

Submission to the first thematic report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

15 February 2018

Geographical scope of submission: Russia

NGO: Citizens' Watch (<http://www.citwatch.org/en/>)

Citizens' Watch is pleased to provide a submission to ms. E. Tendayi Achiume for the first thematic report on racism, racial discrimination and xenophobia in the context of laws, policies and practices relating to citizenship, nationality and immigration.

We also would like to congratulate ms. E. Tendayi Achiume with this appointment.

Citizens' Watch is a human rights CSO founded by a group of Russian activists, lawyers, journalists and parliamentarians in 1992. It is based in Saint-Petersburg, Russia. Our strategic priority is to bring domestic human rights legislation and practices closer to international legal standards. We focus on promoting judicial independence and transparency and access to justice, providing professional training for defence lawyers, and combatting intolerance and racism.

In the submission Citizens' Watch analyses legislation and law enforcement practise in Russia on two issues:

- Deprivation of citizenship on the basis of race, color, decent, or national and ethnic origin, including in the context of counter-terrorism;
- Laws, policies and practices restricting immigration on the basis of national and ethnic origin.

Deprivation of citizenship on the basis of race, color, decent, or national and ethnic origin, including in the context of counter-terrorism

Clause 3 of Article 6 of the Russian Constitution expressly prohibits deprivation of the Russian citizenship, namely, "A citizen of Russia may not be deprived of his or her citizenship or of the right to change it". However, the Russian laws do stipulate grounds for abolition of decisions recognizing a person as a citizen of Russia or conferring into citizenship, *i.e.* for naturalized citizens.

In particular, the Federal Law dated July 29, 2017, N 243-FZ "On Amendment of the Federal Law *On the Citizenship of the Russian Federation*" and Articles 8 and 14 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" added a new ground for abolishing decisions granting citizenship to Article 22 of the Federal Law dated May 31, 2002, N 62-FZ "On the Citizenship of the Russian Federation", reading as follows: "In the case if, when applying for conferment into citizenship of the Russian Federation or reinstatement of citizenship of the Russian Federation, the applicant had no intention to bear duties that are stipulated by the laws of the Russian Federation for citizens of the Russian Federation, and the purpose of acquiring citizenship of the Russian Federation was an activity that is threatening for the constitutional system of the Russian Federation, then the resolution on the acquisition of citizenship of the Russian Federation shall also be abolished on the ground that the applicant provided deliberately false information in regard of the obligation to obey the Constitution of the Russian Federation

and the laws of the Russian Federation”¹. This ground makes it possible to abolish citizenship as a result of conviction for participation in terrorist activity².

The procedure for deprivation of citizenship on this ground is unclear. According to Part 2 of Article 48 of the Federal Law “On the Citizenship of the Russian Federation”, the resolution to abolish a resolution on recognition of a person as a citizen of Russia or conferment into citizenship of Russia shall be made by the Minister of Interior or his/her Deputy. The role of the court is unclear, as Part 2 of Article 22 of the Federal Law “On Citizenship” stipulates that a conviction for participation in terrorist activity is equivalent to recognition by the court of the fact of providing deliberately false information in regard of the obligation to obey the laws of the Russian Federation. Therefore, the possibility to ask for a court examination of a decision on abolition of citizenship and the limits of such examination are dubious.

In addition, the law does not specify a preclusive term, on expiry of which a resolution on conferment into citizenship may no longer be abolished³.

The abovementioned amendments became effective on September 1, 2017. However, to date there is no data on decisions stripping of Russian citizenship because of participation in terrorist activity.

However, in April 2017, the decisions on conferment into citizenship of Akbarzhon Jalilov, the suicide bomber who is considered to have committed the terrorist act in the St. Petersburg metro on April 3, 2017, and his father, Akromzhon Jalilov, were abolished. The press service of the Ministry of Interior reported that pursuant to a judgment of the Smolninsky District Court of St. Petersburg, which had found that Akromzhon Jalilov had provided deliberately false information when he applied for conferment into citizenship, on 20.04.2017 the Ministry of Interior abolished the decision of the Administration of the Federal Migration Service of the Russian Federation (FMS RF) on conferment of Akromzhon Jalilov, a citizen of the Republic of Kyrgyzstan, into citizenship of the Russian Federation. This decision “resulted in abolition of the

¹ Paragraph 2 of Part 1 of Article 22 of the Federal Law N 62-FZ “On the Citizenship of the Russian Federation”.

² These include the following articles of the Criminal Code of the Russian Federation, namely, Article 205 (Terrorist Act), 205.1 (Assistance in Terrorist Activity), Part 2 of Article 205.2 (Public Appeals for Terrorist Activity, Public Justification of Terrorism or Propaganda of Terrorism), 205.3 (Being Trained for Terrorist Activity), 205.4 (Organization of and Participation in a Terrorist Community), 205.5 (Organization of and Participation in the Activity of a Terrorist Organization), 206 (Hostage Taking), 208 (Organization of or Participation in an Illegal Armed Formation), Part 4 of Article 211 (Hijacking of Aircraft, Water or Railway Transport), 282.1 (Organization of an Extremist Community), 282.2 (Organization of Activity of an Extremist Organization), 282.3 (Financing of Extremist Activity), and 361 (Act of International Terrorism) of the Criminal Code of the Russian Federation or any one or more of the crimes (preparation for a crime or attempted crime) specified in Articles 277 (Offense Against the Life of a Public Figure), 278 (Forced Seizure or Forced Retention of Power), 279 (Armed Rebellion), and 360 (Act of International Terrorism) of the Criminal Code of the Russian Federation if their commission is associated with terrorist activity.

³ Until 2002, such preclusive term was 5 years (Clause 3 of Article 24 of the Law of the Russian Federation dated 28.11.1991 N 1948-1), but with the adoption of the new Federal Law dated 31.05.2002 N 62-FZ (version dated 29.07.2017) “On the Citizenship of the Russian Federation”, the provisions of Article 24 of the Law of the Russian Federation dated 28.11.1991 N 1948-1 became ineffective. The new law does not specify any such term.

decision on conferment into citizenship of his son, Akbarzhon Jalilov, who committed the terrorist act in the St. Petersburg metro on April 3, 2017⁴.

Based on the fact that the father who was deprived of citizenship had been a citizen of Russia since 2009 and was deprived of citizenship only when the police declared that his son had committed the terrorist act, one can say with confidence that the only reason why both the father and the son were deprived of citizenship was Akbarzhon Jalilov's involvement in the terrorist act.

Laws, policies and practices restricting immigration on the basis of national and ethnic origin

In Russia, migration policy is regulated not just by laws but also by program documents including strategies, concepts, and programs for their implementation. Strategies and concepts that contain goals, principles, and objectives of planning documents are adopted by the President of the Russian Federation and cover long periods (about 20-30 years), and implementation programs, which include specific activities and usually cover periods of one or several years, are adopted by the Government of the Russian Federation. Due to the fact that Russia is a federal state, similar documents are adopted on the level of regions of the Russian Federation with consideration of the local features and applied on the territory of the region.

As regards migration in Russia on the federal level, there is the Concept of the State Migration Policy of the Russian Federation until 2025 (CPM), which was adopted in 2012. The goals that are stipulated in CPM include protection of Russia's national security, security and well-being of the Russian people, stabilization and expansion of the permanent population of Russia, and assistance in covering the needs of the Russian economy in labor force, modernization, innovative development, and competitiveness. As regards the objectives, CPM promotes a selective approach to migrants, namely, assistance in resettlement of compatriots and highly qualified migrants to Russia and adaptation and integration for all the migrants. Special emphasis is placed on fighting illegal migration.

In 2017, the Ministry of Interior of the Russian Federation (MVD RF) prepared a draft of a new version of the Concept of the Migration Policy (the Draft). Their initiative is an illustrative example of the Russian authorities' attitude to migrants, as MVD RF is the agency that is in charge of working with foreign citizens since the abolition of the Federal Migration Service of the Russian Federation (FMS RF) in 2015.

The Draft declares a new threat for Russia's security caused by "uncontrolled migration flow from the Middle East countries to Europe that began in 2014-2015" and sets an objective of developing a mechanism to fight it. It is unclear what this mechanism will be, and in view of the existing law enforcement practice, the prospects of its development raise concern.

In the opinion of the Ministry of Interior, another threat is immigrants who abuse the right to asylum. This statement is all the more surprising given that there are practically no refugees in Russia. The official statistics of the Ministry of Interior on the migration situation in Russia does not report the number of refugees, refugees in procedure, persons who were granted temporary asylum in the Russian Federation, and internally displaced persons. Unlike the Ministry of Interior,

⁴ Official information // Official website of the Ministry of Interior of the Russian Federation, 21.04.2017. URL: <https://xn--b1aew.xn--p1ai/news/item/10082419/>. In the message of the press service, the presumption of innocence is not respected and it stated that Akbarzhon Jalilov committed the terrorist act in St. Petersburg.

FMS RF, which was its predecessor in the migration field, did publish these data. Now, statistics can be found at the Federal State Statistics Service (Rosstat), and according to these data, in 2017 there were 598 refugees in Russia (most of them came from Afghanistan with Ukraine ranking second), 228,392 persons who were granted temporary asylum (the absolute majority of them arrived from Ukraine because of the war in 2014), and 19,327 internally displaced persons⁵. As the number of refugees is close to zero, it is unclear what kind of threat the Ministry of Interior has described in the Draft and why this threat deserves a separate mention in CPM.

Other aspects of the Draft (issuing permits for temporary residence that are granted primarily for remote regions of Russia, understanding the adaptation of migrants as assimilation, etc.) are discussed in the report of Citizens' Watch⁶.

However, this Draft has not been adopted yet, and the effective document for the time being is still the CPM that was adopted in 2012. In 2015, the Russian Government adopted the CPM Implementation Plan. It includes amendments to laws, measures for fighting illegal migration, and signing international treaties on organized recruitment of citizens for work in the Russian Federation.

The most remarkable novelty of the recent years as regards migration law is the establishment of the Federal Agency for the Affairs of Nationalities (FADN) in 2015, which is intended to implement the national policy of the state, to prevent interethnic and interfaith conflicts, and to monitor interethnic relations. In 2016, FADN and the All-Russian Center for the Study of Public Opinion (VTsIOM) did a sociological study of the living conditions and problems of the Roma in Russia⁷. One of its results is that "90% of the Roma expressed a high level of approval of the activity of the President of the Russian Federation Vladimir Putin"⁸. After the results of this study had been published, FADN did not get back to the Roma subject, at least according to open data on the activity of this agency.

Although FADN have been operating for more than 2 years, large part of his activities remains concealed from public. Nothing is publicly known about the methodology and results of the monitoring interethnic relations, the means and results of prevention interethnic conflicts— the most important tasks of FADN. The closed nature of activities of FADN can be explained by that the Agency regards its activity as relating to national security and, therefore, state secret, which gives basis for concern that FADN is one of the state organs designed to resolve issues by way of force, and in fact has nothing in common with peaceful resolution of interethnic conflicts and integration and socialization of migrants.

Fighting illegal migration is the keynote of Russia's migration policy. Whenever Russian officials speak of migration, they will inevitably mention the need to fight illegal migration⁹. The

⁵ The information in Russian can be downloaded at <https://goo.gl/g2f7KT>. However, there is no published statistics on submitted applications for recognition as a refugee or grant of temporary asylum.

⁶ The report has been published on the website developed by Citizens' Watch on court monitoring. It is available at: <https://goo.gl/ZfdTix>.

⁷ The results of the study entitled "Social / Economic, Ethnic / Cultural, and Legal Problems of the Roma in Russia" // FADN. 7.04.2016. <https://goo.gl/VLrmJL>.

⁸ See above.

⁹ At a meeting with State Duma Deputies, the Minister of Interior Vladimir Kolokoltsev discussed fighting illegal migration (Kolokoltsev Reports for FMS // Rosbalt. 8.11.2017. <https://goo.gl/QTbvpy>); the Mayor of Moscow Sergey Sobyenin ordered to find illegal migrants in reply to news of a serious fire in a sewing workshop that killed

media often publish results of operations named something like “Illegal Migrant”, reporting of dozens of foreign citizens who have no legal grounds to be in Russia and have been detained and expelled from Russia¹⁰. Such ‘victories’ of law enforcement agencies should be regarded with suspicion because of the flaws of the migrant expulsion procedure. In most cases, violations of the migration law are punished by expulsion from Russia to the country of citizenship or a prohibition to enter Russia for up to 10 years and a fine, and the judges give no regard to threat to society and constitutional order and circumstances of the offense and apply both sanctions, i.e., they do not individualize the responsibility. Decisions on expulsion for acts that bear no threat to society are also frequent because parts 1.1, 3.1, 4, and 5 of Article 18.8 of the Code of Administrative Offenses of the Russian Federation (KoAP RF) stipulate a mandatory sanction in the form of expulsion, *e.g.*, just for failure to notify the police of confirmation of one’s residence in the Russian Federation if the migrant lives in Moscow or St. Petersburg.

Besides the disproportionately severe punishment, the very procedure of bringing migrants to justice contributes to violation of their rights. Despite the severity of punishment (expulsion), trials on migration cases are regulated by the rules of KoAP RF and not the Code of Criminal Procedure of the Russian Federation (UPK RF). The latter contains far fewer guarantees than the UPK RF; *e.g.*, the migrant is not offered a free lawyer and an interpreter. In addition, the trial itself is conducted faster than in the event of a criminal case; as a rule, the judge has no time to explain all the rights and the merits of the judgment to the migrant, and as a result, the migrant will sometimes leave the courtroom believing that all he has to do is pay a fine and not realizing that he must leave Russia and not return for a certain period of time¹¹.

Moreover, when involuntary expulsion is ordered, migrants are put into Centers for Temporary Detention of Foreign Nationals (TsVSiG), and their rights and duties during their detention in TsVSiGs are not regulated properly, which contributes to infringement of migrants’ rights. *E.g.*, there is no limit for the time that a migrant may be kept in a TsVSiG, as a result of which migrants are kept in these facilities for years when expulsion to the country of origin is impossible. This problem of indefinite detention has drawn the attention of the Constitutional

12 labor migrants (Sobyanin Orders to Check Moscow Industrial Zones to Find Illegal Migrants) // TASS. 31.01.2016. <http://tass.ru/obschestvo/2628231>; the Governor of the Krasnodar Kray Veniamin Kondratyev thinks that there are too many migrants working in the region without legal grounds (Kuban Governor Proposes Measures to Fight Illegal Migrants // Kuban Governor Proposes Measures to Fight Illegal Migrants. 23.01.2018. <https://goo.gl/Hm1PTy>).

¹⁰ *E.g.*, Dozens of Illegal Migrants Expelled from the Tula Oblast to Ukraine and Middle Asia // Tuskaya Pressa. 12.02.2018. <https://goo.gl/xoDQGQ>; Over 40 Illegal Migrants Expelled from Tyumen Since the Beginning of 2018 // TUMIX. 4.02.2018. <https://goo.gl/FSvrSX>; 150 Illegal Migrants Expelled from Kuban Since the Beginning of the Year // Kubanskiye Novosti. 01.02.2018. <https://goo.gl/Ec2Xci>).

¹¹ In 2016, the Civic Assistance NGO made a report on systemic violations found by monitoring of expulsion trials in Moscow courts in 2015. The report (in Russian) can be downloaded at: <https://goo.gl/cVM2YT>. In 2016, the NGO declared that, according to their data, the situation had not changed since 2015, and migrants were still being expelled from the country *en masse* for the slightest violation of the migration law (<https://goo.gl/okBXDH>).

Court of the Russian Federation, which notified the legislators about this legal gap and obliged them to amend it¹²; however, many problems remain unresolved¹³.

Thus, the entire expulsion process from the ordering of this sanction to its implementation does not prescribe enough guarantees securing protection of migrants' rights and allows arbitrary expulsion.

As for implementation of the CPM in international arena, in April 2017, an Agreement was signed between the Government of the Russian Federation and the Government of the Republic of Uzbekistan on organized recruitment of citizens of the Republic of Uzbekistan for temporary work in the Russian Federation (the Agreement)¹⁴. According to the Agreement, Uzbekistan will select and check the health and criminal record of candidates for labor migrants and communicate with perspective employers in Russia. The Agreement became effective in December 2017, and there is no data to assess it yet.

¹² Ruling of the Constitutional Court of the Russian Federation dated May 23, 2017, N 14-P, St. Petersburg, "on the case of examination of the constitutionality of provisions of articles 31.7 and 31.9 of the Code of Administrative Offences of the Russian Federation due to the complaint of N.G. Mskhiladze, a stateless person" // Rossiyskaya Gazeta. 2.06.2017. <https://rg.ru/2017/06/02/sud14-P-dok.html>.

¹³ E.g., in February 2018, detained foreign citizens who were dissatisfied with the conditions of their detention and long period of waiting for expulsion started a "riot" in a TsVSiG in the Krasnoyarsk Kray; the police together with Rosgvardia stopped this outrage and initiated a criminal case on participation in mass riots. Migrant Riot in Temporary Detention Center near Krasnoyarsk. // Interfax. 8.02.2018. <http://www.interfax.ru/russia/599010>.

¹⁴ The text of the agreement is available in Russian on the website of the Ministry of Foreign Affairs of Russia: <https://goo.gl/hzDcHC>.