



Anti-Discrimination Centre

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Anti-Discrimination Centre Memorial works on protection of the rights of discriminated and vulnerable groups and minorities, including migrants in Eastern Europe and Central Asia, carrying out monitoring, reporting, advocacy on local and international level, opposing discrimination by litigation and human rights education

**Violation of the rights of migrant children in countries-members of
Commonwealth of Independent States (CIS)**

*Submission for Regional Review of the Global Compact for Safe, Orderly and Regular Migration
in the UNECE region*

30 October 2020

The dissolution of the former Soviet Union over twenty-five years ago gave rise not only to new independent states, citizenships, and passports, but also to problems caused by new borders and migration laws. A number of these problems have yet to be resolved, and there are legal lacunae that create pre-conditions for violation of the rights of migrants, especially those from vulnerable groups, including children. In CIS states' migration policies often violate rights of the children and lead to the detention of children, separation of families, deny of right to education and others.

Global Compact for Safe, Orderly and Regular Migration establishes commitment to uphold the best interests of the child at all times, as a primary consideration in situations where children are concerned and call to establish cross-border cooperation frameworks, in order to ensure that the best interests of the child are appropriately integrated, consistently interpreted and applied in coordination and cooperation with child protection authorities. Unfortunately, the regional agreement, national legislations of a number of countries and practices undermine this commitments and are presented in details below.

The problem of deprivation of liberty of children for immigration reasons

It should be noted that migrant children in CIS countries (that is, children who are located in one country and come from a different CIS country) are mostly the children of migrant workers who are in a country with other family members or, if the children are older adolescents, who arrived on their own for the purpose of working. In Russia alone, there are millions of migrant workers from Central Asian countries, the South Caucasus, Ukraine, Belarus, and Moldova. During the first years after labor migration from poorer countries in the region to Russia became a trend, it was mostly young men who participated in this process, but in recent years more and more families with children are migrating for work. Unfortunately, children's rights are often violated in migration: Not all children enroll in Russian schools, with many staying home in their family's temporary homes to help with the younger children and attending school remotely (that is, they do not go to school every day and are given almost all their tasks as homework). Many children struggle with linguistic and cultural adaptation, which is exacerbated by poverty and problems with legal status.

Children over the age of 16 are allowed to work part-time in Russia, but this only applies to children of Russian citizens. Migrants cannot obtain work permits until the age of 18. However, liability for breaking migration laws, including working without a permit, sets in at the age of 16. This makes it possible to prosecute migrant children and to discriminate them in comparison to their peers who are Russian citizens. In and of itself, punishment for minors who break migration laws does not involve deprivation of liberty; the punishment is generally a fine and expulsion from the country. However, as an interim measure (i.e., to enforce expulsion) [children aged 16 to 18 may be placed in a reception center run by the Ministry of Internal Affairs](#), where they may be held up to 30 days under a court decision. Detention conditions in these reception centers are prison-like. Children under the age of 16 also end up in police precincts if during document checks stamps are found to be missing and so forth.

In reality, many children do not leave Russia for years, which means they do not renew their migration documents; in these cases, children can be detained right on the street, delivered to a precinct, and then taken to special "social wards" in children's hospitals. The same fate awaits children taken from their parents during raids by the migration police. In [one well-known incident that took place in Saint Petersburg in 2015](#), a five-month-old infant was torn from his mother's hands at a precinct and taken to the hospital after a report on the discovery of an unknown child was filed

(even though his relatives presented his birth certificate and the names of the child and both of his parents were definitely known); the child later died under unclear circumstances at the hospital. The courts repeatedly refused to find that the forced separation of this healthy child from his mother and his admission to a hospital violated the rights of both the mother and the child. Meanwhile, this practice is not uncommon, and in many cases the question of where a child separated from their migrant parents (accused of breaking migration rules) should be placed and under what grounds is decided in exactly this way—a report on an “abandoned child” is written and the child is admitted to a hospital, thus transforming these “social wards” into places of detention for migrant children in the first hours after the family’s arrest. Then children under the age of 16, that is, children who are too young to face administrative prosecution for violating migration rules, are sent to one of the Transit shelters, which are considered social institutions, but actually serve as detention centers for migrant children. Even though these Transit shelters are not considered “places of detention” (unlike the reception centers run by the Ministry of Internal Affairs), it is clear that children are held there in detention, as proven by the fact that they need special permission to meet with their parents, that they are not taken to school, and so forth.

Both staff members at the shelters and police officers working in reception centers have to complete the documents required to return children home. After confirmation with the country of origin, children are taken out of the Transit system in the accompaniment of police staff or social workers (they are sometimes reunited with parents who are also being expelled at the time of expulsion). Upon arrival in their country of origin, children who were expelled without their parents may again find themselves behind bars. For example, in Tajikistan and Uzbekistan (donor countries of millions of migrants to Russia) children are placed in local reception centers where they may spend up to 30 days waiting to be reunited with their families or may be sent to a children’s home if their families cannot be located. This practice is regulated by the *Chisinau Agreement*.

The Chisinau Agreement and the regional institutionalisation of immigration detention of children

The problem of child migration was pressing even in the 1990s and was regulated by a number of documents elaborated within the CIS. These documents include the Volgograd Agreement Concerning Cooperation with the Ministries of Internal Affairs (MIA) on Returning Minors to their Countries of Origin (1993) and, later, the Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence (2002, henceforth, the Chisinau Agreement).

The Chisinau Agreement concerns the question of the return of children, mainly unaccompanied or separated, to their countries of origin as part of cooperation between Ministry of Internal Affairs structures of CIS countries, in this way the Chisinau Agreement handle children in a vulnerable position over to the police. The structures that controlled the movement of people within the Soviet Union (passport offices, reception centers, etc.) were within the purview of the MIA. Thus, it is not surprising that migration, including child migration, ended up under the jurisdiction of the MIA when, after the collapse of the Soviet Union, the need to coordinate migration matters between the newly independent states arose. In terms of its text and its “police-related” spirit, the Chisinau Agreement basically repeats the earlier Volgograd Agreement (1993), with few exceptions. The annexes to both agreements list the same institutions for detention of migrant children (with the addition of new institutions created at the time of the signing of the Chisinau Agreement), and the abso-

lute majority of them are part of the MIA system. Moreover, according to the Agreement, these centres are also used for detention of children in conflict with law.

Under the Chisinau Agreement, children are returned to their countries of origin through these “transit institutions” within Ministries of Internal Affairs. They are first placed in the detention centers in the country of residence, and then following the accomplishment of all the return procedures and formalities are returned to the same detention centre in their country of origin. In practice children could stay in detention quite a long time. Thus, in 2015 in Saint Petersburg, the majority of children (72%) stayed in Transit centre up to 3 months, however 23% stayed for a period from 3 to 6 months, and 5% for a period from 6 months to 12. In Ukraine in 2014-2019 in Kyiv detention centre children-migrants spend in average 50-60 days. The detailed information about the functioning of the detention centres and return procedures under the Chisinau Agreement is presented in the thematic report of ADC Memorial.

Together with that some states in the region have already started to change the practice of child detention at the national level. Armenia, Georgia, and Moldova have shut down reception centers; migrant children in Kazakhstan are placed in the detention centers, however under the Ministry of Education; and police-run reception centers in Russia and Ukraine in some regions co-exist with social centers for migrant children. In practice, the differences at the national practices create additional obstacles to smooth return of children and results in protracted detentions. Moreover, the regional cooperation is complicated by the conflicts between CIS-members: in 2008 following Russia-Georgia armed conflict, Georgia left CIS in 2008 and its treaties, Ukraine announced leaving CIS in 2018.

ADC Memorial considers that the Chisinau Agreement should be replaced by the special bilateral treaties between countries of Eastern Europe and Central Asia concerning the return of children. The return of unaccompanied and separated children should not be regulated by readmission agreements, as the readmission agreements are applied to persons who violated legislation, which children can not commit, not being subjects to liability. Children and families with children need additional guarantees in the best interests of children. These treaties must be based on the recommendations of the UN Committee on the Rights of the Child and the UN Committee on the Rights of All Migrant Workers and Members of Their Families concerning the special rights of children in migration, the International Convention on the Rights of the Child, and Global Compact on Migration. The agreements on return of children are recommended to be adopted not only between CIS-states, but also between CIS-states and the EU-members states. As, these days unaccompanied children are returned sometimes within readmission agreements.

The new regulations should decriminalise children migration and transfer of the topic of “children in migration” from the police sphere to the social protection/educational sphere. All forms of the immigration detention of children—in hospitals and closed social institutions for those under the age of 16 and in jails for those over the age of 16—must be revoked in international agreements and domestic laws. Separation of migrant children from their parents and family members must be prohibited regardless of migration status. This is particularly true for children “found abandoned,” whose names and families are known from documents or at least from the words of their parents. Safe places of stay must be organized for children in a country without adult relatives so that they are not deprived of liberty, can continue their education, and can receive the required medical and/or psychological care if needed. A child’s return to their country of origin should not connected with a stay in police reception centers or other places of deprivation of liberty. Social structures in the

country of stay that are responsible for returning children should be prepared to transfer children immediately upon their arrival to a family or, if the child does not have family in this country, to social and educational institutions where children are not deprived of liberty or to foster families. The return of children should be handled by educators and psychologists, not officers from the Ministry of Internal Affairs and other security structures.

The new treaties on return of child should be based on and should include the following basic guarantees: migrant children cannot be deprived of liberty, legal representatives for unaccompanied children, procedure for determining a child's best interests, access to legal assistance and the ability to appeal, repatriation can only take place with voluntary consent, every child must be provided with an education and medical care, separation may only occur if a child is in danger. In this way, the much-needed regional cooperation could be established on return of children migrants in accordance with human rights law and international standards.

Effect of Covid-19 pandemic and sanitary measures to migrants and their families

The coronavirus pandemic that has swept across the world and the accompanying quarantine measures have seriously affected the migrants, especially migrant workers and their families. Massive loss of work and income by migrants led to the situations when the migrants have lost their main incomes and ability to feed themselves and their children. Many stayed in countries of residence without work, leaving themselves and their families without any income, and being trapped by the restriction of freedom of movement. Other returned, being, however, in the same situation - having no means to cover basic needs. Having no social benefits and no social support either in the countries of residence or countries of origin, many migrants and their families in the region literally can not feed themselves. This was complicated by the wave of racism and hatred following the beginning of pandemic.

The previously-adopted guidelines on risk management of natural disasters and epidemic in relation to migrants turned out to be ineffective. The current health crisis exacerbates existing vulnerabilities of migrants, while generating new forms of vulnerability for them. The stakeholders turned to provide humanitarian assistance to vulnerable migrants, while the governments in the region simply have not addressed the situation of migrants. On the contrary, despite the calls of human rights defenders to release all the migrants from detention centres as the returns became impossible and the high risks to the health of detainees, the governments continued detentions and attempts to forced returns. Members of the Public Monitoring Commission of Saint Petersburg who visited a temporary detention center in the summer of 2020 reported that: *Because of the COVID-19 pandemic, there are many people in the Center whose documents are in order but who cannot be expelled because the borders are closed. Specifically, there are 25 citizens of Ukraine and nine citizens of Belarus, some of whom have been waiting to be deported for over six months.* At the beginning of quarantine, there were 445 people in this Center awaiting expulsion or deportation.

The COVID-19 crisis provides an opportunity to elaboration of renewed policies that would provide the protection of migrants' rights in the future crises and pandemic. Such regulation should ensure the protection of health and access to healthcare without any discrimination; social protection and benefits for migrants in countries of their residence or in countries of origin, as well as and ensure their right to family unity and return. Together with that, the systematic measures should be taken to help to identify long-term solutions for countries-donors and recipients of migrants to re-orient their economies and provide new opportunities for migrants' sustainable self-realisation.