009	Interview with the Civic Assistance Committee
3	Motives of Prosecution	After Sassou-Nguesso came to power the new authorities of the country forced him to cooperate with them, however he refused. "Convincing reasons of failure to obey to the new authorities of the country... were not presented".	D. N. M continued to work in the clinic after the military coup, however the police and the secret service began searching for supporters of the former president who were taking active part in the armed struggle against opposition. The reason for the prosecution of D. N. M was for providing military personnel of the former political regime with treatment, and also for storing their weapons in the clinic.
4	Refugee status in other countries.	In February, 2002 he was recognised as a refugee in the territory of the Republic of Benin.	In February 2002 he fled to Benin, and was placed in a UNHCR refugee camp, approaching the UNHCR for refugee status. In July, 2002, without having received a decision, he travelled to Senegal because of the visa-free regime between Congo and Benin, and because he was afraid that if he stayed he would be found. From July 2002 to August 2006 he lived in Senegal, where he was recognised as a refugee by the UNHCR.

Certainly, it is difficult to divide the responsibility for such major distortion of the statement between the interpreter and the FMS employee conducting the interview with D. N. M.. However it is very unlikely that the MS employee could consciously distort the facts reported by the refugee. The most probable cause is gross negligence and the irresponsibility of the refugee-interpreter. They were, at one point, often invited for interpreting to the Moscow MS, and this is not the only example of such contradictions in statements connected with this particular interpreter.

Currently the non-professional interpreters are rarely invited to the Moscow MS, however even the use of professionals by the Migration Service on a constant and regular basis does not always guarantee a high standard of translation. The in-house interpreters of the FMS

Migration Service and the interpreters invited by a translation agency and interested in long term cooperation with the Migration Service are quite often biased: they use various tricks facilitating negative decision making by the MS employees. To a refugee it could be barely noticeable, the shifting of emphasis, the choice of words reducing the level of the dramatic nature of the events that the refugee is reciting, or leading the motivation of their actions to seem more primitive, the casual omission of important details, etc.

S. A. F., a Copt from Egypt, at a consultation with the Committee described the events that forced him to make the decision to flee his country in the following way:

"At the beginning of March 2013 a semi-truck filled with 10-12 people armed with knives and arms approached the house where he lived together with his family. Shouting threats, they began breaking the metal door of his house. Three were breaking the door and the others surrounded the house in a semicircle preventing anyone else from interfering with their intentions. S. A. F. called the police, however nobody arrived to assist. The attackers did not manage to break through the recently installed metal door, and after a while they left."

In the Moscow MS's decision the same episode is presented as follows:

"On one day between 05.03.2013 and 10.03.2013 (approximated as he does not remember the exact day), the people released from prison arrived to the house of S. A. F. and began to threaten that they would take away the applicant's daughter. They left after some time."

According to S. A. F., the interpreter translated large parts of his story with just one phrase. This led to S. A. F. becoming agitated during the interview, so that the employee conducting the interview suggested to him to leave, wash his face, and calm down.

As stated previously, the Regulations require that at the end of the interview, with the help of the interpreter, completed questionnaires are read out loud to the applicant presenting them with the chance to clarify points, and to give each page to the applicant and the interpreter to sign. At the end of each sheet of the application and the questionnaire is typed:

"The interpretation from Russian is made by _____
(Interpreters signature)

The above is an accurate record of my statement _____
(Applicant's signature)".

The issues outlined concerning the standard of the translation could be solved if the requirement of the administrative regulations were fulfilled, meaning if a back translation of all documents was made during the procedure and the applicants were given a chance to make corrections. However in practice the back translation in the Moscow MS and the Moscow Region MS is provided only in the presence of representatives and usually only on their insistence. In other cases, and they are the vast majority, the application and the questionnaire are given to applicants to sign without a back translation taking place.

Mentioned above S. A. F., dissatisfied with the translation, did not wish to sign the questionnaire, however the interpreter instructed, "Sign if you want your case to move ahead. If you don't, then don't sign!" Confused with such words, S. A. F. decided to sign everything.

The same situation with translation is common at the Office of the Federal Migration Service in St. Petersburg and the Leningrad region. According to the lawyer of Memorial O. Tseitlina, the interpreting services are provided by the MS, "however the quality of the translation, even when translated from the English language is very bad; the translation is biased. If the language is rare, an interpreter provided by the applicant may be allowed if he is able to present a diploma. Asylum applications are often not accepted from refugees, who are told that there are no interpreters available. The applicant may have to visit multiple times". The back translation is provided only in the presence of a representative, and at his insistence.

In other regions where the amount of refugees is significantly smaller, a great deal depends on the personal qualities of the MS caseworkers. In the majority of regions the translation is provided by the migration service, however in some regions, for example in Krasnodar, the responsibility is shifted to applicants. The back translation of the materials from interview and the opportunity to make corrections is given in some territorial authorities of the Russian FMS, but not in others.

Filing Documents

According to the Regulations, the documents submitted by an asylum seeker in support of an application are included in "the exhaustive list of the documents necessary for the provision of the State service" for the consideration of asylum and temporary asylum applications, and must be filed (Point 32). **There are no** reasons for refusing to accept these documents (Point 34). Applicants can submit such docu-

ments and materials at the time of application, however also during the consideration period (Point 60). The documents in foreign languages must be translated into Russian (Point 26), however the Regulations do not specify who must organise and pay for the translation.

Usually MS employees ask an applicant what kind of documents they have, and decide themselves which ones should be filed. There are cases when MS employees, in defiance of the regulations, refuse to accept the documents which the applicant or his representatives insist on filing.

In April 2014 L. S. M. , a teacher from Afghanistan, widowed with a small child, presented additional documents to the Moscow MS while her refugee application was still under consideration. She also brought the UNHCR response to the Committee query on the possible danger of persecution in Afghanistan of a woman in the situation of L. S. M. . An FMS caseworker accepted her documents, however refused to accept the UNHCR letter, declaring that it "wasn't necessary". The conversation took place in the presence of a volunteer of the Committee. Nevertheless, in a reply to an appeal by the Committee, the Moscow MS reported that the UNHCR letter was attached to the L. S. M. case and no violation of Regulations were revealed in the actions of the MS employee.

Such incidents do not occur too often however. The translation of documents is a more serious issue. The Migration Service, as a rule, do not undertake to pay for the translation of documents, and refugees usually have no means to cover the costs themselves. Since un-translated documents cannot be filed, in certain cases important documents are not considered while asylum decisions are being made.

For example a Copt, G. Sh. Ya was unable to submit to the Office of the Federal Migration Service in the Saratov region the translation of the documents confirming persecution by radical Islamists, which possibly played a role in a negative decision being made on his case.

Interview Style

Having experienced communications with Migration Service employees, refugees often complain about spiteful, scornful, and even aggressive behaviour from the staff they encountered. The majority of such appeals are regarding the staff of the metropolitan migration services and especially the employees of the Moscow MS. According to O. Tseitlina, a lawyer from St. Petersburg, refugees from the Ukraine complained to her about the hostile attitude of the staff of the

local migration service. Certainly, such behaviour does not promote the creation of trust during an interview thereby allowing an applicant, as it is specified in the UNHCR Handbook, to “put forward his case and fully explain his opinions and feelings”.

In May 2014 N. Prokofieva, a French language interpreter, called the Civic Assistance Committee to inform them that she had witnessed the shocking behaviour of a Moscow MS expert when carrying out an interview with A. B. , a citizen of Cote d’Ivoire. Subsequently A. B. , with the interpreter, came to the Committee and filed an appeal to the Russian FMS where it was specified:

“On 20 May 2014 I addressed the Office of the Federal Migration Service of Russia in Moscow with a temporary asylum application. In the Office of the Federal Migration Service I was not informed of my right to apply for refugee status and of the differences between refugee status and temporary asylum. Without my participation, employees of the Office of the Federal Migration Service in Moscow made the decision that I should submit an application for temporary asylum

My interview was conducted by an employee of the Office of the Federal Migration Service, D. Akhmetov. At the very beginning he told me that he could accept my application, however in a month he would report me to the police and I would be deported. He told me that he might not take this action if I were to refuse to apply for asylum and were to leave the Russian Federation voluntary.

Nevertheless I decided to apply, and D. Akhmetov began conducting the interview. He conducted the interview in a scornful, pejorative, and hostile tone. When I said that I would like to enter a university to study, to place my son in a kindergarten, and to be integrated into Russian society, D. Akhmetov declared that I would never study in Russia, and my child would not go to a kindergarten. When answering Akhmetov’s question regarding the reasons for which I was afraid to return to my country, I answered that my son and I would not be accepted by our community and that we would become outcasts. He replied that was not the reason, for in Russia we would also be excluded.

From time to time D. Akhmetov made offensive remarks. For example, when to his question on how I earned a living I reported that I distributed leaflets, D. Akhmetov replied that men distribute leaflets and women are engaged in an absolutely different kind of activity, implying prostitution. He also stated that he was a boss there, and I was nothing. Proudly he announced that in 5 years of his work in the Office

of the Federal Migration Service no refugee that he had interviewed had received either refugee or temporary asylum.

D. Akhmetov conducted the questionnaire very cursorily, not giving a chance to answer questions in detail. The survey ended unexpectedly. I realized that I had not managed to emphasise the main reason for my departure from Cote d’Ivoire, having mentioned it during the interview only in the most general way (persecution for the violation of traditions). I therefore asked D. Akhmetov to write down that an Uncle had forced me to marry against my will. I agreed to the marriage only for the sake of my mother. However before the wedding, relatives of the fiancé demanded that I was circumcised. I could not agree to that, and therefore left Cote d’Ivoire.

D. Akhmetov said that he would not write down my words regarding the threat of circumcision since I remembered it only at the end, an indication that it was not really important to me. He stated that anyhow as a Muslim himself, he knew that female circumcision definitely was not practiced in Muslim countries, therefore I was lying.”

The Committee forwarded this appeal to the Russian FMS along with a letter demanding it be filed with the A. B. appeal to the case and to consider it in the making of a decision regarding her temporary asylum application. The letter also demanded that apologies were offered to A. B. , and that other refugees were protected from the violation of their rights, and from the insults of D. Akhmetov in the future. In reply to this appeal the Russian FMS informed that A. B. was refused temporary asylum and “no proof of violation of the law were established in the actions of the employee conducting the interview”.

Of course, such attitude when communicating with refugees is not common to all Moscow MS employees, or to the staff of other migration services. Regardless, the possibility of such behaviour, even in the presence of a witness, and the connivance of the management of the Moscow MS and the Russian FMS, is quite significant.

Confidentiality

The requirement of the observance of confidentiality during the asylum procedure contained in the UNHCR Handbook is not formulated in the Law On Refugees, or in related bylaws. However in 2006 Federal Law No. 152 “On Personal Data” was issued and Article 7 forbids the disclosure of personal data without the consent of their subject. A rule concerning the personal information of refugees and persons who are seeking asylum is not present in the law. Personal data

obtained in the course of the asylum procedure apparently has to be referred to as “special categories of personal information”. These are data “concerning racial, national identity, political views, religious or philosophical beliefs, health status, personal life” where processing is forbidden, except in the cases stipulated by the law. The provision of Paragraph 6 of Part 2 of Article 10 obviously is related to asylum seekers: “personal data processing is necessary in connection with the administration of justice”.

Part 1, Article 19 of the Federal Law “Personal Data” demands the handler of personal information “to take necessary legal, organisational and technical measures including the use of encrypting (ciphering), to protect personal data from unlawful or accidental access, destruction, modification, blocking, copying, distribution of personal data, also from other unlawful actions in relation to personal data”.

The handler of a refugee’s personal data is the Russian FMS and its territorial authorities, therefore they have to take measures provided by the law for the protection of personal data and protection from disclosure without the consent of the subjects of the personal data, that is of the asylum seekers, recognised refugees, or temporary status holders, and also those who were refused or lost both temporary asylum or refugee status.

In the Moscow MS the confidentiality requirement during the asylum procedure was never taken seriously. Until recently one large room was used to carry out interviews. Interviews with 3 or 4 people could be conducted in the room at the same time. Apparently in 2013, due to criticism from the UNHCR and NGOs, this room was divided into smaller compartments by screens. The screens however do not reach the ceiling, so now people in different compartments are unable to see each other, but nothing prevents them from hearing other voices.

In the Moscow Region MS there are no special interview rooms, they are therefore carried out in rather small work rooms occupied by two employees. Usually one of them conducts an interview, and the other becomes an involuntary witness. Carrying out two simultaneous interviews at the Moscow Region MS in one room at the same time was never observed.

According to the poll conducted with lawyers of Memorial working with refugees in other regions of Russia, in many territorial authorities of the Russian FMS, confidentiality requirements during asylum procedures are not usually observed.

An interesting message arrived from lawyer, O. Tseitlina. Accord-

ing to her data, when carrying out interviews with some refugees of the Ukraine in the Migration Service of St.-Petersburg and the Leningrad region, unknown and out of uniform people were present there without the consent of the applicants.

As for refugees’ personal data confidentiality, concerning data which is stored in their personal records in the Moscow MS, there are good grounds for believing that some employees of this service in defiance of the requirements of Article 7 of the Law On Personal Data, transfer refugees’ data to strangers without their consent.

In 2012 a member of Public Chamber, G. Fedorov, brought accusations against the Chairman of the Committee S. A. Gannushkina to the internet. He declared that the organisation “carries out the legal protection of criminals from the countries of Africa and Asia”. In addition he provided data on several persons which he could only have received from their personal records which had been stored in the Office of the Russian FMS in Moscow.

In May 2013 YU. O. S, a citizen of Sudan, addressed the Committee extremely concerned. He had submitted his asylum application to the Moscow MS the previous day. Later the same day he had received a call on his mobile phone from an unknown person, speaking a Sudanese dialect of the Arabic language. The person called Yu. O. S. by name and tried to confirm his identity. Yu. O. S. did not expect this and answered in the affirmative. The caller informed Yu. O. S. that he knew he had just applied for refugee status in the Russian Federation. Yu. O. S. understood that the caller was from the Embassy of Sudan, by the use of certain words. Yu. O. S. became scared and began to deny everything, however his interlocutor claimed he was lying. Subsequently Yu.O.S. switched off his mobile phone. In his opinion nobody except for the MS interpreter who took part in his interview, could have reported the submission of his asylum application to a third party, and released his phone number.

Admission of representatives

The Law On Refugees provides the possibility to apply for asylum both in person, and “through an authorised representative” (Part 1 Article 4). The possibility of the participation of representatives in the asylum procedure **not instead of**, but **together** with a refugee is not discussed in the law, or in the regulations. However, if a representative can submit the application **in the place of** an applicant, that means, he should be able to participate in the asylum procedure **together** with

him, as the right to submit an application in the absence of the applicant is a power of a higher level than the right to participate in the procedure together with the applicant.

The Russian FMS never denied the rights of asylum seekers to have representatives to participate together with them in procedure. However the position of the Russian FMS states that the role of a representative throughout the course of the asylum procedure must be limited to a mere presence; they should not ask the MS expert conducting the interview any questions, and should not make any comments. It is not clear where such guidelines come from, as the scope of the powers of the representative should be determined by the principal, in this case the applicant, not by the Russian FMS.

Despite such restrictions regarding the representatives' role, their participation is certainly usually, though not always, helpful, in the way that it guarantees observance of the law by MS employees, and in the case of any violations allows these violations to be recorded promptly and in full, and for a response to be received. Extortion is impossible and deportation attempts are improbable in the presence of representatives. For this reason the presence of a representative is always perceived negatively by the Migration Services, with vaguely guarded hidden irritation.

For a long time staff of the refugee department of the Moscow MS resisted the admission of representatives, except for lawyers with a warrant. In recent years such resistance managed to be overcome, and now non-lawyer representatives are allowed to participate in the procedure without great difficulties, with a simple letter of procurator. In the Moscow Region MS issues concerning the admission of representatives arise more frequently.

In other regions, according to information provided by lawyers of Memorial, there is a different situation regarding the admission of representatives. In St. Petersburg it is possible to be present during an interview only with the permission of the Head of the Migration Service and only for lawyers with a warrant or for other persons with power of attorney, that refugees without documents are not able to provide. In Volgograd the migration service recently ceased to allow participation in the procedure even to lawyers with a warrant, and appeals to the Prosecutor's office and court yielded no result. In Kaluga representatives are rarely allowed, in Bryansk they are not allowed at all. There are no problems recorded regarding the admission of representatives in Krasnodar, Orenburg, Stavropol, Penza, Samara, Saratov, Tambov and Vladivostok.

3.3. Decisions

According to Part 4, Article 7 of the Law On Refugees the decision for the recognition of the status of a refugee shall be given to a refugee within three days of the moment from which the decision was made. The Law mentions nothing concerning the issue of decisions regarding the refusal of recognition as a refugee, or positive or negative decisions for granting temporary asylum. The Russian Government Resolution No. 274 of 9 April 2001 governing the order for granting temporary asylum, also does not contain any instructions in this respect.

This gap is filled by Point 122 of the Regulations, which requires to deliver by hand or post by mail a copy of positive decisions to applicants within three working days. Points 90, 99, and 126 require the issuing of copies, of the decision for refusal to examine the asylum application on the merit, on refusal of refugee status, and on refusal to grant temporary asylum, and to persons who had reported their intention to appeal against these decisions by addressing the territorial authorities of the Russian FMS.

However in practice positive decisions aren't usually issued. Once the Head of the Refugee Department of the Nationality Office of the Russian FMS, V. K. Rucheykov, speaking at a seminar for lawyers of the Migration Rights Network of Memorial, explained that positive decisions can be distributed among refugees and used by them as an example for future asylum application. For this reason the Russian FMS consciously violates the requirements of the Law. In addition, the persons who received refugee status or temporary asylum status and are of course satisfied with such a decision, never insist on obtaining a copy of the texts surrounding decisions; appeals on the refusal to issue positive decisions never occur.

The only issue relevant to refugees is obtaining copies regarding a negative decision. After a continuous struggle such decisions began to now be issued in Moscow and the Moscow region in more recent years. There are still cases of refusals, however they are rare. In other regions the situation regarding the issue of copies for negative decisions is different. We will talk about it in more details in the chapter "The right to appeal".

As a result we have no copies of positive decisions at our disposal, however we have plenty of negative ones. The staff of the Committee and the lawyers of the Moscow centre of the Migration Rights

Network operating a reception centre at the premises of the Committee, assist refugees in appealing against more than 100 refusals for recognition as a refugee and for granting temporary asylum annually. In preparation of this report 122 asylum decisions of the territorial authorities of the Russian FMS were analysed, including: 90 decisions of the Office of the Federal Migration Service of Russia in Moscow, 17 decisions of the Office of the Federal Migration Service of Russia in the Moscow region, and 15 decisions from other regions in Russia. The majority of decisions relate to 2014, but some decisions from previous years and of 2015 were also used.

The territorial authorities of the Russian FMS issue seven types of asylum decisions:

- regarding the issue of a certificate on the consideration of the asylum application or on the refusal of the examination of an asylum application on the merit (by the results of the preliminary examination of the asylum application).
- regarding recognition as a refugee or on the refusal of recognising as a refugee in the territory of the Russian Federation.
- regarding the loss of refugee status in the territory of the Russian Federation.
- regarding the deprivation of refugee status in the territory of the Russian Federation.
- regarding the granting or refusal to grant temporary asylum in the territory of the Russian Federation.
- regarding the loss of temporary asylum in the territory of the Russian Federation (option: for refusal for an extension of the term of temporary asylum in the territory of the Russian Federation).
- regarding the deprivation of temporary asylum in the territory of the Russian Federation.

The Law On Refugees does not establish any requirements concerning the structure and the contents of asylum decisions. Such requirements are contained in the Regulations and concern three types of decisions: on issuing the certificate of the examination of an asylum application, or on the refusal for the examination of an asylum application on merit, on recognition or refusal in recognition as a refugee, and on the granting or the refusal to grant temporary asylum. The Regulations do not contain any requirements for the decisions on loss and deprivation of the refugee status and temporary asylum.

The formal requirements of the Regulations are identical for all types of asylum decisions; they have to consist of “introduction, de-

scriptive, analytical, and final (concluding) parts” (Paragraphs 86, 98, 121).

The content requirements differ a little.

The decisions regarding the issuing of the certificate of examination of an asylum application on the merit must contain the results of the preliminary examination of an asylum application. The personal identification of the applicant is carried out, and the existence of any reasons for the refusal of examination of the application on the merit provided by Point 1, Article 5 of the Law On Refugees (Point 83), is checked on the basis of personal interviews, survey materials, replies to requests made to the Ministry of Internal Affairs and the FSB. The decisions to refuse the examination of an asylum application on the merit are quite rare. In 2013-2014 no such decision reached the Committee. In 2012 there were two, both issued by the Moscow MS.

On 4 October D. D. Sh. , an Ivorian, received a refusal for the examination of his application on the merit, on the grounds that on his route to Moscow, during a stopover in Casablanca (Morocco) for half a day, he failed to apply for asylum (the reference to Paragraph 5, Part 1, Article 5: arrival from a foreign state where the person could be recognised as a refugee), and could not provide an address in Moscow (reference to Paragraph 8, Part 1, Article 5: refusal to report personal data).

On 26 November G. M. M a Palestinian refugee who was earlier living in Libya, was refused examination of his application on the merit. Refusal was justified for reasons unknown, by the reference to Paragraph 4, Part 1, Article 5 (existence of the right to stay in a third country) though he had no such right anywhere, and also to Paragraph 6, Part 1 of the same Article (leaving the country not because of persecutions, but for fear of incurring penalties for the illegal departure from its territory, or for the commission of an offense therein).

With the assistance of the Committee both decisions were appealed at the Russian FMS and the decisions were reversed. Considering that the Russian FMS overturns the asylum decisions of the territorial authorities extremely rarely, it is possible to assume that adjudication on the D. D. Sh. and G. M. M. appeals reflect the negative attitude of the Russian FMS to asylum refusals at the stage of preliminary examination, for which only 5 days are provided under the law. Perhaps, such a position of the Russian FMS is a result of constant criticism by the UNHCR of the institute of the preliminary examination of an asylum application, which creates the threat of expulsion of genuine refugees.

Simultaneously in terms of the size of the text of the decision, the country of origin information used, the effort taken, and the quality of the arguments given, both mentioned decisions do not differ from the decisions issued as a result of examination of the asylum applications on the merit, and statements for granting temporary asylum, which we will now examine.

According to the Regulations, positive or negative decisions on asylum applications have to contain the results of the examination of the asylum application on the merit, with the purpose to establish the existence of the circumstances provided by Paragraph 1, Part 1, Article 1, that is the criteria of the definition of the concept “refugee”, and Part 1, Article 2 of the Law On Refugees (category of persons who are not covered by the Law). The decision is made on the basis of a comprehensive study of the reasons and circumstances reported by the applicant, data reliability checks using the materials of the preliminary examination, additional interviews, and country background information (points 83, 95-96).

Decisions on the granting or refusal to grant temporary asylum have to contain the conclusion regarding the existence or absence of the circumstances specified in Part 2, Article 12 of the Law On Refugees (existence of the reasons for refugee status recognition or humanitarian reasons not to expel an applicant from the territory of the Russian Federation) based on a comprehensive study of the reasons and circumstances reported by the refugee, with a reliability check of these data using country of origin information (points 83, 115 - 116).

Thus, requirements to asylum and temporary asylum decisions are almost identical, since during examination of temporary asylum applications it is also necessary to check for the existence of the reasons for refugee status recognition. (Obviously, it needs to be done only when the existence of such reasons is not established during an asylum application examination; that is, in cases where a foreigner applies for temporary asylum right away).

As specified in the Regulations, decisions have to contain an introduction, descriptive, analytical, and concluding parts.

The **introduction** shall include the basic biographical details of the applicant: full name and surname, sometimes a middle name, a birth date and birth place, nationality, ethnic and religious identity, language skills, profession (in some cases), residence in the country of origin, relationship status, information about other family members including their names and surnames, age, location.

Different types of inaccuracies caused by the negligence of an insufficiently qualified decision maker quite often occur at this part of the decision making process.

Sometimes an ethnic origin can be outlined in very general terms according to the country name, for example in the Moscow MS decision of 12 March 2015 regarding the case of a citizen of Sudan, M. M. A., his ethnic origin is noted as “Sudanese”. For a native of a country with such difficult ethnic structure, with such serious interethnic and interracial contradictions, not only is this definition incorrect, but also has the semantic value capable of impacting on the assessment of the validity of the applicant’s fears of falling victim to persecution due to his ethnic and racial identity.

In certain cases religion is indicated in a manner that is too general. For example, in some decisions on Syrian refugees’ applications their religion is simply recorded as “Islam”, without any specifications on the branch of Islam to which the applicant belongs. In one of the decisions analysed in the course of the preparation of this report, the religious affiliation of the applicant was noted not only in a general way, but also incorrectly. For example in the Moscow MS decision regarding Sh. M. M. , a citizen of Iraq, it was specified that he was a Christian although at birth this person belonged to the Mandaeans sect, later converting to Islam, and at the time of the asylum application considered themselves an atheist. One of reasons given for the refusal of refugee status, was that he didn’t produce any evidence that he professes Christianity. Such an error could be a consequence of either the absolute helplessness of an expert who failed to understand a difficult case, or could be mere negligence of his duties.

Sometimes geographical denominations of places are inaccurately specified. For example, in the Moscow Region MS decision of 2 July 2014 on the case of E. M. C. , an Afghan national, a nonexistent city with the name “Kurban” instead of the district Gurband (Gorband, Gkhorband) in the Parwan Province was noted as the place of the applicant’s birth and residence. This, in particular, indicates that the decision maker did not carry out a thorough investigation of the data received from the applicant, did not research the security situation in the region of his residency (which in different provinces, and even districts of Afghanistan varies considerably), and didn’t estimate the risks connected with his return to Afghanistan. This means that he failed to perform his work.

Frequent mistakes are also made regarding the information on applicant's relatives. In many Moscow Region MS decisions, the family structure is not specified at all. For example, information regarding relatives is absent from the negative asylum decision of 22 May 2014 issued to M. N. F. , citizen of Afghanistan despite the fact that this information should have played a major role in the assessment of the applicant's fear to fall victim of persecution in Afghanistan as a single woman.

The descriptive section of the asylum and temporary asylum decisions contains information regarding entry into the Russian Federation (date, route, travel documents), the place of stay in the Russian Federation, legal status in the Russian Federation at the time of application, the date of application and the reasons for seeking asylum in the Russian Federation, and data on previous asylum requests in the Russian Federation and others countries (if applicable). Usually a summary of the circumstances of the applicant's case is also outlined; in some decisions data on the submitted documents is provided.

This part of the decision usually also contains many mistakes, and if the inaccuracies of the introduction were fairly unintentional, nevertheless a biased approach starts to show in the descriptive section, along with negligence and a lack of qualification.

The Moscow MS decisions specify the applicant's address at the time the asylum application is made. Many applicants who do not read in Russian do not know their address and cannot find the accommodation easily from memory. In such cases the decisions made often conclude that an applicant refused to provide their address, giving grounds to suspect his insincerity.

Refugees knowing their Moscow address are often inaccurate when providing the address to the authorities, and sometimes an MS caseworker is inaccurate when writing the address according to the way it is spoken by the applicant. With the assistance of the staff of their regional departments the Moscow MS tries to confirm the whether the persons that applied for asylum genuinely live at the specified address. If the address turns out to be false, or if confirmation of the applicant's accommodation at this address was not possible for any reason, this fact is often interpreted as a conscious lie told by the applicant and is taken into account when a decision is being made regarding their application. It is not taken into consideration that landlords renting to foreigners usually do not wish to admit to FMS employees that foreigners live at their accommodation. They are afraid that it will cause

frequent police visits and punishment for failure to pay rental income tax, or for renting to foreigners without registration.

Therefore, in the Moscow MS decision of 30 June 2014 in a temporary asylum refusal to A. R., a Palestinian from the Gaza Strip, the applicant is accused of "providing obviously false information about the place of his actual stay", on the grounds that the house on Bulatnikovskaya Street which he named, does not exist. In fact, A. R. mentioned Bolotnikovskaya Street, however probably due to his pronunciation the MS caseworker conducting the interview misheard the name of the street, and instead of clarifying this misunderstanding, preferred to accuse the refugee of giving false information.

Sh. R., a Syrian national, lives in Moscow in an apartment which is rented by his brother who has a residence permit in the Russian Federation. During his application to the Moscow MS he stated the address of this apartment. The MS regional department staff members, who were carrying out the investigation, reported to the refugee department that Sh. R. did not reside at the address specified. The reasons for this are unknown; perhaps they just did not find the brothers at home. However in the FMS decision of 15 July 2014 refusing temporary asylum to Sh. R. , it is specified that he had reported false data concerning his address.

The facts of an applicant's case provided in asylum decisions are rarely full and exact. Usually decision makers use various tricks to reduce the gravity and the dramatic nature of the events that were conveyed by the applicant: important facts and details are omitted, the described events are simplified, they are given an insignificant nature or put down to a domestic incident.

In the Moscow MS decision of 8 July 2014 on the refusal to grant temporary asylum to a Sudanese national, A. O. B. , it was mentioned that he had worked for a humanitarian organisation subsequently closed by the authorities. However it was not reported that A. O. B. was the founder of this organisation and that the purpose of the organisation was to provide assistance to a nationality discriminated against, a group that he himself belonged to. Nothing is mentioned in the decision about the first two arrests of A. O. B. , during which he was subjected to beatings and tortures, and was pressured to admit to anti-government plans.

In the MS decision it is merely mentioned that after closing down this organisation A. O. B. started to work in another charity organisation, however nothing is mentioned about the activity of this or-

ganisation, and also that after his escape to a neighbouring country he continued to take part in work for the organisation.. Only the third arrest of A. O. B. is mentioned in the decision, but no circumstances of this arrest are provided. It appears therefore, that the most important facts of the A. O. B. case, were not reflected upon in the decision of the Migration Service, without which it is impossible to estimate the validity of his fears of falling victim to persecution on return to his country of origin..

In the decision of 22 July 2013 of the Office of the Federal Migration Service of Russia in the Saratov region regarding the case of A. S. M. , an Iraqi national, the factual statement is reduced to one phrase: the applicant reported that “his life was threatened for the criticism (distributed by means of the Internet) of the Al Makhdi Army ... and also ... in connection with religious conversion...”. Neither the contents of the applicant’s critical publications, or the attack on him that took place because of this criticism leaving him hospitalised, or the reasons and circumstances of his conversion to another religion are reported.

In the Moscow Region MS decision of 22 May 2014 regarding the case of M. N. F. , an Afghan national, the circumstances of her case were not at all reflected; it is only mentioned that she reported her unwillingness to return to the country because of “an unstable socio-political situation there”. In the decision it is not mentioned that her father was an officer of the Ministry of Defence during the B. Karmal regime, that she took part in the youth pro-communist movement, that as a student she entered the People’s Democratic Party, and that she later worked as a teacher at a women’s school. Nothing is mentioned about when, after the Taliban took over, her and her family were forced to change their place of residence several times to avoid persecutions, and that all her relatives eventually departed to different countries. All these important circumstances were not mentioned and considered during the decision-making. In fact, M. N. F. was refused refugee status without examination and an investigation of the circumstances of her case.

The analytical section of decisions usually begins with a summary of the reasons for granting refugee or temporary asylum. If the granting of refugee status is considered in the decision then Paragraph 1, Part 1, Article 1 of the Law On Refugees is cited:

“A refugee is a person who is not a citizen of the Russian Federation and owing to well-founded fear of being persecuted for reasons of

race, religion, nationality, ethnicity, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return there”.

Sometimes § 42 of the UNHCR Handbook is provided (usually without a reference) “*the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there*”. No traces of the application of this, or other recommendations of the «Handbook» were found in MS decisions.

If the granting of temporary asylum is considered in the decision, then Point 2, Article 12 of the Law on Refugees is cited:

“Temporary asylum may be granted to a foreign national or a stateless person, if they:

1) have the grounds for the recognition as a refugee but restrict themselves to a written application for the granting of the possibility of staying on the territory of the Russian Federation on a temporary basis;

2) have no grounds for the recognition as a refugee due to the circumstances, provided by the Federal Law, but cannot be deported beyond the territory of the Russian Federation on humanitarian grounds.”.

Often instead of, or in addition to this norm, Point 7 of the Russian Federation Government Resolution No. 274 of 9 April 2001 is provided:

“The decision to grant temporary asylum shall be taken in the presence of grounds for recognising the person as a refugee, after verification of data on this person and their family members arriving with them, including the circumstances of their arrival in the territory of the Russian Federation, or humanitarian reasons necessitating this person’s temporary stay in the territory of the Russian Federation (e.g. health status), so long as such reasons exist or the person’s legal status is unchanged”.

In many decisions without any reference it is specified:

“Temporary asylum for humanitarian reasons can be granted due to:

- a serious health condition of the person who is subject to expul-

sion, if the necessary medical care can not be provided in the country of nationality (previous country of residence) where the person is to be expelled, which would put the life of a person in danger;

- real risk to life and freedom owing to hunger, epidemics, natural and man-made emergency situations, or the internal or international conflict covering all the territory of the country of nationality (place of usual residence) where this person is to be expelled;

- real risk to the person to fall victim to tortures and other cruelty, inhuman or degrading treatments and punishment in the case of return to the country of nationality (the former place of usual residence)”

In the Moscow MS decisions regarding humanitarian reasons for granting temporary asylum are formulated in a slightly different way:

“The Office of the Federal Migration Service of Russia in Moscow whilst determining “humanitarian reasons” concerning the persons falling under the protection of the Russian Federation Law On refugees, relies on the following:

- the Russian Federation, assuming obligations in conformity with international treaties, assumed an obligation in the sphere of human rights protection, in particular that a person can't be expelled out of Russia to another state if there is a real threat of torture or extrajudicial imprisonment; or if there are medical grounds officially confirmed by a relevant institution regarding the impossibility of the leaving (expulsion) of a person out of Russia for a certain period of time”.

It seems, the territorial authorities of the Russian FMS declare a different legal approach to granting temporary asylum:

The Moscow MS, unlike other services, do not consider risks to life and freedom due to hunger, epidemics, natural and man-made emergency situations, or internal or international conflict, as the humanitarian reasons. Regarding sick people, threat to life due to the lack of necessary medical care is not a concern for the Moscow Migration Service, only the impossibility of expulsion at certain times due to illness matters.

The application of different criteria by various territorial authorities of the Russian FMS to the definition of “humanitarian reasons” can hardly be considered acceptable; especially if it leads to the discrimination of asylum seekers applying for asylum at the Moscow MS where a narrower set of criteria for granting temporary asylum is applied.

In addition it is hardly acceptable that the decisions lack reference to the documents that establish these criteria for their application affects people's rights.

Since neither the Law On Refugees, or the Government Resolution No. 274 contain such criteria, it is possible to assume that they are established by the departmental order of the Russian FMS. However the Department isn't vested the power of statutory interpretation, therefore the criteria offered by the Russian FMS is nothing more than recommendations, and refusals in granting temporary asylum with reference to these discrepant criteria (and such refusals are the vast majority), can not be considered lawful.

Simultaneously the territorial authorities of the Russian FMS do not consider themselves bound by these criteria and often refuse temporary asylum even when the applicant's circumstances meet the requirements. For example, many refugees from Syria were refused asylum despite the fact that an internal armed conflict was specified, in the same decisions, as one of the reasons for granting temporary asylum.

After stating the requirements for granting refugee and temporary asylum status, an information note from the Ministry of Foreign Affairs/ the Russian FMS, regarding the country of origin of the applicant, is provided in the majority of decisions. Usually it is quite an extensive text that often occupies more than a half of the decision. Any other sources which could help with the analysis of the applicant's case are almost never used, for example UN documents, including the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from specific countries, materials of other international organisations, reports of reputable human rights organisations, and scientific literature.

Simultaneously, rare attempts, that have become known to us, to find other sources of information for consideration of the case, cannot be considered successful. For example in the Moscow Region MS decision of October 4th 2013, on the refusal of temporary asylum to S. Kh. , an Afghan, information from Wikipedia on the traditional code of honor of Pushtuns from Pushtunvali was used to call into question the validity of an ethnic Pushtun applicant's fears that they would become a victim of punishment by the Taliban.

The quality of the background notes of Ministry of Foreign Affairs/ the Russian FMS varies greatly, and depends not only on the qualifications of the specialist, but also on the relations between the Russian

Federation and the country of origin of the applicant, and also on the existence of a sort of request for certain kind of information and allocation of emphasis. According to our observations such requests are absent concerning the countries that produce a small number of asylum seekers in Russia. For example, reports of country information regarding Iraq and Pakistan, provided in the decisions of 2013 to 2014 are rather objective. At the same time the contents of the reports on those countries from which the inflow of asylum seekers is currently large in numbers, significantly present an opportunistic approach.

For many years the main flow of refugees from non-CIS countries arrived to Russia from Afghanistan, and despite all the dramatic changes that are taking place in the country, the only one risk group mentioned in the background information references have been the former members of People's Democratic Party of Afghanistan and the persons connected with B. Karmal and M. Najibullah's governments. The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan that names more than 10 risk groups were not taken into consideration. Only a few years ago the staff of foreign companies, women and persons who converted from Islam to other religious denominations, were added to "ideological communists" on the Ministry of Foreign Affairs/ the Russian FMS background information note on Afghanistan.

Since 2012 Syrian citizens became one of the main groups of asylum seekers in the Russian Federation. At first the Russian FMS did not consider it necessary to grant asylum to Syrians. The territorial authorities of the Russian FMS, refusing Syrians, referred to the fact that "according to the information of the Ministry of Foreign Affairs of Russia, despite a difficult military situation, the Syrian authorities are keeping the current situation in the country under control, and provide the necessary protection to the population from the illegal actions of the armed opposition and foreign mercenaries. In this regard most of the Syrian citizens have no reason to be afraid of illegal persecution or inhumane treatment by the authorities" (quoted from the Moscow FMS decision of December 18th 2012 on the case of S. A.).

At the beginning of 2013, perhaps under the influence of the UNHCR's persistent appeals to impose a moratorium on the expulsion of Syrians, the position of the Russian FMS changed. New, more realistic information on the situation in Syria was distributed among the territorial authorities of Russia and recommendations were made "to consider the current complicated political situation in which the Syr-

ian authorities have no opportunity to effectively protect their citizens from the illegal actions of an armed opposition" (quoted from the Moscow MS decision of March 15th 2013 on the O. A. case). As a consequence, 1191 citizens of Syria were granted temporary asylum during 2013 (compared to only 49 in 2012), and when the territorial authorities initially issued negative decisions, the Russian FMS cancelled these decisions after appeals were made.

In 2014 Syrians once again started coming to the Migration Rights Network centres of Memorial and the Committee drop in centre, with refusals of temporary asylum, however in the first half of the year there were just a few cases. The new short background information note by Ministry of Foreign Affairs/ the Russian FMS stated that "the main problem of the Syrian Arab Republic, is unemployment", however "the UN humanitarian organisations have considerably overrated the scales of humanitarian assistance to Syrians" (quoted according to the Moscow Region MS decision of 17 March 2014 on the case of M. T.). For some time this information appeared in the MS decisions along with more serious references dated November 2013, that with reference to their position, the MFA of Russia characterized the events in Syria as "large-scale internal armed conflict", though the human rights violations of the Syrian authorities were not mentioned (the Moscow MS decision of 15 July 2014 on the Sh. R. case).

From the middle of 2014 other background information notes started to appear in the decisions on Syrian refugees' cases. Most likely it was already impossible to continue to use the note that mentioned unemployment as the main problem of Syria against the background of the ISIS fighters' push followed by mass executions. At the same time the objective picture of events in Syria didn't correspond with the new approach of the Russian FMS to granting asylum to refugees from this country.

In the new background information note, which is still used currently, events in Syria are no longer defined as a large-scale internal armed conflict, but as "a large-scale counter-terrorist operation". The local nature of the armed opposition is emphasized, data on human rights violations, the death toll, information about internally displaced persons and refugees is absent, and at the same time the renewal of the air service between Moscow and Damascus is underlined. Furthermore, the note describes the migratory flow from Syria to the Russian Federation and emphasizes those motives of departure which aren't connected with war and the risk of persecution. Three categories of

Syrian citizens arriving to the Russian Federation are outlined: ordinary citizens believing that it is “quieter and there are also more opportunities to earn money” in Russia, businessmen having business interests in Russia, and descendants of emigrants from the North Caucasus interested in returning to the historical homeland.

The regional geographic information in the MS decision is usually followed by an actual analysis of the applicant’s case. However the issue of whether the persecutions which the applicant was exposed to or is afraid to undergo correspond to the types of persecutions which constitute the concept “refugee”, is almost never tackled. The discussion on the validity of fears is usually substituted by reference to indirect circumstances, for example by the fact that after arrival in Russia the applicant did not immediately apply for asylum, while the reasons for the late application, as a rule, are not mentioned.

In many cases the analysis of the applicant’s case leads to a set of standard phrases in response: “Having comprehensively studied the materials of NN’s personal record, it is possible to conclude that in the territory of Syria / it is possible to put the name of any other country - *author*/ the applicant did not engage in political, religious, military or public activities and had no problems with the authorities of the country of nationality. He was not exposed to criminal persecution. He did not receive personal threats, was not involved in incidents with the application of violence, the applicant did not produce any well-founded fear they would fall victim to torture and other cruel, inhuman or degrading treatment or punishment in the case of returning to the country of origin (the Moscow FMS decision of 7 July 07.2014 on the R. A. case).

This set of phrases, sometimes with small amendments, is copied from decision to decision. It is reproduced even in decisions on cases of refugees who arrived in Russia as minors where phrases about non-participation of the applicant in political, religious, military and public activities appear absolutely ridiculous. For example, such is the decision of the Moscow Region MS of 7 November 2011 on the case of K. A. , who arrived in the Russian Federation from Azerbaijan at the age of 8 years.

Quite often the statements contained in the above mentioned examples contradict the facts of the case including those mentioned in the decision. For example, in the decision already mentioned previously, of the Office of the Federal Migration Service in the Saratov region of 14 June 2014 on the case of a Copt, S. A. F., it is said that he has not

been involved in incidents of violence, though in the same decision an attack on his house by the criminals who had earlier killed his cousin is described.

The set phrases stated above are quite often supplemented by two or three arguments aimed at discrediting the gravity and validity of the applicant’s fears to fall victim of persecution in their country of origin.

Often the arguments for absence of evidence of persecution takes the following form. This circumstance is unambiguously interpreted not in favor of the applicant. The MS experts never act in compliance with the recommendations of the UNHCR Handbook:

“... Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.” (§ 196).

For example, in the decision of the Office of the Federal Migration Service in the Saratov region on 2 June 2015 on refusal to grant temporary asylum to B. K. , a citizen of Uzbekistan, an absence of evidence of persecution is one of two main reasons for a refusal (the second one is the lack of military operations in Uzbekistan). The applicant reported that several times in Uzbekistan he was exposed to illegal detention and tortures for the religious and political convictions imputed to him, and his brothers were arrested for the same reasons. No attempts to estimate reliability of the applicant’s story is made in the decision. Country of origin information, including a quite detailed note from the Russian FMS provided in the decision, isn’t used for this purpose.

A similar situation with the use of country background information by the Ministry of Foreign Affairs / the Russian FMS, is typical for MS decisions in general: it is included in the decisions pro forma and mostly just “is present”, decisions makers cannot or do not consider it necessary to use it in the analysis of the applicant’s case. If the information notes of the Ministry of Foreign Affairs/ the Russian FMS are ignored in such a way, should we find it surprising that FMS case-workers don’t try to use other sources in the decision making process.

If information from the Ministry of Foreign Affairs/ the Russian FMS is nevertheless used, it is done in the most primitive way and generally for the justification of a negative asylum decision.

For example, in many decisions regarding Syrian cases of 2014, after the MFA of Russia background information note on the categories of migrants from Syria, it is specified: "The applicant is subsumed under a category of the citizens of Syria specified in the information of the MFA of Russia". This argument serves as proof that the applicant shall not be granted asylum. At the same time is not taken into account that the note mentions three categories of Syrians who differ in their situations and their reasons for departure. The reasons for allocating a certain applicant to one category or another are also not explained, and explanations as to why representatives of these categories are thought to be able to safely return to Syria are not given.

The existence of documents confirming the circumstances of refugees' cases doesn't significantly increase their chances of obtaining asylum.

Firstly, as it was mentioned previously, not the refugee, but the FMS caseworker makes the decision on which documents shall be filed.

Secondly, the Regulations demand to accept only documents translated into Russian, without obliging the MS to cover translation expenses, and refugees often have no means for this.

Thirdly, in many cases even filed documents with the translation are not analysed in the course of the preparation of decisions and are not taken into account.

For example, E. M. C., a police officer from Afghanistan when applying to the Moscow Region MS accompanied by a lawyer from Memorial, E. Rayeva, submitted some documents confirming his work in the police service, and evidence of persecution by the Taliban. However in the negative asylum decision of 2 July 2014 it was specified that E. M. C. did not present documentary evidence of persecution.

A more unusual case occurred with N. A. B., another Afghan national. He repeatedly applied for asylum in Russia but was refused. In 2013 he received a document from Afghanistan confirming that if he were to return home his life would be in danger. He repeatedly appealed to the Moscow MS with a request to consider his temporary asylum application taking into account the new circumstances of the supporting document.

He was granted temporary asylum, however the year that he applied for an extension he was refused, with the claim that the circum-

stances which had served as the reason for granting temporary asylum had now been eliminated. It transpired that he was granted asylum for medical reasons, although N. A. B. did not complain about his health either in 2013 or in 2014. The fact that he had submitted the document confirming persecution was not even mentioned in the Moscow MS decision of 3 October 2014.

We gain the impression that the provision by an applicant of supporting documents is perceived by MS employees not as an aid, but rather as a disturbance to their work on cases. They choose therefore, either to ignore or to disavow these documents. It seems that this is due to the fact that the documents require additional effort (it is necessary to make sense of the documents, correlate them with the facts of the case, to interpret them) which complicates the task of refusing applications.

The case of A. S. M., an Iraqi, mentioned above was notable for a rare abundance of documents. Some of them the scrupulous refugee had managed to bring with him, others were received at the request of the Committee from the Middle Eastern country by mail. In the Moscow MS decision of 2 April 2012 the decision maker, without having disproved the authenticity of the submitted documents, and without having considered the question of validity of his fears to fall victim to persecution, did not manage to find any other argument for the refusal of refugee status, besides that he was "a professional refugee". A. S. M. applied for temporary asylum with the Office of the Federal Migration Service in the Saratov Region and the same situation occurred: the majority of the documents confirming the validity of his fears were not even mentioned in the decision of 22 July 2013, and the refusal was based on the fact that A. S. M. has a profound experience of applying for asylum.

M. I. M., a young widow from Afghanistan, presented to the Office of the Federal Migration Service of Russia in the Arkhangelsk region, "night letters" from the Taliban with threats made against her because of her unconventional behavior (entering University, participating in an election campaign, training women), and other evidence confirming the validity of her fears of falling victim to persecution. However the MS did not take these documents seriously: without calling their authenticity into question, they came to the conclusion that Taliban letters do not testify to any real threat, and represent only "traditional psychological influence", so on 01 October 2013 they refused to grant her refugee status.

When preparing decisions, especially during the mass inflow of refugees from a certain country, and all with similar reasons for departure from their home country, the territorial authorities of the Russian FMS usually use a template. To a certain extent it is inevitable; however the use of a template should not relieve MS experts of the duty to examine each concrete case. This has however occurred.

When the inflow of Syrian refugees arrived, template decisions on cases of this group of refugees emerged in the territorial authorities of the Russian FMS. A large number of the decisions of these services are at the Committee's disposal. They do not vary in any way except concerning the applicants' biography. Not only the arguments for justifying the refusal for refugee status, but even the formulations of the motives for applying for temporary asylum are the same.

The Moscow MS mostly used the following template.

Reasons for seeking asylum:

"NN justified his application for temporary asylum in the territory of the Russian Federation with the impossibility of returning to Syria, due to the military operations in the territory of Syria".

Justification of the refusal (directly after the note from the Ministry of Foreign Affairs):

"The analysis of NN's personal records showed that in the territory of Syria the applicant was not engaged in political, religious, public or military activity, did not have any problems with the authorities of the country of nationality, and was not exposed to criminal persecutions.

The applicant arrived in the Russian Federation seeking better social and economic conditions. N is illegally staying in the territory of the Russian Federation. In addition, N submitted misleading information on their stay in the territory of the Russian Federation. After obtaining the certificate confirming examination of an application for temporary asylum he did not register with the migration service, thereby violating the law "About migratory registration of foreign citizens and stateless persons in the Russian Federation"

According to the Constitution of the Russian Federation Point 3, Article 62, "Foreign nationals and stateless persons shall enjoy in the Russian Federation the rights and bear the obligations of the citizens of the Russian Federation, except for cases envisaged by federal law or international agreement of the Russian Federation".

Considering that the applicant works in Moscow, it is possible to assume that the applicant wishes to be granted temporary asylum in the territory of the Russian Federation only for the legalisation of their

situation and the registration of the documents necessary to further engage in labour activities in Russia.

NN wishes to be granted temporary asylum in the territory of the Russian Federation only for the purpose of lawful residence in the territory of the Russian Federation. It should be noted that if the applicant wishes to legalise their situation in the Russian Federation they should resolve the matter in other ways according to Russian legislation, regulating a legal status of foreign nationals and stateless persons in the territory of the Russian Federation.

Therefore, proceeding from the circumstances stated above, we do not find that concerning the applicant, there are humanitarian reasons that require granting him the opportunity to stay temporarily in the territory of the Russian Federation."

Among the decisions analysed in preparation of the report, 11 decisions with this text were revealed:

1. Decision on Sh. Kh. M. , case of 23.06.2014
2. Decision on Kh. Kh. , case of 21.07.2014
3. Decision on A. M. , case of 28.07.2014
4. Decision on K. Z. , case of 14.08.2014
5. Decision on A. Kh. , case of 19.08.2014
6. Decision on A. M. , case of 19.08.2014
7. Decision on A. Z. , case of 26.08.2014
8. Decision on Sh. M. B. case of 28.08.2014
9. Decision on A. B. , case of 08.10.2014
10. Decision on Kh. K. , case of 18.11.2014
11. Decision on A. Y. , Case of 25.11.2014

The situations of all these people vary. The majority are from Aleppo, but some are from other places (Damascus, Homs, Kamyshla). Most are Arabs, but some are Kurds. Most are men, but there is also a woman among the list. Most are young people, but there are also elderly. Some people's families stayed in Syria or ran to neighbouring countries; some lost communication with their relatives, others came to Russia together with families. The diversity goes beyond that. Some people's relatives serve in the Government army; others applicants' families are at war on the side of the opposition. Some lived in the areas controlled by the government, others in the area under opposition. According to the UN-HCR, now even just one connection with just one of the warring parties is enough to fall victim to persecution from an opposing party.

Regardless, neither the common danger connected with the military operations, nor the risk of individual persecution is analysed in

these decisions. That is, the question of the validity of fears of falling victim to persecution, or the existence of humanitarian reasons isn't actually considered, but is substituted with arguments which are not related to the case, but are just general issues relating to an applicant's stay in the Russian Federation. (These arguments are also extremely weak: we have already talked about so-called "false data" regarding the Moscow residency address; the responsibility of a foreign citizen for migration registration is not provided by law, and the desire to legally work and live in the Russian Federation does not contradict the desire to be granted asylum).

In the Moscow Region MS another template was used for negative decisions to refugees from Syria.

"During the survey N specified that he do not wish to return to his country of nationality. One of the main reasons is the economic reason, and the military operation happening in the territory of the Syrian Arab Republic. N's statement can be called into question as all the family members of the applicant live in SAR and are not leaving the country for anywhere else. This makes it possible to draw the conclusion that he would not be exposed to a greater danger, than all his family members. On inquiry to the Information Centre of the Database of the Chief of the Internal Affairs General Administration in the Moscow region, the centre replied that it has no data of interest to the migratory bodies, that allows us to assume that the authorities of the Syrian Arab Republic did not place the applicant on the international wanted list. This fact allows us to doubt that the applicant has escaped from possible persecution by the authorities of the Syrian Arab Republic". A short note, not from the Russian FMS, stating that the main problem in Syria is unemployment follows:

"The fact that in the territory of the Syrian Arab Republic N was not involved in incidents with the application of violence, was not exposed to criminal prosecution, is not searched for by police, allows us to assume that if the applicant returns to his country of origin. He would not fall victim to persecution on the basis of race, religion, nationality, belonging to a certain social group or for his political beliefs." / ... /

The fact that the financial situation of the applicant in the country of origin was difficult, allows us to assume that N has left the country due to the difficult economic situation, and that is not a reason for granting temporary asylum in the territory of the Russian Federation.

It should also be noted that N did not leave the territory of the Rus-

sian Federation upon the expiration of his visa, which is a violation of Federal Law No. 109 of 18 July 2006 On Migration Registration.

It is possible with a sufficient degree of probability to assume that N applied to the Office of the Moscow Region MS with the aim of legalising his situation in the Russian Federation, to gaining the opportunity to work, and in this case he should resolve the matter in other ways according to Russian legislation regulating the legal status of foreign nationals and stateless persons in the territory of the Russian Federation.

Following the above, there are no reasons for granting temporary asylum to the applicant in the territory of the Russian Federation. No obstacles for the applicants return home exist".

At our disposal are 5 decisions of the Office of the Federal Migration Service of Russia in the Moscow region containing such text:

1. Decision on M. T. , case of 17.03.2014,
2. Decision on E. Y. , case of 21.04.2014,
3. Decision on A. A. A. , case of 18.06.2014,
4. Decision on M. M. , case of 08.07.2014,
5. Decision on D. M. , case of 09.07.2014.

It is also common that the text provided in the Moscow Region MS decisions are preceded by the above mentioned list of reasons for granting temporary asylum, and an internal armed conflict is also listed. However, as we can see, there is no attempt to apply this reason or to justify the impossibility of its application in relation to these applicants.

The peculiarity of this template are the references to safe living conditions of the applicant's family and "low" financial situation of an applicant from Syria. Without knowing that this is a template it could pass as the real details of an individual case. In fact when submitting the asylum application to the Moscow MS none of the five applicants were asked about the situation of their relatives in Syria or about their financial situation before departure to the Russian Federation.

The situation is enhanced by the statement that, an applicant broke the law "On Migration Registration" by not leaving the Russian Federation upon expiration of a valid visa: in fact it is a violation of Article 25 of the Federal Law No. 114-FZ "On the Procedures for Exiting and Entering the Russian Federation" of 15 August 1996.

Refusals to grant temporary asylum decisions issued by the Office of the Federal Migration Service of the Republic of Dagestan to Syrian citizens also contain the same text. Refusals are explained by

the lack of characteristics composing the concept “refugee” and that according to the Office of the Federal Migration Service, temporary asylum refugee status can be provided only to those who might be threatened by tortures or extrajudicial imprisonment in a home country. At the same time, the decisions do not provide any evidence that such threats to applicants do not exist are absent. The country of origin information note relevant to the applicant’s case isn’t used. Such text is discovered in the decision of 30 January 30, 2014 on the case of Sh. O. and R. N., spouses with children of born in 2006 and 2008 year of birth (their third child born in the Russian Federation in November 2013 isn’t mentioned in the decision), in the decision on Kh. A.’s case of 12 March 12, 2014 and in the decision on Sh. S.’s case of 9 April 9, 2014.

It would also be important to pay close attention to one of the reasons for denying asylum to Syrian refugees that is outlined in the decisions of the Moscow MS and the Moscow Region MS. More specifically the argument that since asylum seeker’s relatives live in Syria the applicant can return there as well because he won’t be in greater danger than the members of his family. Recently this argument became very popular with the Russian FMS system: it also appears in decisions of other territorial authorities and in the decisions of the Russian FMS where they often add: “Difficult living conditions are experienced by the entire country’s population”.

It would be possible to accept this argument if the Russian FMS could say for a fact that the applicant’s relatives living in Syria were in safety, which is unlikely since this concerns Syria where the most bloody of modern armed conflicts is currently taking place and where nobody can feel safe.

In the absence of proved facts, the applicant’s relatives are in safety, this argument means that if the applicant returns to Syria he will be, at least, in the same dangerous situation as his relatives. Refusal of asylum on this basis testifies to negligence to human life, unacceptable in terms of morals and law.

Disrespect for human rights is manifested in many asylum decisions of the bodies of the Russian FMS.

On 28 January 2013 the Moscow Region MS refused to grant asylum to A. Z, a female from a Central Asian country. She applied for asylum because her family was exposed to persecution from law enforcement agencies: her husband was under threat to slander another person and consequently he had fled the country. Constant pressure

was put upon A. Z. to make him return and when she decided to leave and join her husband, she was forbidden to take her children. At the same time no charges were made against A. Z. or her husband, so the authorities did not have any legal basis to prosecute A. Z. and her husband. However the Moscow Region MS didn’t find any violation of the rights of A. Z. and her husband in the actions of the law enforcement agencies.

On 20 December 2011 the Moscow Region MS refused to grant refugee status to Afghan national, M. V. M. a young woman who had to run from her home and country because her father had forced her into an unwanted marriage. The newly minted fiancé had paid a large sum of money to the father and tried to force M. B. M. to quit university under threat. The Moscow Region MS decision maker came to the conclusion that this was a domestic conflict and that the fiancé’s actions, such as the purchase of the woman and deprivation of right for education were not illegal.

The attitude towards the right of refugees to family life and towards children rights varies among different territorial authorities; the Moscow Region MS for example is more condoning than some other migration services. The Moscow MS never considered the presence of a wife and children who are citizens of Russia as a humanitarian reason for granting asylum and by that ignores the Definition of The Constitutional Court of the Russian Federation from 30 September 2010 No. 1317-O-P on the appeal of Zakariya Musa Yassir Moustafaand others about violation of their rights provided by Paragraph 2, Point 2. Article 12 of Federal Law On Refugees. In this definition the Constitutional court specifies that although having temporary asylum isn’t an alternative to the regular order of obtaining a temporary residence permit, under certain circumstances, observance of constitutional rights of citizens of Russia, who are members of the family of a foreign citizen, can be considered as a humanitarian reason for granting him temporary asylum.

P. A. Sh. who used to be an intelligence service employee under the Najibullah government, escaped to Russia after Kabul was captured by the Taliban. In Russia he married a Muscovite, who was Eastern orthodox. They have three children raised as ordinary children in Moscow. A requirement to depart to Afghanistan would be a catastrophe for this family. The UNHCR recognised P. A. Sh. as a person in need of international protection, but the Moscow MS refused to grant him refugee status (due to the lack of documents about his service in

Afghanistan) or temporary asylum.

On 29 September 2014 the Moscow MS refused temporary asylum to D. M. S., Syrian. It was a standard refusal, risk of return to Syria wasn't analyzed, the presence of a wife and one-year-old child who were citizens of Russia, was mentioned but for some reason it was specified that the marriage of D. M. S. was documented despite the fact that he had provided a marriage certificate to the Migration Service, the interests of D. M. S's wife and the child in the event of his return to Syria or departure to Syria with the whole family was not considered.

In general, cases of the Russian FMS bodies treating the rights and interests of children with astonishing indifference are frequent. Out of 122 decisions by the territorial authorities of the Russian FMS analyzed by us in preparation of the report, 21 concern refugees who are in the Russian Federation with children.

1. The decision of the Office of the Federal Migration Service in the Sverdlovsk region of 22 April 2013 on refusal to grant temporary asylum to the citizen of DRC T. G. M. who has a wife and a child born in the year 2007 (it is specified in the decision that the child needs a planned operation, the disease is not life threatening),

2. The decision of the Office of the Federal Migration Service of Russia in the Arkhangelsk region of 01 October 2013 on refusal to recognise a citizen of Afghanistan M. I. M. with 2 children born in 2009 and 2011 (widow, single mother) as a refugee,

3. The decision of the Office of the Federal Migration Service in the Saratov region of 03 October 2013 on the deprivation of the refugee status of the citizen of Egypt A. A. and his two children born in 1998 and 2001,

4. The decision of the Moscow MS of 12 January 2014 on refusal to extend temporary asylum to a Syrian citizen A. YA. and her 2 children born in 2006 and 2008 (in the Russian Federation is with her husband),

5. The decision of the Office of the Federal Migration Service in the Republic of Dagestan of 30 January 2014 on refusal to grant temporary asylum to spouses Sh. O. and R. N. with children born in 2006, 2008, 2013.

6. The decision of the Moscow MS of 18 March 2014 on refusal to grant temporary asylum to T. V., stateless person from Syria with a wife and 2 children born in 1995 and 1998.

7. The decision of the Moscow MS of 20 March 2014 on refusal to

extend temporary asylum to citizen of Afghanistan and her 2 children born in 2006 and 2010 (in the Russian Federation is together with her husband),

8. The decision of the Moscow MS of 16. May 2014 on refusal to grant temporary asylum to citizen of DRC M. N. Sh. and to her 2 children born in 2006 and 2011 (single mother),

9. The decision of the Moscow MS of 03 July 2014 on refusal to grant temporary asylum to citizen of the Ukraine S. I. N. having a wife and a child born in 2007, who are citizens of the Russian Federation,

10. The decision of the Office of the Federal Migration Service in the Saratov region of 14 June 2014 on refusal to grant temporary asylum to citizen of Egypt K. A. D. and to her child born in 2011 (in Russia with her husband),

11. The decision of the Office of the Federal Migration Service in the Saratov region of 16 June 2014 on refusal to grant temporary asylum to citizen of Egypt to X. A. Kh. and her 3 children born in 2006 and 2009 (twins) (in the Russian Federation with a husband),

12. The decision of the Office of the Federal Migration Service in the Tver' region of 26 June 2014 on refusal to grant temporary asylum to citizen of Syria M. A. M. and to her 4 children born in 1998, 2003, 2007 and 2012 (in the Russian Federation with her husband who has a residence permit),

13. The decision of the Moscow MS of 07 July 2014 on refusal to grant temporary asylum to citizen of Syria K. A. having a wife and 3 children at the age of 11, 10 years and 1 year old,

14. The decision of the Moscow MS of 08 July 2014 on refusal to grant temporary asylum to citizen of Ukraine B. A. V. with a wife and child born in 2002,

15. The decision of Moscow MS of 05 August 2014 on refusal to grant temporary asylum to an minor, citizen of Syria S. A. (in the Russian Federation with an elder brother),

16. The decision of the Moscow MS of 29 September 2014 on refusal to grant temporary asylum to D.M.S., having a wife and a child born in 2013, citizens of the Russian Federation,

17. The decision of the Moscow MS of 12 December 2014 on refusal to extend temporary asylum to citizen of Syria A. Sh. R. with a son born in 1998,

18. The decision of the Moscow MS 01 December 2014 on refusal to grant refugee status to L. S. M. citizen of Afghanistan and her daughter born in 2011 (single mother),

19. The decision of the Moscow MS of 24 December 2014 on refusal to extend temporary asylum to citizen of Syria, K.A., his wife and their child born in 2012 who have temporary asylum until 02 April 2015,

20. The decision of Moscow MS of 21 January 2015 on refusal to grant temporary asylum to citizen of Syria, Sh. B. and to his two children of 13 and 12 years (in the Russian Federation with a wife and three children, the youngest is 1 year),

21. The decision of the Office of the Federal Migration Service in the Tver' region of 07 February 2015 on refusal to grant temporary asylum to citizen of Uzbekistan M. F. who has a wife and a child born in 2011, citizens of the Russian Federation.

None of these decisions specifically addressed the consequences of refusing refugee status for children. The exception makes only the decision of the Office of the Federal Migration Service in Sverdlovsk region on the case of T. G. M. where an issue of medical treatment required by the child was raised but the application was denied.

One of the decisions outlines was made concerning a minor refugee from Syria S. A. V who was 16 years old when he arrived in Russia, at the time of applying for asylum he was 17 years of age. The decision on refusal to grant him temporary asylum does not in any way differ from decisions on adult refugee cases, except perhaps that the argumentation is even weaker. The same as in decisions on adults cases it is mentioned that he is «single, has no children». Analysis of his case is reduced to two phrases containing three statements: 1. the applicant didn't report that he could fall victim of persecution or torture in Syria, 2. arrived in the Russian Federation in search of employment and applied for asylum after 1 year, 3. his parents live in Syria, so the applicant could have remained there. Moreover a name and a surname of another person appears in the last phrase of the decision, so it is obvious that text of another decision was used in preparing this decision.

In the negative decision regarding S. A. it is not mentioned that he was a minor or the way in which the procedure was carried out: whether a minor's representative was present, the way his intellectual maturity was established, in particular, whether the young man with 7 classes of education had an understanding of what persecution and torture meant. There are no signs that the UNHCR recommendations on work with minor asylum seekers contained in the "Handbook", and also the UNHCR data on the position of children in Syria (see.

«UNHCR's December 2012 International Protection Considerations with regard to people fleeing the Syrian Arab Republic» § 3) were considered during the decision-making process.

Thus, we have to admit that the Russian FMS ignores the obligations assumed by Russia by signing the Convention on the Rights of the Child. These obligations are as following:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (Part 1, Article 3);

"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties" (Part 1, Article 22).

In 2014 a new problem emerged in the practice of granting asylum in Russia: discrimination. Perhaps, it had existed earlier on a less noticeable scale, but the mass inflow of refugees from southeast areas of Ukraine made it obvious. The Russian Government not only took unprecedented organisational and financial measures to accommodate and assist the Ukrainian refugees, but also greatly simplified the temporary asylum procedure for them, having turned it merely into a registration procedure (Decree of the Government of the Russian Federation No. 690 of 22 July 2014).

At the same time, the approach to granting asylum to refugees from Syria has radically changed. Syrian refugees' reasons for leaving their country are no different from the reasons of residents of Lugansk and Donetsk areas of Ukraine, except they are bigger in gravity. Despite this fact, the bodies of the Russian FMS started to refuse to grant temporary asylum or extend it if it had been provided earlier. Before the Russian FMS used to cancel such decisions after appeal, now they started refusing to do so.

In answer to questions about the reasons for changes in the position in relation to refugees from Syria, the Russian FMS representatives reply that no change has taken place and make reference to statistics. We will provide it here. The Russian FMS data on granting temporary

asylum (TA) to refugees from Syria is presented in table No. 5 (in a number of persons).

Table 5

	Applied for TA	Granted TA	Struck off the register persons having TA	Registered as persons with TA
2012	114	49	1	53
2013	1776	1191	80	1162
2014	1350	1314	438	2021

At a first glance it seems like these data disprove our statement about the change of the Russian FMS position in relation to granting asylum to Syrian refugees. However, the number of persons who were struck off the register (that means lost temporary asylum status or were deprived of it) increased by more than 5 times in comparison with 2013. But the number of Syrians who were granted asylum even increased a little. It was also granted to almost everyone who applied, only 36 people were refused. But this particular figure makes us doubt the reliability of these data of the Russian FMS.

The fact is that the Committee obtained 47 decisions issued by the territorial authorities of the Russian FMS that refused granting temporary asylum to 55 refugees from Syria in 2014. And after all, these were only decisions of the Moscow Migration Services and, certainly, not all such decisions made by the metropolitan services in 2014. Therefore the Russian FMS data on the number of Syrians who applied for temporary asylum in 2014, or data on number of the Syrians who were granted temporary asylum, or both, are doubtful.

Therefore we continue to claim that in 2014 the Russian FMS bodies applied double standards to granting temporary asylum to refugees from Ukraine and Syria who were in a similar situation. This is a direct violation of Article 3 of the 1951 Convention and also Article 19 of the Constitution of the Russian Federation.

The concluding part contains findings with references to the provisions of law which formed the basis for decision-making.

The reasons for refusing application for refugee status on merit are provided in Part 1, Article 5 of the Law On Refugees (grounds for refusing to examine an application on the merit).

The basis for making decisions to recognise or refuse to recognise as a refugee is contained in Point 1, Part 1 of Article 1 of the Law On Refugees (definition of the concept refugee). When rejecting an asylum application reference to Article 2 can be used as well (the list of categories of persons to whom the Law On Refugees doesn't apply).

For decision on granting or refusing temporary asylum links to Provisions of Paragraph 3, Part 1, Article 1 (definition of the concept of "temporary asylum") and Part 2, Article 12 of the Law On Refugees (reasons for granting temporary asylum) can be made.

However in many decisions the conclusions are not drawn from the content of the decision.

Provided in the concluding part findings on the absence of the bases for recognition of an applicant as a refugee or for granting temporary asylum, as a rule, are not logically followed on from a chain of proof and arguments, but exist separately, on their own, unrelated to the contents of the decision. Many decisions are "stuffed" with fragmented pieces of information that are not connected to each other, and sometimes even contradicting each other: applicant's personal data, general reasons for granting refugee status or temporary asylum, country of origin information from the Ministry of Foreign Affairs/ the Russian FMS, a set of standard phrases that the applicant wasn't engaged in political and other activities, information that he didn't register or worked without a permit, etc., that has no relation to the issue of granting asylum. Facts and arguments based on law are substituted by adverse information and indirect evidence, thereby creating a psychological background for refusing an application which doesn't have accurate lawful grounds.

Here is, for example, the decision of the Moscow MS of 12 March 2015 on refusal to recognise citizen of Sudan M. M. A. as a refugee.

After personal information where ethnic and racial origin of the applicant wasn't specified, and information on entry into the Russian Federation, the definition of the concept «refugee» contained in the Law On Refugees is given, followed by circumstances of the case that are extremely incomplete and inaccurate. The facts about the persecutions are reported, but motives of persecution and many important details are incorrect or dropped. Then, brief background information on Sudan is provided where in particular it is mentioned that there are recorded facts of persecution of citizens for political and religious reasons.

It is followed by the standard phrase: "The analysis of a personal data of M. M. A ... revealed, that in the territory of Sudan, he did

not engage in political, religious, military or public activities, had no problems with the authorities of the country/?!/. The facts reported by the applicant could in fact have taken place, however the applicant did not submit any convincing evidence or documents concerning the facts of possible persecution in the territory of Sudan”

Thus, on the one hand, some facts about prosecution of the applicant by the Sudanese authorities are provided in the decision, on the other hand, it is outlined that the applicant had no problems with the authorities. However, on the one hand, the reported data is considered reliable, on the other hand, it is stated that the applicant didn't provide convincing evidence. So what is the outcome, are his fears valid or not and if they are not, then why? The decision gives no answer to these questions that are key in the refugee status determination process.

Then the following arguments are listed in the decision:

- If the threat to the applicant was real, he would apply for asylum in Egypt, but he didn't do it. (The applicant's argument that he was afraid that he would be deported to Sudan, because he had heard of such cases, is not provided in the decision and isn't considered).

- The applicant applied for asylum in the Russian Federation 1.5 years after arrival. (numerous unsuccessful attempts to apply for asylum in the Moscow MS are not mentioned).

- The applicant doesn't work in Moscow, therefore, his application for refugee status is motivated by his desire to be legalized and obtain employment. (The statement is deprived of logic).

- According to the applicant, his relatives in Sudan are not under persecution. (Applicant didn't state anything like that; on the contrary, he reported that his parents are exposed to persecution).

Using such thin arguments the conclusion is drawn that the applicant has no well founded fears to fall victim of persecution according to the criteria contained in Paragraph 1, Point 1, Article 1 of the Law On Refugees.

Sometimes decision makers try to disguise the weak grounds for a decision with a heap of links to the law.

For example, on 4 July 2014 the Moscow MS issued the decision on the request to extend the temporary asylum of Syrian, O. M., The concluding part of the decision made reference to Paragraph 1, Part 5, Article 12 (loss of temporary asylum in connection with elimination of the circumstances which formed the basis for granting temporary asylum), and Point 2, Part 6, Article 12 (deprivation of temporary asylum for reporting false information or producing false documents

that served as the basis for granting temporary asylum to the person, or otherwise violating the provisions of the Law On Refugees), and also Sub paragraph «a» of Paragraph 16 and Sub Paragraph «b» of Paragraph 17 of the Order for Granting Temporary Asylum which contains rules similar to the above-stated provisions of the Law on loss and deprivation.

Elimination of the circumstances which formed the basis for granting temporary asylum to O. M. was proved only by the link to the information note of the Ministry of Foreign Affairs on the situation in Syria: "... According to the above mentioned country of origin information provided by the Russian MFA "the events that [are] taking place in Syria have specific characteristics of a large-scale counter-terrorist operation, but not typical military opposition". The decision provides no explanation of why, in this regard, the circumstances which served as the reason for granting temporary asylum to O.M. have been eliminated.

Apparently being aware of the weakness of such justification, the decision maker decided to refer to the above mentioned definition, Definition of the Constitutional court of the Russian Federation No 1317-O-P of 30 September 2010 which states that the institute of temporary asylum has an extraordinary nature.

Moreover the decision maker added that the applicant violated Paragraph 12 and sub paragraph «b» of Paragraph 14 of the Order for Granting Temporary Asylum. These violations were seen in the fact that O. M. filed an application to extend his temporary asylum not a month in advance, but 3 weeks prior to the termination of its term. A migration registration certificate that he submitted to the Migration Service was pronounced fake in the decision, because the information on this certificate was absent from the database of the Russian FMS. (The conclusion is wrong because information arrives to this database with a great delay, and in any way only an expert can establish the authenticity of the document). Because of these "violations" Paragraph 2, Part 6, Article 12 of the Law On Refugees was mentioned, though neither of them can actually be a reason for temporary asylum deprivation.

In some decisions norms and substandard documents which aren't provided by the Law On Refugees are used to justify asylum refusal.

Thus, on 5 June 2014 the Moscow MS refused to grant temporary asylum to Ukrainian citizen L. O. V. according to Point 1, Article 5 of Federal Law No. 115-FZ of 25 July 2002 On a Legal Status of For-

eign Citizens in the Russian Federation. Certainly it is a unique case, nevertheless, it characterizes the attitude of employees of the Office of the Federal Migration Service towards legal justification of decisions on asylum cases.

Much more often the decisions of the territorial authorities contain remarks that the opinion of the Russian FSB is taken into account while making a decision to refuse recognizing refugee status or to grant temporary asylum.

Thus, in the decision of the Office of the Federal Migration Service on the Arkhangelsk region from 01 October 2013 on the case of citizen of Afghanistan M. I. M as justification of the refusal to recognise as the refugee it is specified that the Office of the FSB in the Arkhangelsk region considers providing refugee status to M. I. M «inappropriate».

On 28 March 2014 in a reply to a request of the Committee, the Office of the Federal Migration Service in the Republic across Dagestan openly stated that citizens of Syria M. Sh. A. and I. M. “were refused temporary asylum on the basis of a letter from the FSB Office of Russia on the Republic of Dagestan”.

Recently reference to FSB opinion began to appear in decisions of the Moscow MS quite often. For example, the concluding part of the decision of 29 January 2015 on the case of citizen of Syria L. A states: “While making the decision it is necessary to consider the position of special agencies of the Russian Federation according to which Syrian citizens are obliged to observe the migratory legislation of the Russian Federation, to obtain migration registration at a place of the actual residence in the residential sector of Moscow (see incoming letter of 12 May 2014 No. 476 restricted)”.

In such statement the content of the FSB letter looks ridiculous as the duty of Syrian citizens, as well as of any other foreign citizens, to obtain a certificate on migration registration is established by the law and doesn't require any confirmation from the FSB. Obviously, the meaning of the FSB letter is not to remind us of this duty, but to instruct that asylum not be granted to citizens of Syria who do not fulfil it. However the law doesn't provide the possibility of refusing asylum due to the lack of a certificate on migration registration, therefore the Russian FMS staff have no right to follow the instructions of the FSB, but not only for this reason.

Point 5, Article 17 of the Federal Law On Refugees assigns certain functions on performance of this law to FSB bodies. In particular, on inquiries of FMS authorities they are obliged to provide information

on persons to whom the provisions of Article 2 or Article 5 of the Law On Refugees apply. However an expression of opinions by FSB agencies on expediency of providing refugee status or temporary asylum to this or that person, as well as the direction to the bodies of the Russian FMS of any instructions concerning asylum isn't provided by the law.

In April, 2014 the Civic Assistance Committee addressed the head of the Russian FMS with a letter concerning violation of the rights of asylum seekers from Syria in Dagestan, in particular it asked to exclude any influence of FSB bodies on the asylum decision-making process which isn't provided by the law. But the Russian FMS did not react to this request in any way. Allowing the illegal intervention of the Russian FSB into the asylum process, the management of the Russian FMS promotes an erosion of the legal bases of this activity.

The typical approach of the attitude of the Russian FMS staff to drafting up texts of motivated decisions is untidiness: actual mistakes, repetitions, contradictions, preservation in the decision on one applicant's case of personal information in another application, all these show that preparation of decisions is a heavy and boring formality for them.

Here, for example, is the decision of the Moscow Region MS of 02. July 2014 on the case of Afghan E. M. S. Mistakes start with the title where it is specified that this is the decision “following the results of examination of the asylum application in the territory of the Russian Federation from the **citizen of Ukraine** E. M. C.”.

In this particular decision the non-existent city of Kurban appears as the applicant's place of residency and the birthplace. Several times in the text of the decision the applicant is mentioned in a feminine gender, for example: «**She** also had an opportunity...».

Therefore we have to admit that the majority of motivated decisions on asylum applications and temporary asylum applications are characterised by extremely poor quality. What is the reason for such a situation?

In our opinion, the reason is not only and not so much the insufficient qualification of FMS territorial authority staff, but the fact that while issuing both negative, and in extremely rare cases positive decisions, employees of the Migration Service are mostly guided not by the law, but by other reasons (orders of the administration, self-interest). The text of the decision is written pro forma, according to a template, without caring about arguments or compliance to the law, because positive or negative outcome of the decision depends not on

how carefully the facts are collected, checked and studied, but on how convincing do the concluding arguments sound in favor of this or that decision.

Conclusions

1. The existing procedure for examining asylum applications is very far from the recommendations formulated in the Handbook on Procedures and Criteria for Determining Refugee Status published by the UNHCR.

2. This procedure doesn't provide asylum seekers with the opportunity to fully state all circumstances of the case and to produce all available evidence. The organisation and style of carrying out interviews, issues with interpreting and participation of representatives interferes with this as well.

3. During the procedure, Russian FMS staff do not seek to collect all relevant facts and do not provide assistance to asylum seekers in assembling evidence; information of Ministry of Foreign Affairs/ the Russian FMS is used almost exclusively for assessment of data presented by an applicant, the UNHCR materials and other credible sources are not used.

4. Asylum applications are studied pro forma and tendentiously, not "in the spirit of justice and understanding" as the UNHCR Handbook requires. Decisions on granting refugee status are made without firm support of the law, and not in the spirit of respect for standards of the 1951 Convention and human rights.

Recommendations

To the Russian FMS

To take serious steps to improve the quality of refugee and temporary asylum' procedure:

1. To oblige the territorial authorities of the Russian FMS to use the UNHCR "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status" in their practical work with asylum seekers,

2. To ensure strict observance by territorial staff of the Administrative Regulations requirements, including obligatory provision of the back translation of case materials before their signing by the applicant, the obligation to accept, file and consider all documents provided by the applicant in support of his application at the choice of the applicant,

3. To exclude violation of the applicants' right to invite representatives to participate in the asylum procedure guaranteed by the Law On Refugees (Part 1 of Article 4),

4. To recommend to the staff of the territorial authorities that they do not only use information notes from the Ministry of Foreign Affairs or the FMS of Russia in their examination of asylum applications, but also other credible materials (UN documents, including the UNHCR, OHCHR UN, International Red Cross, other international and human rights organisations),

5. To demand of staff of territorial authorities to make asylum decisions, being guided only by the 1951 Convention and the Law On Refugees, without allowing for any extraneous instructions and opinions to influence these decisions,

6. To exclude any incorrect behaviour of employees in relation to applicants.

CHAPTER 4. LOSS AND DEPRIVATION OF REFUGEE STATUS

As it was already said, the Law On Refugees provides for the deprivation and removal (loss) of refugee and temporary refugee status. Grounds for loss and deprivation of refugee status are contained in Article 9, while similar rules concerning temporary asylum can be found in Points 5 and 6 of Article 12.

Some of the reasons for loss and deprivation of refugee status and temporary asylum correspond with the 1951 Convention, others do not. We have touched upon that in Chapter 1 of this report. Now let's take a look at how these norms are put into practice.

Statistics

Table No. 6 presents Russian FMS statistical data on the removal of refugees and those granted temporary asylum from registration with the FMS territorial authorities in 2010-2014 compared to data on refugees who received both permanent and temporary asylum whilst registered during the same years.

Table 6

	2010	2011	2012	2013	2014	Total
Were registered as refugees	801	800	763	632	808	
Were recognised as refugees	125	114	94	40	231	604
Removed from registration as refugees	125	134	135	158	76	628
Were registered as granted temporary asylum	3726	3036	2415	2826	217672	

	2010	2011	2012	2013	2014	Total
Were granted as temporary asylum	1040	648	656	1648	225170	229162
Removed from registration as holding temporary asylum	896	1372	1228	1250	9878	14624

Judging by this data, the process for removing refugees and temporary asylum holders from the register is very intensive. The number of persons who lost refugee status annually was either equal to the number of those who were granted refugee status (2010), or exceeded it (2011-2013), except for in 2014 when the situation changed greatly due to the inflow of refugees from Ukraine. In general the number of people who were granted refugee status in 2010-2014 was less, than the number removed from the register. In 2010-2012 the share of refugees who were struck from the register annually was 16% - 16.8% of the number of those who had been registered at the end of previous year. In 2013 the figure reached 20.7%, and in 2014 it fell to 12%.

The number of people who lost their temporary asylum per year was also rather large. From the number of persons still registered at the end of the previous year 26% percent lost their temporary asylum in 2010 while in 2011 this number was 36.8%, was 40.4% in 2012, and 51.7% in 2013. In 2014 there was an unusual occurrence: 9,878 people who held temporary asylum were removed from the register whereas at the end of 2013 there had only been 2,826 people removed. The only possible explanation for this would be that some thousands of people had been granted temporary asylum and lost it within a year. This however is improbable as temporary asylum is only usually granted for 1 year.

Unfortunately, the statistics of the Russian FMS do not provide a breakdown of the number of the refugees removed from the register for different reasons. Therefore we don't know how many people lost the status because they had obtained Russian citizenship, how many received help from their country of origin, how many returned to their country, how many people lost refugee status because the grounds upon which status had been granted to them had ceased to exist. The Russian FMS statistics also fail to specify how many people were deprived of refugee status because they had been convicted of a crime, had been held administratively liable for drug use, or had provided false information on the grounds of which refugee status had been

granted, or due to another violation of the Law On Refugees.

The Russian FMS also fails to provide data on the number of people who lost temporary asylum as the circumstances that had served as grounds for granting temporary asylum ceased to exist (the most popular cause), because they received a residence permit in the Russian Federation, or had returned to their country of origin. Neither do they provide information on how many people were deprived of temporary asylum for the same reasons as those noted regarding refugee status.

The data at our disposal can only shed some light on the process of loss and deprivation of asylum in the Russian Federation.

Loss and deprivation of refugee status

For the first 20 years after publication of the Law On Refugees, refugee status was granted for three years with a possibility of annual extension. Consequently refugees were under constant threat of status loss. Point 9 of Article 7 of the Law On Refugees containing this rule was amended by Law No.186 dated 12.11.2012, and thus since 1 January 2013, when this amendment took effect, refugee status took on a permanent nature. Nevertheless recognised refugees are required to register on a regular basis with the territorial bodies of the Russian FMS as previously. The frequency of this registration did however change a little from once a year to not less than once in one and a half years.

Judging by the data provided by the Russian FMS this innovation didn't result in an initial reduction in the number of refugees struck from the register: in 2013 this number even increased a little (from 135 to 158). But twice less refugees were struck off the register in 2014 than in the previous year (76 people). So far it is difficult to judge whether this is a trend.

However it is possible to tell for sure that the decision on the loss and deprivation of refugee status in many cases, if not always, is taken at the time of registering. All of the decisions known to us were issued as a result of refugees applying to the migration services for registration. This means that this procedure is still perceived by the employees of the migration services to be not purely formal, but as a procedure for extending or not extending refugee status.

In all cases known to us the decisions on loss of refugee status were made on the basis of Paragraph 6 of Part 1 of Article 9 of the Law On Refugees, as the circumstances that had served for grounds for granting refugee status for this person had ceased to exist. It would

be fair to suggest that such decisions deserve more careful justification than just "copy paste" rejections of refugee or temporary refugee status. After all they represent a revision of a decision on recognising somebody as a refugee taken by the migration service itself. Unfortunately, in practice, these decisions do not stand out for either gravity of justification, or respect for previously made positive asylum decisions.

On 3 October 2013 the Office of the Federal Migration Service for the Saratov Region issued a decision on the loss of status for a family of Egyptian Copts consisting of a father and two minor children. The family was granted refugee status in connection with prosecutions on religious grounds. Two arguments were given at the justification: 1) The situation in the country had drastically changed, president Morsi had been displaced, arrests of Muslim Brotherhood organisation members had been carried out in El Minya province, the military control the situation in the country, 2) Perhaps, this family could indeed have suffered from sectarian fighting, but this danger extends to a considerable group of the population of Egypt.

The decision doesn't contain any evidence that the circumstances which had served as grounds for granting refugee status to this family had ceased to exist, since the removal of the president and arrests of his supporters do not at all exclude the preservation of a danger of prosecution on religious grounds coming from non-governmental actors, and the situation in the El Minya province had no connection to a possible safe return for this family as they used to live in another province. Moreover, the Office of the Federal Migration Service for the Saratov Region does not deny at all that this family were in danger but finds it possible to ignore this, including the danger to the children, on the grounds that it relates also to a large number of people.

The striking example of open disrespect for the earlier decision made by the Moscow Region MS dated 1 April, 2014 on the loss of refugee status by an Afghan, F. Y. M. who was recognised as a refugee by the Moscow MS. In the decision occupying only 2 pages the facts of applicant's case were presented briefly and inaccurately and the conclusion was made that since the individual had left Afghanistan as a minor, and had neither been exposed to persecutions from the authorities nor had reported that he feared such prosecutions in future, he did not correspond to the "refugee criteria contained in the Law On Refugees.

The reasons for granting status to F. Y. M. were not specified in the decision, no explanation of why these reasons had ceased to exist at

the time such a decision was taken, regional geographic information was not provided, there were no signs of examination of the applicant's current reasons for which he feared to return to Afghanistan, nor was there any analysis of these fears. In fact this was a very rough and careless decision on refusal of a refugee status, but not a decision on loss of refugee status, despite the illiterate conclusion provided at the end of the decision: *"to lose the refugee status to the citizen of Afghanistan F. Y. M ..."*.

Decisions on refugee status deprivation known to us contain reference to Paragraph 2 of Part 2 of Article 9 of the Law On Refugees:

"A person shall be deprived of the status of a refugee by the federal executive body authorized to exercise the functions of control and supervision in the field of migration or by its territorial body if he has reported false information or produced false documents which have served as a ground for the recognition as a refugee, or has committed a different breach of the present Federal Law".

On 17 April 2014 the Moscow MS deprived H. A. H., a citizen of Afghanistan, and her two children of refugee status for providing false data upon registering and for violating the requirements of Paragraphs 5 and 6 of Part 2, Article 8 of the Law On Refugees requiring her to inform the migration service about a change of residency and to be removed from the migration register when moving to another region. This concerned an absence of H. A. H.'s data on registration in the FMS database and a temporary departure of the family from Moscow to the Moscow region. These reasons appeared enough to subject the refugees family to the risk of expulsion.

Fortunately, after an appeal filed by a lawyer from Memorial, N. Golovanchuk, the Russian FMS cancelled this irresponsible decision, having specified that the information about the place of residency and violation of the rules of stay in the Russian Federation cannot be grounds for depriving an individual of refugee status.

Sometimes decisions on loss or deprivation of status are used to achieve ulterior purposes: for example, as a way of punishing a refugee who is disliked by migration service employees.

One such decision concerned the refugee status deprivation of Afghan, M. N., an employee of the Civic Assistance Committee, that was some kind of act of revenge toward this organisation for constant criticism of the Moscow MS. On 16 September 2013 this territorial body deprived M. N. of the refugee status granted by the same service on the grounds that he had provided false information about his identity

and the circumstances of his arrival in the Russian Federation, and also had concealed criminal record. However M. N. has a passport the authenticity of which had not been called into question, when applying for refugee status he had submitted the documents confirming the circumstances of his case, and had informed the migration service of his criminal record in the presence of a lawyer.

Loss and deprivation of temporary asylum

Apart from single exceptions the decisions on refusal of extension of term of temporary asylum (loss) are justified by Paragraph 1 of Part 5 of Article 12 of the Law On Refugees which says:

"A person loses temporary asylum if the circumstances which served as grounds for granting temporary asylum to him have been removed".

However the fact that the circumstances which formed the basis for granting temporary asylum were eliminated was not proved in any of the 41 decisions on refusal of extension of temporary asylum to citizens of Syria issued by the Moscow MS from 2014-2015 which were analysed in the course of preparing this report. And how could this fact be proved? All Syrians were granted asylum due to the general peril related to the military operations in Syria and these circumstances, as we know, have not only been eliminated, but are constantly being aggravated.

What is the substance of these decisions then in the absence of proof of elimination of the circumstances which formed the basis for granting temporary asylum?

Similar to the decisions on refusal to grant refugee status, the decisions on loss of temporary asylum are written using a single template by both migration services.

Firstly, an information note is provided by the Ministry of Foreign Affairs / the Russian FMS on the situation in Syria. In the majority of the decisions this is a note where the war in Syria is characterized as a large-scale counter-terrorist operation. Then a number of decisions conclude that the situation in Syria has been stabilised, despite the fact that the background information provided in the note by the Ministry of Foreign Affairs / the Russian FMS, does not provide any grounds for such conclusion despite its opportunistic nature.

In some decisions a set of phrases that we have already seen is used: that the person has never been engaged in political, military and so forth activity, had no problems with the authorities, etc. In fact most

Syrian refugees have not been engaged in anything of that kind and had no problems with the authorities. Despite this fact, firstly, this was the case at the time when they were granted temporary asylum and as such this statement can't be proof of elimination of the circumstances which formed grounds for granting temporary asylum. And, secondly, as the UNHCR specifies in the document "International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III" Publication Date, October 2014"⁹ risk of prosecutions exist currently for the most part of Syrian residents irrespective of whether they were engaged in any of the mentioned kinds of activity, and not only government forces are a source of this risk, but also other participants of armed conflict.

In none of the decisions on loss of temporary asylum regarding citizens of Syria available to us the risk of prosecutions was analysed taking either the specific facts of the applicant's case or the UNHCR "Recommendations" into account. Moreover, most Syrians, who brought a decision on refusal of refugee status extension to the Committee were from the cities of Aleppo, Homs, or the Damascus province, that is those places which, according to the note of the Ministry of Foreign Affairs/ the Russian FMS are the main centres of military operations. Relatives of some of them were lost or missing. Among the people who were refused extension of refugee status there are people who would be under threat if returned back because their relatives are at war on the party government side or the opposition. Among them there were representatives of ethnic and religious minorities (Kurds, Druzes, Christians) who risk falling victim of persecution by ISIS fighters. Among them are women and children who, according to the UNHCR, are especially vulnerable in such conditions of conflict. One of the women is suffering from oncology. However none of these circumstances were taken into account or even considered in the decisions on refusal to extend temporary refugee status.

Almost each decision mentions that an applicant's relatives living in Syria "are not exposed to prosecution" and upon return the applicant will be able to approach them for assistance. In the majority of the decisions this assumption has no real grounds and as a rule the migration service does not ask refugees about their relatives in Syria.

In the context of some decisions, such mechanical repetition of the argument about Syrian relatives from decision to decision, sounds ridiculous and cynical. So, in the Moscow FMS decision dated 22

⁹ <http://www.refworld.org.ru/docid/549983214.html>

January 2015 on loss of temporary asylum for a Christian Orthodox A. Ya. from Homs, it is suggested that an aged mother and an unmarried sister could provide help to the young man. Since a resident of Aleppo, A. F., has lost his close relatives, a decision maker at the Moscow FMS found a way around this in a decision dated 19 January 2015 stating that cousins and an uncle could help A. F. upon his return. Apparently, if they were lost as well, the FMS would assign the duty to help to the applicant's second cousins.

After mentioning the relatives remaining in Syria, an argument is provided that the applicant didn't provide evidence that the risk to fall victim to prosecution is higher for him, than "for the rest of the Syrian population". Previously we have already spoken about the immorality and illegality of this argument.

In some decisions the specified arguments are supplemented with data on real and imaginary offences of the applicant which are not related to the matter of extending temporary refugee status: an incorrect address was specified, the person didn't register at the migratory registration, and so on.

In some cases these arguments, against the will of decision makers, showcase violations of the law by FMS' employees.

In the Moscow FMS decision dated 14 November 2014 on the loss of temporary asylum for Sh. M. B. it is specified that the applicant provided the incorrect residential address in Moscow which was revealed after checking. However Sh. M. B had actually never provided this address and never lived there. When at the interview he reported that he worked in the city of Noginsk which is situated near Moscow, he was not asked about his residential address. At the consultation in the Civic Assistance Committee Sh. M.B. explained that in 2013 he was brought to the Moscow FMS by his employer together with a group of Syrian refugees who were working at a private knitting factory in Noginsk.

In 2013 refugees H. H. and T. A. from Syria living in the Moscow region, were also brought to the Moscow FMS office by their employer. As in the case of Sh. M. B., the Moscow FMS failed to inform them that under the law they were required to apply for asylum with the Moscow Region FMS and instead accepted their applications and granted them with temporary asylum for 1 year. They also failed to inform them of their obligation to obtain migratory registration. One year after, in the decisions of 18 November and 12 December 2014 on the refusal to extend temporary asylum they were accused of not

registering after having obtained certificates on temporary asylum and therefore of having violated the law.

While refusing to extend temporary asylum to Syrians and pointing out the possibility of getting help from relatives living in Syria, the metropolitan migration services failed to attach any significance to the existence of close relatives living in Russia.

In this way on 5 December 2014 asylum was lost by A. N., whose husband and three children have temporary asylum and live in Moscow. On 24 December 2014 K. A., whose wife and a small child have temporary refugee status, and whose father is a citizen of the Russian Federation also lost refugee status.

It is obvious that the standard refusals issued to Syrians regarding the extension of their refugee status were a result of a closed decision made by the Russian authorities to end or substantially decrease the numbers of refugees accepted from Syria, and the decisions of the territorial authorities regarding specific cases were to simply formalise this general decision. Therefore the decision makers cared so little about the persuasiveness of their arguments and so bluntly neglected the analysis of concrete circumstances of refugees' cases.

Probably less decisions are made on deprivation of temporary refugee status, than on loss. In 2014 30 decisions on loss of temporary asylum reached the Civic Assistance Committee and the Moscow centre of the Migration Rights Network of Memorial and 4 decisions on refugee status deprivation, plus the above mentioned decision of the Office of the Moscow FMS that refused to extend temporary asylum to O. M.'s Syrian and at the same time was deprived of such status.

If decisions on loss of temporary temporary asylum show a total absence of justification, the decisions on deprivation show meanness and fabrication of reasons which are used to deprive refugees of protection.

All decisions on deprivation of temporary asylum at our disposal are issued by the Moscow FMS and are all based on Paragraph 1 of Part 2 of Article 6 of the Law On Refugees (submission of obviously false data or documents which formed grounds for granting temporary asylum, or other violations of the Law On Refugees).

Spouses S. A. Kh. and Kh. A. who were registered, but not at their place of stay, were deprived of refugee status on 16 May 2014, being accused of submitting false data (it is not clear which data), and for violating the Law On Refugees, by taking residence without registration as details of their registration were not noted in the database of

the Russian FMS. Data appears in this database after a great delay. (Registration was issued after application to the FMS for extension of temporary asylum because earlier they had not been informed about their obligation to register).

Refugee, A. Y. was deprived of temporary asylum on 19 June 2014 for submission of false data on the grounds that he had submitted a document about registration at a market address and information on his registration wasn't present in the FMS database. Despite the fact that registration at an address of an organisation is allowed by law, examination of A. Y.'s registration document wasn't carried out.

O. M. was deprived of temporary asylum by a decision dated 04 July 2014 as his registration document was declared false without being examined just because it wasn't recorded in the database of the Russian FMS.

A. A, a stateless person, was deprived of temporary asylum on 10 December 2014 for the following reasons: he applied for an extension of temporary asylum later than one month in advance of its termination (he had applied before, but was illegally refused to be received until the Civic Assistance Committee sent an appeal to the Russian FMS), reported "obviously false data on his stay in the Russian Federation" (the decision did not specify which data) and didn't get migration registration.

All these decisions evidently contradict the law:

- Paragraph 1 of Part 2 of Article 6 of the Law On Refugees provides for the possibility to deprive a person of refugee status only if they present obviously false data or documents that formed the basis for granting temporary refugee status, but not just any false data;

- the untimely application for extension of temporary asylum isn't a violation of the Law On Refugees since such norm is absent in the law,

- absence of a registration document (the migratory registration), as well as submission of a document that is absent from a database of the Russian FMS, is not a violation either of the Law On Refugees, or the law "On Migratory Registration", the former doesn't oblige foreign citizens and stateless persons to obtain migration registration nor does it carry any punishment (except for some cases that do not relate to refugees).

But the most important part is that these decisions deprive those refugees who were granted refugee status of the protection they were granted on humanitarian grounds, while these grounds still exist at the time of decision-making.

These decisions give the impression that decision makers were looking for the most insignificant reason to deprive Syrians of asylum. Since there are no grounds to believe that MS employees have personal motives against the five refugees named above, it is possible to assume that these decisions, as well as the decisions on loss of temporary asylum are made following instructions given higher up the FMS hierarchy.

Within Moscow migration services there is an illegal means of depriving refugees of temporary status, that is without issuing decisions on loss or deprivation.

On 15 May 2014 K. M., a Syrian citizen, addressed the Moscow MS in relation to the extension of their temporary refugee status. An MS employee told him that everything was all right in Syria at that moment and therefore the extension of temporary asylum was refused, they took away his temporary asylum certificate and gave him a paper to sign where, according to him, it was specified that K. M. had been informed about the refusal. There was no Arabic speaking interpreter present and the conversation took place in the Russian language which K. M. understands poorly. Following the advice of the Committee staff, K.M. submitted a request for a copy of the decision to the Moscow MS. Only after having received this copy, he found out that he had been struck off the migration registration due to his departure home. But K. M. did not plan to return to Syria, especially since he had made a family in Russia. Therefore, if K. M.'s story is authentic, an MS employee deceived him into signing an application to be removed from the migration registry in connection with his departure home.

We are keen to deem the story of K. M. trustworthy as it not the only case of its kind.

The Moscow MS granted temporary asylum to a citizen of Syria, N. A. and her seven children, six of them minors for 1 year. At the end of January 2015 N. A. tried to submit an application to extend their temporary asylum to the Moscow MS but it was not accepted. Therefore at the beginning of March she decided to register in the Moscow Region MS where the family was actually residing, and then to apply for an extension to their temporary asylum with the regional migration service. N. A. sent her two eldest sons of 18 and 16 years to the Moscow MS to remove themselves from the migration register. An interpreter of the Moscow MS, having used the naivety of the young brothers, told them that it would be better to submit applications to

be removed from the registration in connection with their departure to Turkey. Though the family members didn't plan to leave to Turkey at all, they followed the advice of their compatriot and signed the application forms that she had also filled out for them. The Moscow MS issued a decision to remove the members of this family from the registry in connection with their departure to Turkey. With the notice of this decision the family addressed the Moscow Region MS and were obviously denied the registration.

Thus, the family of refugees including 6 minor children, deceived by the interpreter, not only lost their refugee status in Russia, but were also deprived of the possibility to appeal the decision on the refusal to extend temporary asylum as such a decision was not issued.

The practice of illegally depriving refugees of their status by removing them from the migration registry in connection with relocation to another region reached its greatest point in Moscow at the end of 2014 and the beginning of 2015. As it was already mentioned, quite a large number of Syrian refugees living in the Moscow region were for some odd reason granted temporary asylum in the Moscow MS in 2013. In the fall of 2014 rumours that the Moscow service was refusing to extend temporary asylum to Syrians spread among Syrian refugees and on mass they began to submit applications to the Moscow MS of Moscow to be removed from the migration registry in relation to relocation to the Moscow region, where they were actually living all the time.

The majority of them submitted applications closer to the end of the validity of their temporary refugee status. Despite the fact that the procedure for removal from the registry is purely technical, the Moscow MS often delayed this for weeks (and sometimes for months) so when refugees came to the Moscow Region MS with requests to register them and to accept their application for extension of refugee status, very little time was left until the end of their temporary refugee status, or in some cases it had even expired. When the refugees were being removed from the register at the Moscow MS, they, of course, were not warned that the Moscow Region MS would not accept them shortly before the termination of their temporary asylum and especially after its termination.

In fact these refugees were not able to register at the Moscow Region MS at all: they were told that their cases had not yet arrived from the Moscow MS, that it was necessary to apply 2 months prior to the termination of temporary refugee status, or that the temporary asylum

had already expired and sent them back to the Moscow MS. However the first two reasons for refusal to register a person are illegal since, according to the explanation of the Russian FMS, the migratory service is obliged to request refugees' cases itself, and the requirement to be registered in another region some time before the end of term of temporary asylum is not legally established.

Refugees started rushing about between the two migratory services and were refused everywhere. Meanwhile the temporary asylum expired even for those who managed to be removed from the migration registry before their status expired. As a result they were stuck in limbo: without refugee status and without any opportunity to appeal against the decision on loss or deprivation of asylum.

At the end of January 2015 a Syrian, Kh. B. Kh's term of temporary asylum came to an end. He was removed from the register at the Moscow MS at the end of November 2014 and at the end of December he came to the Moscow Region MS to register and to apply for extension of temporary asylum in the territory of the Russian Federation. He was refused with the explanation that his case had not yet arrived to the Moscow Region MS. Not to waste time, Kh. B. Kh. sent a written application for extension of temporary asylum in the territory of the Russian Federation to the head of the Moscow Region MS. In reply he received an invitation to come to the refugee department of the Moscow Region MS. However, when he arrived, his application for extension of temporary asylum was declined again with a reference to the absence of his case at the Moscow Region MS.

M. M., (a Syrian citizen) was granted temporary asylum for a period until the beginning of February 2015. On 15 December 2014 he addressed the Moscow MS requesting that he be removed from the migration register due to his relocation to the Moscow region. The notice of removal from the register at the Moscow MS dated 19 December 2014 was issued to him only on 15 January 2015. With this notice M. M. addressed the Moscow Region MS in order to register and apply for extension of temporary refugee status. His application was declined with an explanation that less than 40 days was left until the temporary asylum expired and he was advised to go to the Moscow MS. But of course he wasn't accepted there after having been removed from the register.

On 26 February 2015 Sh. M. R. received a notice from the Moscow MS, that on 2 February he was removed from the register. When he came to the Moscow Region MS, he was sent back to the Moscow MS

to extend his temporary refugee status, regardless of the fact that his application for extension of temporary asylum was useless after having been removed from the register there.

The practice of illegally depriving a refugee of his status leads to violation of the rights of refugees to access the asylum procedure (for extension of term of temporary refugee status), the right to appeal the decisions on refusal to extend refugee status and to violation of Article 33 of the 1951 Convention.

On 22 April 2015 Syrian citizens I. M. and Kh. Y. A., detained the day before for violation of the rules of stay, were brought to Kuzminsky district court of Moscow. The term of temporary asylum of I. M. ended on 25 February 2015. On 15 January the Moscow MS issued him with a notice of removal from migration register dated 19 December 2014 and he went to the Moscow Region MS to register right away but was not received: instead he was sent to the Moscow MS to extend his temporary asylum their and of course, was refused to be received. Repeated addresses to the Moscow Region MS did not yield any result.

Kh. Y. A. found himself in a similar situation. On 24 December 2014 he was removed from the migration register at the Moscow MS and until 2 February 2015 when his temporary asylum expired, he could not register with the Moscow MS.

The Civic Assistance Committee immediately sent a lawyer, M. Kushpel, to court. He managed to convince the court not to administer punishment in form of expulsion from the Russian Federation to the Syrians, who found themselves in an illegal situation through no fault of their own. However such judgement is a rare piece of luck since Point 3 of Article 18.8 of the Code of Administrative Offences of the Russian Federation provides for a penalty with obligatory expulsion for violation of the rules of stay in the metropolitan region.

We can only assume why the Moscow MS delays the issue of documents regarding the removal of Syrians from the migration register and why the Moscow Region MS illegally refuses to register them. In our opinion, this situation testifies to the seriousness of the problems in these territorial authorities and demands that the Russian FMS establish order therein.

The Committee drew this situation to the attention of the Russian FMS repeatedly and urged them to put an end to the violations of the rights of the Syrian refugees. The Russian FMS responded to these appeals quite evasively: reacted either positively or negatively to the

concrete cases, but concerning the general situation confined themselves to a general explanation that the work of the Moscow FMS was being monitored.

Conclusions:

1. The process of loss and deprivation of asylum in Russia goes on very intensively.
2. Decisions on loss and deprivation of the refugee status are often made without serious justification, without understanding of the high responsibility for the consequences of such decisions that creates a threat to the non-refoulement principle established by Article 33 of the 1951 Convention.
3. Many decisions on loss and deprivation of temporary asylum are standard, they are issued in relation to a group of persons, in fact without individual examination and without any legal basis based on a standard set of secondary circumstances connected with the stay in the Russian Federation and as such are a violation of Article 3 of the 1951 Convention and creates threat of violations of Article 33.
4. The practice of illegal deprivation of refugee status to Syrian refugees which was established in the metropolitan region since the beginning of 2015 leads to a violation of the right for access to the asylum procedure, the right for appeal and threat of violation of the principle of non-refoulement.

Recommendations

To the Russian FMS

1. To oblige the heads of the territorial authorities to make decisions on loss and deprivation of refugee and temporary asylum with extra care and responsibility in order to exclude any violations of Article 33 of the 1951 Convention.
2. To decisively stop and in future to prevent the practice of making decisions on loss/deprivation of temporary asylum without firm legal basis while relying on a standard set of secondary circumstances connected with the stay of refugees in the Russian Federation to exclude violations of Article 33 of the Convention.
3. To decisively stop and in future not to allow the practice of making standard decisions on loss/deprivation of refugee status in relation to whole groups of refugees to exclude violations of Article 3 (non-discrimination) and 33 of the Convention.
4. To take exhaustive measures to prevent practices of extra judi-

cial deprivation of asylum by means of removal from the registration in one region without registering in other region which leads to violation of the right for access to asylum procedure, and of Article 16 (access to courts) and 33 of the Convention:

- to establish a time limit for decision making on removal from the migration register in connection with moving to another region for persons having temporary refugee status,
- to send an instruction to the territorial authorities on inadmissibility of refusals in registration for persons holding temporary refugee status irrespective of the term of its termination, since a refusal to register due to expiration of the validity of temporary asylum isn't provided by law.

CHAPTER 5. RIGHT OF APPEAL

5.1. Legal basis

As previously stated in Chapter 1, the Constitution of the Russian Federation guarantees an equal right to appeal against authorities' decisions and actions (or inaction) for both Russian citizens and citizens of foreign countries. Article 10, Part 2 of the Law On Refugees specifically mentions this right with regard to the decisions and actions of the government agencies and the officers implementing this law. One can appeal administratively (to a higher-standing authority) or judicially. However, the Law On Refugees (Article 10, Part 3) defines the period for appeal differently to Article 256 of the Civil Procedural Code (the CPC):

“The period for filing a complaint shall not exceed:

- one month from the day the person received written notice of the adopted decision, or one month after the filing of a complaint, unless the person has received a written reply to it;
- three months since the day when the person became aware of the refusal to recognise him as a refugee”.

Consequently, Part 2 contradicts Part 1, as receiving a notification is one of the means of becoming aware of a refusal. It is unclear why a refugee who learnt about the refusal from a written notification should be in a less favorable position in terms of the period for appeal than a refugee who learnt about the refusal in any other way (for example through oral communication with a Migration Service officer). It is also unclear how a refugee who does not receive notification in writing can prove the date when the information regarding the refusal was received and therefore exercise their right to appeal within the three months following.

One can suggest that the content of Part 3, Article 10 is a result of the compromise between the attempts of legislators to set a shorter period for appeal whilst not wishing to contradict the CPC provisions. As a result,

the regulation turned out to be unclear and can potentially limit the right to appeal.

Part 4, Article 10 confirms that refugees appealing against the decisions and actions of officials related to the implementation of the Law on Refugees have the rights and duties set out in Articles 6 and 8 of the Law, i.e. the rights and duties they had at the time the decisions being appealed against were made.

The law does not forbid the expelling of refugees whose application for refugee status was denied examination on the merit: Part 1 of Article 10 guarantees non-refoulement of refugees who are applying for refugee status, of those who have received it, those who have been deprived of it, or those who have lost it, if they are still at risk of being persecuted, on the grounds mentioned in the definition of the term *refugee*. Thus, the direct ban on deporting refugees is not unconditional. The law does not specify however how the presence of this condition (the risk of persecution) can be established.

Simultaneously Part 5 of the Article obliges refugees to leave the Russian Federation only upon receipt of the refusal to satisfy their complaint.

Parts 1, 2, 4 and 5 of Article 10 create conditions for refugees to exercise their right to appeal against refusals of refugee status, decisions on deprivation or loss of status to keep their rights, and to have opportunity to stay in the Russian Federation and participate in the appeal procedures personally. However, the realisation of such an important right has to be based on clear direct regulations and cannot depend on a favorable interpretation by law enforcement officials. The ban to expel refugees who are in the process of appeal, should be directly and definitely phrased in the law.

The legal basis for the right to appeal for people who have been denied temporary asylum, have been deprived of it, or have lost it, is significantly poorer. These people are covered by Parts 2, 3 and partly 4 of Article 10, that is:

1. they are given a guarantee for the right to appeal the decisions of the FMS within the time period defined earlier,
2. however, they are not on the list of people whom it is forbidden to deport,
3. only those who were deprived of, or lost temporary asylum, still have the rights and duties defined in Article 6,
4. those who were denied asylum have no rights, since the law does not give any rights to the people who apply for temporary asylum.

Article 12, Part 7 of the Law On Refugees obliges the people, who

have been deprived of temporary asylum (except for those who have been convicted of a crime), or have lost it, to leave the territory of the Russian Federation at the suggestion of the FMS bodies, one month after the decision on deprivation or loss was delivered, and not after an appeal to this decision is rejected. Therefore these people are not supposed to stay in the territory of the Russian Federation during the appeal procedures and do not enjoy any rights.

The law does not contain any instructions regarding whether or not the people who were denied temporary asylum should leave the Russian Federation. However, Paragraph 5 of the Regulations on Granting of Temporary Asylum in the Territory of the Russian Federation approved by Russian Federation Government Resolution No. 274 of 9 April 2001 runs:

“A document or a certificate confirming the consideration of an application for refugee status on the merit, with a stamp confirming the extension of its term of validity, provides grounds to legally stay in the territory of the Russian Federation for the person and their family members, for the period of the consideration of the application for temporary asylum, including the period of appealing against the denial of temporary asylum”.

Hence, the Government views people who appeal against the denial of temporary asylum as legally staying in the Russian Federation and requires the relevant documents be extended for the period of the appeal. However, we are not aware of a single case in which this requirement was met within the last few years.

Thus, the Law On Refugees declares the right to appeal against decisions of refusal, and loss and deprivation of temporary asylum, however its realisation is ensured neither by the guarantee of non-refoulement or by the reservation of rights.

5.2. Creating obstacles against the realisation of the right to appeal

Forwarding persons immediately for deportation upon delivery of the notification on refusal

The lack of non-refoulement guarantees for persons who have been denied temporary asylum, have lost it or have been deprived of

it, leads to sporadic, repeated attempts to expel persons who have been denied temporary asylum or the extension of it, immediately after these decisions have been made, thus violating the right to appeal.

On 30 April 2013 Afghan citizen R. I. S., was detained at the Refugee Department of the Migration Service of Moscow immediately upon receipt of the refusal of temporary asylum. He was then transferred to the Migration Service of the Eastern Administrative District of Moscow where he was told he was a citizen of Pakistan with similar personal data who had not left the Russian Federation after the expiry of his visa at the end of 2008, and for that reason he was brought to administrative liability. Despite R. I. S. objecting to this, and stating that he was a different person, neither the Migration Service nor the Izmaylovsky district court paid any attention to him. The court ruled for his expulsion, with prior placement in the detention centre for foreign citizens (SUVSIG). Firstly, the administration of the SUVSIG did not accept him, due to the mismatching of personal data as it was given in the Izmaylovsky court's verdict, and other documents belonging to R. I. S., including the decision of the Migration Service of Moscow on the denial of temporary asylum. The refugee was then transferred to the Eastern Administrative District MS office, and after all documents contradicting the administrative case were taken away, he was brought once again to the detention centre for foreign citizens, and this time he was accepted without objection.

R. I. S. did not have time to read the decision on denial of temporary asylum before his arrest, and then immediately all his documents were confiscated. Since he did not have the denial decision, and had a poor command of the Russian language, he was unable to independently write a complaint at the Detention Centre for Foreign Citizens. However, while being arrested he managed to contact the Committee and tell them what was happening, before his telephone was then confiscated. The Committee asked lawyer R. Magomedova to represent R. I. S. She appealed against the ruling of expulsion and the denial of temporary refugee status. R. I. S. was unable to participate in the court hearings. The court upheld both decisions, and R. I. S. was expelled to Afghanistan. Thus, the lack of non-refoulement guarantees, led to the fact that R. I. S.'s right to appeal the denial of temporary refugee status was, essentially, violated.

On 24 February 2015 Syrian citizens A. A. Ya. and F. M. M., were invited to the Migration Service of Moscow to receive an answer to their applications on the extension of temporary refugee status. The

officers of the Migration Service of Moscow told them to take their passports, and sign a document confirming the receipt of the passports, without first handing them the decisions regarding their extension requests, or explaining anything further to them. The Syrians were worried, tried to refuse to accept the return of their passports, but were nevertheless forced to do so. The migration officers shouted at them and called for police, at which point the refugees agreed. The police officers took them to the Sokolinaya Gora District office of the FMS and then to the Izmaylovsky district court for the consideration of a case for expulsion. Whilst at the Sokolinaya Gora FMS office, the refugees called the Committee's volunteer and Syrian journalist Muiz Abu Aldjadael. The Committee contacted lawyer I. Vasilyev of Memorial, who was fortunately at the time in the same part of Moscow and therefore managed to participate in the hearing of A. A. Ya. and F. M. M.'s cases in the Izmaylovsky court. Due to the lawyer's participation however, the court refused to consider these cases. The Russian FMS cancelled the decision regarding the loss of status by F. M. M., however turned down A. A. Ya.'s complaint, who will now make an appeal against the FMS decision in court.

In these cases the refugees were able to exercise their right to appeal but only because they were able to contact an NGO and receive timely assistance of a lawyer. These cases do however illustrate the fact that the migration officers act in such a way as to exclude the possibility of an appeal against their decisions. They invite refugees to come to receive the decision at a set time in advance, and by the time of their arrival they have called police officers, they do not give the refugees the copies of the notifications and decisions, or do not allow them to study them in detail, they do not explain the contents of the decision or the right to appeal, and immediately with the help of police officers they send them to the district FMS office to open an administrative case, and following that to court. One could suggest that with such practice only a small number of refugees can receive legal assistance on time and exercise their right to appeal. Many others are expelled without being able to use their right to appeal against the refusal of temporary asylum.

Non-delivery of motivated decisions

An important condition for the realization of the right to appeal is a receipt by a refugee of a motivated decision from the migration service concerning his/her case. As previously mentioned (see Chap-

ter 3), the Law On Refugees obliges the FMS bodies to notify refugees of negative decisions on their applications for refugee status and temporary asylum, however it does not require the issue of copies of motivated decisions. The notifications only contain a reference to the provision of the Law On Refugees on the basis of which the decision was delivered, and does not explain the reasons for the decision. As a result, it is impossible to draft a thorough complaint based only on the basics of the notification.

For many years the provision of copies of motivated decisions constituted a problem, however lately it has lost its relevance, at least in the metropolitan region. Currently, refugees are provided copies of the decisions together with notifications, sometimes even without a request on their part. It is evidently the result of criticism from the UNHCR and NGOs providing support to refugees, as well as of the adoption of the Administrative Regulations. The Regulations directly oblige migration officers to issue copies of refusals for the examination of applications for refugee status on the merit (Paragraph 90), refusals of refugee status (Paragraph 99), refusals of temporary asylum (Paragraph 126), and to applicants who "have informed of their intention to appeal" these decisions. Furthermore, Paragraph 146 obliges migration officers to provide the "information and documents necessary to justify and consider a complaint" to refugees at their request.

In 2014 however problems with the receipt of copies of motivated decisions resumed for refugees. Below we cite only a few examples.

According to the report of a lawyer from Blagoveshensk, L. Tatarts, on 30 January 2014, L. S. H., a North Korean citizen, was told by the FMS department for the Amur region that she was refused temporary asylum. The FMS also refused to provide a copy of a motivated decision. On 5 February 2014 the same FMS department told the lawyer that the North Korean citizen K. Ch. C. whom she represented was denied temporary refugee status, along with another refusal to issue a copy of the decision.

On 28 May 2014 spouses B. P. and S. G., citizens of Uzbekistan with underage children, were given notification of refusal of refugee status in the Migration Service of the Moscow Region. The copies of the decisions were not given to them despite their request.

On 7 July 2014 H. F., a Syrian citizen, was informed of refusal of temporary refugee status at the FMS department for the Tula Region. Neither the notification, nor a copy of the decision were provided.

On 7 August 2014 S. M. R., an Afghan citizen, was given notifi-

cation that he was denied temporary asylum at the Migration Service of Moscow. He requested a copy of the decision, however, migration officers refused without any explanation.

By the end of 2014 the metropolitan migration services had stopped issuing copies of decisions without a written request. This practice contradicts the Regulations requiring the issue of copies of the decisions to refugees who **have informed** of their wish to appeal the decision. It is clear that this can also be done orally.

The requirement to apply for a copy of a decision has definitely made it more difficult for refugees to receive and appeal decisions: they have to ask someone else to write an application in Russian, go to the Migration Service once again, and sometimes for subsequent visits and sometimes waiting in a queue. In the meantime the term for appeal (one month) is diminishing, when time is also needed to draft an application. Not all refugees can manage this task and apply in time, however the Russian FMS refuses to review a complaint even in case of a short delay.

In spring 2014 the Committee and the FMS of Russia exchanged interesting correspondence concerning the non-issue of motivated decisions in Dagestan. On 16 April the Committee sent a lengthy letter to the Russian FMS describing numerous violations of the rights of Syrian refugees in the FMS department of the Republic of Dagestan. The Committee described, for example, a case when refugees M. Sh. A. and I. M. were denied copies of the decisions on the denial of temporary refugee status. The Committee asked that they provide the decisions and calculate the term for appeal to begin with the date when the decisions were finally received.

On 7 May 2014 the Deputy Director of the Citizenship Department, L. D. Arestova, answered the Committee that the absence of copies of the decisions was not a valid excuse for a failure to miss the appeal time, as Syrian citizens could have appealed the MS decisions without copies of the texts.

In its letter of 27 May the Committee continued discussing the issues raised in the first letter sent on 16 April, and drew attention to the fact that L. D. Arestova's reasoning contradicted the regulation's requirement to provide refugees with all the necessary information and documents for the drafting of a complaint.

On 27 June the Russian FMS reacted to this with a short letter stating that the Syrian citizens had not requested copies of decisions from the FMS department for the Republic of Dagestan (although M. Sh. A.

asked for the decisions in the presence of the Committee's volunteer), and no violations were found in the actions of migration officers.

This correspondence illustrates that although the Russian FMS officials included the requirement to issue copies of motivated decisions to refugees in the Regulations, in fact they are not inclined to strictly insist on the fulfilment of this requirement by the officers of regional agencies. It is understandable: the fewer decisions refugees receive the fewer complaints the Russian FMS central offices have to review.

5.3. Administrative appeals to decisions on asylum

As previously mentioned, the Law On Refugees provides for two ways to make an appeal against FMS decisions: administratively by applying to a higher authority, or in court. Appeals against the decisions delivered by territorial bodies are considered by the FMS of Russia. The decisions of the FMS itself can only be appealed against in court. Therefore the texts of negative decisions delivered by the FMS are usually sent to applicants, while the texts of positive decisions are very rarely sent. The Russian FMS usually informs the applicants of positive decisions with a short notification period.

The Committee and the staff of the Migration Rights Network of Memorial regularly provide assistance in appealing the decisions of migration territorial bodies. For instance, from 1 September 2014 to 1 August 2015, 133 complaints were prepared for Syrian citizens alone. As a result, we have a large number of FMS decisions on refugees' complaints, that provide rich data for analysis of the Russian FMS decision making practice with regards to asylum.

First of all, we would like to emphasise the statistics and chronological distribution of positive and negative decisions. Since most complaints were filed by Syrian refugees whose situation is to a large extent similar, the data on Syrian cases is especially illustrative; the FMS delivered 75 negative and 22 positive decisions. It should be noted that 17 positive decisions were made between January and March 2015, 2 between September and December 2014, and 3 between April and June 2015.

Such a significant difference in the number of positive decisions (17 in 2.5 months and 5 in 8 months) shows that the FMS delivers decisions depending on a certain attitude. It is absolutely clear that

from September to December 2014 the FMS officers considered Syrians' complaints in line with one approach, and after the New Year holidays until the end of March 2015 with a different approach, which was again replaced with a new one at the beginning of April (the *2014 attitude*).

The contents of the Russian FMS decisions also testify to the fact that when considering asylum appeals the Russian FMS does not primarily look at the quality of the decision being appealed against or a specific situation of an applicant, and instead is guided by a certain general attitude adopted by the FMS itself, or received from the outside (from the Government? From the FSB?).

The quality of the decisions made by a territorial body does not usually influence the FMS's approach in any way. Neither obvious groundlessness of the decision or its incompetence, is an obstacle for the Russian Federal Migration Service to find it lawful and refuse the complaint.

Let us take as an example decision No. 1466 delivered by the FMS on 3 October 2014 on the complaint regarding the denial of refugee status to an Afghan policeman E. M. S., already discussed in a previous chapter. The FMS decision contains information about the city of Kurban that does not in fact exist. E. M. S. was persecuted because as a result of his professional activities, an influential activist of the Taliban movement (he was named a Governor of the province by the movement), was found and killed. This fact is described in the FMS decision as a domestic conflict which could have been avoided if E. M. S. had moved to a different region of the country. The documents provided by the refugee and the fact that the officials of the Ministry of Interior Affairs of Afghanistan were unable to protect their officer and helped him to leave the country were ignored. Neither the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan (August 2013), nor the information on groups at risk in Afghanistan provided by the Russian Ministry of Foreign Affairs, were taken into account.

The Russian Federal Migration Service confirms obviously incomplete decisions containing unclear legal reasoning or completely lacking legal reasoning. For example, on 3 October 2014 the decisions delivered by the Migration Service of Moscow on the complaints filed by Syrians O. M. and M. M., were found lawful although they were delivered on two conflicting grounds (loss of temporary asylum and deprivation).

On 18 March 2015, the FMS upheld the decision of the FMS department for the Tula region according to which H. F., a Syrian citizen, was denied temporary asylum because he had not taken an obligatory medical examination. The Law on Refugees does not allow the denial of temporary asylum on this basis. The Russian FMS also does not see it as a legal basis for a denial of temporary asylum, as illustrated by FMS decisions on other complaints which mention the fact that the applicant has not had an obligatory medical examination (obviously due to the fault of the Migration Service). In the FMS decision this fact regarding lack of a medical examination is described with complete neutrality, it is not seen as grounds for the cancellation of the FMS decisions (for example see the decisions on A. H. I. and H. K.'s complaints delivered on the same day as the decision on H. F.). Furthermore, as stated in H. F.'s complaint, he had in fact undergone a medical examination, however not in a medical institution that was recognised by the Migration Service, through the fault of the migration officers who did not issue a referral for an examination. The copies of the medical documents were attached to the complaint.

Generally decisions that were made by territorial bodies and are being appealed against are not usually considered, their quality is not evaluated. The conclusion on the validity of the decision is based not on its analysis but on arguments related to the situation of the applicant partly repeating the reasoning of the FMS department, partly adding new facts to it. Thus, a complaint results not in the consideration of the decision of the migration service, but rather in a new consideration of the applicant's asylum application.

However even this new consideration of the case is not usually serious and does not correct the shortcomings of the appealed decision. For instance, persecution risk assessment usually comes down to a standardised phrase in the decisions on Syrian complaints: "The applicant has not provided sufficient data proving that the risk of his persecution is higher than that of the rest of Syria's population. Almost all the population of the country are facing difficulties". Individual risks related to the applicant's ethnicity or religion, place of residence in Syria, involvement of the family members in an armed conflict, or any other circumstances are not analysed. The UNHCR International Protection Considerations with regard to Persons fleeing the Syrian Arab Republic are not taken into account and not even mentioned. Even the information letter of the Russian Foreign Affairs Ministry are used in these decisions selectively and in a biased way.

The greater part of the decisions on the complaints filed by Syrian refugees use only two short excerpts from the information letter issued by the Ministry of Foreign Affairs. It is usually repeated that there are regular flights between Moscow and Damascus, and Syrians who returned or were deported to their home country could move from Damascus to the regions controlled by the government. However there is no information which regions are meant, and if there is a safe way of reaching them. Nothing is said about whether a person can return to this region without the risk of persecution by the government. The risks of returning to Syria for those who lived in the regions controlled by the anti-government forces are not evaluated.

Furthermore, the following excerpt from the information letter on Syria issued by the Russian Ministry of Foreign Affairs is cited:

“Many Syrians want to leave their country **not only** because of the concerns for their own lives but primarily because of a deteriorating economic and humanitarian situation. Many people think that after they arrive in Russia they can expect guaranteed earnings (even for professions that are not valuable on the Russian labor market), free housing, and financial support. In general, this group wants to travel to Russia where “it is safer and one can earn some money”.

Subsequently it is usually concluded that an applicant arrived, or had previously arrived with a business or commercial visa and worked in the Russian Federation, and therefore they “belongs to the group of people described in the information letter of the Russian Ministry of Foreign Affairs”, which is seen as a lawful basis to deny asylum.

The excerpt and the conclusion replace the analysis of risks in the decisions of Syrians’ complaints, therefore we should discuss them in more detail.

It is easy to notice that the Ministry of Foreign Affairs in its information letter does not say that some groups of Syrians leave their country only because of the economic reasons, but that the economic reasons are supplementary to the concerns for their life. So the MFA information letter does not provide any basis to deny asylum for those Syrians who leave their country **not only** because of the concerns for their life, but also seeking means of subsistence that were lost as a result of civil war and economic collapse.

References to the fact that refugees previously, or the last time visited Russia with a business or commercial visa do not cast doubt on their sincere wish to receive asylum as the type of visa describes the goal of their visit to Russia only in the pre-war period. In case of

danger, refugees are allowed to use any means to enter the Russian Federation, including illegal ones which are also discussed in the Law on Refugees.

References to the fact that a refugee “carried out labor activity” before, or at the moment of applying for asylum in the Russian Federation are even more ridiculous. One gets the impression that asylum in our country can only be sought by unemployed refugees or those who do not wish to work.

Nevertheless, the excerpt from the information letter of the Ministry of Foreign Affairs which is often cited in the decisions on Syrians’ complaints gives some (although poor) basis to use when reasoning the denial of asylum. The “economic motive” of asylum seeking is emphasised in the letter by saying that Syrians arrive in Russia driven by groundless hopes to find guaranteed earnings, free housing, and financial support.

Hundreds of Syrians have applied for assistance to the Civic Assistance Committee for the last few years. As quite a significant experience of communicating with them shows, Syrians do hope to find a job in Russia, and in most cases do find it. However, none of them so far have expressed any “groundless hopes” for free housing or financial support provided by the Russian authorities. Some refugees (mostly families with children) were advised by the Committee to apply to the Migration Service to be placed in the Temporary Accommodation Centres, however most of them solve the housing issue by themselves. Being aware of the charity support provided by the Committee, Syrian citizens ask for that kind of support very rarely (and only families with children). Evidently, the fact is that Syrians with quite a vast experience of life in Russia as labor migrants, have a very realistic idea of what they can count on in our country.

Besides the short excerpts from the information letter of the Ministry of Foreign Affairs cited above, the denial is motivated by a standard list of circumstantial arguments.

Without analyzing the existing risks for an applicant on the merit, the authors of these decisions very often try to question the genuineness of the asylum seeker’s application referring to the fact that applicants did not apply immediately for asylum after their arrival. However, the time gap between arrival and the filing of an application (regardless of it being a month or three years) is not taken into account. Decisions do not contain any information on how the applicant explains this delay. Anyhow, this delay is interpreted not in the favor

of refugees; Either “it is not dangerous for them to return to Syria, or they ignore this danger”.

In reality however, the reasons can be different. Firstly, an applicant can become aware of the danger at a later stage. The ability to feel danger depends on the applicant’s personality and also on the information received from relatives and friends who stayed in the homeland. Cultural peculiarities must be taken into account; Like some other ethnicities, Syrians try to avoid telling bad news for as long as possible. Secondly, an applicant might hope that the situation in Syria will improve. These hopes are very typical of refugees’ psychological condition and remain with them for a long time. Thirdly, the situation in the region of applicant’s former residence or their family’s conditions in the home country can become worse during the applicant’s stay in Russia. All these situations happen with “refugees sur place” very often. The officers of the Russian FMS are very well aware of these possibilities, but prefer a negative interpretation of the facts when considering complaints filed by Syrian refugees. Finally, as illustrated in the Chapter “Access to asylum procedure”, an applicant might realize the danger and make numerous attempts to apply for asylum, but not receive access to the procedure.

Other arguments are sometimes used in order to question the genuineness of applications filed by Syrian asylum seekers. For instance, in decision No. 1612 delivered on 20 February 2015 on A. A.’s complaint, doubts arise due to the fact that A. A. left Syria two months after he had received a visa, and because no explanation as to why he left later is given. It is mentioned that during his stay in Russia an invitation for a visa for him was being prepared, i.e. he wanted to leave Russia and then return. However, A. A. did not leave Russia and did not use the invitation. In the FMS decision preparation of an invitation is seen as proof that he does not need asylum in Russia, but the fact he did not use the invitation is not taken into account at all.

In decision No. 1374 delivered by the FMS on 15 May 2014 on the complaint of T. V., a Syrian Palestinian, who arrived in Russia with his wife and two children, the denial is motivated by the fact that he and his family tried to leave Russia illegally and seek asylum in a third country. According to the FMS, this fact means that the applicant does not want to receive asylum in Russia. Such reasoning is however logically and essentially wrong. The applicant applied for asylum in Russia after he unsuccessfully tried to enter a third country, i.e. he did, no doubt, prefer to seek asylum in a third country where refugees are

offered better conditions than in the Russian Federation. However it does not mean that he does not want to receive asylum in Russia, otherwise he would not have applied for it.

Another widespread argument used to turn down refugees’ complaints by both the Russian FMS and territorial bodies is the fact that the applicant’s relatives are residing in the country of origin. This fact is seen as proof of the possibility of safe return and assistance in re-integration. However such an interpretation is possible only if there is credible information on the situation of the applicant’s family in the country of origin and a careful analysis of this information with due consideration of actual experts’ information on the situation in the country regarding human rights’ violations, persecution, and the condition of persecuted people and their families’ members.

Decisions delivered by the FMS of Russia contain none of these details. As previously stated in the Chapter “Quality of procedure”, when interviewed in the regional FMS departments refugees are not usually asked any questions about the situation of their relatives in their country of origin. There is no other way for the FMS agencies to acquire such information. As a result of poor, rare, and sometimes even lost connection or unwillingness of the relatives to worry the refugee with the truth, the refugees themselves often do not have any exact information on the situation of their relatives.

When there is no exact information on a refugee’s relatives safety situation in the country of origin, the fact that relatives still live in their home country should not serve as grounds for the conclusion that a refugee can safely return home. For instance, many Syrians are bound to stay in the country just because they have no means to flee or because it is too dangerous to move within the country. That is the reason why many Syrian families exploit all possible means to help the family member most at risk, and/or the family member who is considered to be important to be saved as a provider who the family depend on for survival.

Finally, the fact that refugee’s relatives are not persecuted does not always mean there is no risk of persecution to the applicant themselves. It depends on the particular case, and the nature of persecution; Some types of persecution do not involve family members or involve only some family members. For example, in many countries with the subordinate status of women, women from the families of persecuted men are not usually persecuted. The FMS experts are certainly well aware of this, but refusing to consider refugees’ complaints carefully,

they must use any, even flawed means to justify their decisions.

In addition to circumstantial reasoning, the FMS decisions often contain arguments that have nothing to do with the issue of providing asylum. They are not even arguments but rather information about administrative offences made by refugees during their stay in Russia: visa violation, work with no permits, failure to draw up migration registration. Not only real, that is to say violations recognised by court, but also alleged offences are mentioned. For instance, decision No. 1489 delivered on 3 October 2014 on the complaint of M. M., a Syrian Kurd, contains the information of his entry to the Russian Federation with a business visa which does not give the right to work. However he worked without such a permit, i.e. violated immigration law. However there is no data regarding M. M.'s administrative penalty therefore the violation is not ascertained.

This kind of data cannot serve as the grounds to deny asylum or to uphold a denial. In view of the absence of essential arguments they are meant to create a “negative background” and facilitate a refusal. Previously these were the methods used only by regional agencies, however for the last few years the Russian FMS began to behave similarly.

As previously stated, the decisions of the Russian FMS on appeals against the refusal of refugee status and asylum do not usually contain any analysis of the appealed decisions of territorial bodies. The applicant's arguments are not cited or considered. Reading some decisions it is possible to gain the impression that the author of the decision has not even read the application.

Thus, decision No. 1533 of 27 November 2014 on the appeal of the Syrian citizen D. M. S. against the refusal of the to grant temporary asylum, does not cite a single argument of the appeal. D. M. S. has a Russian family, a wife and a one-year old daughter. In his complaint he indicated that the decision of the Migration Service of Moscow contradicted the opinion of the Constitutional Court phrased on 30 September 2010 in its conclusion No. 1317-O-P. It states that in the interest of the observance with the constitutional rights of the Russian citizens who are family of a foreign citizen, it can be viewed as a compassionate reason for providing temporary asylum. D. S. M. also mentioned in the complaint that when entering Russia with an invitation from his wife, he was given a three-month visa, which was the reason why his application for a temporary residence permit was not accepted, i.e. he failed to use his right to a family life within Russia

on general grounds. The Russian FMS reacted to this with a single phrase: “The applicant can enter the territory of the Russian Federation in accordance with the established procedure with an invitation from his wife”.

In general the Russian FMS does not consider it necessary to react to the arguments or complaints that the appealed decisions violate human rights, women's rights, and children's rights.

Among the decisions of the Russian FMS analysed when writing this chapter, two were delivered on the complaints of Syrian minors regarding the refusal of temporary asylum by the Moscow Migration Service: decision No. 1482 of 3 October 2014 on the case of 16-year-old H. D. M. and decision No. 1526 of 21 November 2014 on the case of 17-year-old S. A. These decisions do not differ in any way from the decisions on the complaints filed by adult refugees.

The lawfulness of the FMS decision on the refusal of temporary asylum to H. D. M. is supported by the following arguments:

1. The applicant applied for asylum only in order to regularise his stay in the Russian Federation, which can be confirmed by the following:

- the first time he arrived in Russia was in June 2012, when fighting was taking place in Syria, however he did not apply for asylum and left Russia in May 2013,
- he received his second Russian visa in May 2013 and did not leave for Russia immediately, but only two weeks later, and
- he applied for asylum only 11 months after his arrival.

(Remember that at the time of the first visit the applicant was 14, and the second time 15 years old).

2. The applicant committed gross violations of the immigration rules in Russia:

- he entered with an “accompanying family member” visa which did not comply with the goals of his arrival,
- the applicant did not leave Russia after 90 days as he was supposed to do with this type of visa, and
- he did not complete migration registration.

3. All the information provided by the applicant arouses doubt since he stated that he had graduated from the 9th grade in Aleppo in 2013, despite the fact that at that time he was staying in the Russian Federation.

4. The applicant's relatives are residing in Syria. In the case of returning to Syria the applicant “runs the risk of inhumane treatment,

and might suffer from military actions no greater than other residents of Syria. Almost all the population of Syria is experiencing difficulties”.

5. The applicant did not complain about his health condition when applying for asylum.

Here is the list of arguments used to turn down the complaint filed by S. A., another Syrian minor:

- the applicant arrived in Russia in February 2013 when fighting was taking place in Syria, however he did not apply for asylum despite being aware of this institution since he lived with his elder brother who had already been granted temporary asylum (remember that the applicant was 16 years old at this stage),
- the applicant worked in the Russian Federation although an “accompanying family member” visa did not provide him with this right, he did not receive any work permit,
- he violated his visa regime: he did not leave Russia for 90 days after the visa had expired,
- he entered with an “accompanying family member” visa which did not comply with the goals of his arrival,
- he did not complete migration registration, and
- he did not complain about his health condition at the time of applying for asylum.

We think this information highlights the issues.

Some of the FMS decisions lack any reasoning. Decision No. 1485 of 3 October 2014 on the complaint filed by M. N. F., a single female teacher from Afghanistan, on the denial of refugee status, contains the following conclusion directly after the definition of *a refugee*:

“The analysis of the decision delivered by the Migration Service of the Moscow region, of the information from the applicant’s case file, of the information she submitted when applying for refugee status, of the information from the complaint she filed with the Russian FMS, and the information on the situation in Afghanistan, revealed that the Russian FMS Department in the Moscow region had considered the circumstances of the case in full and lawfully concluded that the applicant’s fear of persecution on the grounds of her race, religion, ethnicity, citizenship or membership in a particular social group or political opinion was not well-grounded.” Any kind of analysis is however absent.

Lately the FMS has been producing these “empty” decisions with increasing frequency. They are usually written when the case is very

serious and the complaint is well grounded; Without having any ground to deny the complaint, the Russian FMS prefers to refuse to accept it with no explanation. One can even notice such a pattern; The better the justifications for the complaint, the less likelihood there is to receive a reasoned answer.

We mentioned that the Russian FMS does sometimes sustain the complaints filed by refugees. Does it not contradict our statement that the decision making is mainly influenced by a general attitude and not on the circumstances of the applicant’s case? It seems that in such cases the attitude is not working, or is absent. However one can see the approach in most cases of positive decisions. Let us compare a few cases of Syrian refugees on which the Russian FMS arrived at both positive and negative decisions.

Table 7 (see Annex 3) contains data on four pairs of cases. The cases are paired for the purposes of discussion since there are no completely identical cases. Nevertheless, one can easily see that even when there is a significant similarity of circumstances of applications and reasoning of regional departments, the Russian FMS delivered opposite decisions.

Why was a complaint filed by a young Arab from Aleppo on the loss of temporary asylum denied but an identical decision on his townsman was cancelled with reference to the situation in Syria and Aleppo but not to the individual circumstances of his case?

How can a different approach to two complaints of young residents of the Damascus region be explained? Is it the case that the FMS experts became angry with one of the applicants who “willfully quit his studies” in Belgorod and “arrived in Moscow with an alleged goal of working there with no ground to do so”?

Why is the denial of temporary asylum to a Kurd from the city of Al-Hasakah found lawful but a similar denial to a Kurd from Aleppo cancelled on the basis that Kurds are persecuted by the ISIS militants despite the risk of persecution in Al-Hasakah being no less than the risk in Aleppo? The fact that the first applicant was born in Moscow and has been living in Russia together with his family for a considerable length of time, is not taken into account. Is it the case that the man from Aleppo is earning a degree in tourism at a Moscow college, and the man from Al-Hasakah turned out to be a poor student and was expelled from the university for academic failure?

How can it be explained? One might suggest that these decisions reflect a difference of views of the Russian FMS officers, however

this seems not to be the case if we consider that the opposite decisions were made by the same people. The only remaining conclusion is that all these decisions reflect a private directive which changes sporadically. The content of the directive is of course unknown to us, but judging from the results it requires a more or less restrictive approach to providing asylum to Syrians.

Until the end of 2012 there was a strict directive to deny asylum to Syrian refugees. Since the beginning of 2013 this approach has become significantly more moderate; Syrians began receiving asylum and in the case of denials the FMS cancelled them upon appeal. In the spring or the beginning of summer 2014 granting asylum to Syrians was stopped or drastically restricted. From September 2014 until the beginning of 2015 almost all appeals against the refusal to grant or extend temporary asylum to Syrians were rejected by the FMS. The first three months of this year have revealed a warming. The FMS started satisfying Syrian complaints on denial of asylum. The situation changed again in March when the number of positive decisions made by the FMS decreased although some complaints were still allowed.

The influence of the directive from above on the consideration of appeals makes the right of refugees to appeal the decisions of territorial bodies to the FMS fictitious. More precisely, this right becomes totally fictitious in the periods when there is a strict directive to not recognise complaints, and a lottery when the directive is more moderate. During these periods the result of appealing does not depend on the case and the quality of the complaint but rather on the good fortune of applicants and whether their complaint will make part of the allowed percentage of positive decisions.

The decision of the Russian FMS to satisfy the complaint on the decision of a territorial body, cancels the original decision and entails an obligation for a territorial body to start a new procedure, i.e. to review the issue of whether to grant refugee status, temporary asylum, or rule the loss or deprivation of refugee status and temporary asylum. It does not however guarantee any positive result of a review. We do not have statistics on how many refugees gained or managed to keep asylum in the Russian Federation as a result of filing a complaint with the FMS. Most probably such statistics do not exist at all. We know incidents (numerous) when after the appeal to the FMS, territorial bodies once again turned down refugees' applications.

For instance, the Russian FMS has twice cancelled the decision of the Migration Service of Moscow denying refugee status to a Congo-

lese N. M. T. However regardless of this fact, the Migration Service of Moscow rejected his application for a third time. The last denial was cancelled by the court however N. M. T., exhausted by a many-years fight for status and not feeling optimistic about a positive decision, decided to apply for temporary asylum and received it (at a different territorial body). Although, the reason, was not because his fear of persecution was recognised as well-founded, but because he had a daughter who was a citizen of Russia.

Two of the Syrians whose appeals against denial and the extension of temporary asylum by the Migration Service of Moscow were satisfied at the beginning of this year, have already been turned down repeatedly. Possibly this will also be the case with all the others.

The Heads of territorial bodies would never admit repeated denials if they knew that such disrespect of the decisions of the FMS would incur displeasure. None of them would wish to upset relations within the central apparatus merely because of a few refugees. Why does it then happen? Apparently territorial bodies know that there will be no issues surrounding repeated denials. Maybe it is also a part of the game? Territorial bodies realise directive of the FMS to deny status, and the FMS imitates the observance of the refugees' right to appeal, sometimes cancelling their decisions. The critics can always be shown a certain number of satisfied complaints.

5.4. Observance of the right of refugees to judicial protection

The right to judicial protection is guaranteed to any person in Russia (Article 46 of the Constitution of the Russian Federation). The system of justice is the most universal means of restoring violated rights. The guarantees set out in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the *ECHR*)¹⁰ and Article 14 of the International Covenant on Civil and Political Rights (the *ICCPR*)¹¹ regulate the standards for the right to a fair trial and define the efficiency of the remedy not by its results

¹⁰ The Convention was signed in Rome on 04 November 1950.

¹¹ The Covenant was adopted by the United Nations General Assembly's Decree 2200 A (XXI) on 16 December 1966.

(winning the argument) but by legal opportunities provided to everyone to protect their rights.

Guided by this vision, from November 2014 till August 2015 we visited 47 court hearings with foreign citizens represented by the Committee and Memorial lawyers as parties. These hearings were held at the Zamoskvoretsky (16) and Basmanny (19) district courts (where the appeals against decisions of the Migration Service of Moscow and Migration Service of the Moscow region are heard according to the rule of court jurisdiction), the Moscow Municipal court (5), Moscow regional court (4), the Izmaylovsky district court of Moscow (1), and the Noginsky municipal court of the Moscow region (2).

The basic categories of cases monitored were cases of appealing decisions, and actions (inaction) of the state bodies (Chapter 25 of the Russian Federation Civil Procedural Code). The plaintiffs sought the cancellation of the decisions of migration agencies on denial of refugee status, and on granting or extending temporary asylum. Furthermore, the monitors observed a few hearings under Article 18.8 of the Russian Federation Code of Administrative Offenses (Violation by an Alien or a Stateless Person of the Entry into the Russian Federation Regulation or the Sojourn (Residence) Regime in the Russian Federation), where the court ruled on the possibility of an administrative expulsion of a foreign citizen who at the moment enjoyed the rights of a person granted asylum or undergoing the procedure of seeking asylum (or a higher court reviewed the court decision which had not come into effect).

While we are not claiming to have carried out an exhaustive survey, we tried to describe and evaluate the events we saw from the point of view of generally accepted standards of fair trial and compliance of legal practice with the Russian laws and international norms. The evaluation of a fair trial is a complex issue; due to available options and time we decided to focus on the main aspects described in the separate sections:

- access to court,
- the right to review the case file,
- an open and public trial;
- the hearing of a case by an independent and impartial court,
- equality and adversary of the parties,
- the right to interpretation/translation,
- the right to a public, motivated and timely decision.

Access and accessibility

It is not only citizens of countries where a court functions have the right to pursue litigation. This right is a recognised international norm and is entrenched in the Russian Constitution.

The Russian Constitution guarantees equality of all people before the law and court (Article 19), the right to state protection of rights and the freedoms of man and citizen in the Russian Federation (Article 45), the right to judicial protection (Article 46), and the right to qualified legal assistance (Article 48). These very rights are essential elements of the right to access to Justice since the efficient protection of citizen's rights at court depends on the realisation of each of these rights. In addition, Article 62 of the Russian Constitution specifies that foreign nationals and stateless persons use the rights and bear responsibilities on a par with Russian citizens within Russia.

As it has already been said, the Law On Refugees also guarantees the right to appeal against the decisions of migration bodies related to the implementation of this law on asylum seekers.

Access to justice is obviously a prerequisite of the right to judicial protection. The European Court of Human Rights (the *ECHR*) pointed out in one of its decisions that *"It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 (art. 6-1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court."*¹²

Undoubtedly, the lack of knowledge of the Russian language and laws hinders asylum seekers' use of their right to judicial protection and, hence, they are in need of qualified legal assistance. However, the issue of accessible legal assistance (including representation in court) remains a problem for foreign citizens and stateless people. The Federal Law No. 324-FZ On Free Legal Assistance in the Russian Federation of 21 November 2011 and Article 26 of the Law on Legal Counselling and the Bar provide free legal assistance only to Russian citizens even though the number of those who can be referred to socially vulnerable population among asylum seekers is very high.

As it has already been said, according to Article 10, Part 3 of the Law On Refugees, a complaint against a FMS decision should be filed within one month after a notification of a decision is received or within 3 months after an applicant learns about it. At the same time Article 256 of the Civil Procedural Code grants a citizen the right to file a

¹² *Golder v. the United Kingdom* [1975] ECHR 1, paragraphs 35–36

complaint on violation of one's rights within three months after one learns about the violation.

Lawyers rendering assistance to refugees we have questioned say that courts do not accept writs if certain requirements (absence of state duty receipt, applicant's address, copy of the decision appealed against etc.) are not met but do not tend to ultimately turn down the applicant's appeal due to a default of the term, even in cases when a person received an FMS decision on time, but did not appeal against it for some reason. In this case courts usually satisfy a motion to restore the term for appeal.

Access to justice includes physical access to court, i.e. to the building of a court institution, information on the date and the time of hearings. Guarantees of a free trial impose additional positive obligations upon the state in providing an opportunity for everyone to enter a court building and take part in the hearing of his case. Besides objective obstacles (fences, lack of access ramps, narrow doors etc.), the resistance of court officers to provide access to court serves as a subjective factor: court bailiffs forbid entry into courtrooms, and excessively rigorous regulations for visitors are introduced (the demand of showing a passport and the summons).

The bailiffs at the Zamoskvoretsky district court where hearings of appeals against the decisions of the Migration Service of Moscow take place, have repeatedly tried to refuse entrance to court to applicants without a passport but with a court summons. As a result some refugees failed to participate in hearings which took place in the presence of their representatives. In most cases the problem was resolved after the lawyer accompanying the applicant interfered. It should be noted that there exists no regulatory act in the Russian law obliging everyone entering a court to provide an identification document. When requiring to show a passport, the court guards refer to the Instruction on the Organisation of the Inside Regime and of the General Procedure for Entry into the Building of District Courts and Judicial Sub-districts in the city of Moscow¹³, Standardised Rules of Internal Order approved by the resolution of the Council of judges of the Russian Federation in 2003, and point to the excerpt from the Rules of the Visitors' Stay in Court hanging on the wall. However, bailiffs fail to explain why this must be a passport and not any other identification document (as it is indicated in these regulations) that has to be shown

¹³ Approved on 24 May 2006 by the chair of the Moscow municipal court (edited on 19 October 2009).

when entering a court building. Similar cases occurred in the Moscow regional court and Moscow municipal court and in the course of the proceedings, judges would reprimand the applicants' representatives for the violation of the Rules of Stay in Court by the applicants.

The right of access to judicial protection, as with other rights and freedoms, can obviously be limited in exceptional cases (protecting the foundations of the constitutional system, defending country or its safety etc.) and only by federal law and not by means of law enforcement convenient for the state.

Publicity of the trial

Openness and transparency of a court trial are closely related to access to court and are an important and inherent standard of a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention. Article 123 of the Russian Federation Constitution also guarantees this right. The Civil Procedural Code of the Russian Federation (Article 10) and the Russian Federation Code of Administrative Offenses (Article 24.3) announce this principle as one of the main principles of a fair trial (considering the limitation provided for in exceptional cases), other provisions specify it¹⁴.

The right to a transparent and open trial presupposes that not only the parties of the trial but also public can attend hearings and the court has to provide all conditions for this possibility. At the same time publicity means not only openness of trials for public but also transparency of the work of the judicial system: providing information on the cases to be heard, on the time and place of a hearing, access to court case files and court records — at least to the interested parties — and also a consequent publication of final enforcement acts (see the results of the monitoring in Sections "Adversary and equality of the parties", "Keeping court records", "The right to a public, timely and motivated decision").

The monitoring was not focused on the violation of applicants' rights by bailiffs who would admit people to court only upon pres-

¹⁴ For instance, the Federal Law of the Russian Federation of 22 December 2008 No. 262 on Provision of Access to the Information on the Activity of the Courts of the Russian Federation and the Resolution of the Plenary Session of the Supreme Court of the Russian Federation of 13 December 2012 No. 35 on Openness and Transparency of Judicial Proceedings and Access to Information on Activity of the Courts.

entation of a passport and following a body search that is carried out with no grounds to assume that a person might be in possession of forbidden items and often by a person of a different sex. However, we attentively observed how the courts provide information on case hearings, how judges react to visitors during the hearing and if the people present during the trial experience obstacles which don't allow them to fully participate in the trial.

The information on participants, time of hearings, the essence of disputes, or type of case were regularly published on the websites of the courts we were interested in. However some necessary information (courtroom number, judge's surname) was often missing from the websites of the Basmanny, Zamoskvoretsky courts of Moscow, Moscow regional court, and Noginsky municipal court of the Moscow region. In order to obtain the missing information one had to ask bailiffs at the entrance to district courts (electronic information terminals work with varying degrees of success), at the help desk of the Noginsky municipal court, or look for it on information boards on the first floor of the Moscow regional court. In the Izmaylovsky court of Moscow, information could not be found either on the official website or in the court building. Some trial participants reported that they were only able to find their own last names having walked around the whole floor and checking the schedules hanging at every courtroom. At the Noginsky municipal court the time announced to a person brought to administrative liability differed from the time indicated in the list of the hearings by a few hours: maybe in this very simple way the court safeguarded itself from applicants being late. In the Moscow municipal court when hearing the cases on Article 18.8 of the RF Code of Administrative Offenses the judge invited people in order of appearance in the list — no exact time was given in the list of cases to be examined. To assume even approximately at what time the judge would start examining a particular case was impossible.

The difference between the announced and the real time of hearings was often three or more hours. The Zamoskvoretsky court is especially notorious for its unpunctuality. A. M. D., a Syrian citizen, had to come to Moscow for a hearing from Kazan three times. The first two times he waited for his hearing for a few hours and by the end of the day was told that the hearing on his case had been postponed to a different date.

Usually only the applicant and his representative, and sometimes the FMS department representative which delivered the decision ap-

pealed against, are present during trials. The public does not attend these trials. That is why the presence of monitors was obviously noticed by the court officers. In the Zamoskvoretsky court they were somewhat alerted by the presence of a monitor. At one of the sessions the secretary noticed a monitor (who was repeatedly present in the courtroom), went to the camera, returned and asked the monitor: "Are you with the media or what?" When the monitor said he was not a journalist she said: "Oh, that's fine then". In other courts the presiding judges reacted to the visitors calmly, sometimes asking what their status was in order to learn if they were participants of the trial.

In courtroom No. 11 of the Basmanny court where decisions of the Russian FMS are appealed against, the benches for the public are used for folders with documents and for interns filing documents. In fact there was no place not only for the public, but also for the participants of the trial to sit: during a few hearings the translator had to stay next to the applicant for the whole time.

Examination of the case by a competent, independent and impartial court

Independence

The principle of the independence of the court — one of the basic standards of justice — is entrenched in the Russian Constitution (Articles 10, 120), in the Federal Constitutional Law on Judicial System of the Russian Federation (Article 1 Part 2, Article 5 Part 2), in industrial codes (Article 6 of the Civil Procedural Code, Article 29.2 of the Russian Federation Code of Administrative Offenses) and the Code of Judicial Ethics of 19 December 2012 (Article 8).

Evaluating the issue of a court's independency, the ECHR pays attention not only to legal limitations of the involvement of executive governmental agencies in the activity of court or any non-procedural influence of the agencies of judicial system on the judge but also "*to the question whether the body presents an appearance of independence*"¹⁵.

During the period of monitoring, no facts of direct influence from the agencies of the executive power or other external factors on the examination of complaints filed by refugees and asylum seekers were established. However, existence of such influence can be suggested by a few indirect factors.

When refugees' cases are examined in the Basmanny district court

¹⁵ See the decision on the case Bryan v. the United Kingdom of 22 November 1995.

a representative of the Russian FMS almost always before and after a hearing stayed in the hall together with a judge and their assistant/secretary while other participants of the trial (applicant, their representative, and interpreter) waited in the corridor. Here is an example from the monitor's report: *"I'll go and say hello to the judge" — said the representative of the FMS, entered the hall and stayed there till the end of three hearings on refugees' cases appointed for today"*.

While representatives of migration services participated in every trial in the Basmany court, the representatives of the Migration Service of Moscow were present only at three hearings in 10 months in the Zamoskvoretsky court. Quite often it seemed like the court took upon itself the functions of the Migration Service not reacting to the absence of one of the parties of the hearing, not asking if the hearing can be continued in spite of absence of the participant, or sometimes in fact answering the applicant on behalf of the migration authorities.

An excerpt from the monitor's report: *The applicant's representative: "The FMS Department refers to the position of the Ministry of Foreign Affairs of the Russian Federation in its decision but does not provide the data on the document — only a short excerpt. The document to which the department refers needs to be presented..." Judge: "If they refer to it, it means the document exists." The lawyer: "We think it might be doubtful." The judge: "Are you arguing with the court? I said so and that's that."* (Case of A. A., 12 December 2014).

Sometimes it seemed like a new practice was developed in the Zamoskvoretsky court: a court which is supposed to serve as an arbiter in fact "replaces" an executive agency and that is why both court and representatives of the Migration Service see the participation of the representatives in the hearing as a mere formality.

An excerpt from the monitor's report: *"While the judge is issuing a judgment in the camera, the representative of the FMS Department sitting next to the secretary says: "I don't really want to stay for the next cases." The secretary: "You can go. You brought your written opinions. We'll handle it"* (case of A. M. D., 27 February 2015).

Evaluating the compliance of the trials on refugees' cases with the principle of the independence of the court, we cannot ignore the fact that only once during the whole period of monitoring was an applicant's complaint on the decision made by the migration service in regard to granting asylum sustained.

Impartiality

The court should be impartial in any specific case. Genuine impartiality and its manifestations are important to keep respect and trust of society with regard to the administration of justice. First of all, judges must not allow their judgments to be influenced by personal (subjective) bias. Secondly, and here lies the objective neutrality — the tribunal must also appear to a reasonable observer to be impartial¹⁶.

The behavior of judges during a trial may also show a lack of justice in their approach to the parties of the trial. Judges who impersonate judicial power in general are expected to be tactful and polite with all those present at a trial and not to be arrogant and hostile.

During the period of monitoring judges did not express any impoliteness towards the parties of a trial in the Moscow city, Moscow regional, Zamoskvoretsky or Noginsky courts.

However, the judge in the Basmany district court raised his voice when addressing the participants of the trial, interrupted the representative of the applicant in blunt terms, and tactlessly interrupted the applicant when he was making a statement. Sometimes the judge did not hide her anger towards the representative of the applicant:

"Expressing their position the lawyer sometimes turned towards the applicant. The judge started shouting: "Whom are you telling this, the court or whom? You are looking at the visitors. You're violating the procedure!" The representative: "I am checking if the interpreter had enough time to interpret. A... must know what we're saying and the interpreter has to manage to interpret" (Case of A. A. M., 13 November 2014).

Some statements made by the same judge imply prejudice towards the case under examination.

An excerpt from the monitor's report: *"After the lawyer provided the UNHCR documents on the situation in Syria the judge turned towards the representative of the FMS: "Do you need them? You must have a pile of these papers. I have at least twenty."* (case of A. Yu. 10 March 2015).

Equality and adversary of the parties

A fair trial should meet a number of criteria, including the equality and adversary of the parties, demanding a fair balance of interests of both parties to a trial. Each party should have reasonable opportunity

¹⁶ The United Nations Human Rights Committee, ICCPR General Comments No. 32 (2007), paragraph 21.

to present its reasoning under equally favorable conditions with its opponent and to contest the evidence given by the opponent with a view to influence the decision of the court.

The given principles established by the Russian Federation Constitution (Articles 19, 123) are also set forth in Articles 12, 113, 35, 127, 48, 174, 181, 190, 327 and others of the Civil Procedural Code of the Russian Federation, Articles 1.4, 24.4, Chapter 25 of the Code of Administrative Offences of the Russian Federation. However, it should be noted that Russian administrative cases in practice proceed in such a way that the burden of proof is imposed fully on a judge instead of an official authorized to support and prove the charge presented. Hence a plaintiff and his defendant oppose not the charge, but the court itself.

While monitoring the observance of the principle of equality of an adversarial nature we first of all paid attention to the following aspects:

1. the presence and availability of documents and information on the case so that the parties had enough time to prepare their comments and opinions with regard to the opponent's reasoning;
2. the parties' awareness of their rights and duties in the course of the proceeding which the court is obliged to explain so that they understood how to use their right to a fair trial;
3. the presence of real opportunity of the realisation of procedural rights, including the making of motions and submission of evidence.

To effectively present his demands at court and defend his rights a foreign citizen, as does his representative, has the right established in the Russian Federation legislation (in particular, by Articles 35, 127 of the CPC of the Russian Federation) to familiarize themselves with the case file materials, with the objections received by the court from the state bodies to his claim (appeal in case of appealing proceedings), take notes and make copies of specific documents.

The Russian FMS and the MS of Moscow usually communicate to court their objections with regard to appeals against the denial of refugee status, and granting/extension of temporary refugee status, but on a very irregular basis before the trial begins. At the Basmanny and Zamoskvoretsky district court the applicant's representatives were not always able to study the contents of the comment and of the case file of their clients beforehand, since the judge did not have these materials at his disposal. Consequently the applicant and his representative could only review them during the course of the hearing - provided that they

had been brought to court by the state body representative on that day. The judges did allow them to familiarize themselves with the case file or give the necessary time - either in the course of the hearing itself (15-20 minutes - which, judging by the reaction of the applicant's representatives, is enough to analyse the situation and update their stand) or postpone the hearing at the request of the applicant so that the comments could be prepared and additional evidence gathered.

From the monitor's report. Basmanny court, the case of Ye. Ya., 19 February 2015: *Before the session began, when the judge assistant went out into the corridor, the lawyer asked to see the case file. Assistant: "Only during the court session or you should have come another day". Lawyer: "I did come, but there were no materials from the FMS in the case file". Assistant: "I can't give them to you, since they have not been not examined during the session and have not been filed". 10 minutes later the judge assistant brought the FMS comment provided by a migration official who was already in the courtroom saying: "The FMS was kind enough to pass the document to you personally for familiarisation". Lawyer: "But I need to see all the materials". Assistant: "Then only during the court session". During the court session the judge made a pause to pass the case file to the applicant and his representative to be reviewed and copied".*

It is not infrequent that at the beginning of the session judges have to postpone hearings as the migration services report that they have failed to prepare the required documents.

As a rule, when opening a court session, the judge enumerates in passing the "catalogue of rights" each party has, including the applicant and his representative in accordance with the Civil Procedural Code and the Code of Administrative Offences. No cases where the court avoided this duty have been registered. Some of the presiding judges explained certain rules in detail. At a trial of the administrative case of Iranian citizen Kh. G. M. the judge, when asking him questions, from time to time at her own initiative reminded the applicant that he could turn to his attorney any time for consultation.

The court's obligation to assist the parties to the trial is especially topical when a plaintiff does not have a qualified representation, facing the representative of the state body alone, and has to oppose him.

In all the cases we monitored the interests of foreign citizens were represented by Memorial or Committee lawyers. Only once the case of Cameroonian citizen B.E. was heard at the Basmanny district court without a qualified legal representation. At first the judge was calmly

explaining what the plaintiff had to do in accordance with the procedural rules of the consideration of the claim, but then, abruptly and emotionally reacting to B. E.'s absence of knowledge of some procedural aspects and to the necessity to explain them to him, indignant that the trial was being dragged out for this reason, the judge declared: "We have an adversarial trial here! I am not obliged to explain anything". The attempts of the applicant to recount the circumstances that had lead him to seek asylum in Russia and his claims to migration bodies provoked an even greater intolerance on the part of the court. Indeed, the principle of adversary implies the parties' awareness of the risk of consequences as a result of their actions (or inaction). But its contents includes the responsibilities of the court with regard to procedural assistance to the parties so that a legal ignorance of the citizens and their lack of experience in the workings of the court should not serve as an obstacle to their participation in adversarial proceedings (Article 12, Part 2 of the CPC of the Russian Federation).

As for the possibility of the plaintiffs, their representatives or persons brought to administrative responsibility of taking an active part in the court proceedings, on the whole the judges did not impede their giving explanations, commenting upon arguments of the opposing party and presenting their case (where appropriate in case the opponents - representatives of the state bodies - were present). However, some situations (described further) arouse doubt as far as the equality of the trial is concerned.

Some judges (we should especially note the Moscow regional court and the Noginsky district court in this regard) took an active position while examining administrative cases: they asked foreign citizens about the circumstances that had forced them to flee their country of nationality, and clarified some moments connected with the asylum procedure, that could be interpreted in the applicant's favor.

The motions made with a request to file evidence were also satisfied by the courts in the majority of cases. At that, not all refusals recognised this or other information as evidence drawn up by the judge as a definition (or were not registered in the court record) with the corresponding explanation of the motives for the refusal. This is inadmissible and does not allow for the conduct of the court to be deemed as conforming with the law. The following reactions of the presiding judges to the motions made were also remarked:

The representative of the applicant: "We are requesting to examine a number of appeal decisions of the Moscow regional court on admin-

istrative expulsion cases, definitely stating that Syrian citizens can't be expelled due to the war that is under way there...". The judge of the Basmanny court interrupts the lawyer: "I don't need it, I am not expelling anyone". The applicant's representative continues: "The applicant can't leave (he will be obliged to leave the territory of Russia in case of denial of temporary asylum), as if he goes back to Syria, his life will be threatened. Similarly to expulsion - that is why I and other lawyers draw attention to court decisions stating the prohibition of expulsion of Syrian citizens". Judge: "Well, let's see, but I don't need all of them, choose some. Why do I need all of them? This is a different citizen". Lawyer: "It follows from this that a certain practice has formed". Judge: "So you can say so during the pleadings". Then the applicant's representative asked to file fresh UNHCR reviews on the situation in the Arab Syrian Republic. Judge: "I don't need them, there's already a pile..." Lawyer: "This is a different review, it shows that the number of Syrians seeking asylum in other countries has exceeded all indicators compared to nationals of other countries" (the case of D. M. S., 24 July 2015).

The principle of adversarial equality can also be violated if the judge repeatedly interrupts the parties during their speeches. Below are several examples of these situations from the Basmanny district court:

The case of O. M., 10 March 2015: *The applicant, while explaining his current situation in Russia and reasons for seeking asylum, was interrupted by the judge saying: "Have you got something to say on the merit? We can't listen to it three times running". At that, as the monitor noted, there were no repetitions in the applicant's speech, he gave a chronological account of the facts exclusively related to the matter at hand opposing the FMS official.*

The case of D. M. S., 21 April 2015: *The lawyer asks the interested party: "Where does your information on the situation in Syria come from? Please provide the publisher's imprint. On the basis of what information did you make your conclusions?" FMS: "On the basis of the documents submitted by the applicant". Lawyer: "And what about the excerpts you quoted? You..." The judge, interrupting: "Your question has already been answered, what else do you want? Why are you interrogating the FMS?" FMS: "This is out of my sphere, we have other people who do it, I am just representing the case at court".*

The courts' reactions to applicants' motions to hear out experts, specialists, etc. are varied. During one of the trials the judge of the

Zamoskvoretsky court agreed to hear out a specialist on the situation who had carried out human rights observation in North Korea with some hesitation, but later relied on his information in her decision. In the course of another session at the Basmany court the presiding judge rejected the motion to invite an expert - representative of the UNHCR who had come to court to explain the situation in Syria and the stand on the case at hand. The refusal was explained by the fact that the information on what was happening in Syria is generally available, the expert can't provide any new information, and the court had already received a supporting letter from the UNHCR.

Judges tried to avoid any additional actions, such as collection and reclamation of evidence (sending enquiries to the RF MFA concerning the situation in the applicant's country of origin, requesting the provision of the missing materials from the FMS, for instance, the certificate on the obligatory medical examination of the applicant), equally avoiding postponing the hearings for this reason and usually rejecting the applicants' motions with regard to it.

Nevertheless, it should be noted that the judges of the Moscow municipal and the Moscow regional courts more often than others satisfied the lawyers' motions to request documents (from the FMS, SUVSIG, etc.) or did it at their own initiative while considering administrative cases to specify some factual data thus using their investigative authority.

From the point of view of administering justice, it can't be considered effective if the court does not contribute to a full and comprehensive examination of the circumstances of the case, if the judge is preoccupied with trying to consider as many cases assigned to him as possible only formally observing mandatory procedures. This can quite often be observed at the Basmany court and sometimes at the Zamoskvoretsky district court. In the course of the sessions, presiding judges make those present in the courtroom aware that they want to quickly finish the session and are not going to spare a lot of resources (including their time). Only a few episodes from various trials are cited below:

- *Firstly, according to the schedule on the door of the courtroom, the hearing is appointed for 9-00. In fact the examination of the case started at 9-40. Hardly had the participants entered the courtroom, the judge opened the session without even letting them arrange their things and sit down, and started hurrying everybody: "So, come in quickly, I've got little time, hurry up - I have a lot of cases today" (the Basmany district court, the case of K. S. I., 16 June 2015).*

- *When the lawyer announced that his client would like to explain his situation in connection with his refugee status application himself, the judge and the representative of the Migration Service exchanged glances and sighed. The judge: "All right, let him!" (the Zamoskvoretsky district court, the case of A. M. D., 27 February 2015).*

- *During each short pause in the speech of the applicant's representative, who stopped to find the necessary documents and show them to the court, the judge asked: "Is that it? Explain your position. Why are you silent? Hurry up" (the Basmany district court, the case of A.A.M., 13 November 2014).*

- *Interrupting the lawyer's speech, the judge turned to him: "Make your speech shorter!" (the Basmany district court, the case of K. L. Kh., 28 November 2014).*

- *Judge: "The case is being heard by judge A. in the presence of persons taking part in the case"; neither positions, nor names are given (the Zamoskvoretsky district court, the case of A.M.D., 27.02.2015). The situation repeated at every session.*

- *When the applicant in reply to the remark of the FMS official concerning his untimely application for asylum explained that he had applied to the Migration Service immediately upon his arrival in the RF and was invited to the Migration Service for an interview only 4 months later, and tried to ask questions to the FMS representative, the judge, evidently dissatisfied with his dragging out the trial, interrupted him: "Don't interrogate the FMS of Russia. We can't be clarifying this for so long..." (the Basmany district court, the case of B.E., 28.04.2015).*

Moreover, some judges, while the parties explained their positions, were evidently busy with tasks not connected with the trial under way: looking through folders with other files on their table, sorting out correspondence.

The analysis of the court record and decisions on the merit makes it obvious that the judges almost don't perceive the information provided in the course of oral proceedings and ignore it while delivering decisions (in more detail see sections "Keeping records" and "The right to a public, timely and motivated decision"). As a result, when the applicant gets a decision, he can see that he was not being listened to when giving an account of his case.

There were no cases of refusal to postpone the case on reasonable grounds, however, the situation described below fully reflects the relationship between the parties and the court in this context:

The lawyer asked to postpone the examination of the case of S. due to the fact that the latter was feeling unwell in the morning, had called an ambulance and either would not be able to take part in the trial or would arrive later. The judge's reaction: "I've got 12 cases crammed into my schedule before 11.30. When will I hear you? S. has not come, she is to blame herself. We have already postponed the case three times". Lawyer: "But every time it was not through her fault. The FMS did not have the materials". Judge: "This is not of my concern. I am leaving the claim without motion". The lawyer's request to hear the case, even in the absence of the applicant, was turned down. The same day another case was appointed for 9-45, but the FMS representative said she did not have the materials of the case and could not provide her comments. Judge: "We have already postponed the hearing twice, you had a lot of time, why are you not ready?" As a result the court still ruled to postpone the hearing. And the judge announced: "Then we are now hearing the case of S. without her" (the Basmanny district court, the case of S. U. G., 16 June 2015).

This peculiar "procedural time-saving" practiced by certain judges might be explained by the number of cases to be considered per day that is out of proportion to the judge's real ability. As a rule, the interval between the sessions in the schedule during the monitoring period at district courts (the first instance, civil cases) constituted 15 (more often) or 30 minutes. Judging by the results of the monitoring the shortest trial on refugee's cases lasted 25 minutes, the longest - 1 hour and 5 minutes.

But we can't rule out the assumption that the main factor resulting in this sort of behavior by judges is the "conveyor" perception of this category of cases and a predetermined outcome of the trial for the court (and most often for the parties as well).

Right to interpretation and translation

Independently of judicial status or language abilities, any applicant must be able to understand a trial they are participating in. Although the ICCPR and the ECHR¹⁷ set the requirement to provide translation/interpretation only in regard to criminal cases, sometimes, as the UN Human Rights Committee has pointed out, interpretation is required in non-criminal cases as well if one of the parties needs to be provided with the ability to participate in the trial in accordance with the princi-

ple of equality of arms¹⁸, in observance of the right to access to justice and non-discrimination before law.

When a person has difficulties speaking, understanding or reading the language used in court, the Russian Federation Code of Administrative Offenses unambiguously obliges a judge, body or official examining an administrative case to appoint an interpreter/translator (Article 25.10) in order to provide the ability to fully participate in the preparation of the defense using their native language or any other language of free choice (Article 24.2). The Russian Federation Civil Procedural Code also ensures the right to the applicant to present his case in the language they have good command of during civil proceedings (Article 9) but does not define who is responsible for simultaneous interpreting during a trial. Only the applicant's right to suggest an interpreter to a court is mentioned (Article 162).

In the majority of cases monitored interpreters were provided by the Committee. When there were difficulties with providing an interpreter the representatives of applicants offered to help in solving this problem. The courts agreed. As one of the judges said: "What else are we supposed to do! We are rendering this assistance". Judges react positively to the applicant's initiative to find and invite an interpreter and are sometimes ready to change the schedule of the examination of cases depending on the interpreter's opportunities. An excerpt from the monitor's report: *The judge tells the lawyer: "Call the interpreter and ask him when he is free" ... After speaking with the interpreter, the lawyer names the dates suitable for the interpreter: "He also asked not to appoint a time for early in the morning, since he lives in the Moscow region, it will take time to get here". The judge: "Alright, I'll consider it"* (the Basmanny court, case of H. F., 08 June 2015)

Such a positive approach of courts can probably be explained by the fact that providing an interpreter is not only organisational, but also a financial issue (the interpreter is paid by the court, i.e. from the federal budget's money). During the monitoring in the Noginsky city court in February 2015 there was a situation when the court in fact refused to provide an interpreter in an administrative case and asked the lawyer to do so. According to the lawyer, the judge showed a document in which the Court Department of the Supreme Court of the Russian Federation informed the court about the suspension of providing money for interpreters. Later the translator invited by the Basmanny district court to one of the hearings told the monitor that the

¹⁷ See Article 6, Part 3 of the ECHR and Article 14, Part 3 of the ICCPR.

¹⁸ General Comments No. 32, Part 13.

Court department and the translation agency where he works could not “find common ground” at the beginning of 2015. We failed to find official proof of this fact. However, we didn’t notice that the court would refuse to provide interpreters from some rare languages that couldn’t be provided by the Committee, at least in district courts.

Judges always paid attention to the presence of an interpreter during a trial when needed and would adjourn the hearing if they were absent; judges would also check if an interpreter’s competency could be confirmed by documents (diploma etc.). Some judges also checked whether the interpretation of everything that was going on during the trial was being provided to the applicant or the accused of an administrative offence in full. However, it wasn’t done in order to provide equal rights to efficient participation in the trial but to secure possible cancellation of decisions by a higher court.

The case of M. M. K., 05 February 15, the Noginsky district court: *The judge addresses the lawyer before the hearing: “You should find an interpreter; I will not work without him. You should provide an interpreter; otherwise they will get both you and me into trouble. You know how they do it? Do you often work with administrative cases? I’ve been working with them for a long time. I will issue a judgment, and they will go to the regional court and get me into trouble. They find your colleague who would write nicely that the applicant didn’t understand certain things and interpretation wasn’t provided. Let’s have a normal procedure, and I will look into the case: if there is a fine or there is not...”*

However, opposite cases also occurred.

The Basmanny district court, case of D. M. S., 08 April 15: *“The judge kept on asking the applicant if he had an application to appoint a representative for the case although she was told by the lawyer that the applicant did not understand Russian. The applicant would nod and stare at the judge not understanding what he was expected to do. In the end the judge turned to the secretary and said: “Alright, he understands. Write down that he did apply.” Then the lawyer on behalf of the applicant would ask for adjourning the hearing as there was an obvious need for an interpreter who did not come to court that day.”*

Holding of trial records

Court records are the only procedural documents reflecting the whole proceedings of a trial, the “mirror” of a trial. According to the legal stand of the Russian Federation Constitutional Court, the court

record should “objectively and as fully as possible” reflect the course of the trial, since it is connected “with delivering a decision (passing a sentence) in accordance with the evidence examined in the course of the trial, provides for an opportunity of control on the part of higher judicial instances over the observation of the demands of the law by the court while examining cases and thus effective administration of justice and realisation of the citizens’ rights to legal assistance”¹⁹. In fact the court record is a testimony of the impartiality of the court in the course of considering one case or another.

The Code of Administrative Offences provides for the mandatory keeping of records and a presence of a secretary only if the case is being heard by a collective body (Article 29.8 of the Code of Administrative Offences). In other cases the law does not require to keep records. That said there is no prohibition on keeping records either, and a person, in whose regard judicial proceedings are conducted, has the right to make a motion requesting that records be made. However the Code of Administrative Offences, as well as the Ruling of the Russian Federation Supreme Court Plenary session²⁰, provides for the right of the court to dismiss this motion, which does not fully guarantee the person his constitutional right to judicial protection of his interests. Records were not kept in any of the court hearings of administrative cases we observed - neither at the decision of the court, nor at the request of a party to a trial.

When considering a civil case the keeping of records is mandatory (Article 228 of the CPC of the Russian Federation). It is the duty of the secretary of the court session to keep the records (Article 230 of the CPC of the Russian Federation) who, just like a judge, has to conform to the demand of impartiality (Articles 16, 18 of the CPC of the RF). In the Zamoskvoretsky court the secretaries during the sessions - even in the course of the pleadings - could go out of the courtroom and communicate with the assistant judge, ignore the lawyer’s requests to put on record the words of the MS official without distortion, or even write something evidently not related to the trial at hand.

Despite the fact that in the Basmanny court the secretary was always present during the sessions, we can’t say that her keeping of

¹⁹ The definition of the RF Constitutional Court of 19 January 2011 No 48-O-O.

²⁰ The Ruling of the RF Supreme Court Plenary session of 24 March 2005 No 5 on Certain Issues Emerging with Courts while applying the RF Code of Administrative Offences.

records was a very consistent one. In the course of some hearings it was obvious that while the applicant's representative was speaking or the applicant was giving explanations the secretary was not typing, but was busy doing something else: sorting out papers and folders on her table, talking over the phone, discussing something with the judge. This conduct may result from the fulfilment of two functions at a time - that of a secretary and of a judge's assistant. But it can't justify disregard of the legal prescriptions.

We do not know whether such a loose attitude to the keeping of records is a result of audio recordings of court hearings, since none of the participants of trials asked the court about this and the court in its turn did not inform them of it. But while studying the records of the Basmany court we did not detect any signs of the use of audio recording facilities in the course of hearings (provided for by article 229 of the CPC of the Russian Federation).

We also failed to find reliable information on the actions of the court and the trial participants in the records of the Basmany court. By way of illustration we are citing the records of the court hearing of the case of Palestinian citizen A. R. T. on 21 April 2015 where the speech of the lawyer pronounced in the courtroom is not reflected at all, while the position of the FMS is represented in detail, but has nothing in common with what the MS representative said during the session. The pleadings, the applicant's explanations, the court's clarifying questions - nothing was reflected in the records. Instead of specific questions touched upon by the applicant and his representative the records contain general phrases representing a free interpretation of the applicant's appeal. The discrepancies between the real and the indicated time codes of the hearing are not so significant, but should be noted to complete the picture: the factual time of the beginning of the session 17.18 instead of 17.30 indicated in the records, the factual time of the end of the session 17.42 instead of 18.00 indicated in the records.

As a matter of fact the judge, if not right after he goes to the decision room to deliver a decision, then during the compilation of the full text of the decision, should have the records signed by him and the secretary at his disposal, because when delivering a decision he should rely on the circumstances ascertained in the course of the hearing and reflected in the court records. No wonder that the final decision on the abovementioned case did not bear any traces of the process of presentation and examination of evidence that took part in the course of the

hearing. This can not but cause doubts as to the conscientiousness and impartiality of the secretary and the judge.

The court records should be ready within three days. At our request the applicant from Palestine tried to receive these but it took him four months to do so. It was only at the end of August, that is 4 months after the session, that he managed to obtain a copy. According to the assistant judge it is only possible to receive the court records together with the final decision that is submitted to the court registry with the case file. Considering actual terms of the preparation of motivated decisions (see Section "The right to a public, timely and motivated decision") it can be considered a violation of the right of the participants of the proceedings to familiarise and comment on the records within 5 days from its signature provided for by Article 231 of the CPC of the Russian Federation.

The right to a public, timely and motivated court decision

The right to a public, motivated and timely decision of the court makes part of the general right to a public hearing²¹.

Not only all interested parties should have a timely access to the court decision to get an opportunity to use it or appeal against it, but the general public as well (provided that the principle of privacy be observed). If according to the national legislation, it is not mandatory to announce the whole decision in an open session, another means of making the full text of the decision public should be used, be it the register of the court registry, a web site or other media.

Russian legislation provides for the announcement of the decision on administrative offences (or on the appeal of this decision) immediately after the decision was delivered in the course of the court session. A motivated decision should be forwarded to all the participants of the trial within three days (Articles 29.11, 30.8 of the Code for Administrative Offences). At that the appeal against the decision in an administrative case can be filed within ten days from the day of handing or receipt of the copy of the full text of the decision.

In civil proceedings a decision should be delivered and its findings announced immediately after the proceedings and a motivated decision should be compiled within five days from the last day of the hearings (Article 199 of the CPC of the Russian Federation). The term of preparation of a motivated appeal definition is not regulated by the

²¹ Article 14 paragraph 1 of ICCPR, as well as Article 6 paragraph 1 of ECHR.

CPC, but according to the Instruction on Court Records in regional courts, a civil case is returned to the court of first instance within 15 days. It's only logical that the appeal definition should follow the same scheme. The ruling of the court of the first instance can be appealed against within one month from the day of adoption of an ultimate decision (Article 321 of the CPC).

However, it is extremely difficult to determine the beginning of the term for an appeal, since the law does not oblige the court to forward the ultimate decision to the parties of the trial or to indicate the date of its production.

After the examination of civil cases were over, the judges of the Basmanny and the Zamoskvoretsky court explained the appeal procedure, but most often forgot to name the date for the familiarisation with its full text. In reply to the question of the applicants' representatives as to when it would be possible to receive a motivated decision, the Zamoskvoretsky court officials answered: "you can track it on the court site", or "come in a month". In Basmanny they replied "in 3-4 weeks", "in a month", or "you can take a copy next year" (the hearings took place on 28 November). In the Moscow municipal court the plaintiffs were usually told that the case would be in the district court in 2 weeks and they would be able to study the definition there.

In practice the applicants were only able to get a copy of the decision two, three or even more months later, i.e. when appeal terms already expired. Not to miss the term of appeal in such a situation, the lawyers immediately after the trial file a preliminary or a brief appeal based on the findings of the court, and upon receipt of the text of the decision they additionally file a full appeal based the justification of the decision. The European Court of Human Rights has commented this practice as non-violating the right to access to justice²². But such a solution is unlikely to be the right one in the case of foreign citizen S. F. S.. The Basmanny court in its definition left a brief appeal against the court decision of 12 December 2014 without motion. The court suggested that the applicant eliminate the violations committed before 6 April 2015, however the applicant received the definition of the court informing him of it only on 10 April 2015 after numerous requests of the applicant's representative to the court. Thus the court placed the applicant under conditions which prevented him from correcting the shortcomings of his appeal and file a full appeal on time (which can be done

²² See *Ryazantsev v. Russia*, ECHR, 10 March 2011.

only upon familiarisation with the full text of the decision to be appealed against).

According to Federal Law of 22 December 2008 No. 262 on Provision of Access to Information on the Activity of the Courts of the Russian Federation, court decisions should be published on the official web sites of the courts. The decisions of Zamoskvoretsky and Basmanny district courts of Moscow were published on the web sites with a considerable delay (3-4 months or even later), some of them have not been published until now, though they came into effect more than half a year ago. On the web sites of the Moscow regional and district courts the information is published more promptly. But sometimes, as in the case with Kh. G. M. the hearing of which took part on 18 June 2015, at the beginning of August this year their sites provided notifications that the "text of a judicial act" was being prepared, and in September - that "the text is being prepared for publication on the web site".

The applicant and his representative could obtain copies of decisions on civil cases at the court registry. According to the Committee and Memorial lawyers the situation is aggravated by the fact that many of the applicants can't apply for copies of decisions because they don't speak Russian and the applicant has to be accompanied by an interpreter or a representative himself who has to go to court.

Russian procedural law guarantees the right to review a motivated decision and to obtain a copy only to participants of the trial. However, Article 6 of the Law on Provision of Access to the Information on the Activity of the Courts of the Russian Federation provides for the right of the citizens to familiarize themselves with court information held in archives. The monitor, considering the fact that no decisions she was interested in were published on the web site of the court, tried to use this right and turned to the registry of the Zamoskvoretsky court with a request to look through the materials (the decision and court records) of some cases assumingly already filed in the archive. Having clarified that the monitor was not the participant of those trials, the court officials asked her not to "waste their time", because in "any case" nobody would let "strangers" read the case files.

Court decisions should sufficiently explain the grounds for their delivery. It does not mean that the courts are obliged to provide detailed answers to every remark of the participants of the trial, but each party to the case should be informed on the court's reaction to the explanations and evidence it submitted. A motivated decision allows

the parties to establish whether they have any grounds for appeal. Effective realisation of the right to appeal is only possible if a court decision clearly indicates the reasons for its delivery. These decisions also show the participants of the proceedings that they were heard thus motivating them to accept the position of the court. And finally another aim of motivated judicial acts consists in showing the general public how the courts deliver their decisions.

Guided by the requirements of Russian legislation to the contents and the quality of court decisions (Articles 198, 329 of the CPC of the Russian Federation, Articles 29.10, 30.7 of the Russian Federation Code of Administrative Offences) we have examined 21 decisions on civil and administrative cases to which asylum seekers were party. Having no intention to analyse court decisions on the merit, we tried to study how decisions reflected basic arguments of the parties, including the ones ascertained by the court directly during the examination of evidence in the course of court sessions, whether the court provided its assessment of this evidence, which of them were of decisive importance for the outcome of the case and for the mere fact of partial or complete satisfaction (or dismissal) of the demands.

It is noteworthy that for the given survey we have selected the decisions that were taken as a result of the hearings we personally were present at and which we audio recorded.

In the greater part of the Basmany court decisions the FMS arguments were comprehensively presented and assessed by the court, while counterarguments of the applicant and his representative were presented quite briefly. At that decisions are founded most exclusively on written materials submitted by the FMS (their objections), and on the contrary - there is no mention of the arguments and evidence received from the explanations of the applicant, his representative, or pleadings of the parties during the court session. (There are some exceptions, but their number is not large, see further on).

Thus one of the decisions runs as follows: "... a person is deprived of temporary asylum in the Russian Federation if this person deliberately provided false information or presented falsified documents on the basis of which temporary asylum was granted. It has been ascertained during the court session that the applicant was not registered at the address he had indicated. The mere fact that the applicant deliberately provided false information (that he was temporarily registered) to the migration body serves as sufficient grounds to deprive him of temporary asylum". The references of the applicant's representative to

Russian legislation in the course of the session with a view to prove that no legal norm provides for the granting of temporary asylum only on the basis of registration at a place of sojourn were not assessed by the court.

Zamoskvoretsky court, while considering a similar refusal of the Migration Service of Moscow to extend temporary asylum agrees with the state body and does not, for instance, mention the letter of the FMS of Russia of 7 October 2014, examined and filed by the court at the applicant's initiative explaining that non-fulfilment by a person granted temporary asylum of the duty to register does not entail the loss of his status, the Federal Law on Refugees does not contain a demand to present a rent agreement or registration papers when applying for the extension of temporary asylum, and the address is needed only for notifications and other correspondence.

Quite often during the court session the applicants refute these or those arguments of the migration service giving the necessary explanations (including when they answer the judge's questions), however in the final text of the decision we find only the quote from the FMS's written objection as if there were no session at all. The impression created is that oral and direct examination of the case has no impact whatsoever on the decision the court delivers and is perceived as a mandatory but only a formal, decorative stage of the proceedings. But even if the court cites a detailed description of the applicant's demands with an account of circumstances connected with individual risks in case of his return to the country of origin, it doesn't mean that further on, while substantiating its decision, the court will not write that the applicant "did not receive any threats and did not cite any apprehensions of becoming a victim of torture and other cruel, inhuman or degrading treatment or punishment in case of return to his home country". The case of Uzbek citizen S. F. S. who was put on the wanted list by the authorities of his country of nationality on charges with infringements of the constitutional system and other grave crimes may serve as an example. The applicant did state that in case of his return to Uzbekistan he might become a victim of torture. The Russian Federation General Prosecution Office as a result of the check refused to extradite him as the General Prosecution Office of the Republic of Uzbekistan demanded. But the judge writes that the Russian FMS took into account the absence of threats to the applicant when delivering its decision and hence cannot recognise the decision as unlawful or cancel it.

Another example is the case of the applicant from Cameroon B. E.. During the court session he was asked: “Have there been any threats to you since 2013?” B.: “Yes, my parents and my wife were also threatened, I have a telephone record of it. I can show it if necessary...” Afterwards the court decision runs: “The applicant did not inform of any threats on the ground of race, religion, nationality, ethnicity... or political convictions against him or the members of his family on the territory of the country of nationality”.

Quite a widespread argument of migration bodies for turning down asylum applications is the argument that the applicant’s “relatives are residing in the country the applicant fled and that the latter has not provided any evidence as to their being subjected to any persecution”. The court also refers to it in the justification of its decision. However, sometimes the applicants in the course of the sessions inform that the members of their family were granted asylum in other countries (as it was, for instance, the case of Syrian A. A. M.), and the FMS representative does not deny it, but the court, despite the information received, cites out-of-date or false information from the migration service’s response in its decision.

It should be noted that sometimes the court copies the comments of the Migration Service into its conclusions. The most widespread phrase in the decisions on Syrian cases was derived from the decisions of the Migration Service where the situation in Syria is described without mentioning the civil war underway there: “The arguments of the applicant concerning an unstable social and political situation and mass unemployment on the territory of Syria do not testify to the fact that the applicant’s fear for his safety in Syria is more well-founded than that of other residents in the country”. This wording can be encountered not only in the decisions of the court of first instance, but also in the decisions of the court of appeal.

It is noteworthy that the decisions of the Zamoskvoretsky court on the whole reflect the positions of the parties in a less biased way than those of the Basmanny court.

The only decision of the court of the first instance fully conforming to the legislation and the standards of a fair hearing is the one delivered by the judge of the Zamoskvoretsky court in the case of a North Korean citizen N. N. The decision equally cites not only the arguments provided in the appeal against the actions of the FMS department, but also the evidence provided in the course of the session: the speech of the specialist, explanations of the applicant himself, large excerpts

from the materials of international organisations (in particular, the UN General Assembly on the situation with human rights in North Korea) filed by the court at the initiative of the applicant.

Moreover, this decision was the only one among the decisions we have analysed when the court imposed the burden of proof of potential risks for the applicant to fall victim of cruel treatment and execution in the country of origin on the migration body and not on the person who turned for assistance: “The court finds the arguments of the applicant concerning his (the applicant’s) well-founded fear of persecution on the part of the authorities well-grounded... since no other proof confirming that the applicant would not be arrested for the flight from the country in case of his return to North Korea has been submitted” (the decision of 10 November 2014). This position has been repeatedly pointed out by the Supreme Court of the Russian Federation²³ as a recommended position for the courts with a view to remind that the Law on Refugees does not require that an asylum seeker provide evidence to confirm his fear of persecution, and instructs migration bodies to carry out the necessary verification of the information provided by the applicant.

In all the other decisions the courts were acting on the premise that it is the applicant’s duty to prove the existence of risks for his life if he returns to the country of origin: “When delivering a decision the FMS of Russia officials comprehensively examined all the circumstances of the case and ascertained that the applicant’s fears of persecution <...> in case of his return are hypothetical and subjective. The applicant has not provided any proof of... impossibility of return”; “the applicant has provided no evidence of any obstacles hindering his return to the country of nationality to the Migration Service of Moscow, or in the course of the court session...”.

We have also paid attention to the fact that the applicants (and their representatives) urged the court to take into account not only asylum seeker’s specific circumstances but also the general situation concerning human rights in his country of origin referring, in particular, to expert reports and information on the country of origin prepared by international organisations (UNHCR Guidelines, ICRC documents, human rights NGO’s reports, etc.). The district courts of Moscow filed these materials, but in their decisions (with the exception of the above-

²³ See, for instance, “Summary of the legal practice regarding the application of legislation on refugees and forced settlers”, the Supreme Court Newsletter No. 5, 2000. See also the Supreme Court Newsletter No. 11, 1995.

mentioned case of N. N.), these materials are not examined and the applicant's references to them are not cited.

In this connection the definition of the Moscow municipal court on the appeal of Kyrgyz citizen K. against the refusal of the Basmany district court of Moscow is curious. The definition runs as follows: "In his appeal the applicant refers to the survey of competent international organisations, but in a one-sided way, so the Civil Chamber thinks it necessary to quote the fragments of the survey not mentioned in the appeal".

At that it is not indicated which surveys the applicant considered important to cite and what argument he wanted to illustrate with the help of the surveys. This is followed by four pages on positive trends in the development of the Kyrgyz Republic: about successful presidential and parliamentary elections in 2010 and 2011, about the fact that Kyrgyzia signed a number of international treaties prohibiting torture, about the legislation on a national preventive mechanism (NPM), etc. "Thus," summarises the court "the applicant did not cite any convincing arguments proving that his fear for his safety in Kyrgyzia are more significant than those of other residents of the country". Instead of a comprehensive assessment of the applicant's arguments the court opposed another series of facts on the country of origin not directly related to his case, that is, by exposing the applicant's one-sidedness, the court manifested its own one-sidedness.

As far as the results of considering appeals against FMS bodies' decisions by courts are concerned, as we have already mentioned, the court only once (out of 28 cases) satisfied the appeal against the denial of asylum during the monitoring period - it was the decision of the Zamoskvoretsky court of 10 November 2014 with regard to a North Korean citizen. The Migration Service of Moscow failed to appeal against this decision on time, that is why it came into effect. In August 2015 the Moscow MS attempted to restore the period for appeal, but the court rejected their application. In the court of appeal (Moscow Municipal Court) the monitor observed no cases of decisions in favor of refugees who did not agree with the refusals delivered by the judges of Zamoskvoretsky and Basmany district courts.

The situation is drastically different with administrative cases against asylum seekers within Russia, mostly under articles sanctioning their expulsion outside of Russia in addition to a fine (Part 3 Article 18.8, part 2 Article 18.10). In this case the judges of both the first and the second instances (the Izmaylovsky district court, the Nogin-

sky municipal court, the Moscow municipal and regional courts) often made compromise decisions: some ruled the punishment in the form of a fine without administrative expulsion; others, while considering appeals against court decisions, found that violations had been committed, but partially cancelled them indicating it was not necessary to expel, still others returned the case files to lower courts for a review or back to migration bodies due to procedural violations committed or insufficiency of the documents required.

It is noteworthy that confirming the guilt of a foreign citizen for the failure to implement migration legislation but making a conclusion that an expulsion would be excessive in this situation, the courts justified this decision in different ways.

The situation in the Syrian Arab Republic ("military operations, devastation and famine, the lack of opportunities for the citizens to find any job on the territory of the republic") serves as the grounds for a judge of the Noginsky district court to recognise an administrative expulsion as an inadequate measure against a Syrian citizen who had to leave his home country. At that the court does not refer to the fact that the person is awaiting an interview at the migration service with a view to apply for asylum among the arguments in favor of its decision (the case of Kh. M., 25 November 2014).

The Izmailovsky district court of Moscow as a rule does not take into account the fact the persons in whose regard they consider the materials on violations of immigration rules are seeking asylum. When refusing to consider an administrative case the court refers to the shortcomings of the administrative case file presented by the FMS bodies, but not to the risk of violation of the Federal Law On Refugees allowing a person to legally stay in Russia until the end of the asylum procedure (the cases of Syrian citizens A. A. Ya. and M. M. F., 25 February 2015).

The analysis of the decisions of the Moscow regional court, obviously taking into account the "principle of non-refoulement", reveals quite a different approach: agreeing with the courts of lower instances as to the guilt of the person for having committed a violation, judges nevertheless point out a lawful necessity to provide an opportunity to a foreign citizen to terminate the asylum procedure (for instance, the cases of Kh. G. M., 18 June 2015, A. F. M., 17 February 2015).

One of the judges of the Zamoskvoretsky court, having turned down a Syrian citizen's appeal against a decision of the Migration Service remarked in a conversation with the lawyer: "The Moscow

Municipal Court also expels Syrians, it's only the Moscow region/ meaning the Moscow regional court - *author/* that is so kind to leave them here”.

Unfortunately, as some of the texts of the decisions were not ready, we were not in a position to analyse some important cases in terms of the observation of refugees' rights. For instance, the case of the citizen of Tajikistan S. U. G.. The case is important from the point of view of the observation of the principle of family unity and respect of private life since the court refused to recognise her right to temporary asylum despite the fact that her husband, as a result of ECHR intervention, was granted temporary asylum in Russia.

Thus, if not all the courts find it expedient, human and lawful to expel refugees from the territory of Russia, it can be said that the greater part of asylum seekers are deprived of justice that is “to be considered as such if it meets justice criteria and provides effective restitution of rights”²⁴, when the matter concerns provision of protection and corresponding rights and guarantees by the Russian state. Behind the observation (not absolute, and sometimes not fully conforming not only to international standards, but to Russian legislation either) of the general rules of court proceedings there stands a biased attitude towards the applicants, an uncritical perception of the vision of a refugee's situation the state body sticks to, neglect of the interests of a private person and a formal writing of decisions. There are no direct grounds for the conclusion that while hearing foreign citizens' cases the judges are not free and are guided by external directives. However, both refugees (and their representatives) and neutral monitors have some doubts as to the fairness of the hearing, and get a persistent impression of a predetermined outcome. For them justice was not administered, and was not obvious²⁵.

General conclusions

1. In Russia refugees enjoy the right to a fair trial on a par with Russian citizens, but do not have the right to free legal assistance as provided to Russian citizens. In this sense the norm of Article 16 of the 1951 Convention is not fully realised.

2. Moreover, in accordance with Article 10, Part 2 of the Law

²⁴ As the Russian Federation Constitutional Court noted in its Ruling No. 16-P of 2 July 2013.

²⁵ As the ECHR insists (see *De Cubber v. Belgium* of 26 October 1984).

on Refugees, refugees enjoy the right to appeal against FMS decisions administratively.

3. At the same time the realisation of these rights when appealing against decisions on asylum issues has a practical meaning only in a sense that it gives refugees an opportunity to legally stay in Russia during the period for which the appeal against the FMS decision is underway but almost never leads to a review of FMS decisions on asylum issues. Considering the extremely low effectiveness of appealing against these decisions, administrative appeals are still slightly more effective.

4. The opportunity to appeal against expulsion decisions at court has a very important practical meaning for refugees, which, despite procedural defects of the judicial consideration of administrative cases, is often effective and serves as the last means of protection of refugees from expulsion.

Recommendations

To the FMS of Russia

1. Take measures to eliminate obstacles hindering the realisation of the right to appeal of the FMS decisions on asylum issues:

2. provide rigorous observance of administrative regulations concerning the issue of providing copies of motivated decisions to persons who informed - orally or in written form - of the intention to appeal against them;

3. introduce a requirement to issue copies of motivated decisions on the day of address in administrative regulations so that the applicants are able to realise their right to appeal;

4. exclude facts of forwarding for expulsion of persons who received denials of temporary asylum, decisions on loss or deprivation of temporary asylum on the day of receipt of notifications on these decisions at the office of territorial FMS bodies as violating the right to appeal and the principle of non-refoulement;

5. abandon the practice of formally considering appeals against the decisions of territorial bodies by the Russian FMS without considering decisions appealed and arguments of the appeals on the merit, which leads to the violation of the right to appeal and a risk of the violation of the principle of non-refoulement.

6. since the Russian FMS actually assesses the applicant's circumstances and not the decision of a territorial body when considering appeals, use the right of the FMS to deliver decisions on migration

issues and if the decision of the territorial body is cancelled, deliver a new decision on the case - obliging the territorial body to issue the relevant document to the applicant.

To the legislative and executive authorities of the Russian Federation

1. To provide laws for the right of foreign citizens to free legal assistance on a par with Russian nationals, if their social and economic status testifies to their belonging to the most vulnerable groups of the population.

2. To ensure genuine equality and adversary of the parties in the course of trials on administrative offences, establishing in the law the participation of an official (the representative of the agency that carried out an administrative examination or the Prosecution Office) authorised to support and prove the charge brought, thus sparing the court the necessity to assume the role of the state prosecution which in itself violates the principle of the independence of the court.

3. Regulate administrative proceedings (similarly to criminal proceedings) so as to guarantee the observation of the presumption of innocence of the person brought to responsibility. The guilt of the alleged perpetrator should be proved by the authorities, and the person in his turn should not prove his innocence to the court.

4. Provide for obligatory record keeping for hearings of administrative cases by the courts or establish a norm obliging to satisfy the motion on record keeping where it is made by the person (and not at the discretion of the court, as it is indicated in the Code of Administrative Offences of Russia), since it guarantees to the person the constitutional right to judicial protection of his interests.

5. Provide all courtrooms with sufficient equipment introducing a system of mandatory (up to the cancellation of decisions in case of non-fulfilment) full audio recording of court hearings which will avoid cases of falsification and "adjustment" of the record's contents for the final decision.

6. Take measures to optimize the workload of the courts (primarily in district courts of general jurisdiction).

To the courts and community of judges

1. The courts should have access not only to professional legal education, but to specialised training, including on international law, in the sphere of human rights and its application at a national level.

2. While considering cases concerning refugees and asylum seekers as parties to a trial, the courts should be guided not only by Russian legislation, but also take into account international standards reflected in legal treaties and their protocols, the positions of the Constitutional and Supreme Courts of the RF, and the legal practice of the ECHR and the UN Human Rights Committee. To ascertain the circumstances of the case it is not sufficient to use only the materials of the migration case file as evidence, the information and reports of international organisations, of the Russian FMS, media reports and other relevant information on the country of origin should also be examined.

3. Take measure to compile motivated decisions on time and provide access to them to the participants of the trial without an unjustified delay. Regularly publish judgements passed on the merit of the case (on the courts' web sites).

4. Strictly observe the provisions of statutory enactments providing for the familiarisation with the necessary procedural documents (including court records) and their receipt by the parties to a trial.

5. Openly publish reliable and full information on the cases at court and the upcoming hearings of these cases. Install information stands or working equipment in accessible places for visitors of the court premises meant for the provision of information on the current activity of the corresponding court.

6. Show impartiality and lack of a biased attitude to the parties to a trial. Avoid the practice of limiting fully-fledged participation of the parties to a trial. Observing ethical norms of conduct for judges who should show respect to all those present in the courtroom. The violation of these principles arouses doubts in the fairness of the trial and the decision delivered.

7. Review the procedure of access to courtrooms by changing internal regulations of the courts, taking into account the proportionality principle as far as security matters and the public character of the courts' activity are concerned. Give up the practice of allowing of visitors into court establishments exclusively upon the presentation of a passport.

8. The courts should provide the necessary conditions within reasonable limits for the general public and not only the participants of a trial to attend hearings. The lack of vacant seats and other inconveniences and obstacles to the presence in a courtroom do not meet the requirements of publicity and openness of justice.

CHAPTER 6. DOCUMENTS

The Law On Refugees provides for 4 types of documents to be granted to refugees:

1. a certificate confirming examination of the application for refugee status on the merits,
2. a certificate of refugee status,
3. a refugee travel document,
4. a certificate of temporary asylum status.

Government Resolution No. 274 of 9 April 2001 On Granting Temporary Asylum on the Territory of the Russian Federation” adds another document: a certificate confirming examination of an application for temporary asylum.

Certificate confirming examination of an application for refugee status on the merit

A special FMS order No. 87 of 5 April 2011 regulates the procedure for drawing up, issuing and exchanging a certificate confirming examination of an application for refugee status.

A certificate confirming examination of an application for refugee status is issued following the results of a preliminary examination of an application for refugee status (Article 3, Part 2, Paragraph 3 of the Law on Refugees). The certificate is issued for the standard application examination period of three months. This document replaces the identity document that the refugee temporarily surrenders to the Migration Service (MS) upon getting the certificate. The certificate serves as the grounds to get registered with the police and in the exercise of other rights guaranteed by Article 6 of the Law On Refugees, including referral to housing in a Temporary Accommodation Centre (the TAC). The certificate also allows the refugee to enjoy the protection from refoulement (guaranteed by Article 10, Part 1 of the Law On

Refugees). It is therefore critically important to refugees to obtain this certificate.

When refugees apply for asylum at the border (in case of a forced, illegal border crossing), their application is referred to an FMS territorial body within three working days (Article 4, Part 4). The application should be examined, and a decision on whether to issue a certificate (or refuse to advance to an examination of the application on the merit) should be delivered within five working days (Article 4, Part 5, Paragraph 2). The document is to be handed to a refugee within a day of the moment a decision is made on whether to issue a certificate (per Article 4, Part 7).

Thus, a refugee who had illegally arrived in Russia and applied for refugee status right at the border should receive a certificate within nine workdays. This is reduced to six workdays in the case of an application filed directly with a territorial body of the FMS.

As noted above in the Chapter “Access to procedures,” applying for asylum at the border poses a big challenge. If refugees are not sent back to their country of departure on the next plane, without any chance to seek asylum, they may be held criminally liable for illegally crossing the border—or attempting to do so—and end up under investigation in a pre-trial detention centre (SIZO). With the involvement and assistance of a lawyer, a refugee may apply for refugee status and get a documented refusal to examine the application on the merit (in compliance with Article 5 Part 1 Paragraph 1 of the Law On Refugees). A refugee who is released after trial or having served a sentence will be able to apply for asylum at an FMS territorial body, where a certificate confirming examination of the application for refugee status on the merit should be issued to him within six working days.

In some cases, refugees assisted by UNHCR succeed in filing applications for temporary asylum from airport transit zones. In these cases, the delay until the applicant receives a certificate confirming examination of his application depends on when a migration officer will find time to deliver them.

The aforementioned are examples of individual cases. Drawing on experience, we can make some broader observations and conclusions about how certificates are issued by territorial bodies of the FMS. The Migration Services of Moscow and the Moscow region **never** issue certificates within six working days, but tend to take 2-3 weeks—at best. These certificates, however, are typically falsely marked with earlier dates rather than the actual date of issue: refu-

gees get documents not for three months, but for two and a half, or sometimes less.

The law does not provide for any documents to be issued in the period of preliminary examination of the application for refugee status—i.e. up to the moment when the decision on whether to issue certificate is delivered—which makes a refugee who has applied for asylum subject to expulsion. That is why some territorial bodies—at their own initiative—have decided to issue an informal post-interview document that attests that an asylum application was accepted from this person. Administrative regulations formalized this practice by forcing territorial bodies to issue these letters to refugees within a period not exceeding five workdays (Paragraph 77) from the day the asylum application was filed.

Issuing these papers could protect asylum-seekers who have applied for refugee status from expulsion, if a certificate were indeed issued within six workdays or if the term of such a certificate were not limited to 5 days. Meanwhile these papers only partially solve the problem for those waiting for a certificate, and do not even address the problems of those whose applications for refugee status were denied.

According to the law, when migration bodies refuse to examine an application for refugee status on the merit, refugees have a right to appeal the decision (and, as we have seen, there is a chance the FMS might satisfy their appeal), but they receive no document attesting to the lawfulness of their stay in Russia during the appeal period, which is an obvious flaw.

Territorial bodies of the FMS not only violate the terms of how certificates should be issued to confirm a refugee claim under review, but sometimes never issue them at all.

On 10 April 2013, 9 Copts from Egypt (including a 2-year-old child) in search of asylum who had arrived in Russia the previous day applied to the Migration Service of Moscow. They had no place to stay in Moscow, so, as they applied for refugee status, they also requested to be referred to a TAC as soon as possible. On 11-12 April the Migration Service decided to issue certificates confirming examination of their applications for refugee status, and on 18 April, instead of certificates they were given notifications of refusal to recognise them as refugees dated 16 April 2013. They were also denied referrals to TAC since the right to a TAC referral is only granted to holders of certificates. These people met on their way to Russia, and each family has its own story. It was impossible to thoroughly examine their cases

in two or three working days. The incredibly rushed decision-making can only point to a deliberate attempt on the part of MS staff to prevent these Copts from receiving certificates and exercising their right to asylum.

According to the law, a certificate shall be issued for the period of the examination of the application, for which three months are allowed; if necessary, it may be extended for another three months, though we do not know of a single case in which the FMS failed to meet the initial three-month deadline.

The law does not provide guidelines for how the terms of validity of certificates should be extended in the case of appeals against refusals of refugee status. However, this gap is bridged by aforementioned FMS Order No. 87, which states that the term of validity of the certificate, upon FMS approval, is extended for “*the period of examination of the appeal at the FMS of Russia and (or) at court if a person lodges an appeal against the decision of a territorial body of the FMS of Russia on refusal of refugee status*” (Paragraph 6). However, the implementation of this provision makes it almost meaningless. At any rate, such is the case in metropolitan areas.

In order to extend the term of this certificate (attesting that an application for refugee status is under evaluation), a refugee must submit a written application to the migration service and enclose the certificate itself and a copy of the document confirming that an appeal is underway against the refusal of refugee status (a registered copy of the complaint to the FMS or filed in court, or a court summons). Most refugees cannot write such an application in Russian by themselves—they have to seek assistance from friends or NGOs. The application may be submitted to the registry located at the refugee department of the Migration Service of Moscow. But the registry is on the first floor of the building, which visitors cannot access. One has to rely on assistance of the staff, which is not guaranteed, or submit the application to the central office of the migration service, located at a different address, and spend a long time queuing at the registry. The Refugee Department of the Migration Service of the Moscow region, located in central Moscow, does not have its own registry; applications for extension of certificates are not accepted there, and are expected to be submitted to the main office in the Moscow region.

Having submitted an application and a certificate, a refugee is left without any documents for a month at least. The law does not set a period within which territorial bodies are obliged to provide extensions

of certificates. According to the explanation provided by the FMS's Department for Citizenship Issues in a letter dated 16 May 2014, coming to a decision on the extension of the term of validity of the certificate takes a week or two, after which certificates should be issued immediately. It is unclear what the two additional weeks are spent on.

In addition, migration officers do not notify refugees when the document is ready, making them repeatedly visit the Refugee Department before the extended certificate is eventually obtained.

The term of validity of the certificate is normally extended for one month or until the date of the court session indicated in a notification. But the appeal procedure takes many months (at least in the Moscow region): the central apparatus officials of the FMS examine appeals for one month at least, sometimes much longer—always failing to observe the term of 15 working days stipulated by regulations. After that, a refugee has one month to prepare a complaint to court, and the procedure of judicial appeal in two instances can be dragged out for at least 6 months due to extreme overloading in the courts.

And so, a month later, the refugee has to re-apply and submit a certificate for extension again, and repeat this procedure several times. Language issues are a perpetual problem, as the territorial bodies of the FMS are unable to provide interpreters to assist refugees during visits to the FMS for documentation matters (except for Dari and Arabic interpreters available at the Migration Service of Moscow). All told, the process for extending the term of validity of the certificate becomes a nightmare for refugees, making it possible only for the most determined to go through it. But even they spend more time waiting for the documents than using it.

For example, a North Korean refugee, N. N., having filed an appeal with the Zamoskvoretsky district court of Moscow against a refusal of refugee status from the Moscow MS, applied on 3 March 2014 to the migration service for the extension of the certificate confirming examination of his application for refugee status. Following repeated phone calls to the Refugee Department by his representative, it was only on 10 April that N. N. succeeded in having the document extended, until 30 April. The hearing of his appeal was postponed several times for various reasons. This forced N. N. to apply to the Migration Service of Moscow for two more extensions of the certificate confirming examination of his application. For the last time the document was extended from 28 August till 10 October 2014. His case was finally heard at the Zamoskvoretsky court on 10 November. At the time of this writing,

his certificate was pending extension at the Moscow MS. Due to the lack of papers a court bailiff wouldn't let him enter the court building, and he managed to take part in the hearing of his case only thanks to his lawyer's persistence.

The Civic Assistance Committee has repeatedly drawn the FMS's attention to these cases, but with no results.

Certificate of refugee status

A person recognised as a refugee, i.e. granted refugee status, is provided with a refugee certificate that stands in for their passport (Article 7 Part 7 of the Law On Refugees). The term of validity of a refugee certificate is not prescribed by law. It is defined by Government Resolution No. 356 on Refugee Certificates (of 10 May 2011), which equally established the Regulations on Drawing up, Issue and Exchange of a Refugee Certificate. Paragraph 3 of the Regulations runs:

“A refugee certificate is issued for the period its holder is recognised as a refugee, but no longer than for 3 years. In case refugee status is extended, the term of validity of the refugee certificate is extended by a territorial body of the FMS at the person's place of migration registration, but no longer than for one year.”

This Resolution was issued before Law No. 186 of 12 November 2012 cancelled Article 7 Paragraph 9 of the Law On Refugees, which stated that refugee status was granted for three years with a possibility of subsequent annual extension. Thanks to this amendment, refugee status in Russia became perpetual, as of 1 January 2013. Still, the provision that the certificate of refugee status be provided with three-year validity has not been changed. According to Paragraph 9 of the Regulations on Drawing up, Issue and Exchange of a refugee certificate, this document must be drawn up within 5 days of the date the decision on recognition as a refugee was delivered. No information related to significant violations of this provision has been communicated to us by any of the very few holders of refugee status in Russia.

Apart from the term of validity of a refugee certificate itself, it also indicates the term of re-registration for refugees, which is set by a territorial FMS body, but cannot be less than once in 18 months.

As mentioned above, despite the termless character of refugee status, re-registration procedure is effectively a regular chance for the status to be confirmed or denied. The first edition of the Administrative Regulations cancelled the instruction about annual re-registration

of recognised refugees on the territory of the Russian Federation adopted by FMS Order No. 5 of 1 February 1999. However, no new rules of re-registration have been established – they are evidently set out by the heads of individual FMS territorial bodies.

According to refugees, re-registration proceeds in the following way. Refugees should go to the refugee department a month before the re-registration term indicated in their certificate.

To be re-registered with the Migration Service of Moscow, refugees should present a document confirming their registration at a place of residence. There are no legal grounds for this request. Nevertheless, in practice the FMS justifies such an approach. In the response to an enquiry by the NGO called “Faith. Hope. Love.”, Liudmila Arestova, Deputy Head of the FMS Department for Citizenship Issues, pointed out that during re-registration, observance of immigration rules by a refugee may be checked. Although violations of these rules may not serve as the grounds for deprivation someone of refugee status, we have seen that in practice, unfortunately, they often do. Furthermore, refugees without a place-of-residence registration document are not admitted to the procedure of re-registration thus depriving them of the opportunity to extend their refugee certificates.

During the re-registration refugees are interviewed, questionnaires are filled out. Refugees are asked where they live, study or work, whether they left Moscow or Russia during the previous year, why they cannot go back to their country of origin and other questions.

Then a refugee certificate is withdrawn and replaced by a notification paper confirming that a refugee document has been sent to the migration service for extension.

In case of a favourable decision, in approximately a month’s time a refugee will get their certificate returned, with a mark of the current re-registration and the date of the next one. Sometimes, this procedure may be dragged out for some reason, and refugees have to walk about with a notification and pay numerous visits to the MS, where their notification is stamped instead of a new refugee certificate being issued. However, as long as re-registration does not deprive the refugee of protected status, these issues are not extremely serious.

Travel document

Apart from a refugee certificate, a travel document for travelling outside Russia may be issued upon request. The right to apply to the MS for this document is guaranteed by Article 8, Part 1, Paragraph 13

of the Law On Refugees. In addition, Law No. 186 of 12 November 2012 complements the text of the Law on Refugees in Article 8.1, which is entirely devoted to a travel document. Thus, no other refugee right is better articulated in law than the right to a travel document. This is probably the reason why in recent years, there have been no complaints of problems with getting a travel document—a problem that refugees had often addressed to the Committee and Memorial lawyers in previous years.

Certificate of temporary asylum status

Let us proceed to the documents issued to persons who applied for temporary asylum and were granted it.

The Law On Refugees names only one document of this kind: a certificate confirming that temporary asylum has been granted (the *TA certificate*). According to Article 12 of the Law, the TA certificate is issued to those who have been granted temporary asylum and serves as the grounds for their stay in Russia and registration. A holder of a TA certificate surrenders their identity document to the migration service. Russian Federation Government Resolution No. 274 of 9 April 2001 adds that a TA certificate serves as an identity document for the holder (Paragraph 9).

The Regulations on Drawing up, Issue and Exchange of a TA certificate in the Russian Federation established by FMS order No. 81 (of 25 March 2011) state that a TA certificate is issued for a term of up to one year (Paragraph 2). The Regulations also indicate that a TA certificate is issued within one working day from the day when the decision on granting temporary asylum was delivered (Paragraph 5), while the Administrative Regulations indicate the period of 2 working days (Paragraph 123). Metropolitan migration services usually fail to adhere to these timelines. The issue of TA certificates became a serious problem in 2014 when refugees from Ukraine flooded Russia. The FMS failed to provide the required amount of certificate forms, so refugees had to spend months waiting for the documents—without which they could not be legally employed, travel and solve other problems.

According to the Regulations, the TA certificate is issued to an applicant and each family member aged 18 and older (Article 123) with photos included into the TA certificate (Paragraphs 6.3, 6.4). The Regulations equally provide for the possibility of issuing a TA certificate to children under 18.

Paragraph 11 of the Regulations states: “*A certificate for a family member under 18 of a person who was granted temporary asylum is issued to a person who has received temporary asylum. In such case, a dash is put on page 12 of the TA certificate*” (Page 12 contains the following information: the title of the territorial body of the FMS of Russia that issued the certificate; the number of the case file of the certificate holder; surname and signature of the authorized officer of the FMS of Russia territorial body sealed with a stamp of the territorial body of the FMS of Russia).

However, TA certificates are practically never issued to minors, which causes some inconvenience for them and their parents. In the streets, on public transport, and in public space (e.g. on the way to school), being a visible minority may draw the attention of the police to children with TA status. Since they don't have documents, police officers tend to regard them as homeless and bring them to the police department until their parents come to collect them. Such circumstances may provoke children's trauma, cause children to miss classes, and cause their parents to miss work.

For instance, the family of S. H. S., a refugee from Afghanistan who was granted asylum by the Migration Service of Moscow faced this kind of problems. He has 7 children aged 3 to 16. He can't accompany the older children to school as he's the only breadwinner in the family and has to work from 5 in the morning, while his wife takes care of younger children and runs the house. The children are named on their mother's TA certificate, and have no documents of their own. This has led to repeated police stops and trips to the police department—days on which the father had to leave his job and lose his daily wage in order to get children out of the police department.

In April 2012, H. G. S., an African refugee who was granted temporary asylum by the Migration Service of Moscow, turned to the Civic Assistance Committee. Her 14-year-old son is a keen athlete who cannot take part in competitions held in other cities as his name is entered in his mother's certificate, and he has no other documents confirming his identity or authorising his legal stay in Russia, making even travel within the country impossible.

Sometimes, children from families like this face other issues due to the lack of documents. For instance, in spring 2014, 16-year-old T. H., from an Afghan refugee family, was not admitted to 9th grade final state exams (GIA) in a Moscow school.

Children from families of recognised refugees (not merely those with temporary asylum status) might also face similar issues, but the Regulations for Drawing up, Issue and Exchange of a Refugee Certificate do not provide the possibility of issuing separate documents to minors at all.

As mentioned in the Chapter “Access to procedure,” people granted temporary asylum have the right to submit an application for an extension of its period of validity one month prior to the end of the permit term, though exercising this right may pose challenges, at least in the FMS offices of the Moscow region.

No normative document establishes the procedure for the examination of applications on extension of temporary asylum: neither Government Resolution No. 274, nor Order No. 81, nor the Regulations provide for the terms of examining these applications and issuing documents to cover the review period. In this respect, every territorial body develops working practices for examining applications on the extension of temporary asylum terms.

In the Migration Service of Moscow, when refugees succeed in submitting applications for extension, their TA certificates are withdrawn, and a copy is given in place, with a marking that the document has been surrendered to the MS for extension, signed by a migration officer responsible for the case and stamped by the MS registry stamp. This copy cannot be considered a valid document though, at best, it may sometimes help in dealing with police stops. As the terms for the examination of extension are not established, a refugee may end up with this copy, i.e. with no official documents, for an indefinite term.

Several years ago, an outrageous incident occurred at the Migration Service of Moscow. The family of Afghan refugee K. Sh. A. was granted temporary asylum, which was repeatedly extended—for the last time, it was up to 26 September 2010. In mid-September, K. applied to the MS for extension of his temporary asylum. His family's TA certificates were withdrawn, and in their place, copies of the certificates were made, with a note that the documents were pending extension. After that, K. paid monthly visits to the migration service hoping to receive extended certificates, but instead, he got just a new mark on his copies. The process of delivering a decision on K.'s case was evidently dragged out by the officer in charge of his case, who hoped to extort money for the extension of temporary asylum that K. refused to pay. It lasted until February 2011 when the aforementioned officer “extended” the copies of the family's TA certificates. The same month,

K. received notifications of refusal to extend the term of TA by post from the Migration Service of Moscow. When K. asked the officer in charge of his case what it meant, the latter replied that those notifications were “rubbish” and assured K. that everything would be fine. He kept assuring K. until summer of 2011, when the latter realized that he was being deceived and applied for assistance to the Civic Assistance Committee. The Committee informed the FMS of this outrageous case, and the latter in its response of 2 August 2011 informed the Committee that the FMS had ordered the Migration Service of Moscow to carry out an inspection and would inform the Committee of the results. However, despite repeated enquiries to the FMS, we failed to get the information on the results of the inspection. The officer who was deceiving K. either resigned or was fired, but no significant changes have occurred in the practice of examination of applications for extension of temporary asylum at the Migration Service of Moscow.

Those who have lost or have been deprived of temporary asylum are entitled to an appeal (provided for by Article 10, Parts 2-4 of the Law On Refugees), but the law does not provide for the extension of TA certificates or the issue of another document to claimants that covers the period of an appeal against a refusal as asylum status. According to the Regulations on Drawing up, Issue and Exchange of TA certificates, a TA certificate shall be withdrawn in case of loss or deprivation of temporary asylum (Paragraph 20).

This creates significant obstacles for persons who have lost TA or have been deprived of it in the exercise of their right to appeal and generates a high risk of expulsion. This risk is aggravated by paragraph 19 of the Regulations on Granting TA, established by Government Resolution No. 274 of 9 April 2001, which requires that territorial bodies that have delivered a decision on loss or deprivation of TA should take measures to organise a voluntary return of such a person or, in more extreme cases, their deportation from Russia. We may judge the way these measures are taken on the example of Syrians A. A. Ya. and F. M. M., whom the Migration Service of Moscow tried to forward for deportation straight from its Refugee Department (see Chapter 5: “Right to appeal”).

Certificate confirming examination of the application for temporary asylum

The Federal Law on Refugees does not provide for the issue of a document that covers the review period of a temporary asylum application, as it does for applications for refugee status. This gap is

bridged by the Regulations on Granting Temporary Asylum. As per paragraph 4 of the present edition of the Regulations, for the period of examination of the application for temporary asylum, which shall not exceed three months, the person who has filed this application is provided with a certificate confirming examination of his TA application (the *certificate*). If an application for refugee status from this person was under evaluation immediately before they applied for temporary asylum, his certificate confirming examination of an application for refugee status is stamped with a mark stating the extension for the period of examination of his application for temporary asylum.

According to the Regulations, this certificate should be issued on the day of receipt of an application for TA (Paragraph 113), though the terms for certifying the application by means of a stamp on a certificate for a previous refugee status application are not specified by law. In Moscow and the Moscow region, this type of document is never issued on the day of application but rather several days later—sometimes considerably later. For example, Sh. M. N., a refugee from the DRC who applied to the Migration Service of Moscow for temporary asylum in March 2015 was provided with a certificate one month following receipt of her application. On the day of application, the Moscow region MS issues an informal letter confirming receipt of someone’s application for temporary asylum. It is even more significant that certificates confirming examination of temporary asylum applications are not extended for the period of appeals against refusals of asylum as is prescribed by Paragraph 5 of the Regulations on Granting Temporary Asylum. Since failure to fulfil the obligations of this paragraph is widespread, it may be assumed to be an unofficial FMS practice. The lack of documents conforming legal stay for the period of appeal creates a threat of expulsion for persons who have been denied TA up to the moment they can realise their right to appeal.

Unlike recognised refugees, persons who have been granted temporary asylum do not exercise the right to a document to travel outside Russia. In our opinion, there is no reasonable explanation behind this denial.

Conclusions

1. Certificates confirming examination of a refugee status application and certificates confirming examination of temporary asylum applications are not issued in a timely manner, which creates a threat of expulsion for refugees undergoing status determination procedure.

2. Persons who have been refused following a preliminary examination of their application for refugee status (whose applications the migration service refused to examine on the merit), are not provided with any documents for the period of appealing against refusals which creates a threat of expulsion and violation of the right to appeal.

3. No clear rules have been established concerning the extension of certificates confirming examination of an application for refugee status on the merit—where reasons for extension, terms of extension, and terms of issue of the documents would be indicated. This subverts the procedure for the extension of certificates and leads to threats of deportation for refugees undergoing status determination procedure.

4. There is legal provision for refugee status certificates to be issued to minors, though the provision on issuing certificates to minors who have been granted TA is not working, which leads to the violations of their rights and interests.

5. No procedures are established for the examination of applications for extension of temporary asylum. The terms of this evaluation and a list of documents to be enclosed to the application are not specified, although they should be, which creates grounds for abuse. There is no legal provision for documents that attest that an application for an extension of TA has been received and is under assessment, which creates a deportation threat for people whose applications for asylum are under evaluation.

6. There is no legal provision for issuing documents that attest that an appeal against loss of TA status is ongoing, which creates a threat of expulsion for persons in whose regard the decision on loss and deprivation of TA has not yet legally come into effect, and violates their right to appeal.

7. There is no legal provision for issuing travel documents to TA holders. Since TA is granted not only on humanitarian grounds but also when there are grounds for refugee status, the right to documents for travel outside the country of asylum (stipulated by Article 28 of the 1951 Convention) is violated.

Recommendations

To the Russian Government

1. Add a provision for issuing certificates to minors in refugee families to Resolution No. 356 On Refugee Certificates of 10 May 2011.
2. Introduce the following amendments to Government Resolution

No. 274 On Granting Temporary Asylum in the Russian Federation of 9 April 2001:

- Introduce regulations on the examination of applications for extensions to TA terms, indicating the terms of examination of these applications and a list of documents to be enclosed to the application; provide for extension of the term of validity of TA certificate for the period of examination of the application for extension;
- add provisions for the extension of TA certificate for the period of appealing against loss or deprivation of TA;
- add provisions for the issue of travel documents for travel outside Russia to persons granted TA.

To the FMS of Russia

1. Ensure that certificates are issued *within the legally prescribed terms* that attest that applications for refugee status are under examination or that TA has been granted.

2. Add provisions to the Administrative Regulations concerning issuing a document to cover the appeal period for people who have been denied evaluation of their application for refugee status on the merit, in order to avert their deportation and violations of their right to appeal.

3. Ensure the issue of TA certificates to minors when they have been granted TA through a parent's application.

CHAPTER 7. GUARANTEES OF NON-REFOULEMENT

In the report we have repeatedly tackled the question of how the fundamental principle of non-refoulement of refugees to a country where they can be exposed to danger, declared in Article 32 and 33 of the 1951 Convention, is observed in the Russian Federation.

In Chapter 1 we demonstrated that the Law On Refugees contains **limited guarantees** of non-refoulement for refugees legally staying in the Russian Federation: direct guarantees do not apply to all groups of refugees, some groups profit from these guarantees indirectly (refugees appealing against the refusal to consider their refugee status application on the merit), while some other groups do not enjoy any guarantees (persons awaiting a decision on granting temporary asylum, persons appealing against a denial, deprivation or loss of temporary asylum).

Moreover, in violation of Article 32 of the 1951 Convention the law provides for an opportunity of extra-judicial expulsion of refugees whose refugee status applications were not considered on the merit, who were denied refugee status or temporary asylum, who were deprived or lost their refugee status or temporary asylum – and did not invoke the right to appeal these decisions or failed to appeal them successfully and would not leave the territory of the RF voluntarily.

The law equally stipulates extra-judicial refoulement for refugees deprived of their refugee status or temporary asylum refugee status for any criminal offence, while the Convention only allows refoulement of refugees posing a threat to national security or having committed a grave crime.

Moreover, in violation of Article 32 of the Convention the law does not give refugees in whose regard a decision on refoulement was made time to leave for a third country.

Neither the Law On Refugees, nor any other normative acts of the Russian Federation contain any norms similar to Article 33 of the 1951 Convention strictly prohibiting the refoulement of refugees to a country where they can be exposed to danger regardless of their legal status in the country of asylum, with the exception of persons posing a threat to national security or having committed a grave crime.

In Chapter 2 we showed that there exist serious problems with access to procedure in the Russian Federation creating a threat of refoulement for those refugees who failed to overcome these problems. Moreover, there are incidents of refugees having been subjected to expulsion at the moment of applying for asylum.

In Chapter 3 we showed that there is no fair procedure of considering asylum applications in Russia which creates a threat of expulsion for refugees who were groundlessly denied asylum.

In Chapter 4 we proved that decisions on deprivation or termination of refugee status and temporary asylum are often unfounded and are taken without the consideration of consequences for the security of those to be expelled as a result of termination or deprivation of asylum.

In Chapter 5 we demonstrated that there exists no efficient procedure for appealing against the decisions of the Federal Migration Service concerning asylum issues in Russia, which results in a risk of refoulement for refugees whose appeals have been unfoundedly rejected.

In Chapter 6 we showed that the existing practice of documenting refugees may lead to a threat of refoulement of certain categories of refugees legally staying in Russia.

Thus we showed that in Russia legislative guarantees of non-refoulement are very limited, while numerous factors bring about a threat of expulsion for refugees. In the previous chapter we discussed the threat of expulsion without mentioning how real this is. In this chapter we will try to answer the question whether Russia expels refugees, how and how often this happens.

To answer the last question the easiest thing would be to turn to the statistics of the Russian FMS, but the problem is that the official data on expulsions of foreigners published on the web site of the agency, are generalized and represent a total number of expelled and deported foreign citizens and stateless persons for a certain period – without an indication of the grounds for deportation/expulsion and with no breakdown into country of origin.

In terms of quantitative assessment of refugees' refoulement from the Russian Federation the data on deportation/expulsion of Syrian citizens and citizens of the Democratic People's Republic of Korea is most revealing.

Syria because in the given situation voluntary migration from this country, not connected with war or risk of persecution is insignificant (if it exists at all). In this connection the UNHCR qualifies the departure of residents of this country as an exodus of refugees and appeals to the governments of other countries of the world to introduce a moratorium on all returns to Syria²⁶.

North Korea because it is almost impossible for the greater part of the population to leave the country legally, while any unauthorized departures, including the ones for economic reasons are qualified as a state crime and are cruelly punished. In this connection the UN General Assembly in its Resolution of 20 December 2012 urged all the states of the world to unconditionally observe the fundamental principle of non-refoulement with regard to North Korean citizens.

In April 2014 the Civic Assistance Committee requested the information from the Russian FMS concerning the number of Syrian citizens who had turned to the Russian FMS bodies, had been granted asylum, as well as on the number of Syrian refugees, deported or expelled from Russia the same year. The response to this enquiry of 7 May 2014 contained information on the number of Syrian citizens who had applied for temporary asylum and the number of those granted temporary asylum in 2013. The data on deportation or expulsion of Syrian citizens was not provided.

In July 2015 the Committee sent a request for information to the Russian FMS concerning the number of foreign citizens expelled judicially or deported by decision of the FMS with a breakdown into country of origin. On 5 August 2015 the deputy head of the Supervision Department of the Russian FMS, K. V. Aleksashkin, in reply to this inquiry, recommended that the Committee familiarize themselves with the data on the web site of the Russian FMS. This answer cannot be interpreted other than as a refusal to provide the information, since the requested information is not published on the FMS web site.

They say, no answer is also an answer. There is no doubt that the FMS of Russia has the information on the nationality of those expelled and deported at their disposal. The FMS web site cites the figures on

the number of foreign citizens staying in the territory of Russia at the present moment with a breakdown into nationality even "with an indication of sex and gender"²⁷. The obvious reluctance of the FMS of Russia to reveal the data on the number of deported and expelled citizens of each country speaks for itself: expulsion from Russia to countries where it is prohibited to expel does exist, and these cases are not isolated, otherwise it wouldn't be necessary to conceal this information.

The Report on the results and basic directions of the activity of the FMS for 2013 and for the 2014-2016 planning period published on the official FMS web site runs as follows: "the FMS territorial bodies of the Russian Federation have organised the voluntary return of 120 foreign citizens who had been denied asylum in the territory of the Russian Federation to their home country, 5 citizens were deported, 3 – expelled, 9 – extradited to foreign states"²⁸.

The report of the last year cites the following data: "In 2014 the Russian FMS territorial bodies have organised voluntary return of 788 foreign citizens who had been denied asylum within the territory of the Russian Federation, 11 persons were deported, 8 were subjected to administrative expulsion"²⁹.

How the Russian FMS territorial bodies organise voluntary return, we do not know. Most probably, what is meant is the issuing of transit (exit) visas to leave the RF without deportation resulting in a ban to enter the Russian Federation for 5 years. To obtain such a visa the Refugee Department needs to refer a corresponding letter to the Visa Department of the same territorial body. However, getting such a letter and an exit visa often turns into a serious problem.

In mid-February 2015 a young Syrian citizen, N. O. turned to the Civic Assistance Committee after he had been denied temporary asylum. N. O. decided not to appeal against this decision, but to leave for Turkey and join his parents, since he could not support himself because of a serious eye illness. That said, it was important for him to be able to return to Russia from time to time for an examination at an eye clinic where he had had surgery. He could appeal against the denial of asylum within one month after he had received the decision and hence could legally stay in the Russian

²⁷ <http://www.fms.gov.ru/about/statistics/data/details/54891/>.

²⁸ <http://www.fms.gov.ru/about/statistics/plans/details/81732/full/>

²⁹ http://www.fms.gov.ru/upload/iblock/b26/doklad_2014_naplan2015_2017.pdf

²⁶ See "International Protection Considerations with regard to people fleeing the Syrian Arab Republic. Update III" October 2014, §§ 21, 26, 30.

Federation and leave its territory without being subjected to deportation during this time.

The same day the Committee chair Svetlana Gannushkina agreed with the deputy head of the Moscow FMS, V. Ivanov over the phone that a transit visa would be issued to N.O. The next day the visa department suggested that N.O. should buy an air ticket and come with this ticket to the Migration Service to have a visa issued. That he did, but the visa was refused to him. Then the Committee referred an enquiry to the Russian FMS. It was advised that a similar letter be sent from the UNHCR. Such a letter was sent. However, the FMS pursued in their refusal. The air ticket N.O. had bought was wasted as it was non-refundable. The Committee had to provide financial assistance to N.O. so that he could buy a new ticket. More than a month passed until N.O. managed to obtain a visa with this support.

If a refugee does not have any documents confirming his legal stay in Russia (even in cases of de-facto legal stay – in the process of appealing against asylum decisions, prolongation of documents), he is unable to leave the Russian Federation voluntarily without a transit visa. The only alternative is an expulsion, more precisely, a self-expulsion initiated by the refugee himself. If he wants to leave the country, he should turn to the district unit of the FMS and seek administrative liability without being placed in the detention centre for foreigners (SUVSIG). FMS officials are not always ready to help a refugee with this, so the Committee staff and volunteers have repeatedly had to accompany refugees to FMS district units and courts to help them obtain a decision on expulsion. This decision allows a refugee who doesn't have any documents confirming his legal stay in the Russian Federation, to leave the country. At that he has to pay a fine that constitutes from 5 to 7 thousand roubles in Moscow, the Moscow region, Saint-Petersburg and the Leningrad region and wait for 10 days while the decision on expulsion comes into effect. Otherwise a refugee will not be taken on board the plane.

Thus, voluntary departure takes shape of an expulsion imposing a ban to enter Russia for 5 years. According to FMS data, in 2013 17 persons who had been denied asylum were forcedly expelled from the Russian Federation. In 2014 this number reached 19 persons.

These figures do not seem to reflect a real scale of expulsion of refugees. Firstly, they concern only one group – those denied asylum. In view of the quality of the procedure for the consideration of asylum applications and appeals against refusals, this group is very likely to

include persons who fall under the criteria of a “refugee”. Secondly, these figures are definitely imprecise, as they do not include cases of administrative expulsion after asylum was refused, for instance, from Moscow, not a single refugee was expelled from in 2013 according to the data of the Migration Service of Moscow³⁰. Thirdly, numerous incidents of expulsion, or attempts to expel that we know of, contradict the picture of isolated cases of refugees' expulsion created on the basis of FMS data. We do however only receive information from several regions, and can only see a part of the whole picture in such big regions such as Moscow, the Moscow region, Saint-Petersburg and the Leningrad region.

Naturally, we don't have any other statistics at our disposal but the official ones, but still we do have some figures. In spring 2014 the Committee collected information on all cases of expulsion of Syrian citizens that we and our partners from Migration Rights Network of Memorial knew of for one month. It turned out that as of the end of March 2014 these two organisations only received information on 80 administrative expulsion decisions with regard to Syrian citizens delivered by courts in various regions of Russia from the end of 2012. A part of these decisions were successfully appealed against with the participation of Memorial lawyers or invited lawyers, some decisions were appealed against but were upheld, and some were not appealed against for some reason. Nevertheless, even these incomplete data give an idea of the scale of refugees' expulsion from the Russian Federation.

It should be noted that the greater part of these 80 decisions were taken in 2013, most favorable for Syrians in terms of chances to be granted asylum. Thus, the FMS of Russia, granting asylum to Syrian citizens “with one hand” (Refugee departments), subjected those very Syrians who violated the rules of sojourn to expulsion with its “other hand” (district units).

7.1. Administrative expulsion

The most widespread means of refugees' expulsion is an administrative expulsion for violation of immigration rules for foreign citizens in Russia. It is enforced judicially most often on the basis of Article

³⁰ <http://www.fmsmoscow.ru/ufms/stat/>

18.8 of the Russian Federation Code for Administrative Offence (the *KoAP*):

3. *Violation by an alien or by a stateless person of the rules for entry into the Russian Federation or of the regime for staying (residing) in the Russian Federation, manifesting itself in the violation of the statutory rules for entry into the Russian Federation, in violation of the rules for migration registration, movement or the procedure for choice of the place of stay or residence, or transit passage across the territory of the Russian Federation, or in non-discharge of the duty of making a notice proving residence in the Russian Federation in the instances established by the federal laws, -*

shall entail the imposition of an administrative fine in the amount of two thousand to five thousand roubles with or without an administrative expulsion from the Russian Federation.

1.1. *Violation by an alien or by a stateless person of the rules for entry to the Russian Federation or of the regime for staying (residing) in the Russian Federation, manifesting itself in the absence of the documents proving right to stay (reside) in the Russian Federation or, in the case of such documents' loss, in non-submission of an application about their loss to the appropriate body as well as in avoiding exit from the Russian Federation upon the expiry of a certain period of stay there -*

shall entail the imposition of an administrative fine in the amount of two thousand to five thousand roubles with or without an administrative expulsion from the Russian Federation.

4. *Violation by a foreign citizen or a stateless person of the rules for entry into the Russian Federation or the regime for staying (residing) in the Russian Federation manifesting itself in the noncompliance of the declared purpose of entering the Russian Federation with the activity or line of business which is actually carried out while staying (residing) in the Russian Federation -*

shall entail the imposition of an administrative fine in the amount of two thousand to five thousand roubles accompanied by an administrative expulsion from the Russian Federation or without such.

In the “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 2006 to 2012” it was noted that Russia failed to take into account the criticism by the Committee against Torture of the norms of the Code of Administrative Offences providing for such a serious meas-

ure as an expulsion for minor violations of immigration rules. It was pointed out in the report that violations of international norms, such as expulsion of refugees and persons who run the risk of torture in their country of origin, will continue in Russia “as long as no changes are made to establish differential criteria governing punishment for violation of immigration rules so that it is clearly determined where administrative expulsion may be enforced, taking into account the severity, scope and nature of any damage inflicted, as well as the offender's guilt and danger to society”³¹.

However, instead of differentiating punishments for administrative offences, quite the contrary occurred. On the tide of anti-immigration hysteria which accompanied the Moscow Mayoral election campaign in 2013, on 23 July 2013 Law No. 207 was passed, which supplemented Article 18.8 of the Code of Administrative Offences with paragraph 3 running as follows:

“Violations provided for by paragraphs 1, 1.1. and 2 of the given article committed in the city of federal importance Moscow or Saint-Petersburg, as well as in the Moscow and the Leningrad regions, - entail the imposition of an administrative fine in the amount from five to seven thousand roubles with administrative expulsion from the Russian Federation”.

Administrative expulsion of foreign citizens is often carried out on the grounds of Article 18.10 of the Code of Administrative Offences stipulating punishments for exercising labor activity without a patent or a work permit, or in a professional field not indicated in the patent/work permit. The above-mentioned Law No. 207 of 23 July 2013 introduced a paragraph into this article stipulating obligatory expulsion for the indicated violations committed in Moscow, the Moscow region, Saint-Petersburg and the Leningrad region.

Thus, in two metropolitan regions, where the greater part of refugees are residing, a punishment with no alternative was introduced for most widespread violations committed by foreigners providing for an obligatory expulsion from the Russian Federation in addition to a fine.

Decisions on administrative cases are delivered by courts of the 1st instance (both district and municipal). Consideration of these cases – at least in Moscow – as a rule, has nothing in common with judicial proceedings. Often a judge receives a whole bunch of administrative case files from a district FMS department and either considers them

³¹ See.: §§ 134-136, http://publicverdict.ru/topics/international_instances/10659.html.

behind closed doors without inviting and hearing out those brought to administrative responsibility, or invites several persons at once and asks each of them one or two questions, one of them meant to clarify personal data.

Despite the fact that the Code of Administrative Offences obliges the courts to provide interpreters' services to foreigners with no knowledge of Russian while considering their cases, this requirement is often not fulfilled, and a frightened foreigner, with no idea of what is going on, is made to sign a document stating that he does not require an interpreter or lawyer.

Since the beginning of 2015 the Committee has been monitoring the consideration of administrative cases in the courts of Moscow. It turns out that among Moscow judges there are real record breakers in terms of the number of administrative cases considered: Judge of Chertanovo district court of Moscow, A.G. Vassiliev considers 20 cases like this per day on average, and for the first three months of 2015 delivered 919 decisions on expulsion³².

It is obvious that considering this practice, the possibility that the court will tell a refugee from a migrant worker and won't impose an expulsion referring to the 1951 Convention is approximate to zero.

This possibility grows if a lawyer takes part in the proceedings: in this case the judge will try to avoid procedural violations, and might even deny an expulsion³³. But as a rule refugees can't invite a lawyer: it takes but a few hours to open an administrative case, and it is usually referred to court the same or the next day. It is almost impossible to find a lawyer at such a short notice who will agree to urgently go to court. Moreover, those held responsible for administrative offences and their defendants are never informed of the exact time of the court hearing: usually migrants are delivered to courts in large groups, at that a judge can have other cases appointed on the same day, and so it is impossible to determine the time at which each case will be considered and migrants have to languish in the corridor for hours awaiting their hearings. It is hard to imagine an extremely busy metropolitan lawyer in this line waiting with his client for hours for a court hearing of a badly paid case to begin.

These cases are dealt with almost exclusively by lawyers cooperating with NGOs. But even these lawyers are not always free when nec-

essary. In some cases, when a refugee manages to quickly get in touch with an NGO, and an NGO manages to promptly invite a lawyer, the courts impose punishments not connected with expulsion or find mistakes in the administrative case file (which are almost always present) and return it to the FMS unit that sent the case. But these cases are a drop in the bucket.

It is more probable to prevent an expulsion at the stage of appeal. This is possible on the following conditions:

- if a refugee receives timely and qualified assistance from a lawyer, who will help to appeal against the expulsion decision and apply for asylum from the detention centre for foreigners (SUVSIG);
- if the FMS territorial body is ready to accept his asylum application from the SUVSIG;
- if the local court, in defiance of an unfavorable political context will rely on international norms, since Russian legislation does not give sufficient grounds for the cancellation of an expulsion decision.

It is extremely problematic to see all these conditions coincide. It is very difficult for foreigners, who often don't know the language or where to turn for help, where to find a qualified lawyer. Sometimes relatives "on the loose" help the expelled person to organise a defence, but not everybody has relatives and it is not always possible to get in touch with them from the SUVSIG. While it has to be done promptly: the law provides only for 10 days to appeal against decisions on administrative offences. After 10 days the decision comes into effect – and a refugee may be expelled any moment.

The greater part of even highly qualified lawyers do not have any experience of legal assistance to refugees and do not always know of efficient legal remedies. Moreover, refugees can often not afford lawyers' services, and NGOs in a position to invite lawyers operate but in a few regions of the country.

As for the willingness of the territorial bodies to send officials to the SUVSIG to accept asylum applications, as we have already mentioned in Chapter 2 "Access to procedure", as a rule, it doesn't exist, and without any pressure on the part of the lawyer or the instruction of the Russian FMS, a refugee might never see a migration officer.

In the same chapter we mentioned that applying for asylum from the SUVSIG does not automatically suspend the execution of the expulsion decision: the bailiffs' service only takes into account the court ruling on the cancellation of the decision or on suspension of its execution, which only a lawyer deal with.

³² See <http://refugee.ru/news/slozhilas-praktika-takaya/>

³³ See, for instance, <http://refugee.ru/bednaya-lyudmila-grigorevna-zametki-izsuda/>.

Legal practice in cases of administrative expulsion varies across the regions of the country. In some regions where NGOs assisting refugees and lawyers cooperating with them are active, the legal practice develops in a favorable vein for refugees.

For instance, in Ivanovo, where lawyer I. Sokolova works under a contract with Memorial, Syrian citizens awaiting expulsion apply for temporary asylum from the SUVSIG with her assistance, and the migration service accepts these applications. Though the regional court refuses to cancel expulsion decisions, the district court suspends their execution in view of asylum applications. Thanks to this, not a single Syrian citizen, who had turned to I. Sokolova for help, was expelled. Nevertheless, refugees have to wait for months for their release from the SUVSIG: either till the detention term defined by the court expires, or till they receive a certificate confirming that temporary asylum has been granted to them.

In Saint-Petersburg and the Leningrad region the practice is contradictory.

On 12 February 2014 the Leningrad regional court rejected the appeals against the decisions of the Vyborg municipal court on expulsion of two Syrian citizens (Sh. A. M. and Kh. R.), and the next day the same court cancelled similar decisions with regard to two other Syrians (A. A. M. and A. A.). But during 2014 Memorial lawyers O. Tseitlina and Yu. Serov managed to change the approach of the Leningrad regional court to the cases of Syrian refugees.

On 14 April 2014 the Leningrad regional court cancelled the expulsion of Syrian citizen K. N., whom Memorial lawyers had helped. He was kept in the SUVSIG from September 2013, applied from the SUVSIG for asylum in December 2013, but the procedure was not carried out. Only upon release he applied to the migration service for the second time, accompanied by O. Tseitlina, but he was not granted asylum and left for Turkey.

On 2 June 2014 the deputy chair of the Leningrad regional court Yu. Ivanenko considered O. Tseitlina's supervisory appeal in the cases of Sh. A. M. and Kh. R. and cancelled all initial legal acts pointing out the priority of international norms over national ones and the inadmissibility – in view of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – of the expulsion to Syria, where the lives and freedom of the applicants are threatened.

After that the legal practice of the courts of the Leningrad region and Saint-Petersburg started to change and as a result on 25 June 2014

the judge of the Leningrad regional court ruled release of Syrian citizens A. A., A. R. and A. E. incarcerated in the SUVSIG for expulsion following a decision of the Vyborg municipal court of 2 June 2014.

In the town of Pyatigorsk of Stavropol Territory assistance to refugees is provided by lawyer E. Drozdova. In March 2014 she took up the case of a Syrian girl D. S. M. who came to Russia to join her father, a Russian citizen. On 19 February 2014 the Pyatigorsk municipal court ruled to expel her with preliminary detention in the SUVSIG. On 5 March the Stavropol Territorial Court upheld this decision. With the help of the lawyer, D.S.M. applied for temporary asylum from the SUVSIG, and on 4 June 2014 the Promyshlenny district court of Stavropol suspended the execution of the expulsion decision. D.S.M. was granted temporary asylum, but she was only released from the SUVSIG after the Stavropol Territorial court cancelled her expulsion referring to the fact that her father was a Russian citizen.

The cases of two other refugees from Syria, Sh. A. And V. R. followed a different scenario. On 26 December 2014 the Predgorny district court of Stavropol Territory ruled a punishment in the form of an expulsion with detention in the SUVSIG. On 16 January 2015 the Stavropol Territorial Court upheld these decisions, despite the fact that both Syrians had applied for temporary asylum from the SUVSIG. In April they were refused asylum. At the beginning of July the Russian FMS upheld this refusal. However, on 10 June 2015 the very same Stavropol Territorial Court, having considered the Syrians' supervisory appeals, cancelled their expulsion.

In the Moscow region the legal practice with regard to expulsion of Syrians was also contradictory, but developed quite positively. In 2013-2014 the Moscow regional court often rejected appeals against expulsion decisions delivered mostly by the Noginsky and the Schelkovsky municipal courts (The Noginsky and the Schelkovsky districts of the Moscow region are areas of compact settlement of a large number of Syrian natives).

On 5 November 2013 the Schelkovsky municipal court delivered 4 decisions on expulsion of Syrians at once (without placement in the SUVSIG): M. M. K., D. B., A. A. and A. R. Three of them had applied for asylum with the Migration Service of Moscow and that of the Moscow Region without success. On 13 November 2013 the Schelkovsky municipal court ruled to expel Syrian citizen Kh. A.. Memorial lawyer I. Biryukova appealed against these five decisions, but on 24 December 2013 the Moscow regional court upheld them all.

On 20 March 2014 the Noginsky municipal court delivered an expulsion decision with regard to Syrian citizen Kh. Yu. On 28 March 2014 Memorial lawyer I. Biryukova appealed against the decision of the Noginsky court at the Moscow Regional court. The copy of the appeal was sent to the Bailiffs' service. At the beginning of April, despite the fact that the appeal against the expulsion decision with regard to Kh. Yu. had not yet been considered by the Moscow regional court and it had not come into effect, he was expelled to Turkey. On the day of expulsion he called a relative of his and said he did not agree with the expulsion and did not want to go to Turkey.

The Committee referred an enquiry to the Russian FMS and the Bailiffs' Service concerning Kh. Yu.'s unlawful expulsion. The FMS replied that they did not have any information as to the expulsion of this person, and the Bailiffs' service did not answer at all.

On 20 March 2014 the Noginsky municipal court sentenced two Syrian citizens to expulsion and placement in the SUVSIG: Z. T. and R. M. On 22 June 2014 upon appeal by lawyer I. Biryukova the Moscow regional court cancelled the rulings of the Noginsky municipal court of 20 March 2014 with regard to expulsion beyond the territory of the Russian Federation. With the help of the lawyer, both men applied from the SUVSIG for refugee status to the Migration Service of the Moscow region. But until their release from the SUVSIG no migration official visited them.

On 20 August 2014 the Noginsky municipal court delivered a ruling on expulsion of Syrian citizen K. A. with his preliminary placement in custody in the SUVSIG. On 14 October the Moscow regional court rejected the appeal of Memorial lawyer N. Golovanchuk and the decision on expulsion was executed.

On 21 January 2015 the Noginsky municipal court sentenced Syrian citizen A. M. Kh. and a Sudanese citizen (from the region of Darfour) D. Kh. I. to expulsion with preliminary placement in custody in the SUVSIG. On 22 January 2015 the Ramensky district court of the Moscow region ruled expulsion with placement in the SUVSIG of eight more Syrians: A. Kh., A. A., B. M., D. A., Dj. A., O. M., O. N., Kh. M.. Memorial sent lawyer I. Vassiliev to provide legal assistance to all these people. The lawyer helped all of them, with the exception of A. Kh., who did not want to stay in the Russian Federation, to write applications for temporary asylum to the Migration Service of the Moscow region and drafted appeals to the Moscow regional court. On 26 March 2015 the court cancelled the decision on expulsion of all

Syrians but refused to satisfy the complaints of the Sudanese citizen, despite the fact that he had got an appointment with the Migration Service of Moscow to apply for refugee status and had applied for asylum with the Migration Service of Moscow from the SUVSIG.

However, on 14 April 2015 the Moscow regional court cancelled the expulsion decision of the Schelkovsky municipal court of 26 March with regard to another Sudanese citizen - G. A. M.

Thus throughout 2014 the Moscow regional court delivered heterogeneous decisions with regard to refugees' appeals against expulsion, but by spring 2015 this court had developed a negative approach to the expulsion of refugees. However, the change in the stand of the regional court has had an insignificant impact on the practice of the courts of the first instance.

On 25 November 2014 the Noginsky municipal court took into consideration the reasoning of Memorial lawyer E. Rayeva and, referring to international norms, imposed an administrative punishment for the offence provided for by paragraph 3 of Article 18.8 of the Code of Administrative Offences, without an expulsion. However, on 12 August 2015 the same court sent a new party of 7 Syrian refugees to the SUVSIG for expulsion.

Nevertheless, it should be noted that some changes have occurred in the practice of the Schelkovsky municipal court with regard to refugees undergoing the status determination procedure. If in March 2014 this court ruled to expel an Egyptian citizen B. R. N. who had applied to the Migration Service of Moscow for refugee status and had a corresponding confirming document (this decision of 10 April 2014 was cancelled by the Moscow regional court upon appeal by lawyer N. Golovanchuk), in March 2015 the same court, with the participation of the same lawyer, terminated administrative proceedings with regard to a Syrian A. F. M. who had applied for temporary asylum.

The stand of the Moscow municipal court while considering administrative cases has remained traditionally tough for the last two years.

On 12 March 2014 the court upheld the decision on expulsion without the placement in the SUVSIG of a Syrian citizen A. Kh. delivered by the Butyrsky district court of Moscow on 27 January 2014, and on 18 March upheld a similar decision of the Gagarinsky district court of Moscow of 18 February 2014 with regard to Syrian citizen A. A.

On 8 June 2015 the Moscow municipal court upheld the decision of the Meschansky district court of Moscow on the expulsion of a

young Afghan, M. A. M. S., whose parents had been killed by Talibs. He had earlier applied for asylum in Russia, but was refused. The court gave the following reasons for its judgment: the applicant did not have refugee status, could not provide any evidence of the danger he might run in case of return to the home country, procedural violations in the course of issuing the decision appealed, which were pointed out by N. Golovanchuk who represented the refugee's interests, were not found.

On 8 September 2015 the Moscow municipal court rejected the appeal drafted by lawyer I. Vassiliev in the interests of a Syrian citizen, K. A., against the judgment of the Koptevsky district court of Moscow of 21 August 2015. The fact that the declaration of the decision indicates a different name instead of K. A. stresses a standardized nature of the Koptevsky court decision. While considering the appeal the Moscow municipal court did not take into account the reasoning of the lawyer stating that K. A. was legally staying in Russia, since he was appealing against the decision of the Russian FMS which upheld the refusal of the Migration Service of Moscow to prolong his temporary asylum in the Basmany district court of Moscow.

We know of only 2 cases for the last two years when the Moscow municipal court cancelled the expulsion of a refugee. The first one is the case of a Syrian citizen A. Ass. of 26 November 2014. The Nagatinsky district court ruled his expulsion on 30 October 2014 - at the very moment when his temporary asylum expired and he had applied for its prolongation, but the decision concerning his application had not been delivered yet. Besides lawyer R. Magomedova's reasoning the fact that the refugee submitted the certificate confirming his temporary asylum had just been prolonged for a year also influenced the decision of the court. In the second case the Moscow Municipal court cancelled on 18 June 2015 the expulsion decision of the Meschansky district court of 27 May 2015 of the citizen of Iran Kh. G. M. who appealed against the refusal of temporary asylum to the Migration Service of Moscow. Lawyer I. Vassiliev represented the refugee's interests.

Thus the courts of the 1st instance as a rule deliver decisions on administrative expulsion of refugees without taking into account the specificity of their situation. The courts of the second instance on the whole are more disposed to take it into account.

Cancelling the rulings on expulsion of refugees, the courts often refer to international norms on inadmissibility of cruel treatment and torture (the International Covenant on Civil and Political Rights, the Convention against Torture, European Convention for the Protection

of human Rights and Fundamental Freedoms), as well as Russian legislative norms (Articles 3.1. and 4.1. of the Code of Administrative Offences), the stand of the Supreme Court of the Russian Federation (Plenary session No. 11 of 14.06.2012) and the Constitutional Court of the Russian Federation on the necessity of differentiating and individualizing punishments depending on specific circumstances of the case, the necessity of observing the principle of proportionality to the offence committed while imposing a punishment, as well as the principle of the balance between the rights of the person and the interests of society (Ruling No. 11-II of 15.07.1999, No. 8-II of 27.05.2008, No. 4-II of 14.02.2013).

At the request of the lawyers representing the interests of Syrian refugees, the UNHCR refers letters to courts stating their position with regard to the situation in Syria and impossibility of safe return to this country at the present time. Sometimes the courts take the UNHCR position into account while considering appeals against administration expulsion.

At that judges rarely refer to the 1951 Convention and apply the norms of the Law On Refugees. Apparently, they either don't know about these documents or are not used to applying them. It can partially be explained by the fact that the lawyers representing refugees' interests, don't draw the attention of judges to these documents, as they themselves more often refer to international norms prohibiting cruel treatment and torture rather than to the Convention Relating to the Status of Refugees.

The positive trends in the consideration of expulsion cases in some regions mentioned mostly, concern Syrian citizens. Undocumented refugees from other countries can only escape expulsion if they have Russian families. In these cases judges refer to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Exceptions from this rule are rare. The amazing story of Igor Ascheulov expelled to the Lugansk region in Ukraine in October 2014 at the decision of the Ertilsky district court of the Voronezh region despite the fact that he had applied for temporary asylum is both exceptional and typical. It is exceptional because the victim of expulsion was an ethnic Russian, born in Russia, moreover, a single disabled person, who was expelled to Ukraine at the height of the conflict, to the zone of military actions, at the time when Russia was accepting thousands of Ukrainian refugees. And it is typical because it shows

how the “expulsion machine” works - without looking into individual stories and circumstances³⁴.

Administrative expulsion is usually imposed on refugees illegally residing in the RF, that is those who either arrived illegally, or who lost their legal status and for some reasons did not apply for asylum. As we showed in Chapter 2, part of these people failed to apply for asylum because of the lack of information or due to unlawful obstacles in the access to the status determination procedure.

On 10 November 2013 14 Syrians were expelled from Russia to Syria. In July 2013 the Vyborgsky municipal court of the Leningrad region brought them to administrative liability and sentenced to a fine with expulsion. They were all placed in the Detention Centre for Foreign Citizens (TSIG). With the help of Memorial lawyer O. Tseitlina, in August the same year they turned to the FMS Department for Saint-Petersburg and the Leningrad region with a request to accept their applications for temporary asylum. The official of the Migration Service who had come to the TSIG to accept their applications persuaded them not to seek asylum explaining that while awaiting the decision of the Migration Service they would spend more than a year in the TSIG, but would be refused any way. But if they agreed to expulsion, they would be sent not to Syria, but to neighboring countries - Lebanon and Turkey. It was all a lie. In fact the Syrians were not admitted to the asylum procedure and were expelled to Syria by deception³⁵.

On 7 April 2014 a Syrian citizen, T. L., was expelled to Syria upon decision of the Proletarsky district court of Tver of 19 February the same year. In August he arrived in Russia with a visa that was valid till March 2014. He did not know that he nevertheless was supposed to leave the country 90 days after his arrival. He wanted to apply for asylum to the Migration Service of the Tver region, but was refused without any explanations. On 18 February he came to the FMS unit of the Proletarsky district for migration registration - he was immediately detained for violating immigration rules and was sent to court the next day. The court sentenced him to a fine and expulsion from Russia with the placement in the special detention centre until the execution of the court judgment.

³⁴ See <http://refugee.ru/news/v-rossiyu-vernuli-nezakonno-vydvorenogo-v-zonu-ato/>

³⁵ See <http://refugee.ru/news/rossijskie-vlasti-prodolzhayut-vydvoryat-sirijitsevne-brezguya-melkim-obmanom-i-narushaya-zakon/>

Having learnt about what happened from T. L.’s relatives, the Committee helped him to draft an appeal and sent the “UNHCR recommendations on International Protection of Persons Fleeing the Syrian Arab Republic” for submission to the court. On 3 March T. L. filed a written application for temporary asylum with the Migration Service of the Tver region through the detention centre office. On 5 March the MS unlawfully rejected to accept his asylum application on the grounds that his application was an abuse of rights, since the applicant had not applied for asylum before he was brought to administrative liability. The MS sent a similar letter to the Tver regional court, which rejected T. L.’s appeal on 14 March without paying any attention to the UNHCR Recommendations.

On 25 March the Committee turned to the Russian FMS with a request to urgently accept T. L.’s application for temporary asylum and protect him from expulsion. The Committee also filed an application with the Prosecutor of the Tver region concerning the unlawful refusal of the MS to accept T. L.’s application for temporary asylum. All the applications were sent by post and fax.

On 22 April the Russian FMS sent two replies to the Committee. The Department for the Organisation of Work with Foreign Citizens informed that the court decision on T. L.’s expulsion had been executed and that according to the information of the MS of the Tver region, T. L. “had not applied for temporary asylum within Russia”. And the answer of the Department for Citizenship Issues ran that the MS for the Tver region had been instructed to accept T. L.’s application for temporary asylum in the special detention centre. The Prosecution Office did not find any violations in the actions of the MS.

The second biggest group of refugees subjected to administrative expulsion, in our opinion, are refugees, who were refused refugee status and/or temporary asylum. For many years, when the status determination and FMS decisions appeal procedure in Russia has almost exclusively resulted in refusal, quite a large group of refugees has formed who have undergone the procedure (some of them repeatedly), were not granted asylum, but did not bring themselves to return to their home country and continue to reside in Russia illegally.

The greater part of these people are Afghans. Many of them were connected with the pro-Soviet regime in the past, have long resided in Russia and lost whatever social ties they had in Afghanistan. Even if the reasons for fleeing the country have become irrelevant since then, it is almost impossible for these already not young people and

their children who have grown in Russia to find a place in present-day Afghan society.

A considerable part of these “old” refugees were registered in the UNHCR and were hoping to sooner or later obtain asylum in Russia or another country with the help of this organisation. However, the UNHCR failed to persuade the Russian FMS to grant legal status to all these people, and it is impossible to resettle such a large group in third countries, all the more so that third countries are reluctant to accept some of these refugees (Afghan ex-military, special services officers).

The UNHCR came up with the following solution: at the decision of the UNHCR leaders the staff of the Moscow mission of the UNHCR have reviewed all the cases of refugees registered in the mission since 2013. As a result the greater part of them were refused further support - with the exception of assistance in return to the home country, provided they leave promptly. As far as we know, few people decided to resort to this help, and the others keep residing in Russia, running a daily risk of detention for illegal sojourn and expelled to the country of origin on a daily basis.

The only guarantee of non-refoulement for these people is a bribe to the police officers and the FMS officials. Under the conditions of total corruption this instrument may serve for years, but may fail any time: if a refugee does not have the necessary sum or the policemen are interested in his detention not for the sake of an income, but for reporting purposes - for instance, during mass anti-immigration campaigns that have been organised in Russia from time to time for the last few years.

This is what happened to the refugee from Afghanistan M. Yu. M.. He fled to Russia in 2008 fearing blood feud: his relative had killed a Talib fighting on the side of the government and fled the country. According to the traditions of blood feud, the responsibility for the Talib's death fell on M. Yu. M. The Migration Service of Moscow has twice denied him refugee status and once - temporary asylum. In October 2009 M. Yu. M. was detained in Kursk and sentenced to expulsion. The lawyer O. Sabantsev invited by the Committee, managed to cancel the expulsion decision at the Kursk regional court, but M. Yu. M.'s attempt to apply for temporary asylum to the MS for the Kursk region did not succeed: his application for temporary asylum was not accepted, in view of the previous refusals. In January 2010 the Leninsky district court of the city of Kursk recognised this decision as unlawful, but the Kursk regional court cancelled this decision in April.

M. Yu. M. has not since made any new attempts in seeking asylum.

During the anti-immigration campaign waged in Moscow on the eve of the Mayor's elections in summer 2013 M. Yu. M. was detained and placed into the notorious illegal camp in the Moscow district of Golianovo. On 3 August 2013 the Preobrajensky district court of Moscow that delivered hundreds of expulsion decisions during those days, ruled to expel M. Yu. M. as well. The Committee chair Svetlana Ganushkina managed to visit the camp in Golianovo together with the Human Rights Ombudsman V. Lukin. Among migrant workers kept in the camp she discovered three refugees, including M. Yu. M. Memorial sent lawyer I. Biryukova to defend them. She managed to secure the cancellation of the expulsion decisions with regard to two Syrians and secured temporary asylum for them, but failed to prevent M. Yu. M.'s expulsion.

The cases of expulsion of refugees residing in Russia on legal grounds are undoubtedly more infrequent than those of illegal migrants, but these cases do exist, and are not so few. If refugees manage to timely resort to highly qualified legal assistance, the expulsion is usually prevented, but there are failures as well. Without the assistance of a highly qualified lawyer it is almost impossible to avoid expulsion.

Syrian citizen Kh. M. has been residing in Russia since 2008, graduated from a university and worked as an intern at People's Friendship University (PFUR). On 8 December 2014 the Migration Service of Moscow turned down his temporary asylum application. Kh. M. received a notification of this decision and a copy of the decision on 25 December 2014. Thus he had a right to appeal against this decision within one month, and the Migration Service was to have prolonged his certificate confirming that his temporary asylum application was pending at least for this period, but they failed to do this as usual. During the New Year holidays Kh. M. went to visit his friends in Pskov, where on 6 January 2015 the court delivered a judgment on his expulsion and placement into the SUVSIG. Having learnt about it, the Committee invited the Pskov lawyer V. Kashtelianov to defend Kh. M.. At his request the UNHCR sent a letter covering their position on the inadmissibility of Syrian refugees' return to Syria. As a result on 9 February 2015 the court cancelled the decision of the court on bringing Kh. M. to administrative responsibility for lack of evidence.

But the circumstances are not always so favorable. Syrian citizen S. G. R. from the city of Deir-ez-Zor, the area of fierce fighting since the beginning of the conflict, had graduated from a university in Rus-

sia, arrived in Russia for the second time in 2013, settled in the city of Astrakhan, applied for a refugee status, was denied and applied for temporary asylum. In December 2013 he contracted a Muslim marriage with a Russian citizen, but could not register his marriage officially in the registry office since his passport had expired.

At the end of December 2013 the MS for the Astrakhan region denied temporary asylum to S. G. R.. The MS recognised the presence of a fierce inner armed conflict embracing all the territory of the country, but, in defiance of any logic or without any evidence the conclusion drawn states there is no danger for S. G. R.. Moreover, the decision runs that “according to the operative data received from the Astrakhan department of the Russian FSB, there are no grounds to grant temporary asylum to his person”. Having failed to receive a qualified legal assistance, he sent a wrongly drafted appeal to the court himself, but the appeal was returned to him. On 15 February 2014 the Kirovsky district court of Astrakhan ruled to expel S. G. R. for violating Russian immigration rules, and place him in custody in the SUVSIG.

With the help of his friends S. G. R. invited a lawyer who appealed against both the MS and the expulsion decisions. On 25 February 2014 the Astrakhan regional court upheld the decision on expulsion of the Kirovsky district court. The court ignored the fact that a refugee appealing against refusal of asylum can't be expelled from the Russian Federation, as well as the fact that he had a pregnant wife in Russia. On 6 March 2014 the Kirovsky district court rejected S. G. R.'s appeal against the decision of the MS for the Astrakhan region on denial of temporary asylum. At that the court confined itself to the reproduction of the wordings from the MS decision.

Having entered into the case at that stage, the Committee recommended S. G. R. apply for temporary asylum for a second time, because this was the only way to prevent expulsion. At the beginning of April the Astrakhan migration service officer accepted S.G.R.'s application for temporary asylum in the SUVSIG. From that moment on he entered the status determination procedure and found himself under the protection of Article 10 of the Law On Refugees, that prohibits expulsion of asylum seekers. However, despite all this, on the night of 7 April 2014 the refugee was deported to Syria. Later S. G. R.'s wife informed us that he had been arrested in Damask airport, but released a month later. After that he fled Syria and is now seeking asylum in one of the Western European countries.

7.2. Deportation at the decision of the FMS bodies

Extra-judicial deportation of refugees, i.e. at the decision of the FMS bodies, is carried out on a significantly smaller scale than administrative expulsion by decision of the court. This is confirmed by the data of the Russian FMS cited at the beginning of this Chapter.

A small number of deportations in accordance with Article 13 of the Law On Refugees is quite explicable. The matter is that it is not so easy to fulfil the requirements of this Article for the FMS bodies: to do it, they have to trace the moment when the term for appealing against the refusal of a refugee status or temporary asylum or against the deprivation/loss of the former or the latter expires or wait until a lengthy appealing procedure finishes with a negative outcome. Only then, having somehow made sure that the refugee refuses to leave Russia voluntarily, the FMS can deliver a decision on deportation. Moreover, the agency needs to find a potential victim, while refugees, as is known, do not stay long at the same place. That is why, if the opportunity does not present itself, the organisation of deportation in accordance with Article 13 is a troublesome matter.

It is likely that the difficulty associated with the deportation of refugees who had gone through the status determination procedure with a negative result (in accordance with Article 13 of the Law On Refugees) incites the Migration Service of Moscow to illegally refer refugees for administrative expulsion at the moment of delivery of a notification on refusal, as set out in Chapter 5 “The right to appeal”.

It is much easier to organise the deportation of refugees who have received an ultimate denial of asylum in Temporary Accommodation Centres (the *TACs*), where they are under the permanent control of the migration service. But for some reason the migration service prefers to expel refugees through the court instead of at their own decision.

The largest *TAC*, where the greater part of refugees are residing is located in the town of Krasnoarmeysk of the Saratov region. According to the information from Memorial lawyer Zh. Biryukova working in Saratov, in 2014 5 persons with an ultimate refusal of asylum were expelled from the *TAC* (parents with a 2-year-old child to Egypt, one person to Iraq and one to Ukraine). At that they were all subjected to administrative expulsion, at the decision of the court on the grounds of part 1.1 of Article 18.8, and not at the decision of the migration service on the grounds of Article 13 of the Law On Refugees.

It should be noted that the MS for the Saratov region sends the fol-

lowing notification to refugees who have received an ultimate refusal of asylum before expulsion:

“We are writing to notify you that the appellate ruling of the Civil Chamber of the Saratov regional court of... dismissed your appeals against the decision of the Frenzensky district court of the city of Saratov.

Please be advised that a person who has appealed a decision and was refused, or who has not used his right to appeal against the decision and refuses to voluntarily leave the country, should be in due course subjected to administrative expulsion or deportation outside of Russia together with his family members”.

This notification confuses two notions: “expulsion/deportation” at the decision of the FMS body and “administrative expulsion” at the decision of the court, that are differentiated in our legislation, though with no serious grounds, since they entail identical consequences. However, denial of asylum and refusal to leave the country voluntarily do not serve as the grounds for administrative expulsion. Moreover, administrative expulsion “together with family members” is impossible, since this is a punishment that cannot be imposed on all the family members at once.

Why the MS for the Saratov region does not use the right to deport refugees provided by the Law On Refugees, but delegates this decision to the court, we don’t know. Probably, this is done for the sake of statistics to conceal the data on expelled refugees among the figures of those administratively expelled.

Undoubtedly, it is preferable that the courts decide the question on refugees’ expulsion from a country instead of the migration service through a bureaucratic procedure. But only if the court not only rules on whether the administrative offence was committed or not, but also assesses the risks associated with the refugees’ return to their home country, which does not usually occur in practice.

It is not only Article 13 of the Law On Refugees that provides for the deportation at the decision of the FMS bodies - more often foreign citizens are deported on the grounds of Article 31 of the Law On the Legal Status of Foreign Citizens in the RF (reduction of the term of residence and temporary stay, temporary and permanent residence permit annulment), as well as on the grounds of Article 25.10 of the Law On the Procedure of Entry and Exit from the RF (decision on prohibition of entry and undesirability of stay). Refugees are also deported not only in accordance with Article 13 of the Federal Law On Refugees, but on other grounds as well.

On 9 December 2014 the Migration Service of the Bryansk region delivered a decision on the deportation of a family from Syria: spouses M. A. I. and A. N. and their 22-year-old son M. A. M.. In 2013 this family were granted temporary asylum in Tatarstan. In March 2014 the status was prolonged for another year. Having received some information on employment possibilities in Belarus, the Syrians withdrew from the register of those granted temporary asylum and left for Belarus where they immediately applied for asylum. It is likely they did not understand they were going to another country and were losing asylum granted in the RF. In Belarus they were immediately detained and on 10 December 2014 were sent back to Russia under the readmission procedure. It is noteworthy, that the MS of the Bryansk region delivered a deportation decision one day before the Syrians were returned to Russia, that is absolutely automatically, in default, without any assessment of the act that Russia had granted asylum to these people and that they applied for asylum in Belarus as well.

Fortunately, thanks to the efforts of the Bryansk lawyer D. Sychyov, the decision on the deportation of this family was cancelled in court.

The deportation of refugees at the decision of the FMS bodies in violation of Article 13 of the Law On Refugees is not included in the statistical data on persons deported in connection with refusal of asylum, that is why it is impossible to assess the number of these deportations.

7.3. Extradition and abductions.

From the mid-2000s and for the following 10-15 years extradition served one of widespread forms of refolement of refugees from Central Asian countries. Persistent and prolonged fighting of human rights defenders and lawyers with this phenomenon - with the support of the UNHCR and with a permanent application of ECHR mechanisms - has led to a situation when these facts have become rare: ECHR decisions on the prohibition of expulsion in accordance with Rule 39 of the Rules of the Court and positive decisions on appeals are now considered as the grounds for granting temporary asylum.

However, the fact that the mechanism of extradition is now malfunctioning has resulted in a substitution of extradition by other forms

of refoulement: administrative expulsion and abduction. The latter is practised by the officers of the special services of Central Asian countries with a tacit and illegal assistance of the law enforcement agents of the Russian Federation (the FSB, the MVD, the FSIN).

Abductions are often attempted right at the moment, when a refugee is released from custody after the General Prosecution Office refuses extradition or when the court cancels a decision on extradition. After a few cases like this, lawyers and human rights activists have started picking their clients at the exit of detention centres and thus preventing abductions.

Thus, in April 2015 the presence of the Memorial lawyers I. Vassiliev hindered Uzbek security officers to abduct Sh. Urinov charged with state crimes he had not committed, at the exit of the detention centre in the Oryol region³⁶.

Upon release the risk of abductions remains, and it is almost impossible to prevent it: it can happen any time, at any place.

On 9 June 2014 a native of Uzbekistan Mirsobir Khamidkariyev was abducted in Moscow. Mirsobir was subjected to persecution on the part of the Uzbek authorities as a producer of the movie “Nafs” banned in the country. In 2013 he was detained due to the fact that the Uzbek authorities had put him on the wanted list on the grounds of a falsified criminal charge. The Golovinsky Interregional Prosecutor of Moscow came to the conclusion that Mirsobir should not be held responsible for the criminal offence incriminated to him and released him from custody. On the eve of his liberation, Mirsobir opened his veins, having learnt of a threat of abduction. On 7 August 2013 he was detained by the police while leaving the detention centre with a view to be brought to criminal liability for violating immigration rules. But the materials submitted to the Golovinsky District Court of Moscow provoked doubt in the judge, and the attempt to extradite him in the form of an administrative expulsion failed.

Mirsobir Khamidkariyev applied to the Migration Service of Moscow for refugee status, was refused and appealed against this refusal in the Zamoskvoretsky district court, which satisfied his appeal. On 9 June Mirsobir was waiting for his wife, who had dropped in a pharmacy with a newborn son, in a taxi in one of the Moscow streets. When his wife went out of the pharmacy, the taxi with her husband was gone. Later it turned out that Mirsobir was in prison in Tashkent, that he had been charged with setting up an extremist Islamic organisation and

³⁶ <http://refugee.ru/news/predotvrashheno-pohishhenie-bezhentsa-iz-uzbekistana/>

subjected to torture. Memorial lawyer I. Vassiliev met him before the court and found out that FSB officers had taken part in his abduction having put him on board the plane from Moscow to Tashkent without going through border control. On 8 November 2014 he was sentenced to 8 years of imprisonment. And on 2 December 2014 the Moscow municipal court hearing the appeal of the Migration Service cancelled the decision of the Zamoskvoretsky court despite the fact that all the fears of persecution he was talking about when applying for asylum proved to be founded³⁷.

Conclusions

1. The guarantees of non-refoulement provided for by Russian legislation do not fully conform to the requirements of Article 32 and 33 of the 1951 Convention.

2. In Russia there is no homogenous legal practice with regard to the consideration of refugees' expulsion cases: the practice varies from region to region.

3. Both illegal refugees and refugees staying in the Russian Federation on legal grounds run the risk of refoulement.

4. There are no precise data on the number of refugees expelled from Russia, but taking into account the large number of refugees in the country, the insufficiency of legislative guarantees, and the large number of expulsions or attempts of expulsion known to NGOs, the scale of expulsion of refugees should be considerable³⁸.

³⁷ <http://www.memo.ru/d/200283.html>; <http://refugee.ru/news/dvojnoe-popadanie/>

³⁸ See the recommendations on how to bring the Law “On Refugees” in line with the 1951 Convention in terms of the non-refoulement principle in the conclusion to Chapter 1.

CHAPTER 8. IMPLEMENTATION OF REFUGEES' RIGHTS

In Chapter 1 we have already discussed what rights the Law On Refugees and Russian legislation on the whole provide to refugees, as well as how these rights relate to the ones guaranteed by the 1951 Convention.

Before considering the question of how the rights guaranteed by the Law on Refugees are implemented, we will re-iterate that they are formulated in two articles: in Article 6, Part 1 - rights of persons who have received a certificate confirming examination of their application for a refugee status, and in Article 8, Part 1 - the rights of recognised refugees. The rights of persons who have been granted temporary asylum are not listed in the law, but it follows from paragraph 4 of Article 12 that the rights guaranteed by part 1 of Article 6 extend to these persons as well, with the exception of the right to a one-time allowance.

As for persons who have received a certificate confirming examination of their applications for temporary asylum, the Law On Refugees does not provide any rights for this category of asylum seekers.

8.1. The rights of refugees undergoing a status determination procedure and of persons granted temporary asylum

Let us consider the rights guaranteed by part 1 of Article 6 of the Law on Refugees to two categories of refugees: 1) those undergoing a refugee status determination procedure (including appeals) and 2) those who have obtained temporary asylum. These two groups to-

gether constitute the greater number of refugees residing in Russia on legal grounds.

As we have already mentioned, some provisions of Article 6 Part 1 cannot be considered as rights strictly speaking: these are either obligations of the FMS bodies connected with the fulfilment of their functions while receiving refugees (provision of information and interpreter's services - paragraph 1, provision of escort and security in TACs - paragraphs 1 and 5) or natural possibilities (seeking the termination of their application examination - paragraph 9). With the exception of these provisions, the scope of guaranteed rights is quite limited. These rights include:

- the right to assistance in travel and transportation of luggage to the place of sojourn (Paragraph 2);
- the right to one-time monetary allowance for each member of the family (Paragraph 3);
- the right to referral to a Temporary Accommodation Centre, meals and utilities in the place of temporary accommodation or Temporary Accommodation Centre (Paragraphs 4, 6);
- the right to medical and medicinal assistance (Paragraph 7);
- the right to assistance in vocational training in TACs or employment (Paragraph 8).

The realization of the right to assistance in travel and transportation of luggage to the place of sojourn is regulated by Russian Federation Government Resolution No 595 of 18 June 2012; which replaced Resolution No 485 of 23 May 1998.

This assistance represents the purchase of train tickets in a third-class sleeper for a refugee and his or her family, and in case there is no railway service to the destination point, tickets for other means of transport. Government Resolution No. 1036 of 9 October 2014 also provides for free meals and bedding on the way. Refugees holding certificates on examination of their refugee status applications can obtain tickets either from the place where they applied for asylum to a TAC or from a TAC to any other place. Persons granted temporary asylum - only to TACs. This assistance is provided once to each person. Travel expenses incurred by refugees themselves are not covered.

To exercise this right a refugee should apply to the territorial FMS body that is obliged to consider his/her application and issue tickets within 3 working days.

As is known, the majority of refugees come to Russia through Moscow. Many stay in the city, since the metropolitan area offers better

possibilities for integration of refugees than other regions: it is easier for refugees to find fellow countrymen speaking a language they know, who can share their experience, help to settle among a large number of foreign citizens residing in Moscow and the Moscow region. Moreover, it is much easier to find a job here. (The situation could be different if the state took charge of refugees: then it would be able to send them to other regions guaranteeing support in integration in the places assigned for their residence. But while refugees are left to their own resources, the greater part of them will continue settling in metropolitan areas). Hence very few seek to leave Moscow and utilise their right to free tickets - mostly those who asked for a place in a TAC, having failed to settle themselves or with the help of a diaspora. However, when refugees turn to the Migration Service of Moscow or that of the Moscow region for free tickets, they cannot always obtain them - due to the lack of funds for these purposes at the disposal of the Migration Service.

A refugee from Syria, D. A. I., arrived in Russia with a sick wife and two children. They were smuggled into the country in a truck - their carriers promised they would bring them to Finland, but dropped them off in Moscow with no belongings, money or documents. At the beginning of 2012, D.A.I. and his wife applied to the Migration Service of the Moscow region for refugee status and at the same time requested a referral to a TAC. Negotiations with the FMS dragged out till the end of the month, and a written answer arrived only after the New Year holidays. At that time the Migration Service did not have any money for tickets. D.A.I.'s family had nowhere to live, and the Syrian diaspora raised money for his ticket. By that time the Migration Service had already decided to turn down their refugee status application - they lost their right to be sent to a TAC and to free tickets. The family could regain this right only after they got temporary asylum, i.e. approximately three months later. After the Committee turned to the head of the Department for Asylum Issues of the FMS of Russia, V.K. Rucheikov, the problem was resolved unconventionally: at his instruction the Migration Service of the Moscow region refused D.A.I.'s family the benefit of refugee status and granted temporary asylum in the same decision. As a result in February 2013 the family finally left for the TAC "Ocher" in Perm Territory.

Due to the lack of money for the purchase of tickets, the staff of the Migration Service of Moscow have repeatedly turned to the Committee with a request to solve this problem, or recommended refugees to turn to the Committee themselves for financial assistance in the

purchase of tickets - and the Committee has up to now always satisfied these requests. But in other regions there are no NGOs capable of providing this assistance.

The right to one-time monetary allowance, as has already been mentioned, does not extend to persons granted temporary asylum. However, we can say with certainty, that they do not lose much.

The procedure of payment of a one-time allowance and its amount are established by Government Resolution No. 484 of 23 May 1998 (in the version complemented by Government Resolutions Nos. 999 of 21 December 2000 and 220 of 28 March 2008). Paragraph 1 of this Decree cannot but arouse a certain embarrassment. This paragraph runs as follows:

"Establish that the one-time monetary allowance is paid in the amount of:

- *100 rubles - to persons who have received a certificate on examination of their refugee status applications on the merit (the **certificate**), and to each member of their family under 18 arriving with them;*
- *150 rubles - to low-income persons (single incapacitated retirees or disabled persons, single parents with children under 18, many-children family with three or more children under 18), who have received a certificate and each member of their family under 18 arriving with them."*

At present this money cannot even cover the price of the ticket from the Moscow region to Moscow, to the Refugee Department of the Migration Service of the Moscow region in order to file an application for a one-time allowance. No surprise, refugees do not seek realization of their right to this allowance. In 2014 only 35,000 rubles were allocated from the budget for these purposes, and not a single ruble was spent³⁹.

The right to referral to a TAC is much more important. It is especially important for newly arriving refugees, who do not know the language and who have no contacts or ties in Russia that could help them solve the problem of accommodation and financial support for the first few months themselves.

At present there are three Temporary Accommodation Centres under the jurisdiction of the FMS of Russia:

- the biggest one is located in the town of Krasnoarmeysk in the Saratov region; accommodating 117 persons at the moment, including 56 refugees (the others are forced settlers of Russian nationality);

³⁹ http://www.fms.gov.ru/about/statistics/byudzhet_grazhdan/using/details/125880/

- TAC “Serebryaniki” in the Vyshvolotsky district of the Tver region accommodating 29 persons;
- TAC “Peresyphino-2” recently opened after renovation in the Gavrillov district of the Tambov region accommodating 76 persons (one Afghan family of 5 people, the others - citizens of Ukraine).

As we can see, all these Centres are generally far away from Moscow and Saint-Petersburg where refugees mostly arrive.

To obtain a TAC referral a refugee first needs to get access to the asylum procedure, which, as we have pointed out in Chapter 2, can take weeks, even months. If the Migration Service agrees to consider a refugee’s asylum application on the merit, it takes at least 2-3 weeks before the certificate is issued. An asylum seeker can apply to be referred to a TAC while applying for a refugee status. The territorial body which has accepted the application should secure the agreement of the FMS of Russia to issue the referral which might take another 2-3 weeks. All this time a refugee and his family who have applied for a TAC referral exactly because they do not have a housing or means of livelihood, have to live somewhere and provide for themselves. And what if they lack this opportunity?

In January 2013 four Copt families arrived in Moscow from Egypt - eleven persons, including four children. They had nowhere to stay and did not have any money to rent a housing or a hotel. The refugees spent their first night in Moscow in the underground and in the street near the underground station, where a compassionate Muscovite saw them and took them to her place. Then they went to the UNHCR, which referred them to the Committee. The Committee staff could not throw these people out into the frosty street and let them stay in the office. The next day the Committee interpreter accompanied them to the Migration Service of the Moscow region. They were not admitted to procedure on the grounds of the allegation that the interpreter did not arouse trust. The Committee staff revealed what happened via social networks and organised a press conference right in the office of the NGO so that the journalists could make sure that the refugees were really living there. After that the FMS of Russia immediately instructed the Migration Service of Moscow to invite the Copts for an interview. In the Migration Service the Copts applied for a referral to a TAC. But it took more than a month for the families to receive these referrals and finally leave for the TAC.

As this (and many other) cases show, there is an urgent need in a TAC for asylum seekers in the metropolitan region. Since this centre

would quickly become overcrowded, it could be used only for refugees awaiting to be admitted to the procedure and awaiting referrals to TACs in other regions of Russia. UNHCR and NGOs rendering assistance to refugees have been trying to convince the FMS of the necessity to establish a TAC in the metropolitan region for many years, but there has been no progress on this matter.

As we have seen, at present all the three working TACs accommodate only 161 persons. Why don’t refugees use their right for referrals to these centres?

A few years ago it would have been easy for us to answer this question. The Committee staff often visited TACs that were much more numerous in the second half of 1990-2000s and that were filled mostly with refugees (more precisely IDPs) from Chechnya. In these missions the Committee staff provided humanitarian assistance and helped to solve various problems to these people. The reports on these missions to TACs were sent to the FMS of Russia. The visits did not arouse any objections on the part of the FMS of Russia.

The last mission like this was organised in February 2010 - to the TAC in the town of Ocher of Perm Territory, which was at that time the only centre where refugees were placed. Despite normal living conditions, the psychological atmosphere at the Centre was very depressing. Many TAC residents told the Committee staff: “I feel like I am in prison here”, “It’s like a grave”, “I often sit alone and cry”, “sometimes I feel like committing suicide”, etc. The Committee staff came to the conclusion that the reasons for this sort of mood consisted first of all in an unfriendly treatment of refugees by the TAC administration (threats, provocations, intrigues); secondly, the Centre residents were isolated from the outer world (there were no interpreters, no Russian language courses, no means of communication); thirdly, they were forcedly idle due to impossibility of employment (lack of knowledge of the language and of vacancies available) and finally, they did not see any prospects of integration. In the report sent to the FMS of Russia the Committee recommended to invite qualified specialists to work in the TAC, including interpreters and psychologists, to organise Russian language courses, to assist refugees in employment, etc.

Since then the FMS of Russia has been denying access to TACs to the Committee for unknown reasons.

Within the framework of preparing this report we planned to examine all the three working TACs, but the FMS of Russia did not allow us to visit them again.

Then we sent to the FMS of Russia a letter with questions on the work of TACs hoping to use the answers in the report. But these hopes were not realized; we received a rather strange answer that the information on specialized establishments for the detention of foreign citizens to be subjected to administrative expulsion is published on the official website of the FMS of Russia and its territorial bodies. That is, in reply to the enquiry on TACs we received a refusal to provide the information on SUVSIGs.

Moreover, we requested Memorial lawyers working in the regions where all the three working TACs are situated to answer the same questions we asked to the FMS of Russia. Lawyers V. Shapkin from Tver and V. Shaisipova from Tambov reported that the TACs administration refused to provide any information to them. Only Zh. Biryukova from Saratov sent the answers to all the questions. We are citing them fully below.

**TAC in the town of Krasnoarmeysk, the Saratov region
(as of 22 June 2015)**

1. How many persons are at the moment residing at the TAC?

The TAC is designed for 200 persons, at the moment 117 persons are residing at the TAC: 56 foreign citizens, 61 forced settlers.

2. What is the gender, age, country of origin and legal status of foreign citizens residing at the TAC?

<u>From 6 states:</u> Ukraine - 37 Afghanistan - 9 Egypt - 2 Iran - 1 Syria - 6 Cote-d'Ivoire - 1	<u>Legal status:</u> Refugee status - 10 Temporary asylum - 46	Children - 24 Schoolchildren - 12 Pre-schoolers - 12 Working population - 23 Retirees - 5 Disabled persons - 4
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3. What services are provided to persons residing in the TAC?

Medical, social, legal assistance and psychology services are provided, Russian language courses and cultural events are organised.

4. Are there any staff interpreters at the TAC, from which languages, what is their employment (full-time, part-time)?

There is a fully employed staff interpreter of the Arabic language.

5. How much budget funds are allocated for the provision of one foreign citizen at the TAC?

Meals - since 1 June 2015 - 362 rubles per person per day (before - 262 rubles), i.e. 11222 rubles per month.

Utilities and personal hygiene items - 52 rubles, 62 kopecks per person per day, i.e. 1631 rubles, 22 kopecks per month. Apart from that washing powder, soap, diapers and other personal hygiene items are provided.

6. How many children out of the children residing at the TAC attend schools, kindergartens, and how many do not? If the children don't attend schools or kindergartens, what is the reason for it?

12 children attend a school

4 children attend a kindergarten

8 children attend the "Family" centre - a free pre-school centre.

7. How many adult foreign citizens residing at the TAC are employed? If everybody or the greater part of people don't work, what is the reason for it?

17 persons are employed. In the case that they do not work, they explain that it is due to a poor knowledge of Russian and a low salary.

8. Is the state assistance to unemployed foreign citizens residing at the TAC provided to the same extent as to those with a job?

Yes.

9. Are foreign citizens residing in the TAC allowed to leave the TAC to seek employment? In this case do they retain their places at the TAC and the right to use the services connected with living at the TAC?

Yes, they are allowed to leave. Their place is retained for 10 days. If a refugee has found a job by shifts, his place at the TAC is retained for a month.

10. Is free medical and medicinal assistance provided at the TAC and how is it organised? Is there any medical staff and what is the qualification of this staff (doctor, medical assistant, nurse), its employment (full-time, part-time)? What is the amount of the budget funds allocated for medicines per each TAC resident?

Medical assistance is organised: there is a doctor, a medical assistant and a nurse working part-time. 145 rubles per month per applicant are allocated for medicines.

11. How many foreign citizens residing at the TAC have medical insurance?

All the residents have medical insurance.

12. Is there a staff psychologist, does he work full-time or part-time?

There are two psychologists working full-time.

13. Are there Russian language courses for foreign citizens at the TAC and how are they organised (is there a qualified instructor, classrooms, teaching materials, how many classes per week are organised)?

There are Russian language courses: there is an instructor, classrooms, teaching materials. Classes are given daily (1 hour per day).

14. How many persons at the TAC receive pension, allowances and other social assistance?

Only one family from Syria with a refugee status receives children's allowances. Nobody receives pensions due to the fact that none of those of the retirement age have a refugee status (those granted temporary asylum do not have the right to a pension).

Judging by these answers, the situation at the TAC seems much more favourable than that at the TAC in Ocher in 2010. The funds allocated for meals are minimal, for medicines - insufficient, but there is now an interpreter (although only of Arabic, while there are refugees with other languages), 2 psychologists are working, Russian language courses have been organised. None of this was present in Ocher. It is obvious that the FMS of Russia has partially taken into account the criticism on the part of the UNHCR and NGOs and has improved the work of TACs in some aspects.

The greater part of employable refugees work: we do not know if this is the merit of the TAC administration, but it is important that those working retain a place at the TAC, including those leaving the centre to seek paid work. However, this does not allow men to leave their family at the TAC and go for a prolonged period of time to the regions where they can really earn some money.

Despite the improvements mentioned, the Committee regularly receives complaints from refugees residing at the TAC of Krasnoarmeysk - people mostly complain of unfriendly and disrespectful treatment on the part of the administration, hostility on the part of the local population, a bad quality of medical assistance and a low income.

In our opinion, all the working TACs have a common and irreparable drawback connected with their location. They are all situated in settlements where the opportunities of integration for refugees are minimal or are absent completely. Instead of promoting the integration of refugees in the Russian society, the residence at the TACs becomes a wasted time for them.

Krasnoarmeysk is a small town with a population of about 25 thousand people. There are a few enterprises in the town, but it is hard to find a job and the salaries are very low. They serve only as an addition to the assistance received by refugees at the TAC, but do not help them to become independent. The town community cannot assist in the integration of refugees that local residents perceive as their rivals in the fight for scarce means of livelihood.

The situation in the "Serebryaniki" TAC is even worse - it is located among forests, far away from urban centres. As for the new TAC "Peresypkino-2", we do not have much information at our disposal. But this centre is also located in rural area, 130 km away from Tambov.

Thus, the problem of the implementation of the right to accommodation at the TAC is mostly the location of these centres: they are located far from where they are most needed and where they could play an important role in the process of integration of refugees.

It is probable that the FMS of Russia deliberately locates TACs in such a way that they become less attractive for refugees - with the purpose of saving state funds or avoiding a situation when a possibility of free accommodation and meals at a TAC encourages people to turn to asylum and boosts parasitical behaviour. We assume that similar apprehensions explain diminutive allowances. Despite the fact that these apprehensions are not unsubstantiated, they must not lead to the emaciation of rights guaranteed to refugees by the Law.

Undoubtedly, the right to medical and medicinal assistance is one of the most important rights. In practice, it means the possibility to obtain medical insurance (OMS), the holder of which can turn for medical assistance to medical establishments operating within the OMS system.

Originally the Rules of obligatory medical insurance approved by Order of the Ministry of Health and Social Development of the Russian Federation of 28 November 2010 No. 158n did not include the certificate on granting temporary asylum in the list of documents giving the right to the OMS insurance (Paragraph 9.3). This has led to the violation of the right to free medical assistance of persons with temporary asylum. NGO "Faith. Hope. Love" contested the lawfulness of the corresponding paragraph of the OMS Rules to the Supreme Court, which urged the Ministry of Health and Social Development to include the certificate on granting asylum into the list mentioned by Order No. 897 of 10 August 2011.

At present, insurance companies working in Moscow easily issue their product on presentation of the certificate confirming examination of a refugee status application or the certificate on granting temporary asylum; but only for the term of validity of these documents.

The Rules also provide for the issue of insurance to refugees appealing against the deprivation of status, on presentation of a copy of the complaint to the FMS with a stamp that it has been accepted. However the following documents are not mentioned: a copy of the appeal to the court against the decision on status deprivation, appeals against the decision on status loss, deprivation/loss of temporary asylum. This is an obvious lacuna since Part 4 Article 10 of the Law On Refugees provides for maintenance of the rights guaranteed by Articles 6 and 8 of this Law for persons appealing against the decisions of the FMS bodies.

While turning for medical assistance to medical establishments, refugees are often required to present documents confirming their migration registration or registration at a place of residence, which many of them do not have. This requirement is not based on any law, but usually in these cases refugees fail to overcome the refusal in medical assistance without the interference of a lawyer or NGOs.

As for medicinal assistance, as we have seen, refugees residing at TACs have a real, but a very limited opportunity to get it. Besides, if a medical insurance is present, those undergoing an in-patient treatment should be provided with medicines. In case of outpatient treatment, medicines are provided to certain groups of citizens (participants in the Great Patriotic and other wars, 1st and 2nd degree disabled people, disabled children, victims of the Chernobyl catastrophe and some others), none of which includes refugees.

Children under the age of 3 also have a right to free medications, and children from large families retain this right for up to 6 years. But for

that one needs to present a certificate of a many-children family which is not issued without previous registration at a place of residence.

According to the list approved by the Ministry of Health, free medicines should also be provided to patients suffering from certain illnesses, including AIDS, oncological illnesses, TB, bronchial asthma, diabetes, cardiac infarction, multiple sclerosis, mental illnesses). If a refugee suffering from one of these illnesses is registered at a clinic on the basis of a medical insurance, he/she should not be denied free medicines. However, in practice not only refugees, but Russian citizens without a registration at a place of residence in the given region, cannot receive free medicines without the help of a lawyer or an NGO either.

We have already discussed in Chapter 1 the right to assistance in referral for a vocational training at a TAC or employment.

The right to assistance in referral for re-training concerns only those residing at TACs, and we do not know of a single case when this right was implemented.

It is not quite clear from the text of the Article, whether the right to assistance in employment concerns only those residing at TACs or all those who have a certificate confirming examination of a refugee status application and a certificate on granting temporary asylum. However, as a rule, placement services do not deny anybody this assistance in the form of providing information on vacancies.

At the same time this right loses value for persons awaiting a decision on refugee status determination, due to the fact that they cannot work without a special work permit or a patent they cannot obtain on the grounds of the certificate on consideration either.

For a long time labour activity of refugees as a special category of foreign citizens was not legislatively regulated, which generated numerous problems for refugees and enquiries to the FMS of Russia. It urged the FMS of Russia to issue an explanation to the heads of territorial bodies of the FMS of Russia on Labour Activity Procedure for Asylum Seekers No. KP-1/6-21240 of 10.11.2008. The document stated that since the Law on Refugees guaranteed the right to assistance in employment to recognised refugees, as well as persons with a certificate confirming examination of their refugee status application and a certificate on granting temporary asylum, these categories could function without a work permit.

Indeed, persons holding certificates confirming examination of temporary asylum applications who are not vested with any rights by

the Law on Refugees, according to the FMS explanation, cannot work without a work permit either. Refugees appealing against decisions on deprivation/loss of a refugee status or temporary asylum were not mentioned in the explanation at all, though in accordance with Part 4 Article 10 of the Law on Refugees they retain the rights provided for by Articles 6 and 8 of the given Law.

Nevertheless, the FMS director's explanation was useful in some specific cases of refusal of employment. But it could not solve the problem on the whole, since the greater part of employers are not familiar with this document.

On 5 May 2014, Law No. 213 complemented Part 4 Article 13 of the Law On Refugees containing the list of all the categories of foreign citizens who are not obliged to have a work permit (and since 1 January 2015 a patent as well) with paragraphs 11 and 12, indicating persons who have received a refugee status and temporary asylum. Thus, the right of recognised refugees and those granted temporary asylum to work in the Russia without any limitations was finally legislatively established.

However, refugees holding certificates confirming examination of a refugee status application and certificates confirming examination of temporary asylum applications have not been included in this list and have been thus deprived of the right to work without a work permit or a patent.

It should also be noted that the Law on Legal Status of Foreign Citizens in the Russian Federation provides the right to freely work to recognised refugees and persons granted temporary asylum only until the loss or deprivation of a refugee status/temporary asylum. That is, refugees appealing against decisions on deprivation/loss of status will be unable to use this right.

Due to the fact that for more than 20 years since the adoption of the Law On Refugees, the latter virtually did not have the right to legal employment, they had to work informally. This state of affairs still exists since employers are not familiar with documents that people present when applying for a job. Employers are concerned about hiring this category officially, fearing large fines for using foreign work force without a work permit or a patent and prefer either to deny employment or to hire illegally - this is more profitable, and allows for sacking of the employee at any moment.

Russian Federation Government Resolution No. 274 of 9 April 2001 on Granting of Temporary Asylum on the Russian Federation Territory

does not add much to the rights of persons granted temporary asylum: according to paragraph 14 of the Resolution they *“have a right to rent (and sub-rent) living space, to receive assistance in leaving the Russian Federation and also use other rights provided for by the Russian legislation, international agreements signed by the Russian Federation and legislation of the subjects of the Russian Federation”*.

The right to rent housing is exercised by all foreigners in Russia, and it would be strange if persons granted temporary asylum in Russia were deprived of this right - all the more so that the state does not provide for the housing (apart from a place at TACs).

We do not know what is meant under assistance in departing for abroad, but in any case this assistance is not offered in the form of issuing travel documents which, as has already been mentioned, temporary asylum holders cannot obtain.

Federal and regional legislation of the Russian Federation does not contain any additional rights for persons granted temporary asylum.

It can easily be noted that the rights provided for by Article 6 of the Law on Refugees, do not include such most important rights as the right to social assistance and education.

The duration of the status determination procedure is very indefinite: it may last 3 months or protract for many months in case of appeals of the Migration Service and the FMS. Moreover, newly arrived refugees do not usually have a permanent address. Hence it might be justified that the same forms of social security provided for Russian citizens are not guaranteed to persons holding certificates on consideration of a refugee status application, since the procedure for the provision of social assistance demands an applicant should collect a lot of documents and the payment should be carried out at the place of residence and hence cannot be applied to persons in the position of asylum seekers.

At the same time the absence of any forms of social assistance for newly arrived refugees, who often have no means of livelihood, no opportunity or even the right to earn their living, is inadmissible. They are in need of special forms of support: apart from a one-time but decent allowance that should be paid to all those applying for a refugee status, it is necessary to provide for additional forms of assistance for vulnerable groups of refugees (families with children, single women, elderly and sick people).

As for those granted temporary asylum, the term of which is determined by the Migration Service at the moment of issuing a decision

and usually constitutes one year, the deprivation of these people of all forms of social assistance provided for Russian citizens, including families with children, has no reasonable justification.

Temporary asylum is considered a humanitarian status, it is often provided to sick people, single women, many-children families and single parents. These people are in need of social assistance to an even greater extent than the same groups of the local population, since refugees have no housing, no property, and no opportunity to get assistance from relatives or acquaintances. Many of them cannot find a job because they don't know the Russian language, some are unable to work due to illness.

In the family of refugees from Uzbekistan A. there are five children - from 5 to 17 years old. The family resides in the Moscow region, in temporary asylum. The parents speak Russian quite well, in Uzbekistan they had a tailor shop and on arrival in Russia they quickly found a job in the same field. They did not earn much, but it was enough to rent a housing and to support the family. In 2014 the head of the family fell seriously ill and could no longer work, and his wife could not support the family on her own. The elder son who is still a schoolboy tries to make some money on the side, but so far cannot replace his father.

The mother turned to the administration of the town where the family is residing with a request for social assistance for families with many children. But the answer was that social assistance cannot be granted on the basis of her documents (certificate on granting temporary asylum).

A single woman from Abkhazia N.V. G-ni fled to Moscow in 1992, during Abkhazian-Georgian conflict, failed to obtain a refugee status or Russian citizenship, made her living selling flowers near metro stations, rented housing. But as time passed, her health condition deteriorated. In 2009 she fainted in the street, an ambulance took her to hospital, but her bag with the only document - her Soviet passport - was gone. It turned out that she had diabetes, which resulted in almost complete blindness. She could no longer work. N.V. wanted to go back to Abkhazia, where she had some distant relatives, but Abkhaz border guards did not let her cross the border. The Committee appeals to the President of Abkhazia and to the Russian Federation Ministry of Foreign Affairs with a request to help N.V. to return to her home country did not bring any results.

Finally with the Committee support, N.V. was granted temporary asylum and was referred to a TAC where she is still living. The

TAC provides her with free housing and meals, but despite her elderly age and a serious illness she does not receive any pension and has no money to buy the medicine the TAC aid-post cannot offer, nor some clothes, nor the means to call her relatives or acquaintances, etc. Moreover, this situation is humiliating for her and inflicts moral suffering.

According to the data of the FMS of Russia, by June 2015 336,000 Ukrainian citizens were granted temporary asylum on the territory of Russia, so the problem was that few holders of this status confronted has acquired a mass nature and demands an urgent solution. The Committee and other NGOs received numerous applications from Ukrainian refugees who find themselves helpless, even after having obtained asylum.

One of the latest applications like this was received at the beginning of September 2015 on the Committee hotline from a single woman, M.K, with 1st degree eyesight disability. Her house in the Donetsk region was destroyed, there were no relatives left. In summer 2014 she was brought to the Lipetsk region with a group of other refugees. M.K. was granted temporary asylum and was temporarily placed in one of the rural hospitals. A year later the administration of the hospital suggested she should return home, as they no longer had the resources to keep her there. M.K. has nowhere to return, neither has she any means to travel or even make phone calls. The Migration Service of the Lipetsk region told her they could not help in any way. Then she called the Committee from the hospital phone. At the Committee application, the FMS of Russia instructed the Migration Service of the Lipetsk region to "consider the question" on referring M.K. to a TAC. If the matter is settled positively, M.K. will find herself in the same situation as N.G-ni. This is the best Russia can offer her now.

In Chapter 1 we have already mentioned that with regard to the guarantees of the right to education the Law On Refugees contradicts Article 22 of the 1951 Convention, since it does not guarantee the provision of this right to asylum seekers and persons granted temporary asylum. However, the Russian Federation Constitution and the Law on Education guarantees "*each person the right to generally available and free pre-school, general secondary education and secondary vocational training, as well as the right to free higher education on a competitive basis*" and thus makes up for this drawback of the Law On Refugees.

At the same time, the Law On Refugees was adapted numerous times to limit the right to education on the grounds of the place of

residence or legal status; which has affected the right of refugees to education.

In the second half of the 1990s, local acts were adopted in a number of Russian regions making admission of children to schools conditional on whether their parents had registration or not. Though it was not pronounced directly, these measures were aimed at the Chechens, but automatically affected other children without registration as well.

The Moscow authorities were especially persistent in their aspiration to deprive the unregistered children of the right to education. At first the prohibition to admit children from families without a registration in Moscow to school was based on a certain undisclosed protocol generated by the Moscow Education Committee. After the General Prosecution Office, upon the complaint of the Committee, warned the Moscow Government of the unlawfulness of the abovementioned protocol, the Moscow Education Committee started using the letter of the head of the Passport Department of the Interior Department (the *GUV*D) of Moscow as the basis for denying access to schools. In this letter the official expressed his opinion that children without a registration could not be admitted to schools. After a new warning of the General Prosecution Office, the Moscow Government decided to make this prohibition normative and included it into joint Resolution of the Moscow Government and the Government of the Moscow region No. 241-28 of 30 March 1999 on establishing regional Rules of registration. Paragraph 5 of these Rules ordered the admission of children to schools and kindergartens **if their parents were registered in Moscow and the Moscow region**.

The Civic Assistance Committee appealed against this provision at court, and in its decision of 25 December 2000, the Moscow Municipal Court recognised it as unlawful. The Moscow Government tried to contest this decision at the Supreme Court, but in its definition of 15 May 2001 the Supreme Court upheld the decision of the Moscow Municipal Court.

Since then refugees have almost never complained of denials of admission to schools of their children on the grounds of the absence of registration. But in 2012 the complaints were resumed in connection with the issue by the Russian Federation Ministry of Education and Science (Minobrnauki) of Order No. 107 of 15 February 2012 on Establishing the Procedure of Admission of Citizens to Comprehensive Educational Establishments.

The Order allowed access to the 1st grade only to children registered at a place of residence at a given settlement. To enrol a child in

school, non-Russian parents, who are foreign nationals, should additionally present a document confirming their legal stay in Russia. The order did not mention any possibility of admission to school for children without a registration or a legal stay.

The Committee drew mass media attention to this order, and thanks to this campaign on 28 June 2012, the Ministry of Education and Science circulated letter No. IR-535/03, explaining that Order No. 107 should not violate children's right to education.

However, on 22 January 2014 the Ministry of Education and Science cancelled order No. 107 and established a new procedure of admission to comprehensive schools in its Order No. 32. This procedure demands that parents should present a document on the child's registration on the territory the school is reserved for to enrol a child in the 1st grade. Foreigners should also present a document confirming their legal stay in Russia. Children registered on the territory the school is reserved for are admitted to school in the first place, the others - on vacant places.

The Order states that children can be refused admission to schools only in the case where there are no places. The Order does not mention the possibility of refusal on the grounds of the absence of registration. Nevertheless, the requirement of obligatory submission of documents confirming registration and legal status for the admission to school could not but have led to refusals of admission to children whose parents could not present these documents.

In Moscow the situation is aggravated by the fact that children are enrolled in the 1st grade only after their parents have filed an electronic application through the Internet. The system offered to do it provides for an obligatory entry of the registration data. If this information is absent, it is impossible to enrol a child in school through the electronic system.

In September 2014 a Syrian refugee, N.K., who arrived in Russia with a 7-year-old daughter and was granted temporary asylum, turned to our organisation for help. For a month she tried to enrol her child in the 1st grade without any success. She turned to the school and was referred to the Circuit Service of Informational Support (the *OSIP*) to file an electronic application, and from there - to the Education Department for North-East Circuit of Moscow. The officials of all these establishments demanded either a registration, or a residence permit. They were not satisfied with the certificate on granting temporary asylum, and the N.K.'s landlords did not agree to register her.

The Committee sent enquiries to the Education Department of Moscow and to the Russian Federation Ministry of Education and Science. The Ministry replied that the provision of the state guarantees of the right to generally available and free education at municipal schools and kindergartens falls under the jurisdiction of the authorities of the subjects of the Federation; that is the Ministry declined responsibility for the implementation of the constitutional right. The Education Department explained in its response that the admission of children to the 1st grade is carried out on the basis of the parents' application registered on the Portal of state and municipal services of Moscow, on presentation of documents indicated in Order No 32 of 22 January 2014 of the Ministry of Education and Science. It equally stated that "other forms of enrolment of children in the 1st grades of educational establishments under the jurisdiction of the Education Department of Moscow are not provided for".

For the first time in its history the Committee faced a situation when it could not help with getting the child into school, since even at the times of combatting Moscow prohibitions, it was always possible to settle the issue of admission of a specific child to school by turning to the school headmaster or the Committee (at present - Department) of Education.

After the case with the Syrian girl, complaints of refusals of admission to schools and expulsion from schools of refugees' and migrants' children due to the absence of registration or documents confirming a legal stay poured down on the Committee. In total the Committee received 59 complaints of this kind during the year. In connection with this, the Committee decided to turn to the Supreme Court of the Russian Federation with a request to recognise as partially invalid the provisions of Order No. 32 of 22 January 2014 of the Ministry of Education and Science on the obligatory presentation of a document confirming a registration or a legal stay in the Russia by parents to enrol a child in the 1st grade.

On 27 August 2015 the Supreme Court examined the application of the Committee. The representatives of the Ministry of Education and Science, Ministry of Justice and the General Prosecution Office took part in the court hearing. Without denying the facts of violations of children's rights to education cited by the Committee, they spoke out against the introduction of any changes in the Order imposing the responsibility for these violations exclusively on the school headmasters. The Supreme Court did not find any violations of the federal leg-

islation in the provisions of Order No 32 contested by the Committee and dismissed the Committee complaint.

At the same time, the decision of the Supreme Court of 27 August cannot qualify as a definite defeat; the trial attracted the attention of society and the press. In the course of the proceedings, the representatives of the Ministry of Education and Science had to give their assurances that the contested provisions of the Order did not serve as the grounds for denial of children's access to schools. The definition of the Court contains a similar statement.

Nevertheless, it is obvious that the refugees' right to education - considering the absence of guarantees of this right in the Law on Refugees - is under considerable attack at present. The issue of Orders Nos. 107 of 15 February 2012 and 32 of 22 January 2014 only serve as catalysts of this process. The orders only concern the issues of enrolment in the 1st grade, but after their issue children without a registration started facing problems with admission to other grades and expulsion from schools.

In September 2014 one of the Moscow schools demanded that a refugee from Afghanistan, Kh.M.F, should present the documents confirming the presence of registration of her two children studying in the 3rd grade threatening otherwise to expel the children. At that time Kh.M.F. was appealing against the refusal of temporary asylum at court and could not obtain a registration, as she had no other documents but her appeal to the court.

The right to attend municipal pre-school establishments (kindergartens) makes part of the right to education guaranteed by the Constitution and by the Law on Education, but it is not influenced by the order of the Ministry of Education and Science. Nevertheless, for the last few years it has become even more difficult to get children into kindergartens. Before the main problem, there was the shortage of places and waiting lists dating back for years, but now children are refused admission to kindergartens due to the lack of registration.

A Syrian refugee M.L. granted temporary asylum received such a refusal. She tried to place her two children in a kindergarten without any success. The Committee turned to the Department of Education of Moscow with a request to solve this problem. In its reply of 8 October 2014 the Department cited the list of documents necessary for the admission of a child into a kindergarten including a document on the child's registration on the territory of Moscow.

8.2. The rights of recognised refugees

The scope of rights guaranteed to recognised refugees is significantly wider, though the number of persons granted these rights by Part 1 Article 8 of the Law On Refugees is very small: as of the end of 2014 it constituted only 808 persons - for the whole Russian Federation.

As is the case with the rights set forth in Article 6, not all the rights listed in Article 8 fully conform to the meaning of this term. The provision of information and interpreters' services, the drawing up of documents to enter Russia, provision of security in TACs (Paragraphs 1, 2, 5) are technical obligations of the Migration Service connected with the work on granting asylum rather than the rights of refugees. The right to voluntary return to the country of nationality and departure to a third foreign country (Paragraphs 16, 17) are natural possibilities rather than rights; the realization of which depends on foreign states and not on Russian authorities (if we exclude a ridiculous assumption that but for these "rights" the latter would hinder refugees' exit from the territory of Russia).

Some rights of recognised refugees coincide with those granted to refugees undergoing a status determination procedure and persons granted temporary asylum: this is a right to travel and transportation of the baggage to the place of sojourn (Paragraph 3), to the provision of accommodation and meals at TACs (Paragraph 4), to medical and medicinal assistance on equal terms with Russian citizens (Paragraph 7), to assistance in referral for a vocational re-training and employment (Paragraph 8). While realising these rights, refugees often face the same problems as asylum seekers undergoing the procedure, as well as those granted temporary asylum.

In January 2014 a recognised refugee from Afghanistan G.A.Z. was hospitalised with a cardiac infarction and underwent heart surgery. Upon discharge from hospital regular medical check-ups of several specialists were recommended, but despite the fact that she had medical insurance (the *OMS*) she was refused registration at a clinic due to the lack of registration at a place of residence.

The following rights are guaranteed only to recognised refugees:

- the right to housing provided from the temporary accommodation funds in accordance with the procedure defined by the authorised federal executive body (Paragraph 6);
- the right to be employed or to undertake entrepreneurial activity on equal terms with Russian citizens (Paragraph 9);

- the right to social assistance, including social security on equal terms with Russian citizens (Paragraph 10);
- the right to assistance in placing their children in state or municipal pre-school educational organisations, as well as comprehensive, vocational and higher education on equal terms with Russian citizens (Paragraph 11);
- the right to assistance from the FMS of Russia in obtaining the information on the relatives of a person recognised as a refugee who are residing in the country of his nationality (Paragraph 12);
- the right to apply to the FMS territorial body at a place of sojourn of the person and his family members with a view to have a travel document issued to be able to exit and enter the Russian Federation (Paragraph 13);
- the right to apply for permanent residence or naturalisation in the Russian Federation (Paragraph 14);
- the right to participation in social activities on equal terms with Russian citizens (Paragraph 15);
- other rights provided for by the Russian legislation and international agreements, as well as by the legislation of the subjects of the Russian Federation (Paragraph 18).

Housing is the principal social problem of refugees. Almost all of them rent accommodation, but it is extremely difficult to find landlords ready to rent out to refugees, especially families; the greater part of Russian residents are suspicious and apprehensive towards refugees, xenophobic attitudes are mingled with the fear of the police regularly visiting apartments where foreigners live. The rent eats up the bigger part of refugees' earnings, leaving no chances of saving some money to buy a property of their own. That is why the possibility to use the housing from temporary accommodation funds provided for by the law could be one of the most important rights of refugees and a serious achievement of the Russian asylum system, if this possibility did in fact exist.

The establishment of the temporary accommodation funds is provided for by Article 11 of the Law On Refugees. To fulfil its obligations under this Article, the Russian Government elaborated the Regulations on Temporary Accommodation Funds for Recognised Refugees (Government Resolution No. 275 of 9 April 2001) and the Procedure for the registration of recognised refugees in need of housing from the temporary accommodation funds and for the provision of this housing to them (Order of the Ministry for Federation Affairs, National and

Migration Policy of the Russian Federation of 5 October 2001 No. 83). However, we have failed to discover any signs of the existence of this housing and its provision to refugees. There is definitely no housing of this kind in Moscow and the Moscow region where 92% of all recognised refugees reside (748 out of 808 refugees on the list as of the end of 2014). Comprehensive and quite detailed reports on the results and basic directions of the FMS of Russia for 2012-2014 contain no information on temporary accommodation funds for refugees and their use. We cannot but conclude that the right to use the housing from temporary accommodation funds exists only on paper.

We have already discussed the right to work for all categories of refugees. As for the implementation of the right to entrepreneurial activity, we do not have any information on violations of refugees' rights, we have not received any complaints from refugees-entrepreneurs: either they do not face these violations (which is unlikely) or prefer to solve their problems without turning to human rights organisations (which is more likely).

The realisation of the right to social assistance by refugees depends on two circumstances: the type of social assistance and the presence and type of registration.

If the registration is absent, refugees can secure only one type of assistance: old-age or disability pension without any regional additional payments.

At the same time the unemployment benefit is only paid out if the person is registered at a place of residence. The Law on Employment of the Population in the Russian Federation provides for the recognition of persons as unemployed with the assignment of a corresponding allowance "at a place of residence" (Paragraph 2 Article 3), but does not require the presentation of a document on registration at a place of residence, to confirm such a place. Nevertheless, the Placement Service unequivocally interprets this provision in this way and so far we have failed to overcome the discrimination against the unemployed without a registration at a place of residence, including at court⁴⁰.

Registration is also necessary to seek other kinds of assistance in Moscow and the Moscow region. However, despite the fact that since 1 January 2013 a refugee status has become permanent, refugees are only registered for the term of validity of their certificates (one year or

a year and a half). In this situation, refugees do not enjoy any social benefits or allowances provided for residents of these regions.

In October 2013 the family of an Afghan refugee, A.Z.A., had a child. The child was registered by one of the Moscow children's clinics, and the family received free infant food. But only for a short while - it was explained to the parents that they did not have a registration at a place of residence. In reply to the letter from the Committee with a request to resume provision of infant food to the baby from the refugee's family, the Moscow Department of Health informed that in accordance with the Law of Moscow of 23 November 2006 No. 60 on Social Support of Families with Children in the City of Moscow, social assistance is provided to Russian citizens, foreign citizens and stateless persons with a place of residence in Moscow, on the condition that *"the place of residence is ascertained in accordance with the information received from the registration bodies"*.

Discrimination of refugees with regard to access to social rights on the grounds of registration contradicts not only Paragraph 1 Article 8 of the Law on Refugees providing for equal rights of refugees to social assistance with Russian citizens, but also Article 19 of the Russian Federation Constitution prohibiting discrimination in any form. However, refugees rarely manage to overcome the barrier of the permanent registration in access to social assistance.

Ex-officer of the Afghan army, an elderly single disabled M.N.A., a recognised refugee, turned to the Social Security Department of the Dmitrovsky district of Moscow with a request to issue a "Muscovite social card" (the *SKM*), in order to be able to use city transport for free. His request was rejected with a reference to Moscow Law No. 70 on Measures of Social Support to Certain Categories of the Moscow Residents of 30 November 2004, in accordance with which the right to free travel can only be exercised by pensioners with a place of residence in Moscow. The Committee in its letter to the Social Security Department of Moscow pointed out the unlawfulness of this decision, since despite the lack of a registration at a place of residence, M.N.A.'s place of residence for the last 20 years has been Moscow, and he has no other place of residence. In her reply of 15 October 2014, the Department deputy head N.Yu. Komarova informed that, due to the absence of registration at a place of residence in Moscow, M.N.A. did not have the right to be issued an SKM, nevertheless, as an exception the Department made a decision to provide this type of social assistance to him.

⁴⁰ D.V.Poletaev. Report on the project "Survey on the possibilities of integration of recognised refugees in the Russian federation". Moscow. March 2014, pp. 42-44 (http://unhcr.ru/uploads/media/doklad_ob_integracii_bezhencev_v_rossii.pdf).

Inspired by this success, M.N.A. decided with the help of the Committee to secure other types of social assistance he had been previously refused: a municipal additional payment to a small social pension and a sanatorium voucher for a rehabilitation after a stroke. The Department agreed once again - also as an exception - to provide the refugee with a free sanatorium voucher, but rejected his request for a municipal additional payment to reach the level of the municipal social standard. The letter ran that only pensioners who have had a permanent registration in Moscow for more than 10 years (letter of 10 December 2014) have the right to additional payment in order to reach the level of the municipal social standard. In 2014-2015, this standard amounted to 12,000 rubles.

For the last few years we have not received any complaints of the violation of their right to education on the part of recognised refugees. Neither have there been any complaints on the problems with the issue of a travel document (see Chapter 6 “Documents” for more details). Refugees have not informed us of any obstacles in the realisation of their right to participate in public life.

The right to assistance in obtaining the information on relatives who had stayed in the country of origin, is evidently un-reclaimed. In any case, we don't have any information at our disposal concerning refugees' applications to the FMS bodies for this kind of assistance.

We have discussed other rights absent in the Law on Refugees, but still guaranteed to **each person** by the Russian Federation Constitution and other federal laws in Chapter 1. Federal and regional legislation does not contain any rights provided to refugees in addition to the rights stipulated by the Law On Refugees. On the whole, the Russian legislation does not consider refugees as a special vulnerable category of the population in need of special support. There are no programs aimed at the integration of refugees on the federal or regional levels.

In the next chapter we will discuss the issue of how the right of refugees to apply for permanent residence in Russia or for the Russian citizenship is realised.

Conclusions

1. Refugees undergoing a status determination procedure (holding certificates confirming examination of a refugee status application) can actually, though not without difficulties, use the following rights:

- coverage of travel costs to a TAC or any other place of temporary stay;

- residence and meals at TACs;
- issue of a medical insurance (the *OMS*) and medical assistance in accordance with the insurance, medicinal assistance in TACs.

2. Refugees undergoing a status determination procedure do not have the right to work and obtain social assistance.

3. Persons applying for temporary asylum (and holding certificates confirming examination of their application of temporary asylum) do not enjoy any rights with the exception of the right to legally stay on the territory of the Russian Federation.

4. Persons granted temporary asylum can actually, though not without difficulties, use the following rights:

- coverage of travel costs to a TAC;
- residence and meals at a TAC;
- issue of a medical insurance (the *OMS*) and medical assistance in accordance with the insurance, medicinal assistance in TACs.

- the right to work without a special permit or patent.

5. Persons granted temporary asylum do not have the right to social assistance.

6. Recognised refugees can actually use the following rights:

- coverage of travel costs to a TAC;
- residence and meals at a TAC;
- issue of a medical insurance (the *OMS*) and medical assistance in accordance with the insurance, medicinal assistance in TACs;

- the right to work without a special permit or patent, entrepreneurial activity;

- participation in public life.

7. The right of recognised refugees to housing from temporary accommodation funds is not realised.

8. The right of recognised refugees to social assistance is with significant limitations.

9. The right to education guaranteed to each person by the Constitution and the Law on Education has been lately significantly limited affecting all categories of refugees.

10. On the whole the situation with the realisation of mostly significant social rights of refugees guaranteed by the 1951 Convention is not favourable:

- not all the categories of refugees residing in Russia on legal grounds enjoy the right to wage employment in violation of Article 17 of the Convention;
- the requirement of Article 21 of the Convention stating that

the Contracting States “shall accord to refugees lawfully staying in their territory treatment as favourable as possible” in terms of housing is reduced to placement of a small number of refugees in TACs;

- the requirement of Article 22 of the Convention on an equal right of refugees to elementary education, despite the guarantees of the Russian Federation Constitution and the Law On Education lately have been subjected to restrictions;
- in violation of Articles 23 and 24 of the Convention the greater part of refugees legally residing in Russia do not have any access to social assistance.

Recommendations

To the legislative authority of the Russian Federation (in addition to the recommendations suggested in Chapter 1)

1. Extend the rights of persons undergoing the procedure of applying for asylum, granting them the right to special forms of social support, as well as the right to work without a work permit or a patent and the right to education in the scope provided for by Article 5 of the Law on Education.

2. Extend the rights of refugees and persons granted temporary asylum providing them with the right to unemployment benefit on equal terms with Russian citizens. With this view, introduce the corresponding changes in the Law on Refugees and on the Employment of the Population.

To the Russian government

1. Introduce changes in Government Resolution No. 484 of 23 May 1998 providing for a significant increase in the one-time allowance for persons applying for a refugee status, as well as the mechanism for a regular review of this amount, taking inflation into account.

2. Take measures to implement Paragraph 6 Part 1 Article 8, as well as Article 11 of the Law On Refugees, namely: to create temporary accommodation funds and oblige the FMS of Russia to start using it. It would be expedient to create these funds in places where large numbers of refugees reside.

3. Take measures to eliminate obstacles in the access of recognised refugees’ to social rights, due to the lack of registration.

4. Take measures to eliminate obstacles in the access to education of the children of all categories of refugees.

To the Russian Ministry of Health Care

1. To introduce the following changes in the Rules of obligatory medical insurance in accordance with Part 4 Article 10 of the Law on Refugees: complement the list of documents providing for the right to the issue of medical (the OMS) insurances to the following persons: 1) those appealing against the decision on the loss of a refugee status at court, 2) those appealing against the decision on the deprivation of a refugee status, 3) those appealing against the decision on the loss of temporary asylum at the FMS of Russia and at court, 4) those appealing against the decision on the deprivation of temporary asylum at the FMS and at court.

To the FMS of Russia

1. To expand the network of Temporary Accommodation Centres for refugees by setting up these centres in metropolitan regions and large cities, where the greater part of refugees are residing and where there are better opportunities for their integration.

2. Cooperate with NGOs on the issues of rendering assistance to refugees and persons granted temporary asylum, including those residing in TACs.

CHAPTER 9. NATURALISATION

As we have already mentioned, the Law on Refugees guarantees the right to apply for permanent residency or equally for naturalisation for recognised refugees, from within the borders of the Russian Federation. However, the Law on the Legal Status of Foreign Citizens does not provide refugees with an opportunity to apply for a residence permit, hence refugees, like other foreigners, can only realise their right to obtain residency one year after they obtain a RVP (temporary residence permit). Moreover, refugees are not included in any group of foreign citizens who are normally entitled to benefits and who can apply for a temporary residence permit without a quota; it is very unlikely that a refugee can obtain an RVP from the quotas allocated.

At the same time, the Law on Russian Federation Citizenship vests refugees with a more important right - the right to apply for citizenship through an urgent procedure, only a year after refugee status has been granted (paragraph "c" Part 2 Article 13 of the Law on Russian Federation Citizenship). However, the realisation of this right represents an insoluble problem. Refugees have to literally haunt the Russian FMS for years trying to submit the documents for naturalisation. Those who succeed wait for a decision for years and in many cases their documents are returned to them.

The staff of territorial bodies resort to various techniques to hinder refugees from realising their right to acquire Russian Federation citizenship. These techniques can be summarised as follows:

- repeated detection of real and alleged mistakes in the application form for naturalisation: every time refugees comes to the FMS, new mistakes are pointed out to them. Once corrected, other mistakes are detected and corrected, still new ones are found - and so on and so forth.
- reclamation of documents not provided for by the Regulations on Consideration of Russian Federation Citizenship Issues (approved

by Decree of the Russian Federation President No. 1325 of 4 November 2002), including those a refugee cannot provide: documents confirming registration for the whole period of residence in the Russian Federation, documents on the sources of income for the whole period of residence in the Russian Federation, which for some refugees reaches 15 to 20 years.

- returning refugees' documents to them many months after they have been accepted, having previously fulfilled numerous demands as a result of the detection of some new mistakes, with a suggestion to start anew the procedure of collection and submission of documents or to apply for naturalisation under a general procedure: to obtain a RVP, then a residence permit and apply for naturalisation 5 years later.

A refugee from Afghanistan, A.A.B., had some problems with preparing documents for naturalisation due to a poor knowledge of Russian and, at the recommendation of Migration Service personnel, turned to a certain company for assistance. The documents prepared by this company were returned to him for the correction of mistakes more than 10 times. Finally A.A.B.'s documents were accepted but a few months later they were returned to him yet again, because two more mistakes had been detected in his application. The Migration Service recommended that he request a suspension in the consideration of his application for naturalisation, since these contradictions can serve as a reason for refusal; in the event of such a refusal, he would not be able to apply for naturalisation for a further two years. He had to ultimately write such an application.

Another Afghan citizen, A. M. G., was granted refugee status in 2009 and a year later applied to the Migration Service of Moscow for naturalisation in Russia. At the Migration Service he was told that his papers would not be accepted and that he needed to go to another region. He went to his friend in the Smolensk region. There at the Migration Service he was misinformed again and told that he first had to obtain a RVP. He registered at his friend's address, withdrew from the registry at the Migration Service of Moscow and registered at the Migration Service of the Smolensk region. When he finally collected all the documents necessary to apply for a temporary residence permit, they were not accepted due to the fact that he was not actually residing in the Smolensk region. By that time, the term of the validity of his refugee status had almost expired. After the Committee turned to the FMS of Russia with a letter describing A.M.G.'s plight, his refugee status was extended for one year. He turned to the Migration Service

of Moscow again, where his application for naturalisation was not accepted once again, as it was rendered to be in violation of Paragraph “c” Part 2 Article 13 of the Law on Russian Federation Citizenship. It was once again recommended that he should collect the necessary documents to apply for a temporary residence permit. The refugee gave up and decided to apply for a temporary residence permit.

An Afghan citizen S.G.B., along with his wife and two children, has been trying to apply for naturalisation since 2013. The main problem has been the demand of the Migration Service of Moscow, not only to indicate the types of income he has received throughout his time of residence in Russia, addressed in point 16 of the application for naturalisation, but equally to provide supporting documents to confirm any income garnered. The demand to provide supporting documents to prove any income earned throughout the period of residence contradicts the Regulations on the Consideration of Citizenship Issues and is not feasible for S.G.B. who, despite having obtained refugee status in 2008, only managed to find legal employment in 2013. S.G.B. and the Committee have repeatedly complained to the FMS of Russia of the illegal demands of the Migration Service of Moscow; in July the FMS of Russia instructed the Migration Service of Moscow to accept S.G.B.’s application for naturalisation, but this instruction has not yet been fulfilled.

Sisters N.M. and F.M. from Afghanistan applied for naturalisation to the Migration Service of Moscow in June 2013. According to the law, the term of examination of applications for naturalisation in Russia takes one year. But two years passed, and no decision was made with regard to their applications. The sisters made a complaint about the inaction of the Migration Service to the Butyrsky district court of Moscow. In the course of the court proceedings it turned out that in September 2013 the sisters’ cases were referred to the FMS of Russia, but were returned for the correction of mistakes four times. However, the court found no signs of the correction of these mistakes in the case files and came to the conclusion that the Migration Service treated the instructions of the FMS as a pure formality. In other words, the Migration Service officials sent the sisters’ case files to the FMS without correcting mistakes, thus provoking repeated returns back to the Migration Service for improvements and hence, either deliberately or out of pure negligence, dragged out the adoption of decisions on granting citizenship to the sisters. On 18 May 2015, the court found the actions of the Migration Service of Moscow unlawful stating that they had

led to the violations of terms for examination of N.M. and F.M.’s application for naturalisation in Russia. A few days prior however, the Migration Service sent their documents to the FMS for the fifth time. If they are not returned to the Migration Service, the sisters will have to wait for Russian passports at least another year.

In November 2012, the Law on Russian Federation Citizenship was complemented by Chapter VIII.1 (Articles 41.1 - 41.9) establishing a naturalisation mechanism for stateless persons from the former USSR, who had arrived in Russia before 1 November 2002, that is, before the Law on the Legal Status of Foreign Citizens came into effect. These people are “*smithereens of the empire*”, who failed to obtain Russian citizenship and did not acquire the citizenship of those countries that emerged as a result of the collapse of the USSR. Before the Law on the Legal Status of Foreign Citizens in the Russian Federation was adopted, they had been residing in the Russian Federation legally but when the law was passed they became illegal overnight. There are many refugees among them: Armenians and members of mixed families from Azerbaijan, Georgians from Abkhazia and Russians from Central Asian countries. For 10 years NGOs appealed to the authorities to correct the mistake made in 2002. Law No. 182 of 12 November 2012 represents an attempt to do so, although not quite consistently.

The importance of this law rests in the possibilities it creates for the naturalisation of refugees who have been residing in Russia illegally. However, the implementation of the law faces considerable difficulties, and the term of validity of the changes introduced into the Law on Russian Federation Citizenship is limited to 1 January 2017.

To obtain citizenship in accordance with this law, the applicant should prove his or her statelessness and arrival in Russia before 1 November 2002. Moreover, it is necessary to present a birth certificate. However, many of the stateless persons do not have these or indeed any other documents at hand; they thus need to collect them and send enquiries to various bodies both in Russia and beyond in order to do so. It takes time, sometimes a lot of time, and moreover, a level of effort some stateless persons are incapable of, since there are quite a few elderly, sick and homeless people among them. Sometimes it is impossible to receive an answer to a written enquiry, while many stateless persons cannot travel to request the issue of some documents due to a lack of identity documents and financial means.

The law imposes on territorial FMS bodies not only an obligation to verify and assess proof on the grounds for naturalisation, but also to collect these documents (Paragraph “d” Article 41.6 of the Law on Russian Federation Citizenship), which provides FMS bodies with an active role in obtaining the necessary documents. For the FMS personnel however, such an approach is very unusual, and by force of habit they demand that applicants bring all the necessary documents themselves. If the applicants are not in a position to do it, the work with them is ceased or is dragged out for years.

A single homeless 67 year old, Kh.R., left Tajikistan for Russia in 1992 and in the same year obtained a USSR passport in Moscow. For a few years he was registered in the Leningrad region. In 2010, with the support of the Committee, he obtained a temporary residence permit for stateless persons. In 2013, before his temporary residence permit expired, he applied to the Migration Service of Moscow for naturalisation in Russia in accordance with paragraph “a” Part 1 Article 41.1 of the Law on Russian Federation Citizenship. In August 2013 Kh.R. requested a replacement of his birth certificate from Tajikistan through the Russian Ministry of Justice. But as of yet, this document has not been received. In June 2014 the Committee turned to the FMS of Russia with a request to assist Kh.R. in obtaining a replacement of his birth certificate. In response to this request, the FMS of Russia instructed the Migration Service of Moscow to accept Kh.R.’s application on the grounds of the available documents, that is, without a birth certificate. But it was only in January 2015 that the Migration Service of Moscow accepted his application for naturalisation in Russia after a prolonged period of resistance. The term of consideration of these applications usually constitutes 6 months, but the decision on Kh.R.’s case is still ongoing at the time of writing. Some stateless persons do not have any identity documents. In these cases, FMS bodies should initiate a procedure to identify a person, which is an extremely difficult task to complete if there are no documents or witnesses. To solve this problem one needs to be capable of non-standard decisions and a willingness to answer for them, these are quite rare qualities.

Armenian T.A. lived in Baku in the family of her Azerbaijani husband, but when the husband decided to divorce her and take the child, she ran away with the child, having left all necessary documents in the husband’s house. T.A. arrived in Russia with her 8 year-old son illegally, the Migration Service of the Moscow region denied her refugee status and T.A. ceased any attempts to obtain legal status. However,

her son K.A. took over this task upon his graduation from school. In December 2012, the Committee turned to the FMS of Russia with a request to grant T.A. and her son Russian citizenship in accordance with Article 41.1. of the Law on Russian Federation Citizenship. The Department of Citizenship Issues of the FMS of Russia came to the conclusion that there were no grounds to grant citizenship to this family, but in April 2013 instructed the Migration Service of the Moscow region to provide them with assistance in the regularisation of their status in Russia. It implied an identification procedure and the provision of temporary residence permits for stateless persons. However, two years later the Migration Service of the Moscow region issued a resolution that “*it is not possible*” to identify K.A. The case came to a standstill.

According to our data, few people have managed, at present, to naturalise in Russia in accordance with Law No. 182 of 12 November 2012.

Among them are two elderly refugees from Abkhazia, spouses Z.I. and L.M., who have been residing in Russia since 1992. Only in 2010 were they granted temporary asylum in Russia. Following that, they made eight attempts to apply for temporary residence permits, but they failed to be included in a quota. In July 2013 the Committee turned to the Migration Service of Moscow with a request to provide them with Russian citizenship in accordance with Article 41.1. of the Law on Russian Federation Citizenship. But only in November 2014 did the spouses obtain Russian passports - to a great extent thanks to the exceptional energy of Z.I.

As previously noted, the Law on Refugees does not guarantee the right to permanent residency and naturalisation in Russia to those who are granted temporary asylum. Nevertheless, the Law on the Legal Status of Foreign Citizens in the Russian Federation allows holders of temporary asylum, on a par with other categories of foreign citizens residing in Russia, to apply for a temporary residence permit on legal grounds. However, it is quite difficult to realise this opportunity.

Firstly, if refugees granted temporary asylum do not have any grounds to obtain a temporary residence permit outside of a quota (spouses, children underage, incapacitated parents, who are Russian citizens), they need to try and be included in a quota. However, the quota for the issue of temporary residence permits, annually determined by the Russian Government, is usually insufficient for densely-populated regions, and persons granted temporary asylum have little

chance of success. As the example of Z.I. shows, refugees have to re-apply over and over again, but their persistence does not guarantee a quota. Moreover, at the moment of application for a temporary residence permit (after the quota has been allocated) the certificate on granting temporary asylum should expire not earlier than in a 6month period, considering that temporary asylum is granted for one year at most. Ultimately, the Migration Service can deny the extension of temporary asylum and consequently the chance of obtaining a temporary residence permit will be irreparably lost.

Secondly, the preparation of documents for a temporary residence permit is quite costly; it includes the costs of a notarial attestation of the translation of the documents, a duty and medical examinations. At that, if a family is seeking temporary residency, the costs are multiplied by the number of family members.

A typical example is as follows. A family of Afghan refugees with five children have temporary asylum, they are renting a house, the father supports the whole family and the family does not receive any social assistance. For such a family, the costs of the duty and obligatory medical examinations will constitute 30,000 to 35,000 rubles. This is approximately the price of their monthly rent. Most refugees cannot pay such a sum from their family budget.

Since 1 January 2015, refugees have to cover additional costs connected with obtaining a certificate confirming their knowledge of the Russian language, history and the fundamentals of Russian law. Only those with proof of graduation from an educational establishment in Russia are exempt from this obligation.

There are no free courses of Russian , history or the fundamentals of legislation in the Russian Federation. The majority of refugees, preoccupied with cares for their daily bread, have neither the time nor the means to undertake this training. Those who have long been residing in Russia, especially men, know Russian to the extent necessary to work and exercise elementary communication in the street; women, busy with housekeeping, usually do not know Russian, not to mention history or laws. Those who are most well-educated in this regard are children attending schools, but they cannot apply for a temporary residence permit. To obtain a certificate confirming knowledge of the Russian language, as well as knowledge of history and Russian laws, one needs to pass an exam, the cost of which varies from 500 to 6000 rubles; those who cannot pass it need to pay for preparatory courses.

Thirdly, those willing to apply for a temporary residence permit need to overcome numerous bureaucratic obstacles. In Moscow and the Moscow region, in defiance of all the regulations, numerous people queue up at the Departments of the Migration Service, which accept applications for temporary and permanent residence permits and citizenship. To get an appointment, people have to queue up at daybreak and spend hours in the street regardless of the weather. In some places, people preserve their numbers in the queue from one day to the next, awaiting the roll call, those who have cars, sleep in them overnight.

At that, as in the case with applying for naturalisation, applicants have to come to the Migration Service many times, to be made aware of an ever-increasing number of new requirements concerning the filling out of the application form and supporting documents. The application process is much simpler if the applicant turns to a company offering paid services (and quite costly ones) such as the drawing up of documents. These companies are often located not far from the Migration Service. Alternatively an applicant may find another way to “motivate” MS officials.

In fall 2014, a refugee from the Congo, N.M.T., having been granted temporary asylum repeatedly, tried to apply to the Department for the Mytischinsky district of the Moscow region for a temporary residence permit outside of the quota (as a father of an underage child with Russian citizenship), but his application was rejected under various pretexts.

At first, the Migration Service did not accept his documents, pointing out some mistakes in the application form to him. The Committee helped him correct these mistakes but the MS officials found new shortcomings in the application and sent him to have them corrected by a neighboring organisation called *Authorised Agency FGUP PVS FMS of Russia* (Federal Agency of the Passport and Visa Service of the Federal Migration Service of Russia). There he paid 2000 rubles for their services. Following that, the Migration Service demanded a statement from the house register confirming his child’s permanent registration and references from his employer. When he brought these documents, he was told that his work record book or alternatively a contract was also needed. The reclamation of all these documents is not necessitated by the Administrative Regulations of the FMS of Russia in the provision of a state service in issuing a temporary residence permit to foreign citizens and stateless persons (approved by Order of the FMS of Russia No. 214 of 22 April 2013).

The visitors of the Migration Service with whom N.M.T. shared his problems told him that the MS would keep sending him away until he turned to the aforementioned FGUP where an RVP is drawn up for 30,000 rubles.

The Committee described all these circumstances in a complaint to the FMS of Russia, which instructed the Migration Service of the Moscow region to accept N.M.T.'s documents. Meanwhile a year passed, and the certificate confirming the absence of HIV in his system, which should be attached to the application for a temporary residence permit, expired. N.M.T. had to obtain and pay for this document once again. At the beginning of 2015, a requirement on the submission of the certificate confirming knowledge of Russian language, history and legislation, when applying for a temporary residence permit, came into effect. N.M.T. speaks fluent Russian; nevertheless, to pass an exam he had to attend a short-term training, the total cost of the training and the exam constituted 9600 rubles. Only in March 2015 did N.M.T. finally submit his application for a temporary residence permit, accompanied by a Committee representative.

Yet that was not the end of the story. In September 2015, that is, 6 months later, the term stipulated by the law for the delivery of a decision on granting RVP, N.M.T. came to the Mytischinsky Department of the FMS of Russia to get a stamp to confirm that he had been granted a temporary residence permit in his application for temporary asylum. Instead, the Migration Service official told him that he *"did not like"* the certificate proving the absence of HIV in N.M.T.'s system submitted half a year earlier and suggested that N.M.T. either immediately apply for a new RVP or receive a refusal and apply for an RVP in a year.

In addition, the FMS officials working in the departments accepting documents for an RVP perceive refugees to be ordinary foreigners, with whom they are dealing on a regular basis, and fail to understand the peculiarities of refugees' situations and of the sensitive nature of the work involved with them. That is why they often demand that refugees and temporary asylum holders provide documents, which the latter - due to their situation - are not in a position to provide: police clearance certificates from the country of origin and other documents are impossible to obtain without turning to the embassy of the country of origin.

While refugees are trying to fulfil all these requirements, medical documents expire and they have to get fresh ones, or alternatively the

term of their temporary asylum expires and they consequently lose an opportunity to apply for a temporary residence permit.

This is what happened with the family of a refugee from Afghanistan, S.A.M., who had been granted temporary asylum. There are 7 people in the family, including 5 children. The family could not raise the necessary money to apply for a temporary residence permit, and the Committee allocated them considerable financial assistance for these purposes. S.A.M.'s family managed to get a quota, but the process of filing out the documents dragged on as usual; medical documents expired, the term of temporary asylum neared its end and the family failed to use their quota for a temporary residence permit.

If temporary asylum holders still manage to apply for a temporary residence permit and obtain it, they confront new problems.

The MS might consider the presence of a temporary residence permit as the grounds for refusal to extend temporary asylum, which means a refugee will lose protection from expulsion.

One year after a temporary residence permit has been granted, a refugee can apply for a residence permit. If a refugee does not lose asylum when they are granted a temporary residence permit, they are certain to lose it when they secure a residence permit - in accordance with Paragraph 1 Part 1 Article 9 (Loss of Refugee Status) or in accordance with Paragraph 2 Part 5 Article 12 (Loss of Temporary Asylum).

According to Paragraph 7 Part 1 Article 7 and Paragraph 7 Part 1 Article 9 of the Law on the Legal Status of Foreign Citizens, a temporary residence permit and a residence permit can be annulled if, over the course of a year, a foreign citizen was more than once brought to accountability for an administrative offence connected with *"offences against public order and public security or with violations of immigration rules for foreign citizens in the Russian Federation or labor activity"* or *"with illegal traffic of drugs and psychotropic substances"*. At that, the seriousness of an offence is not relevant, so one can lose an RVP or a residence permit, for example, as a result of having been brought to *administrative responsibility* for the organisation of or participation in an unauthorised public event, and equally for *"being in public in a state of alcoholic intoxication"*, for *"unauthorized termination of work as a means of settling a labor dispute"*, for *"violations of rules of conduct of spectators at sports events"*, and so on.

The risk of expulsion of refugees who have lost their status when granted a RVP or a residence permit increases manyfold if a refugee is

put on a wanted list in the country of origin. This situation is especially typical for refugees from Central Asian countries.

An ethnic Russian from Uzbekistan, P.A.V., fled to Russia due to persecution for his refusal to give false evidence against his employer. The Uzbek authorities put him on the wanted list. In Russia P.A.V. settled into married life and was granted temporary asylum, a year later in 2012 he was granted a RVP, that is, a residence permit and subsequently lost temporary asylum. Now every encounter with the police, which occurs from time to time when he drives a car for instance, carries the threat of extradition to Uzbekistan for him, the Committee consequently has to “*fight for him*” with the police. Moreover, due to his being on a wanted list, his application for naturalisation in Russia is not being accepted.

The loss of status for incapacitated holders of temporary asylum residing at TACs, as, for example, the aforementioned N.G-ni, will entail a loss of the right to accommodation and meals at the TAC and the risk of starvation in the street, since persons granted an RVP are not provided with any kind of social assistance in Russia.

Moreover, it is extremely difficult for incapacitated refugees who have been granted a RVP to retain it and progress towards a residence permit and naturalisation, as to do so one has to annually confirm his or her income in the amount not less than the living wage established in the given region. This requirement does not extend to retirees and disabled persons, but in Russia temporary asylum does not encompass the right to a formalized recognition of a disability and a pension, while without the documents confirming a retiree’s or a disabled person’s status, it is impossible to enjoy this benefit.

Even for able-bodied recognised refugees or holders of temporary asylum, it is not easy to confirm their income, since as has already been noted, the greater part of the aforementioned groups cannot find gainful employment where all formalities would be observed.

Thus the naturalisation of refugees within the framework of a general procedure - through the stages of obtaining an RVP and a residence permit - does not conform to the specificity of the situation of recognised refugees and holders of temporary asylum. They are in need of special mechanisms or preferential terms within the general procedure of naturalisation in the Russian Federation.

Conclusions

1. The right of recognised refugees to naturalisation in the Russian Federation in accordance with Paragraph “c” Part 2 Article 13 of

the Law on Russian Federation Citizenship is practically not implemented due to inexplicable resistance on the part of the FMS bodies’ personnel.

2. The right of stateless refugees from the ex-USSR republics to naturalisation in the Russian Federation in accordance with Part 1 Article 41.1. of the Law on Russian Federation Citizenship is implemented only partially and with great difficulties - due to the unpreparedness of the FMS bodies’ personnel to carry out this work.

3. The naturalisation of persons granted temporary asylum through an RVP and a residence permit is extremely complicated due to the inadequacy of these mechanisms when compared to the specificity of refugees’ situations and systemic corruption.

Recommendations

To the legislative bodies:

1. In accordance with Paragraph 14 Part 1 Article 8 of the Law on Refugees, Article 8 of the Law on the Legal Status of Foreign Citizens in the Russian Federation should be amended to allow for the possibility of applying for a residence permit on the basis of a refugee status certificate.

2. Delete Paragraph 2 Article 3 the Law on Introducing Changes in the Federal Law of the Russian Federation on Russian Federation Citizenship No. 182 of 12 November 2012, which states that the provisions of Chapter VIII.1 of the Law on Russian Federation Citizenship are in effect till 1 January 2017.

3. Make additions to Article 6 of the Law on the Legal Status of Foreign Citizens providing for a simplified procedure to obtain a RVP by recognised refugees and holders of temporary asylum status, considering the peculiarities of their position. This would entail abolishing quotas as well as the obligation to present documents, for which an applicant must apply to the embassy of his or her country of origin, and finally abolishing obtaining a certificate proving knowledge of Russian language, history and fundamentals of the Russian laws. It would equally entail a shorter term of consideration for applications for refugee status and benefits in terms of payment of expenses, while waiting on the outcome of one’s application.

To the FMS of Russia:

1. To ensure the implementation of the right of recognised refugees to naturalisation in the Russian Federation in accordance with

Paragraph “с” Part 2 Article 13 of the Law on Russian Federation Citizenship. To hold accountable heads of territorial FMS bodies who sabotage the fulfilment of the law.

2. Intensify the work associated with the fulfilment of the requirements of Chapter VIII.1 of the Law on Russian Federation Citizenship by FMS territorial bodies: refer methodological recommendations on the fulfilment of this Chapter to territorial bodies, organise training for FMS staff of corresponding departments.

3. Take measures to eliminate corruption in the FMS units responsible for the granting of RVP, residence permits and Russian citizenship.

CONCLUSION

We have tried to describe every element of the asylum system in Russia as thoroughly as possible compared to the standards of the 1951 Convention Relating to the Status of Refugees: legislation, access to the procedure of seeking asylum, the procedure itself, how decisions on the loss and deprivation of status are made, how decisions on asylum are appealed, how the fundamental principle of non-refoulement works and ultimately how the rights provided to refugees by Russian legislation are realised in practice. We have devoted a separate chapter to each element of the asylum system, at the end of which we have summarised the problems identified and made recommendations for their elimination. Now we only have to make a general conclusion, that is to answer the main question: does Russia observe *the 1951 Refugee Convention* or not?

What does it mean - to observe a Convention? In the case of this particular convention, it means to receive refugees and grant them asylum. To receive refugees, a country needs to determine who is a refugee and who is not, through a special procedure. To do so, it is necessary to provide access to the procedure for a refugee. The procedure should be fair, and in the case of mistakes, an appeal procedure should be effective.

Does our asylum system conform to these requirements? We can say with certainty that it does not.

The observation of the Convention also ensures refugees access to the rights it guarantees. Does our system fulfil this requirement? It does, but to a limited extent.

Moreover, the Convention implies a strict observation of the principle of non-refoulement of refugees - regardless of their legal status - to the country where they are at risk of persecution. Is this principle observed in Russia? It is, but only partially, we cannot say that this principle is strictly and unconditionally observed.

So, is there an asylum system in Russia or not?

Let us answer this question with the help of a comparison. The asylum system in Russia resembles a monumental, empty skyscraper with a very important superintendant, service personnel and stern armed security at the entrance who do not let almost anyone in. There are moreover, minimal conditions necessary for life, with people living only on one floor. Sometimes someone from the crowd at the entrance manages to arrange it with the security and enter via the rear entrance. But the majority, exhausted by vain attempts to burst into the building, retreat.

In other words, an asylum system does exist in the Russian Federation, but it works only on orders from above or through corrupt means.

Do 300,000 Ukrainian refugees who have been granted asylum, not refute this comparison?

Unfortunately, they only confirm its validity. These people were granted asylum not because of the existence of a well-operating system of asylum, but because the leaders of the country's decision to receive them was guided by political considerations. The asylum system itself, used to fulfil decorative functions, failed to cope with the receipt of actual asylum seekers; the role of the FMS bodies came down to purely issuing certificates.

Perhaps, there are no funds to implement the requirements of the 1951 Convention? However, the expenses associated with the reception of refugees, considering the present level of FMS officials' salaries and the scope of the rights of refugees provided for by the existing laws, are insignificant. Even if they were to be considerably increased, they could not be compared to the expenses associated with the solution to problems resulting from the Ukrainian crisis.

So maybe the matter is that our Law on Refugees is not good enough? As we have seen, there are some drawbacks in the law. But if we compare it to other elements of the asylum system in Russia, this law is its best part.

The problem is that the law is not a real regulator of the system; figuratively described above as a skyscraper, it only serves as a formal cover for other regulators: the directives of the authorities and systemic corruption.

ANNEX

ANNEX 1

On the position of Ukrainian refugees and asylum seekers in the Russian Federation (November 1, 2014 – May 1, 2015)⁴¹

The year 2014 was marked by a massive influx of refugees from Ukraine, as a result of military operations in its territory. The first applications were submitted in the spring of 2014, and the greatest wave of refugees came in the summer months. As a rule, Russian was a native language of people arriving from Ukraine, they were similar to Russians in cultural traditions and religion and their integration did not pose any particular problem. It is necessary to underline that in the beginning, Ukrainian refugees were welcomed by the Russian society and the authorities with great sympathy. Many people willingly donated money, provided housing, clothes, food, etc.

Great help was provided by the official structures, mostly by the Russian FMS and the Russian Emergency Ministry (EMERCOM). Refugee camps were organised and the high quality of organisation was acknowledged by many observers. The procedure of granting asylum to Ukrainian citizens was simplified by special Government Resolution No. 690 of 22 July 2014 and the term of decision-making was reduced to 3 days. On 2 September 2014 Government Resolution No. 886, on the issue of work permits without quotas, was published “to the citizens of Ukraine who arrived in the territory of the Russian Federation in the emergency mass order”. However this Resolution was applied selectively and did not operate in all regions of the Russian Federation. Since 2015 the Resolution lost its effect, given that the citizens of all the countries having a visa-free regime with the Russian Federation can work in Russia, according to the patent.

In the spring of 2014, temporary asylum was being granted to Ukrainian citizens rather easily. However in July 2014, huge queues

⁴¹ The information note is drawn up in accordance with the results of monitoring of the situation of refugees from Ukraine which was carried out as part of a project in 9 cities of Russia financed by the Soros Foundation: Bryansk, Voronezh, Borisoglebsk, Taganrog, Perm, Yekaterinburg, Kazan, Orenburg, Smolensk. the information provided by the lawyers of the Migration Rights Network of Memorial working in other regions of the Russian Federation was also used.

started to form in the migration services, in Moscow and St. Petersburg interview dates were being arranged for the end of 2014 and even for the first half of 2015. Refusals to grant asylum began to be issued on the grounds that people had arrived from the regions where no military operations were taking place, or before the commencement thereof.

From 1 August 2014, reception of asylum applications from Ukrainian citizens was terminated completely in Moscow, the Moscow region, St. Petersburg, the Rostov region, the Crimea and Sevastopol. It was stipulated by Resolution No. 691 of 22 July 2014; according to which, these territorial subjects of the Russian Federation were not assigned with the task of reception of the Ukrainian refugees. Thus, the applicants were told that “there were no asylum quotas” in Moscow. This statement contradicts the Law on Refugees which does not imply any quotas for asylum applications on the territorial subjects of the Russian Federation. On the contrary, the Law obliges foreign citizens arriving in Russia to report about their intention to apply for asylum at the place of arrival as soon as possible. Quotas are established only for temporary residence permits and work permits.

Many Ukrainian refugees have close relatives in Russia who are willing to provide them with long term accommodation. There were cases when children came to parents living in the metropolitan region, or aged parents came to their children. In each such case it was necessary to solve a problem in a “manual control mode”, that is, to address directly to the Russian Federal Migration Service.

At the end of 2014 the Migration Service of Moscow and those of other territorial subjects of the Russian Federation with zero percent of acceptance of Ukrainian refugees, received an order from the Russian FMS to accept applications only from Ukrainian citizens who had close relatives among locals. However it only covered parents, children and siblings; as a result, applications would be accepted, for example, from a sister of the resident of Moscow, but not from her daughter who was only a niece to the Muscovite. It is obvious that such approach violates Article 8 (Respect for private and family life) of the European Convention.

Such situation, evidently, contradicts the Russian Federation Law on Refugees and the 1951 Convention relating to the Status of Refugees as well. Certainly, a state has the right to distribute asylum seekers across the regions. However there could be no “quotas” for them, and they have to have an opportunity to apply for asylum from the

place of arrival; this could only be regarding distribution of refugees among the regions in relation to providing them with accommodation, food, etc.. It seems that the Russian FMS agreed with our position in response to our inquiry, however it did not find reflection in practical work with Ukrainian refugees who do not have close relatives in the regions with a “zero” quota: their asylum applications are still refused there.

By the end of the year 2014 refugee status was granted to 227 citizens of Ukraine (generally the military personnel of “Berkut” battalion, public prosecutors, etc.), temporary asylum was granted to 214,152 persons.

Amendments designed to simplify the naturalisation process for the native Russian speakers among Ukrainian refugees were developed and adopted to the Federal Law On the Russian Federation citizenship. However law-enforcement practice on this norm is not yet refined; many complain about refusals of reception of Russian citizenship applications from Ukrainians, even those who were born in Russia or those whose close relatives are Russian nationals.

Since August 2014 the Russian FMS started a campaign to attract Ukrainian citizens seeking asylum in the State Program for assisting compatriots residing abroad in their voluntary resettlement in the Russian Federation. This program has been operating since 2007; however regional authorities, having reported about the readiness of places for the state program participants, were in practice not ready to accept them. Lawyers of the Migration Rights Network noted that multiple violations took place at the implementation of this program. Housing and work planned by the program were not provided. There were cases of crude exploitation of refugees by the employers who invited them to live and work in Russia through this state program.

The only valuable advantage provided by the status of the state program participant is an opportunity to obtain citizenship of the Russian Federation in the simplified order. But for this purpose it is necessary not only to arrive to the appointed place, but also to receive permanent registration at a place of residence. It is very difficult to receive this registration as a newcomer usually rents housing or stays in the hostel. In both cases he or she receives temporary registration but not permanent registration at a place of residence.

Over time society’s enthusiasm declined: many refugees disappointed the population with the shortcomings common for all people and the overestimated expectations about the host country. By that time

Ukrainian refugees had already served the propaganda goals. Harsh attitudes began to appear in some government officials’ statements concerning the Ukrainian refugees. So in mid-December 2014 the Russian Prime Minister Dmitry Medvedev declared that “from January 1, 2015 Ukrainians won’t be able to work in Russia without a patent... we will observe the terms of stay in our country, that is 90 days within half a year, more strictly. From now on our border control will pay special attention to such Ukrainians... without work patent in Russia”⁴².

At the same time, on 26 January 2015 at a meeting with students, the Russian President Vladimir Putin said that “the term of stay of Ukrainian citizens in the territory of Russia, most importantly those of military age, can be increased”⁴³. Therefore it is obvious that the president was talking not only about the residents of the Eastern Ukraine but the rest of that country too.

One day after, on January 28 the Russian FMS website posted a message, declaring that “The Russian FMS, proceeding from humanitarian reasons, made the decision to extend terms of stay of Ukrainian citizens in the territory of the Russian Federation.

To extend the term of legal stay in Russia, Ukrainian citizens shall apply to the territorial authorities of the Russian FMS at their place of temporary stay before the term of 90 days from the moment of entrance to the Russian territory has elapsed. The term of temporary stay will be repeatedly renewed for subsequent periods of 90 days. This order extends to all citizens of Ukraine and is not related to obtaining any status (refugee, temporary asylum, temporary residence permit, etc.). Terms of temporary stay will be renewed until August 1, 2015”⁴⁴.

On 23 April 2015 in an interview to Interfax, the head of the Russian FMS said that the preferential treatment of the residents of the south-east Ukraine will stay in force after 1 August 2015⁴⁵.

Despite the fact that TACs (Temporary Accommodation Centres) were organised in some regions allocated for reception and arrangement of Ukrainian refugees, recently persons arriving in organised order started facing the same difficulties as independently arriving

⁴² «Nezavisimaya Gazeta», 15.12.14, «Russia and Ukraine: life by new rules» http://www.ng.ru/ideas/2014-12-15/1_medvedev.html

⁴³ Putin: Russia can prolong stay term to Ukrainians of military age <http://www.vedomosti.ru/politics/news/38652181/putin-rossiya-mozhet-prodlit-srok-prebyvaniya-ukraincam>

⁴⁴ http://www.fms.gov.ru/press/news/news_detail.php?ID=12181

⁴⁵ <http://www.interfax.ru/438054>

residents of the Southeastern Ukraine. They are compelled to rent expensive housing, to look for work in the conditions of unemployment. Some families in despair decide to return to the restless regions of East Ukraine where, of course, nobody can guarantee safety⁴⁶.

In April 2015, Natalya N. and Tatyana K, two sisters from the Donetsk region addressed the Civic Assistance Committee. Natalya was granted asylum in Perm Territory, however herself and her two underage children had to rent housing. Due to difficulties with job-hunting she moved to Ivanovo where her sister Tatyana lived in a TAC. The sisters rented accommodation together, but it turned out to be too expensive for them. When sisters asked the authorities for the help they were told that Tatyana would hardly be able to return to the TAC, and her sister was advised to place her children in a children's detention centre until she finds work. The Committee provided financial support to the women with 5 children to return home because of the disastrous situation. Under no circumstances did they want to remain in Russia.

The main regions, from where people were arriving (also independently) during the summer and fall of 2014 is Donetsk and Lugansk areas: Lugansk, Donetsk, Kramatorsk, Snezhny, Krasny Luch, Krasny Liman, etc. Since February 2015 a new wave came: refugees began to arrive from Severodonetsk, the Lugansk region and Debaltsevo, the Donetsk region.

Following the results of half a year's monitoring, we can say that the Russian Federation divides Ukrainian refugees into two categories. The first one arrives from Ukraine "in the emergency mass order" at the Russian regions where TACs are located. There they are accommodated and minimum life support arrangements are provided to them. Everywhere the situation differs, but in general this is quite a good scenario for the people fleeing a conflict zone. Here and there psychologists provide assistance, rooms for children are arranged and the regional authorities provide support and help them to get status. But it also happened that, despite Government Resolution No. 1502⁴⁷

⁴⁶ <http://www.svoboda.org/media/video/26980535.html>

⁴⁷ <http://www.garant.ru/products/ipo/prime/doc/70735636/#ixzz3Yv2Rson1>. Russian Federation Government Resolution No. 1502 of December 26, 2014 "About allocation in 2015 of funds from the federal budget to the budgets of the territorial subjects of the Russian Federation or other interbudgetary transfers for financial security of the activities on temporary social arrangement of citizens of Ukraine and the stateless persons who were permanently residing in the territory of Ukraine and who arrived in the territory of the Russian Federation in the emergency mass order and are staying in Temporary Accommodation Centres"

of December 26, 2014, the refugees were delivered an ultimatum and forced to move out of TACs⁴⁸.

The second group consists of people who are arriving independently, they are bigger in numbers and their situation is much worse⁴⁹. They are not brought by planes or trains of the Russian EMERCOM, they came to the regions where their relatives lived, or where there were job offers, or just a higher probability to find a well paid work. Generally that is Moscow and the Moscow Region, St. Petersburg and the Leningrad Region. However these are exactly the regions with zero quotas for reception of Ukrainian refugees defined by Government Resolution No. 691 of July 22, 2014. Many refugees find it extremely hard, and sometimes impossible to get status in the regions where they arrive. Therefore the problems of social exclusion and threat of expulsion follow. Medical care becomes unattainable, children are not accepted to schools because they do not have registration⁵⁰.

St. Petersburg

Queues in the St. Petersburg migratory service amount to 300 people. When a refugee finally gets his or her turn, an asylum application is accepted from Ukrainian refugees only in the presence of close relatives in the region. But even then they face an array of problems.

For example, temporary asylum was granted to Natalya M., a citizen of Ukraine from Lugansk who has a sister in St. Petersburg, but at the same time applications from her daughter, son-in-law and their child were not accepted as they were not considered as close relatives of their mother's sister.

In June, 2014 a disabled person of group 1, Tatyana L, requiring constant care was brought to St. Petersburg to her daughter Elena P., who was a refugee from Lugansk herself who had been granted temporary asylum in October, 2014. However the asylum application of Tatyana L. was not accepted.

The relevant documents (temporary asylum certificate) are not issued to the persons granted temporary asylum. A mark about granting temporary asylum is stamped on the certificate of documents accept-

⁴⁸ <http://www.svoboda.org/media/video/26932357.html>

⁴⁹ <http://www.kommersant.ru/doc/2712838>

⁵⁰ According to the law on the migration registration the duty to register foreign citizens is assigned to so-called «hosts». It can be the acquaintances who invited to visit or the employer who employed. Refugees, as a rule, don't have either. However the Russian FMS didn't agree that our organisation could register refugees and asylum seekers.

ance, which is not the document in the established form. For Ukrainian refugees, it creates problems with employment, with their right to medical and educational institutions and also with confirmation of legality of stay in Russia, and in St. Petersburg in particular. There are cases when refugees have had to bribe police officers so that they are not sent to court for deportation.

It should be noted that it is unacceptable to return Ukrainians to an armed conflict zone and to place them in the closed centres for foreign citizens waiting for deportation (SUVSIG), even in the absence of registration at a place of stay.

On January 5, 2015 the Smolninsky district court of St. Petersburg issued the decision on deportation with placement to SUVSIG of Dmitry P, a citizen of Ukraine from Gorlovka living in the Russian Federation with a partner. At that time active military operations were taking place in Gorlovka. Due to the New Year's holidays, he could not find a lawyer and missed the 10-day term for appeal. However on April 9, 2015, he was released after a lawyer got involved, having spent 4 months "behind bars".

After the president's statement that Russia will accept persons of military age from Ukraine, there were no noticeable changes in the work of migration services. Asylum applications from the residents of Kiev, Odessa and Kherson were still not accepted if they stated that they did not want to fight at war.

Anatoly and Aleksandra S. had a tailoring business; they began to sew bullet-proof vests for rebels during the conflict, therefore according to the Ukrainian legislation they were considered to be separatists' supporters. The staff of the migration service made them give up submission of applications for refugee status, and they had to apply for temporary asylum even though they had all the grounds to receive refugee status.

There are also cases of refusal of examination of temporary asylum applications that had been accepted earlier. On July 21, 2014 an aged Anna N. and her neighbours Sergey and Nadezhda U, who could not leave her to die alone in Druzhkovka of the Donetsk region, appealed to the migration service. Anna N., born in 1926, a World War II veteran as well as a blockade survivor, had been working as a member of medical public squad at the military and medical train in Leningrad during the war years; a veteran of work. Sergey U., used to be a police officer of MIF of Ukraine, supported national militia in the Donetsk region therefore had the right to receive refugee status.

However their interview was repeatedly postponed. On November 4, 2014 the applicants were finally called by phone and invited to the office where they were informed orally that no status could be granted to them since "according to the Government Resolution No. 691 of June 22, 2014 there is a zero quota for granting asylum in St. Petersburg". All of them, together with the elderly blockade survivor were advised to move to another region, for example to Tyumen, without any guarantees of housing and other arrangements. A written rejection in examination of the asylum application on the merit was similarly not issued by the Office of the Federal Migration Service across St. Petersburg and the Leningrad Region.

Only after a lawyer appealed to the head of the Office of the Federal Migration Service in St. Petersburg SPb and the Leningrad Region, Sergey and Nadezhda U. and Anna N. were invited to the migratory service at the end of November where, after conducting a short interview on temporary asylum, Sergey and members of his family were forced to receive refugee status in written form. At the same time no documents confirming their request for temporary asylum were issued. Only after an active intervention of the lawyer, did Sergey and Nadezhda U. and Anna N. receive temporary asylum certificates, 10 months after their initial application.

Even former prisoners of war face not only problems with receiving, but also with applying for temporary asylum in St. Petersburg. From one of them, who had arrived in Donetsk from Odessa to patrol the streets in order to avoid disorders and looting, the statement for temporary asylum was not accepted, with a reference to a "zero" quota and absence of close relatives in St. Petersburg. Due to long queues, people are forced to be on duty at the migration service office for days, to spend nights there to check in, as a result those who work and have children refuse to apply for asylum. With those who managed to be received, instead of the status determination procedure a conversation takes place, directed at convincing applicants to refuse to apply for asylum and instead to apply for patent, temporary residency or to go to another region.

Voronezh

An example of extremely inhumane treatment of Ukrainian refugees is described in the "Novaya Gazeta" article⁵¹. It is a story of a Ukrainian citizen, Igor Ashcheulov, whom the Russian authorities not only refused to recognise as a refugee, but also as a human being.

⁵¹<http://www.novayagazeta.ru/society/66286.html>

Thanks to long term work of a lawyer of Migration Rights centre in Voronezh V. I. Bityutsky, Ashcheulov who, according to the court decision, was deported to the territory where an anti-terrorist operation in the Lugansk region was taking place, was granted temporary asylum and could return to Russia.

From 01.09.2014, no housing to the Ukrainian refugees is provided in any form in the Voronezh region. Work offered by population employment agencies do not suit refugees because of the discrepancy with their qualifications and low salaries.

The overwhelming amount of addresses of Ukrainian refugees to the Migration Rights Network centres are related to delays in the issuing of temporary asylum certificates by local migratory service, registration of questionnaires and surveys for persons interested in taking part in the Compatriot Resettlement Program and work patents. The reason is the lack of employees of the Office of the Federal Migration Service across the Voronezh region, leading to a congestion of applications.

A tendency to extreme incompetence of employees of the Migration Service of the Voronezh region brought uncertainty to the situation of Ukrainian refugees and other foreign citizens in Voronezh area. In their work with Ukrainian refugees they were generally guided not by law, but by the speeches of the Russian president and the public interviews of the Head of the Russian FMS, and also by the data posted on the FMS web site which were not always duly updated.

So, according to the Russian FMS statement (including the one posted on the website) “the term of stay of Ukrainian citizens in Russia, including the ones of military age, will be extended for a term of more than 90 days”. However the position of the FMS Legal Department is that the term of temporary stay will be extended only to the persons of military age since the president Putin only spoke about them⁵².

In relation to this, since January 2015 the number of complaints from Ukrainian refugees has increased greatly. They complained about refusals to extend registration and the requirement of the Migration Service to leave to Ukraine and then to return again to get migration registration.

Among the positive changes we can note acceleration of decision-making process on granting temporary asylum and issue of temporary asylum certificates by April 2015. Now the process takes from a week

⁵²See footnotes 42 and 44

to 2 months, instead of 8 months. It is first of all connected with the appointment of a new Head of Office of the Federal Migration Service. His predecessor is currently under investigation for accepting bribes.

Borisoglebsk

In Borisoglebsk of the Voronezh region Ukrainians seeking asylum experience difficulties with employment, legalization and serious financial difficulties. The refugees who arrived in the summer of 2014 were accommodated in office buildings, and schools, but in fall they were forced to move out to look for housing themselves.

Refugees prefer to apply for temporary asylum as they hope to return home soon. However the issue of certificates is delayed for up to 8 months due to enormous queues in the Migration Service of the Voronezh region. Without documents Ukrainian refugees cannot find work, nor receive free medical care, nor yet continue further legalization process since it is only possible to file documents for temporary residence permit if the person resides in the country legally for 6 months.

A refugee, Marina S. from Severodonetsk in the Lugansk region with a child of 6.5 years and a dependent 63-year-old mother, managed to receive a temporary asylum certificate only after engaging a lawyer from Memorial.

Some refugees are denied reception of temporary asylum applications with the explanation that all the spots defined for refugees in this region are already taken.

Sometimes the actions of employees of the Migration Service working with refugees reach total absurdity: a newborn child of G’s family was denied temporary asylum because “he was born in the peace territory”, that is, in Russia. Due to this, medical insurance was not issued to the child. The situation of this family was resolved only when having spent a considerable amount of money for translation of documents, which were then signed and stamped by a notary, they managed to enter the Compatriot Resettlement Program.

The refugees from Ukraine who do not have a temporary asylum certificate have to buy patents in order to get a job, but the majority of them have no financial means for that. As a result, the majority of them make a precarious living on casual earnings.

In March the number of refugees in the region increased. In April 2015 there were allegedly around 3,000 refugees from Ukraine in Borisoglebsk.

Taganrog

Some outflow of the Ukrainian refugees from the Rostov region

was noticed in March – April: according to the regional government official figures there were 38, 657 people as of 16 March and there were 37,908 people 8 by April in 55 municipalities of their area. However the real number of refugees is bigger since official statistics do not include those who reside without migration registration.

Since January, 2015 the main stream of newly incoming refugees was redirected daily to other regions of Russia by railway and motor transport: within 10 days of February (from 6 to 16), 1525 Ukraine refugees were redirected from the Rostov region to other regions of Russia by railway transport.

For the last week of January 2015 around 300 refugees arrived from Ukraine to the Neklinovsky area (Taganrog suburb). 150 of these were young men, generally military recruits from the territory of the Kharkov, Dnepropetrovsk, Zaporozhye areas. Judging from their stories, they escaped military conscription as they know neither for what nor for whom they have to fight, and thus they call the current war fratricide.

Despite high figures and highlighted declarations of the local and regional authorities, the real situation of the Ukrainian refugees, even those having the status, is quite difficult, while the provided assistance is insignificant.

By March 2015, the amount of TACs was reduced from 43 to 15. Now 1,874 persons including 630 children are located there. 6 TACs are located in the Neklinovsky area. The biggest one is the “Krasny Desant”; it accommodates around 470 people now.

Due to decrease in intensity of shelling and attacks in Donbass, the stream of Ukrainians moving through the Russian-Ukrainian border in both directions multiplied. Some refugees go to Ukraine to settle their affairs, to receive or renew various documents, to visit their remaining relatives, to bring them aid. The border guards treat them kindly and extend their migration cards. Some other Ukrainians, on the contrary, move from Ukraine to Russia, taking children and elders from the anti-terrorist operation zone. However, most people who are interested in going back are so far afraid to do it because they fear the beginning of new military operations and also they do not know where to return; after all their housing was partially or completely destroyed by bombing. A full truce in Donbass region has not been proclaimed yet and shells from rocket systems “Hurricanes” and “Tornado” fall on the territory of the Rostov region from time to time. Therefore, despite temporary departure to

Ukraine of some refugees, in reality their quantity in Taganrog has not decreased.

Most of all, people worry about employment. The Russian authorities are unable to cope with an unemployment problem in the regions that have accepted a large number of the Ukrainian refugees. There are tens of thousands of people, but only hundreds of spots for participation in the Compatriot Resettlement Program.

The Government Decree established a zero quota of refugees’ reception in the Rostov region; that is, an asylum application in this region is not available.

The refugees who have no status and who do not live in TACs but reside in apartments, country houses, garden sites, etc. find themselves in the most difficult situation. They have no registration, experience difficulties with finding jobs and cannot receive medical assistance, grants, pensions and most other necessary assistance.

Local and national mass media on TV and print press regularly cover events in Donbass, using the aggressive propaganda and inciting hatred.

The vast majority of residents of the region sympathize with the refugees and try to help since many have relatives, friends and acquaintances in Ukraine.

A lawyer of the Migration Rights Network notes some pronounced features of work with refugees in the region:

1. Migration officers show a clear attitude of “we have no quota so we won’t accept people, they have an opportunity to go to another region and to receive status there”. Ukrainians do not want to appeal against refusal since they are afraid to get any problems from the Migration Service and they prefer to live here quietly, without drawing additional attention from the officials.

2. Ukrainians who have status are being employed easily. Generally they are refugees from TAC. But there are not enough work for everyone. Those who have no status work illegally, search for jobs on the side without registration at enterprises or for individuals.

3. Many refugees consciously do not want to address and receive the status since it limits them in their freedom of movement through the Ukrainian border.

4. There are no social privileges for the refugees from Ukraine without status. But medical care is provided to them free of charge. The lawyer of Memorial managed to place children in schools and other educational institutions. The situation with day care is more difficult, but it is due to long queues (even locals have to wait).

Smolensk

For the end of December 2014 about 6.5 thousand refugees from Ukraine remained in the territory of the Smolensk region, but only 1,800 people resided in 29 TACs.

In January and February, the number of TACs was reduced after merging and departure of people to other regions, today about 16 of them remained with 818 people. It is estimated that there are approximately 6 thousand Ukrainians in the Smolensk region.

Most TAC residents in the Smolensk region are pensioners, single mothers and disabled people who are the most vulnerable; therefore it is almost impossible for them to find employment in such small cities and areas in Russia. They completely depend on humanitarian aid and volunteers.

Refugees living in TAC are mostly worried about whether they will be able to stay in TACs, since the majority plan to obtain Russian citizenship. By the Government Resolution No. 1502 of December 26, 2014, funding for TACs was extended in 2015. However those who came from regions other than Donetsk and Lugansk lost their rights to stay in a TAC⁵³.

As well as in other regions, Ukrainian refugees complain about long delays with the issue of documents (temporary asylum certificates, certificates of participants in the Compatriot Resettlement Program).

The participation of refugees in the Compatriot Resettlement Program is often interfered with by the problems with registration: even if people work and rent accommodation, but their landlords are not always keen to register refugees. Without registration they cannot obtain the certificate of participation in the resettlement program, thus, people get into uncertain legal situation.

Perm

Legalization. Since the beginning of the Ukrainian crisis employees of Migration Rights Network of Memorial have not revealed any cases of refusal in reception of temporary asylum applications; moreover the decisions are issued no later than in 10 calendar days. Decisions on status withdrawal have not been issued, temporary asylum status has been terminated only at the initiative of the person who had received this status or in relation with naturalisation.

Also, documents for the temporary residence permit, residence

⁵³According to the Russian Federation Government Decree No. 1502 of December 26, 2014 some persons living in TAC who arrived from the areas outside Donetsk and Lugansk region, lost the right to live there after 30 days.

permit and the native Russian speaker test for naturalisation are accepted. Documents for the Compatriot Resettlement Program are accepted and processed. Perm Territory has been completely included into this program since April 22, 2015. Before that date, only four northern municipal areas participated in the Compatriot Resettlement Program.

Education. Equal opportunities for education are created in Perm Territory for children of the Ukrainian refugees, regardless of whether their arrival was organised or they arrived independently. There are 67 children living in TAC and rooms for preschool education are organised for children of 3-7 years. All school age children attend school. The regional government has reserved 640 places in kindergartens for children of refugees, having eliminated the problem with placement of Ukrainian children in pre-school educational institutions; this has caused some hostile attitudes from the local population.

Housing and work. Two TACs for Ukrainian citizens function in the Bardymy area and the settlement of Krym in the Perm region. The local government of the Perm region takes steps to ensure total employment of refugees from Ukraine. Plentiful job offers are available for the Ukrainian refugees at the population employment service. Everyone can take a look at the offered positions at the population employment or at the Migration Service of Perm Territory. Work on refugees' employment, including direct employment at TACs is carried out in Perm Territory. As a result of this work, people get jobs and what is more important, often employers provide housing. However the shortcoming of such an employment scheme is that as a rule the employed persons find themselves in the positions of low-paid workers.

In the Molodezhny settlement in the Gremyachinsky region, some businessmen founded a wood processing production and invited 100 Ukrainian refugees from TACs. They do not complain about living conditions but low wages place refugees in survival mode. According to the refugees, the actual salary on average is 6,000 roubles a month, while payment for accommodation is about 4,800 roubles.

The most acute problem that refugees face is receiving pensions and social benefits. Temporary asylum status and a temporary residency permit do not provide the right to the social benefits in the Russian Federation. It is possible only in the presence of a permanent residence permit, which takes several years to obtain.

Bryansk

According to the official figures over 26,000 citizens of Ukraine in

total have arrived in the Bryansk region since the beginning of 2014 until today.

The main problems that refugees face are:

- unemployment;
- lack of housing;
- long queues in the departments of the Migration Service to apply for asylum, to submit documents for TRP, residence permit, participation in the Compatriot Resettlement Program ;
- transfer of pension payments and necessary documents from Ukraine.

Those Ukrainian refugees who have arrived to the Russian Federation not in “a mass emergency order” have difficulties with obtaining status: FMS employees refuse to grant them refugee status or temporary asylum, claiming that in Ukraine “there is peace, and already many people come back ... there”.

The migration service refuses to accept applications for participation in the Compatriot Resettlement Program from the refugees of pre-retirement age (men of 57-59 years and women of 53-54 years) because they cannot find a job.

Another problem faced by Ukrainian refugees is the ban on entrance into Russia which is imposed automatically by the “Central Data Bank of Foreign Nationals and Stateless Persons Registration” for administrative offences. It concerns all foreigners: labour migrants, persons who are seeking asylum, even those who already have temporary or permanent protection (the refugee status).

Due to huge amount of appeals for removal of a ban on entrance, they are being processed extremely slowly. Meanwhile the refugees who are expecting the decision are illegal and are under the threat of expulsion. For example, Marina A, a refugee from Zolotoye in the Lugansk Region, found herself in such a situation. Only with the assistance of a lawyer of Memorial was she able to get asylum and avoid deportation.

Kazan

Currently there are more than 8,000 refugees from Ukraine in the territory of the Republic of Tatarstan. For the beginning of March 2015 temporary asylum in Tatarstan was granted to 4706 refugees. 18 TACs operate in the republic where there are 1,362 inhabitants, that is about 1/5 of all refugees from Ukraine according to the latest information.

Refugees arriving to the region with the Ministry of Emergency Situations and the Russian FMS assistance are accommodated in ho-

tels and hostels. Whenever possible, everyone receives medical and psychological help, employment assistance, consultation on migration registration, preschool and general education and information on money exchange points. Refugees who are placed in hotels are provided with three meals a day. Baby formula and nappies are provided to babies. The migratory service staff accept documents on temporary asylum at the places where refugees reside

Difficulties are experienced by those citizens of Ukraine who arrived independently. They apply for temporary asylum and receive it, but problems still remain. It is impossible to find job due to low salary, citizens with higher education cannot find work according to their qualifications, and rented housing is expensive. Such “independent refugees” are not allowed in TACs.

Yekaterinburg

According to the data of migration registration 19,541 citizens of Ukraine arrived to Sverdlovsk region from 01.01.2014 to 23.01.2015 and 1,900 people arrived in January-February of 2015.

25 TACs were organised in the region but starting from January their number began to be reduced. People leave the remote places where the centres are located because of difficult employment situations. Some move to Yekaterinburg or other large cities, some go to other regions. More people started to leave at the beginning of winter. In February 2015 the number of TACs was reduced to 20, in March and April of 2015 it was increased again to 23, by the end of April 2015 there were 22. According to the latest data, only 801 citizens resided in TAC as of the end of April, 2015.

In March, 2014 lawyers of Memorial located 4 citizens of Ukraine expecting deportation in SUVSIG. They were offered to submit asylum applications and two were granted temporary asylum. The third was released from SUVSIG after lawyers of Memorial managed to achieve cancellation of the deportation decision. The fourth Ukrainian citizen concerning whom there was an order about “undesirability of stay” from the Ministry of Justice of the Russian Federation, was refused both refugee and temporary asylum status.

As well as in other regions the situation is easier for those who are accommodated in TACs: documents are collected and transferred, people are provided with housing and food. On the other hand, since TACs are situated far from the capital of the region, it is harder for the refugees living there to find work. A couple of times, jobs fairs were

organised for refugees from Ukraine that revealed that they have high requirements to salaries and working conditions.

Certainly, not always and not everywhere things go smoothly. A group of refugees living in TAC in the Yushala settlement of the Tugulymsky area appealed to lawyers of Memorial, having found out about the local authorities plans to close their TAC. Refugees complained that they were being transferred to Lebjazhye, the centre for homeless and disabled people. Refugees did not want to reside with the homeless and disabled people in an even more depressive situation than the TAC. They also reported in their complaints that for unknown reasons, their documents for temporary residence permits were not accepted.

The number of appeals of men from different regions of Ukraine (the Dnepropetrovsk, Poltava areas) who are afraid to return home because of mobilization is growing. There are complaints about long queues and intermediaries' intervention in the process of submission of documents for temporary residence permit. At the same time there are no complaints about reception of applications for temporary asylum; they are less in numbers and the work goes in the usual pace.

Orenburg

Currently there are 3,234 citizens of Ukraine in the Orenburg Region who arrived from June 2014 until April 2015, out of them 420 are retired, 712 are minors. Generally they live in Orenburg and two large cities: Orsk and Buzuluk.

According to Governor's of the Orenburg region Decree No. 772-uk of 10.11.2014, 28 temporary accommodation centres for 802 persons were established in the region. Only 11 TACs function today in which 90 citizens of Ukraine, including 29 minors are placed. Most of refugees have to live at their relatives, at the sympathising locals, to rent housing independently or to leave the region.

As of today temporary asylum have been granted to 876 citizens. 166 persons applying for granting temporary asylum (102 families) have returned home.

Main problems faced by the refugees are as following:

- long queues at the regional Migration Service to apply for refugee status, temporary asylum, temporary and permanent residence permit, participation in the State Program, red tape, bureaucracy;
- problems with employment;
- housing arrangements.

The situation of Ukrainians who arrived to the region independently, of course, differs from those who arrived in an organised man-

ner as the first don't get almost any support from the state. But those who live in TACs also experience problems. For example, as soon as a refugee finds paid work, he/she has to move out from TAC.

It also should be underlined that many refugees cannot make a decision whether to remain in the Russian Federation as permanent residents, or to obtain citizenship or to return to Ukraine. Such uncertainty results in problems with the extension of term of stay in the Russian Federation.

Pyatigorsk, Stavropol Territory

Lawyers working in Pyatigorsk report that departments of the Office of the Federal Migration Service extend the term of temporary asylum to citizens of Ukraine at a place of their stay with a passport and a migration card. Complaints about refusals to extension have not arrived yet. In the Stavropol Region, temporary asylum to Ukrainian citizens began to be granted in large quantities only in June 2014.

Citizens of Ukraine are employed only if they have temporary asylum or patent. Not all citizens of Ukraine can settle in Stavropol Territory, since job opportunities exist mainly in the agrarian sector and not all refugees have a desire to go to rural areas. Such professions as mining and steelworking are not offered in the region at all. Many relocate to other areas and some remain in the region and work out of their degrees.

Shakhty of the Rostov region (26 km from the Ukrainian border)

In January 2015 the stream of refugees from Ukraine amplified again. Most were from the Donetsk and Lugansk regions, but refugees from Kharkov and Mariupol began to arrive later.

Refugees shall be registered irrespective of whether they have temporary asylum or not. But more and more Ukrainian refugees complain that locals renting out housing refuse to register them. Some register refugees for money, 3000 roubles per person. The renting contract for Ukrainians is usually much higher than for citizens of the Russian Federation. The average renting price of a one-room apartment in Shakhty is 6-8 thousand roubles, but citizens of Ukraine are renting for 8-12 thousand roubles. The job-hunting situation is also difficult as many employers do not want to employ Ukrainian citizens.

Humanitarian assistance to the refugees continues through the Ministry of Emergency Situations and social security agencies: blankets, grain, sugar, flour are provided, but it is not enough. Also at the

local Administration meeting in Shakhty, hotel owners were instructed to open their premises as TACs, but not everyone agreed.

If in the summer/fall of 2014 refugees still doubted whether Russian citizenship was necessary for them, now almost everyone asks assistance in naturalisation in the territory of the Russian Federation and do not hope to come back to Ukraine. Many do not have housing to return to or relatives who were lost or left as well.

Tambov

We will conclude this report with a story of deportation of a former rebel who did not want to participate in war on any side.

34-year-old Roman K., a Ukrainian citizen who lived in Lugansk joined the militia ranks in June 2014 as he “didn’t agree with a position of official Kiev”. He participated in military operations until the end of October when he decided to leave the militia. He no longer wanted to be at war on any side. According to Roman, young men are forcibly called up for the Ukrainian military service and those who used to be at war on the rebels’ side are being “destroyed”.

Fearing for his life, Roman decided to flee the country. On December 11 together with another former rebel they crossed the Russian border illegally and arrived in Moscow.

Roman’s documents were destroyed during military operations. He tried to restore the passport in Moscow but did not succeed: police officers to whom he addressed, said that it was only possible to do it in Ukraine. Roman decided that it will be simpler to settle down in another city. He reached Tambov in a few days using local trains.

On January 13, 2015 Roman came to the Migration Service of Tambov, and explained his difficulties to the security guard. According to Roman, the guard called somewhere, and then said that no one will work with him here and he needs to go back to Moscow.

By then Roman had been starving for some days. He went to a supermarket which was located in front of the Migration Service and stole a piece of sausage priced at 310 roubles. Police arrested him right there red-handed.

The Oktyabrsky district court of Tambov arrested Roman K. for two days for a petty theft. Roman served his term at a police department and on January 16 police officers brought him to the same court. The judge with no hesitation found Roman guilty of violation of the migration legislation (Part 1.1 of Article 18.8 of the Code of Administrative Offences of the Russian Federation) and sentenced him to 2000 rouble fine with deportation from Russia ; that is to Ukraine where he

was threatened by danger. Before Roman’s deportation he was placed in SUVSIG. At the same time Russian law enforcement agencies have not yet established Roman’s identity.

A lawyer from the Migration Rights Network of Memorial, Valentina Shaysipova, learned about Roman’s story while visiting SUVSIG. She appealed against the deportation decision. On 18 March the Tambov regional court made the decision to uphold the decision on administrative expulsion, having changed its form from compulsory to independent, and release him from SUVSIG.

Valentina did not expect such a decision. She was convinced that a Ukrainian citizen fleeing war cannot be expelled. Moreover, Roman had submitted an application for temporary asylum with her assistance, therefore under the Law on Refugees it was forbidden to deport him to the country of origin. But Roman decided to abide by the decision and return to Ukraine.

The lawyer gave the client some food and a little bit of money for the road and saw him off on the bus.

In Ukraine at Roman has a mother, a wife and a small child. He is afraid of rebels from whom he ran away, as well as republican armed forces. Now, he claims that he intends to appeal personally to Putin.

Valentina Shaysipova is waiting for some news from the “sausage thief”: has he reached Lugansk, what is happening with him?

ANNEX 2

TO THE ATTENTION OF UKRAINIAN CITIZENS!!!!

Russian Federation Government Resolution No 691 of 22 July 2014 established a distribution of Ukrainian citizens and stateless persons permanently residing in the territory of Ukraine and arriving in the Russian Federation in emergency and mass order among the subjects of the Russian Federation.

In accordance with Russian Federation Government Resolution No 1036 of 9 October 2014 on the Introduction of Changes in Some Russian Government Resolutions you (in case you have parents, children, grandparents, grandchildren, sisters, brothers residing in Moscow) can apply for temporary asylum at the address: Kirpichnaya street, 32, building 1, office 105.

Reception days: Monday – Thursday from 9 a.m. to 5 p.m., lunch break from 1 p.m. to 2 p.m. (Friday is a non-reception day)

ANNEX 3

Positive FMS decisions		Negative FMS decisions	
Basic facts	FMS Department reasoning	Basic facts	FMS Department reasoning
Applicant Sh.M.B., 33 y.o., Arab. Muslim. Secondary education. No profession. Aleppo. Single. The parents are in Syria, the sister's whereabouts are unknown, younger brother is residing in Russia. Arrived in Russia in August 2013. In November 2013 was granted TA for one year.	Migration Service of Moscow, refusal to extend TA of 14.11.2014: belongs to the category of Syrians indicated in MFA note. The situation in Syria is coming to normal. The relatives in Syria are not subjected to persecution. Risk of persecution is not higher than for other Syrian residents. Is not residing at a place of registration in Moscow. It is necessary to take into account the position of the Federal Security Service (the FSB) that Syrians should observe migration legislation.	Applicant O.A., 29 y.o., Arab. Sunni Muslim. Aleppo. Single. The relatives are in Syria, one of the brothers is in Turkey. Specialized secondary education. Arrived in Russia in September 2012. In March 2013 was denied TA, the decision appealed against to the FMS and canceled. In September 2013 was granted TA.	Migration Service of Moscow, refusal to extend TA of 12.12.2014: the situation in Syria is coming to normal. The relatives in Syria are not subjected to persecution. Risk of persecution is not higher than for other Syrian residents. Did not get registered. It is necessary to take into account the position of the FSB that Syrians should observe migration legislation.
	Decision No 1610 of 19.02.2015: The FMS Department argument that the risk for the applicant is not higher than for other residents of the country is unlawful, since TA was granted in connection with military actions and lack of security for civilian population. These circumstances are preserved. The number of victims in Aleppo is cited.		Decision No 1644 of 18.03.2015: The applicant is in good health. Belongs to the category of Syrians indicated in the MFA note. There are relatives residing in Syria.

Positive FMS decisions		Negative FMS decisions	
Basic facts	FMS Department reasoning	Basic facts	FMS Department reasoning
<p>Applicant A.Ya., 25 y.o., Kurd. Muslim. Aleppo. Single. Student in Moscow. The whereabouts of the family is unknown. Has a brother in Russia. Arrived in Russia in November 2013. Applied for TA in September 2014.</p>	<p>Migration Service of Moscow. Denial of TA of 25.11.2014: Arab. Did not engage in political, religious or other activity in Syria, did not have any problems with the authorities. Arrived in Russia in search of better economic conditions. Did not get registered.</p>	<p>Applicant Kh.D., 24 y.o., born in Moscow, Kurd. Sunni Muslim. Lived in Al-Hasakah. Single. Expelled from the 5th year of Sechenov medical university for poor progress (was ill). All the family is in Russia. Last time entered Russia in 2011. Applied for TA in September 2014.</p>	<p>Migration Service of Moscow. Denial of TA of 01.12.2014: Risk of persecution is not higher than for other Syrian residents. Applied for TA one year after expulsion from a university. Violated immigration rules, did not get registered. It is necessary to take into account the position of the FSB that Syrians should observe migration legislation.</p>
	<p>Decision No 1616 of 20.02.2015: The information on the seriousness of the conflict is cited, including the number of victims (out-of-date), on the persecution of minorities by ISIS, including Kurds. Circumstances of the case have not been fully considered.</p>		<p>Decision No 1602 of 20.03.2015: Syrian government controls over 65% of the territory. ISIS creates additional tension. After expulsion did not apply for TA for a year, hence, either the danger for him in Syria is absent, or he ignores it. Syrians can move to the regions controlled by the government. Is in good health.</p>

Positive FMS decisions		Negative FMS decisions	
Basic facts	FMS Department reasoning	Basic facts	FMS Department reasoning
<p>Applicant A.A., 37 y.o. Palestinian, stateless person. Aleppo. Sunni Muslim. Secondary education. No profession. A wife and 4 children under age in Russia. Brothers and sisters are in Syria. Arrived in Russia in October 2012. In September 2013 was granted TA for one year.</p>	<p>Migration Service of Moscow. Deprivation of TA 10.12.2014: Applied for the extension of TA 2 months after it expired. Provided false information on his stay (it is not specified what exactly), did not get registered. Arrived in Russia in search of better economic conditions. Is in good health. The relatives are living in Syria.</p>	<p>Applicant Sh.B., 37 y.o. Arab. Sunni Muslim. Aleppo. No education. A wife and three children under age in Russia. The relatives are in Lebanon. Arrived in Russia in February 2013. Applied for TA in October 2010.</p>	<p>Migration Service of Moscow, denial of TA of 21.01.2015: belongs to the category of Syrians indicated in MFA note. Did not engage in political, religious or other activity in Syria. Risk of persecution is not higher than for other Syrian residents. Did not apply for TA for almost 2 years. Did not get registered.</p>
	<p>In March 2015 the applicant was notified by post that his claim was satisfied. FMS decision was not forwarded.</p>		<p>Decision No 1653 of 26.03.2015: The applicant arrived in Russia with a business visa and has repeatedly arrives in business purposes before, hence, belongs to the category of Syrians indicated in MFA note. Applied for TA 2 years after his arrival. Has been brought to administrative responsibility.</p>

Positive FMS decisions		Negative FMS decisions	
Basic facts	FMS Department reasoning	Basic facts	FMS Department reasoning
<p>Applicant A.M., 27 y.o. Arab. Damascus region. Sunni Muslim. Primary education. Single. The relatives are in Syria. Arrived in Russia in June 2013. Applied for TA in November 2013. Was granted TA in January 2014.</p>	<p>Migration Service of Moscow, loss of TA of 25.12.2014; the situation in Syria is coming to normal. The risk of persecution is not higher than for other Syrian residents. In the FMS database there is no information that he is on migration register. It is necessary to take into account the stand of the FSB that Syrians should observe migration legislation.</p>	<p>Applicant O.M., 26 y.o. Arab. Sunni Muslim. Damascus region. Secondary education. Single. The parents are in Syria. Arrived in Russia to study in Belgorod. In May 2013 quit his studied and moved to Moscow. In June 2013 applied for TA. In July 2013 was granted TA.</p>	<p>Migration Service of Moscow, deprivation+loss of TA of 04.07.2014 Applied for the extension of TA not one month, but 3 week before its expiration. There is no information on migration registration in the database, hence the document on migration registration is fake. According to the MFA note, there is no war, but a counterterrorist operation in Syria, hence the reasons for granting TA have been eliminated.</p>
	<p><i>The notification from the FMS of 17.03.2015 on the cancellation of the Migration Service of Moscow decision was received. The text of the decision has not been forwarded.</i></p>		<p>Decision No 1478 of 03.10.2014: Has been brought to administrative responsibility for violating immigration rules. Quit his studies at his own will and came to Moscow. Did not get registered. The parents are in Syria. The risk of persecution is not higher than for others.</p>

