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CIVIC ASSISTANCE COMMITTEE

POLICY REPORT

**A Universal Right – but not for all. Access to School Education for Children
of Refugees and Labour Migrants in Russia**

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Contents

Introduction	3
Chapter 1. Legislation and a brief overview of cases in which access to education in the Russian Federation has been restricted	
1.1 International law.....	9
1.2 Russian legislation.....	15
1.3 An overview of restrictions on the right to education in the Russian Federation.....	19
1.4 Order № 32 of the Ministry of Education and Science.....	26
1.5 The ruling of the European Court of Human Rights in the case of “Timishev v. Russia” and the decision of the Supreme Court of the Russian Federation on the complaint of the Federal Migration Service of the Rostov Region.....	31
Chapter 2. Current problems with access to education in the Russian Federation	
2.1 Overview and limited statistical data.....	37
2.2 Migration services’ interference in schools.....	40
2.3 The requirement to prove the right to stay.....	46
2.4 Local registration requirements.....	48
2.5 Problems of access to education for children who do not speak Russian or have poor knowledge of the Russian, and for children with disabilities.....	52
Chapter 3. The Work of the Civic Assistance Committee	
3.1 Counselling and Support.....	58
3.2 The court decision in Tver and the challenge to Order № 32 in the Supreme Court of the Russian Federation.....	63
3.3 Correspondence with authorities.....	69
3.4 Children of refugees, language courses in Noginsk and Losino-Petrovsk.....	72
Conclusion	75
Recommendations	78

Introduction

The right to education is a fundamental and essential element of human rights. Without education people cannot fully integrate into society, cannot realize their potential and become responsible citizens. People without education find it harder to understand their obligations to others, and they are legally, socially and economically vulnerable.¹ A lack of education usually has negative consequences, often leads to depression, alienation and passiveness; it can also lead to marginalization, a tendency to violence and involvement in criminal groups. Education is closely related to other human rights. A person without education cannot be a fully-fledged citizen, cannot make well-thought out and balanced political choices, cannot integrate into the society of educated people, very often lives in extreme poverty, and does not have the opportunity to enjoy the achievements of world culture. In other words, the right to education is not only connected with civil and political rights, but also with social, economic and cultural rights.²

In the modern world the government is primarily responsible for regulating and providing education. This does not change the fact that historically there have been people who achieved extraordinary results without any formal state education. In some cases, the role of government is replaced by parents or relatives. There are cases when people achieve a lot through self-education. In some countries there is an extensive system of private (non-state) education. Nevertheless, in the modern world, government and public institutions continue to play a central role.

Despite considerable progress in recent years, according to UNESCO data as of mid-2016, there were around 263 million children and adolescents who were not in

¹ According to UNESCO: “Education in itself is an empowering right and one of the most powerful tools by which economically and socially marginalized children and adults can lift themselves out of poverty and participate fully in society” (<https://en.unesco.org/themes/right-to-education/> Accessed on 27.11.17).

² As stated in the UNICEF manual on the right to education: “Education is necessary for the realisation of all other civil, political, economic or social rights” (Human Rights-Based Approach to Education for All. Cultural Organization, 2007. P. 7).

some form of formal education. Of these, around 61 million do not have access to primary education.³

In most cases, it is the government that is responsible when the right to education is violated. There are several reasons for these violations. Often the government does not provide education for economic reasons, as teaching children entails expenditure on infrastructure and salaries for specialists. However, there are also cases when people do not have access to education because of discrimination. As a result, in some countries groups are denied access to education on the basis of nationality, gender, religion or class. However, officials in these countries very rarely speak openly about the discriminative basis of their policies. Under international law there is a clear and unambiguous recognition of the universal and obligatory right to primary and secondary school education. As a result, an openly declared policy of discrimination would lead to confrontation with the international community. Discrimination is therefore often difficult to detect, and at times carefully obscured in laws to manage immigration, support the welfare of local citizens, or protect cultural identity. Sometimes the mere absence of discriminatory policies is not sufficient and proactive measures are needed to change attitudes within local communities, as is the case, for example, with women's education, the denial of which in some countries can even lead to violence against children.⁴

Despite international acknowledgement of the universal right to education, even the most developed countries took time to recognize it as a separate and fundamental right and it was only established in international law in the second half of the 20th century.⁵ Even now and even in democratic countries it is not always universally acknowledged that everybody, regardless of their gender, race, nationality, religion, ethnicity, migration status, social status, or economic status, has the right to education.

³ Leaving no one behind: How far on the way to universal primary and secondary education? Policy Paper 27/ Fact Sheet 37. UNESCO and UNHCR, 2016. P. 2: <http://unesdoc.unesco.org/images/0024/002452/245238E.pdf> Accessed on 07.01.17.

⁴ See: Background Paper on Attacks Against Girls Seeking to Access Education. UNHCR, 15. (http://www.ohchr.org/Documents/Issues/Women/WRGS/Report_attacks_on_girls_Feb2015.pdf Accessed on 07.01.17).

⁵ For an outline of the History of the Right to Education, see: *Beiter, K.D.* The Protection of the Right to Education by International Law. Leiden: Martinus Nijhoff Publishers, 2005. P. 17–46.

The opponents of the universal right to education are still numerous and even in democratic countries some influential politicians try to use this factor in their political campaigns, although only rarely do they choose to openly contest the right of every person to education.⁶

In Russia, the universal right to education is enshrined in the Constitution of the Russian Federation, as well as a range of laws and legal and regulatory acts. Russia has also ratified all relevant fundamental international conventions. Nevertheless, implementation of these conventions and delivery of education to a range of vulnerable social groups is far from perfect. Research undertaken several years ago suggests that between 10% and 25% of children of migrants living in Russia were not in education.⁷ Children of refugees are another vulnerable group whose access to education is also often seriously impeded. Neither the Ministry of Education and Science of the Russian Federation, nor migration services show any interest in researching this problem. Furthermore, as this report will show, they choose to ignore information provided by civil society regarding problems in this area. While formally declaring its commitment to the universal right to education, the Ministry of Education and Science has in fact adopted an ambivalent position, which allows regional authorities to restrict access to schools. Migration services are mainly focused on the strict control of foreign citizens and are committed to finding and prosecuting those whom they regard as “residing illegally” in Russia and actively gather data from educational institutions in order to do so.

There is almost no funding available to develop mechanisms to integrate labour migrants and refugees, and to protect their rights, including the right to education. The situation is complicated by the fact that there is no clear division between different government institutions regarding responsibility for the provision of access to education for children of foreign citizens. Responsibility is distributed in an unclear manner between federal and regional authorities, which usually are not

⁶ Recent cases include, for example, Marine Le Pen's appeal not to provide free education to children of so-called “illegal migrants.” See: <http://www.bbc.com/russian/news-38248724> (Russian). Accessed on 22.02.17.

Her statements on this topic in French are available here:

<http://www.lefigaro.fr/elections/presidentielles/2016/12/08/35003-20161208ARTFIG00201-marine-le-pen-veut-restreindre-lacaces-des-enfants-d-etrangers-al-ecole-gratuite.php> Accessed on 22.02.17.

⁷ <http://demoscope.ru/weekly/2012/0515/analit02.php> (Russian). Accessed on 02.12.16.

inclined to solve the problems that arise. Children of foreign citizens are a vulnerable group, especially if their migration status has not been formalised, or if their parents are in the process of seeking asylum or appealing against the refusal of asylum.

Such children are “triply vulnerable,”⁸ as migrants, as people with unclear legal status, and as children.⁹ Unfortunately, as will be discussed in this report, current Russian government policy has made little attempt to address these vulnerabilities. On the contrary, in some regions additional barriers to education are established for children of certain groups.

This report will focus on access to education for children of foreign citizens,¹⁰ but it should be noted that access is only one element of the right to education.¹¹ The history of totalitarian and authoritarian societies has shown that violation of the right to education does not just arise from a lack of access.¹² By disseminating authoritarian and totalitarian ideologies through schools, colleges and higher education institutions, some states built societies where the violation of basic human rights was recognized as the norm, educational institutions actively sought to identify and severely punish those with “dissenting views.” Another danger is that the education provided (especially by extremely poor countries) is of low quality. In such cases, due to a lack of specialists or appropriate educational conditions, attendance at school does not lead to any significant development of the child's personality or the acquisition of necessary knowledge. Therefore, international conventions dealing with the right to education focus not only on access, but also on its quality, as well as the conditions needed to deliver the universal right to education. Thus, the Convention against Discrimination in Education provides the following definition of what is meant by the right to

⁸ The expression is taken from: Growing up in a Hostile Environment: The rights of undocumented migrant children in the UK. Coram. Children's Legal Center, 2013. P. 3.

⁹ Disabled children with unresolved migration status can be said to be “vulnerable four times over,” given the practical impossibility for some categories of such children in Russia to access education (see chapter 2).

¹⁰ Russian citizens also face the problem of access to education, as will be discussed in the relevant sections of the report.

¹¹ The right to education applies not only to children, but also to adults. This is especially relevant with regard to combating illiteracy, as well as professional retraining.

¹² This is closely related to what is meant by education, see, for example: Spring J. The Universal Right to Education: Justification, Definition, and Guidelines. Routledge, 2000.

education: “The term ‘education’ refers to all types and levels of education and includes access to education, the standard and quality of education, and the conditions under which it is given.”¹³ It follows that the right to education is (1) the right to access to education; (2) the right to quality education; and (3) the provision of the necessary conditions to achieve this. In addition, a separate issue relates to the rights of parents to determine the content of education, as well as the extent to which it corresponds to human rights values.

All these aspects are extremely important and closely interrelated. Regarding access to education, researchers distinguish three elements: 1) the admission of all children to schools and the absence of any discrimination; 2) the physical accessibility of education, which includes enabling each child to get to school or organizing home schooling; 3) economic accessibility, which implies free education and material assistance to children in need.¹⁴ In addition to the problem of discrimination, which is the main focus of this report, deterioration in the level of physical accessibility has recently become a challenge for the Russian education system. This is illustrated by the situation in kindergartens, as well as instances of shortages of places in schools, which is rarer but does still happen. The problem has become more acute owing to the sharp decline in the number of schools in the last 15 years.¹⁵ Moreover, there are several categories of children with special needs. This includes children who speak little or no Russian, as well as children with disabilities and invalids. The first group require free Russian language courses, the second special educational programmes, specialists, and in some cases specialized schools. In Russia, there are serious deficiencies in all these areas. In addition, a child who knows Russian but who has come from another country also needs a special approach that requires teachers with specific training.

Unfortunately, owing to a lack of capacity, and – in all likelihood – a lack of will on the part of the state to allocate the necessary resources, some children are simply denied access to school, as will be shown below.

¹³ http://www.unesco.org/education/information/nfsunesco/pdf/DISCRI_E.PDF Accessed on 27.11.17.

¹⁴ Verheyde M. Article 28. The Right to Education. Leiden: Martinus Nijhoff Publishers, 2006. P. 17–19.

¹⁵ In the 2000-01 academic year, there were more than 68,000 state and municipal education organizations in Russia, and in the 2015-16 academic year the number fell to less than 43,000. See data from the Federal State Statistics Service: http://www.gks.ru/free_doc/new_site/population/obraz/o-obr1.htm (Russian) Accessed on 07.01.17. The merging of schools has played only a small role in this process.

The following report comprises three chapters and fourteen sections. The first chapter outlines international and Russian legislation regulating access to education; it also details the history of several attempts to restrict access to education in Russian schools. The second chapter examines in detail the main obstacles and problems that make it difficult or impossible for children in Russia without Russian citizenship to access education. The third chapter describes the activities of the Civic Assistance Committee to protect children's right to education.

It should be emphasized that the report primarily relies on data from Moscow and Moscow Oblast, since it is in these regions that the Civic Assistance Committee primarily works. Nevertheless, in some cases, data from other Russian regions are included, and the situation across Russia as a whole is described.

Chapter 1. Legislation and a brief overview of cases in which access to education in the Russian Federation has been restricted

1.1 International law

Unfortunately, even in studies produced by experts in Russia, one encounters erroneous statements to the effect that head teachers who admit children without legal immigration status or local registration “are effectively breaking the law”¹⁶ and that if the period of a child’s “legal” stay in the country comes to an end then “the school has no right to continue to provide education to the child.”¹⁷ Such views are often not the result of xenophobia. For example, in the quoted study, the conclusions were drawn on the basis of a “review of the legislation” which was conducted by a lecturer in the Faculty of Law of the Higher School of Economics in St. Petersburg. A. A. Smirnova, who in 2012 was the Deputy Dean of the Faculty of Law, stated that “educational establishments can only admit children if they are in the Russian Federation on a legal basis. Foreign children who are living illegally in the Russian Federation, including St. Petersburg, cannot be accepted into kindergartens and schools...”¹⁸ This is a particularly regrettable example, as financial support for this study of the Higher School of Economics in St. Petersburg was provided by UNICEF, an organisation that is making a huge contribution to saving and helping children around the world, including by upholding the universal right to education of children whom Smirnova describes as “residing illegally”¹⁹ in Russia.

From the perspective of both international and Russian law, the situation regarding access to education is in fact the reverse of that described by Smirnova in her survey. Head teachers who refuse to enrol children in schools with free spaces are breaking the law. If there are no free spaces, then the head teacher should confirm this in writing and the local educational authorities must offer an alternative school. Migration services are also breaking the law if they fine schools for

¹⁶ The situation of migrant children in St. Petersburg. Moscow: Detskii fond OON. 2012. P. 20 (Russian).

¹⁷ Ibid. P. 21.

¹⁸ Ibid. P. 145.

¹⁹ For UNICEF’s position on the right of children without a settled migration status to education, see, for example, the Implementation Handbook for the Convention on the Rights of the Child. Geneva: United Nations Children's Fund, 2007. P. 23.

enrolling and educating children whose migration status has not been resolved. Access to education should not be affected by a child's migration or registration status, or the legality of their residing in the country. This applies equally to state schools in Moscow and schools in Paris, Bangkok and Rio-de-Janeiro. Of course, this was not always the case. Access to education has not always been guaranteed by international law. This principle was first established in 1948 in the Universal Declaration of Human Rights. The development of international mechanisms to enforce this provision and a more detailed elaboration of states' responsibilities took place in the second half of the twentieth century. The right to education is now fixed in a whole range of international agreements and conventions that have been ratified by Russia.

The following survey of international law sets out only the key provisions relating to access to education that the Russian Federation has committed itself to uphold. It should be noted that the survey covers only provisions relating to access to education, and does not include those relating to the quality of education or the conditions in which it is provided. For example, in the case of Article 26 of the Universal Declaration of Human Rights, it will be only cited the section that relates to the requirement that every person should have access to education. However, this article includes two other paragraphs: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."²⁰ Likewise: "Parents have a prior right to choose the kind of education that shall be given to their children."²¹ The fact that this report does not consider the quality and conditions in which education is provided does not imply that they are less important; it merely allows us to focus on our key topic – access to education. A survey of the international norms covering all aspects of education would require a much more extensive study.²²

²⁰ <http://www.un.org/en/universal-declaration-human-rights/> Accessed on 27.11.17.

²¹ Ibid. Accessed on 27.11.17.

²² See, for example, a report running to almost 800 pages on the right to education and the mechanisms of international law to protect it: *Beiter K.D. The Protection of the Right to Education by International Law*. Leiden: Martinus Nijhoff Publishers, 2005.

– On **December 10, 1948** The General Assembly of the United Nations adopted The Universal Declaration of Human Rights, **Article 26** of which states: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.”²³ The wording provoked heated discussions. The initial version even specifically stipulated a “duty” of every country to provide primary education to every child living in the country. However, the commission ultimately concluded that this provision did need not be specifically emphasized.²⁴

– On **December 14, 1960**, at the eleventh session of the UN General Conference on Education, Science and Culture (UNESCO), the Convention against Discrimination in Education was adopted, which was ratified by the USSR (and consequently by the Russian Federation) on August 1st, 1962. **Article 3, Paragraph (e)** of this Convention stipulates that the State Parties to the Convention undertake: “To give foreign nationals resident within their territory the same access to education as that given to their own nationals,”²⁵ and in **Article 4, Paragraph (a)** that the States shall implement policies “to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all.”²⁶

– On **16 December 1966**, by Resolution 2200 A (XXI) of the UN General Assembly, the International Covenant on Economic, Social and Cultural Rights was adopted. It was ratified by the Russian Federation on **October 16th, 1973**.²⁷ In **Article 13, Paragraph (a)** of this Covenant, the Member States recognize that “primary education shall be compulsory and free for all,”²⁸ and in **Paragraph (b)**: “Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by

²³ <http://www.un.org/en/universal-declaration-human-rights/> Accessed on 27.11.17.

²⁴ See the history of the final version: World education report 2000. The right to education: towards education for all throughout life. UNESCO Publishing, 2000. P. 94.

²⁵ http://www.unesco.org/education/information/nfsunesco/pdf/DISCRI_E.PDF Accessed on 27.11.17.

²⁶ Ibid. Accessed on 27.11.17.

²⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en Accessed on 22.02.17.

²⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> Accessed on 27.11.17.

every appropriate means, and in particular by the progressive introduction of free education;”²⁹

It should be noted that by signing and ratifying the Covenant, according to **Article 16**, “the States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.”³⁰ A Committee on Economic, Social and Cultural Rights was created to monitor the implementation of these obligations. It provides regular commentary and recommendations to State Parties. They are required to examine these recommendations and provide information on measures designed to remedy the noted violations and shortcomings. The most recent collections of commentaries provided to the Russian Federation, which date from 2003 and 2011, included recommendations relating specifically to the infringement of human rights arising from local registration requirements. Thus in 2011 the Committee called on Russia to “undertake effective legal or other measures to ensure that the absence of residency registration or identity documents does not prevent the provision of economic, social and cultural rights in accordance with the Convention.”³¹ The issue of access to education was referred to separately. The Committee called on Russia “to intensify its efforts to guarantee that no child is denied the right to education.”³²

In its report in 2016 responding to the comments made by the Committee on Economic, Social and Cultural Rights in 2011, representatives of the government of the Russian Federation sought to give assurances that “the absence of registration is not an obstacle to receiving employment, medical care, social services or education. Appropriate measures have been taken to address these issues.”³³ Numerous examples provided below will show that these assurances do not reflect reality with regard to education in a number of regions.

²⁹ Ibid. Accessed on 27.11.17.

³⁰ Ibid. Accessed on 27.11.17.

³¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5
Accessed on 06.03.17.

³² Ibid. Accessed on 06.03.17.

³³ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fRUS%2f6&Lang=en
Accessed on 06.03.17.

– On **November 20, 1989**, Resolution 44/25 of the UN General Assembly adopted the Convention on the Rights of the Child, which the Russian Federation ratified on **August 16th, 1990**.³⁴ According to **Article 2**, the participating States Parties “shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”³⁵ Moreover, the State Parties, as set out in **Article 28**, “recognize the right of the child to education” and shall “make primary education compulsory and available free to all.”³⁶ The word “compulsory” is understood by experts to mean that “the child’s right to receive education shall not be impeded by for instance parental neglect, abuse or ignorance, cultural resistance or child labour.”³⁷ Researchers note in particular that the requirement of non-discrimination in **Article 2** “applies to *each child* within the jurisdiction of a State. It therefore extends to non-nationals, irrespective of their legal status.”³⁸ This is also confirmed in the UNICEF guide to the Convention: “Article 2 emphasizes that all rights of the Convention on the Rights of the Child shall apply to all children in the state, including temporarily staying (visitors), refugees, labour migrants and those who are in the state illegally.”³⁹

– The Russian Federation has been a member of the **European Council** since 1996 and has undertaken to implement the **European Convention for the Protection of Human Rights and Fundamental Freedoms** which it ratified in 1998. **Article 2 of Protocol № 1** of this Convention states that “no person shall be denied the right to education.”⁴⁰ Moreover, the guide to this article from 2015 states that “it cannot, however, be inferred that the State only has obligations to refrain from interference and no positive obligation to ensure respect for this right, as protected by Article 2

³⁴ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en Accessed on 27.10.16.

³⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> Accessed on 07.11.17.

³⁶ Ibid. Accessed on 07.11.17.

³⁷ Verheyde, M. Article 28. The Right to Education. P. 23.

³⁸ Ibid. P. 39.

³⁹ Implementation Handbook for the Convention on the Rights of the Child. P. 23.

⁴⁰ http://www.echr.coe.int/Documents/Convention_ENG.pdf Accessed on 27.11.17.

of Protocol No. 1.”⁴¹ As will be described in more detail below, the European Court of Human Rights has on one occasion deemed that the authorities of the Russian Federation were in violation of Article 2 of Protocol № 1 because of the school's refusal to provide education to children without registration.

– On **August 11, 1998**, the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms, concluded in 1995, came into force in the Russian Federation, Tajikistan and Belarus. **Article 27, Paragraph 1** of the Convention has the same declaration as the European Convention for the Protection of Human Rights and Fundamental Freedoms and affirms: “No person shall be denied the right to education,”⁴² and in Paragraph 2 of the same article: “Elementary and fundamental education of a general kind shall be compulsory and free of charge.”⁴³

The conventions cited above affirm every person’s right to education, and the Convention on the Rights of the Child affirms the right of every child to education, drawing no distinctions between different groups, other than on the basis of age. It should be noted that they affirm the right to education for the following vulnerable groups: persons with disabilities (**Article 24 of the Convention on the Rights of Persons with Disabilities**)⁴⁴ women (**Article 10 of the Convention on the Elimination of all Forms of Discrimination against Women**),⁴⁵ national, ethnic, religious and linguistic minorities (**Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**).⁴⁶ Given the focus of this report, the 1951 **Convention Relating to the Status of Refugees**, which the Russian Federation ratified on February 2, 1993,⁴⁷ deserves particular attention. **Article 22, Paragraph 1** of this Convention

⁴¹ Guide to Article 2 of Protocol No. 1 to the European Convention on Human Rights. Council of Europe/European Court of Human Rights, 2015. P. 5. (http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf Accessed on 08.01.17).

⁴² <http://www.unhcr.org/protection/migration/4de4eef19/cis-convention-human-rights-fundamental-freedoms.html> Accessed on 27.11.17.

⁴³ Ibid. Accessed on 27.11.17.

⁴⁴ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html> Accessed on 27.11.17

⁴⁵ <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article10> Accessed on 27.11.17

⁴⁶ <http://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf> Accessed on 06.02.17.

⁴⁷ https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en Accessed on 27.10.16.

states: “the Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.”⁴⁸ **Paragraph 2** emphasizes that: “The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”⁴⁹ Despite the fact that the text of the Convention on the Status of Refugees was agreed in 1951, it was ratified by the Russian Federation after almost all other UN conventions and agreements listed above.⁵⁰ It is easy to see that in the Convention on the Status of Refugees the requirements for access to education are less strict than those with which the Russian Federation has undertaken to comply under, for example, the Convention against Discrimination in Education. The latter explicitly stipulates the state's obligation to grant foreign citizens access to education on an equal basis with their own citizens. Thus, it can be said that by the time the Convention on the Status of Refugees was ratified, Russia had already committed itself to not drawing a distinction between its own and foreign citizens with regard to access to education.⁵¹

1.2 Russian legislation

The following section provides a short outline of how universal education has been established as a constitutional and fundamental right in current Russian legislation. In federal legislation, the right to education is guaranteed in two fundamental documents:

– **The Constitution of the Russian Federation, Article 15** states: “The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system.

⁴⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx> Accessed on 27.11.17

⁴⁹ Ibid. Accessed on 27.11.17.

⁵⁰ Except for the Convention on the Rights of People with Disabilities, which was ratified by the Russian Federation in 2012.

⁵¹ The issue of recognition of foreign certificates, diplomas and degrees is distinct from securing access to education and is not considered in this report.

If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.”⁵² This enshrines the priority of international law over Russian laws and regulations. This relates also to the provisions referred to above, which stipulate the universal right to education. **Article 43** of the Constitution proclaims the universal right to education, and specifically that: “Everyone shall have the right to education.” It also guarantees “general access to and free pre-school, secondary and high vocational education in state or municipal educational establishments and at enterprises.”⁵³ **Article 5, Paragraph 1** of the Federal Law “**On Education in the Russian Federation**” states: “The right of every person to education is guaranteed in the Russian Federation,”⁵⁴ and **Paragraph 2** states that the principles of state policy are “to ensure the right of every person to education, and the inadmissibility of discrimination as far as education is concerned.”⁵⁵ **Paragraph 3** of the same article states: “the Russian Federation guarantees universal access to free education in accordance with federal state educational standards for pre-primary, primary, general, basic general, secondary general education, secondary vocational education, and also guarantees free access to higher education on a competitive basis, if the citizen is receiving this education for the first time.”⁵⁶ **Article 67** stipulates that “admission to a state or municipal educational organization may be refused only because of the absence of vacant places, except in cases provided for in Parts 5 and 6 of this Article and in Article 88 of this Federal Law.”⁵⁷ Parts 5 and 6 refer to specialized schools focused on certain subjects, and Article 88 refers to the regulation of educational organizations at Russian embassies abroad. Thus, according to the law, a child may be denied admission to a non-specialized school in Russia only if there are no vacant places.

– **Article 78** of the Federal Law “On Education in the Russian Federation” sets out the right of foreign citizens and stateless persons to education. **Paragraph 1** states: “Foreign citizens and stateless persons (hereinafter – foreign citizens) have the

⁵² <http://www.constitution.ru/en/10003000-02.htm> Accessed on 27.11.17.

⁵³ <http://www.constitution.ru/en/10003000-03.htm> Accessed on 27.11.17.

⁵⁴ http://www.consultant.ru/document/cons_doc_LAW_140174/ (Russian). Accessed on 10.10.16.

⁵⁵ Ibid. Accessed on 10.10.16

⁵⁶ Ibid.

⁵⁷ http://www.consultant.ru/document/cons_doc_LAW_140174/16e2e6dcd017a68bc8b1a445142f9c86a69f3ffa/ (Russian). Accessed on 08.01.17.

right to receive education in the Russian Federation in accordance with international treaties of the Russian Federation and this Federal Law.”⁵⁸

Paragraph 2 affirms the equality of rights of foreign and Russian citizens: “Foreign citizens have the same rights as citizens of the Russian Federation to receive pre-school, primary and secondary general education, as well as vocational training in professional training programmes, within comprehensive educational programmes on a universally available and free basis.”⁵⁹

– After the decision of the European Court of Human Rights in 2005, which noted Russia’s violation of Article 2 of Protocol 1 on the right to education, V.A. Bolotov, the head of the Federal Service for Supervision in Education and Science, published **letter № 01-678 / 07-01 of July 24, 2006** “On the right of children to education in the Russian Federation”. The letter states: “In accordance with the legislation of the Russian Federation, the rights and freedoms of citizens are not subject to restriction on the basis of registration at the place of residence. Article 43 of the Constitution of the Russian Federation proclaims the right of everyone to education. The Law of the Russian Federation ‘On Education’ (Article 5) guarantees the right to education regardless of place of local residence. Russian legislation does not allow the provision of this right to depend on the parents’ registration at the place of residence. In other words, the lack of local registration cannot be grounds for refusing children admission to an educational institution.”⁶⁰

– It is also worth mentioning some other laws that relate to the subject discussed in the report. **Article 3, Paragraph 2** of Law № 5242-1 of July 25, 1993 “**On the right of citizens of the Russian Federation to freedom of movement, choice of place of residence and residence within the Russian Federation**” stipulates that “registration or lack thereof cannot be grounds for the restriction or a condition for the exercise of the rights and freedoms of citizens provided for by the Constitution

⁵⁸ http://www.consultant.ru/document/cons_doc_LAW_140174/61481667d956e25b4c53b1febedf53ed1121e78c/ (Russian). Accessed on 08.03.17.

⁵⁹ Ibid. Accessed on 08.03.17.

⁶⁰ <http://www.garant.ru/hotlaw/federal/145101/#review> (Russian); See the complete version of the letter here: http://www.obrazovanie.vladinfo.ru/edu/index.php?option=com_content&view=article&id=100:2262-2010&catid=60:letters2010&Itemid=13 (Russian). Accessed on 27.02.17.

of the Russian Federation, federal laws, constitutions (statutes), and laws of the subjects of the Russian Federation.”⁶¹

– Moreover, **Article 4** of Federal Law № 115-FZ of July 25, 2002 “**On the Legal Status of Foreign Citizens in the Russian Federation**” states that “foreign citizens enjoy the same rights in the Russian Federation and have the same obligations as citizens of the Russian Federation, with the exception of cases provided for by federal law.”⁶² On the basis of these provisions it follows that it is illegal to restrict the rights and freedoms of foreign citizens in Russia if they do not have local registration.

The Federal Law “**On Refugees**”, **Article 8** “Rights and obligations of a person recognized as a refugee”, **Paragraph 1** refers to the right to education of refugee children. In particular, it states that refugees have the right to “assistance in placing the children of a person recognized as a refugee in state or municipal pre-school educational institutions and general education institutions, professional educational institutions and higher education institutions on an equal basis with citizens of the Russian Federation in accordance with this Federal Law, other federal laws and other regulations of the Russian Federation.”⁶³ It is notable that this provision is vaguely formulated when compared with the Constitution or the Federal Law “On Education in the Russian Federation”, as the law does not stipulate the state’s duty to admit refugee children to educational institutions, but only the right to “assistance”, which is referred to both in relation to schools and higher education institutions. At the same time, no conventions or laws stipulate the universal and compulsory right to higher education, access to which depends on the abilities and interests of the child, as well as the position of the parents. Hence it follows that “assistance” does not mean guaranteed provision, and what is implied by the term remains unclear. The distinction is all the more noticeable, since in this case (as in some others) the Law on Refugees differs from the Convention on the Status of Refugees ratified by the Russian Federation.⁶⁴ Nevertheless, since the right of

⁶¹ http://www.consultant.ru/document/cons_doc_LAW_2255 (Russian). Accessed on 10.10.16.

⁶² http://www.consultant.ru/document/cons_doc_LAW_37868/ (Russian). Accessed on 10.10.16.

⁶³ <http://base.garant.ru/10105682/> (Russian). Accessed on 27.10.16.

⁶⁴ For a detailed comparison of the “Convention on the Rights of Refugees” and the Federal Law “On Refugees” see: *Burtina, E.Y., Korosteleva, E.Y., Simonov, V.I.* Russia as a country of refuge. Moscow: Typography “Vash format”, 2015 (for downloading the report in English go to: <http://refugee.ru/en/publications/russia-as-a-country-of-asylum/> Accessed on 27.11.17). See also: UNHCR Observations on the Law of the Russian Federation “On

every person to education is enshrined in the Constitution of the Russian Federation, as well as the law “On Education in the Russian Federation,” this does not appear to be a serious omission, although it raises questions about the meaning of such a formulation.

– This report will look at numerous examples of the unlawful practice of denying access to schools owing to the lack of local registration at the place of residency or stay. This practice has become especially widespread in Moscow. It is worth mentioning in relation to this the current version of law № 14 of the City of Moscow “**On general education in the city of Moscow**”, which came into effect on July 4th, 2012. **Article 1, Paragraph 1** of this law states: “General education in the city of Moscow is compulsory,”⁶⁵ and **Article 10, Paragraph 5** states that “citizens may be refused admission to a particular state or municipal educational institution only if there are no available places.”⁶⁶ The same law stipulates the need for “the monitoring of the observance of the right of students to receive general education.”⁶⁷ Among other things, district commissions responsible for upholding the rights of minors to receive general education are required to monitor the “admission to state educational institutions under their remit of children and adolescents who have arrived in Moscow, whose parents (legal guardians) are not registered in the city of Moscow.”⁶⁸

Unfortunately, despite the guarantees of the Constitution, laws and legislative acts, the universal right to education is repeatedly put in question in Russia today.

1.3 An overview of restrictions on the right to education in the Russian Federation

In the late 19th and early 20th century, despite the resistance of conservative parts of society, which regarded gymnasiums and universities as hotbeds of revolutionary sentiment, the Russian Empire developed a state programme of

Refugees” and on the Draft Law “On Amendments and Additions to the Federal Law ‘On Refugees’” (<http://www.refworld.org.ru/pdfid/4a8d5be12.Pdf> (Russian). Accessed on 27.10.16).

⁶⁵ https://dogm.mos.ru/upload/iblock/476/zm_14_10_03_2004_r14.pdf (Russian). Accessed on 08.01.17.

⁶⁶ Ibid. Accessed on 08.01.17

⁶⁷ Ibid. Accessed on 08.01.17.

⁶⁸ Ibid. Accessed on 08.01.17.

universal primary education. Even before the Bolshevik revolution, the beginning of the 20th century saw a rapid expansion in primary schools and state spending on education, and hence literacy increased significantly. The State Duma discussed establishing a deadline for the rapid introduction of universal education, however the draft law on universal education was not adopted before the revolution.⁶⁹

The First World War and revolutionary unrest hampered the implementation of plans for the introduction of universal primary education, which was only implemented in Soviet Russia. This was not achieved right away. It took 10 years after the Bolsheviks came to power to reach the pre-revolutionary level of education, and the new education system was very different in form and content from the preceding one. From the end of the 1920s, the spread of education in the USSR accelerated sharply for a number of reasons, including the increased exploitation of teachers, a decline in the quality of education, and repression of those who did not fulfil the plans issued from above.⁷⁰ Moreover, the USSR understood education to mean only pedagogical and academic activity that fitted strictly within the ruling ideology. The education process began to serve as a powerful instrument to spread Soviet ideas and to identify dissenters. Lenin himself said in a speech to teachers that “the army of teachers must set themselves tremendous tasks in the educational sphere, and above all must form the main army of socialist education.”⁷¹ Although “the majority of the intelligentsia of old Russia are direct opponents of Soviet power, and there is no doubt that it will not be easy to overcome the difficulties created by this,”⁷² therefore, “teachers who are sincerely dedicated to the people should not isolate themselves within the framework of the organization of the All-Russian Teachers' Union, but confidently take their propaganda to the masses. This will lead to a joint struggle of the proletariat and teachers for the victory of socialism.”⁷³ If for Lenin teachers are an army, then according to this view, education is a weapon. Thus, the programme of the Russian Communist Party party adopted in 1919 stated that the school should be transformed “from an instrument of class rule by the bourgeoisie into an

⁶⁹ See, for example: *Saprykin, D.L.* Educational potential of the Russian Empire. Moscow: Russian Academy of Science, 2009 (Russian).

⁷⁰ See: *Ewing, E.T.* The Teachers of Stalinism: Policy, Practice, and Power in Soviet Schools of the 1930s. New York: Peter Lang Publishing, 2002.

⁷¹ *Lenin, V.I.* Complete Works. 5th edition. V. 36. M., 1969. P. 419 (Russian).

⁷² *Ibid.*

⁷³ *Ibid.* P. 419–420

instrument for the complete abolition of the division of society into classes, into an instrument for the communist rebirth of society.”⁷⁴

These quotations from Lenin make it clear that the Bolshevik ideologists had a very specific view of the function of education. Immediately after the revolution, mass repressions began aimed at teachers, university lecturers, and academics who were suspected of opposing the new government. One of the most illustrative acts, which became just the tip of the iceberg, was the expulsion in 1922 of many representatives of the intellectual elite of pre-revolutionary Russia by so-called “Philosophers' ships”, the majority of deportees were outstanding teachers and scientists. The repression of teachers, scientists, professors and engineers, who were regarded as unreliable by the authorities, continued throughout the history of the USSR. In some disciplines, especially in the humanities, education in the USSR quickly and significantly degraded, and turned into an instrument of ideology. At the same time, Soviet teachers, especially in the initial stage of Soviet history, not only had to teach a strictly and ideologically defined curriculum, but also to actively participate in anti-religious campaigns, and agitate in favour of the new government and its policies, such as “the struggle against the kulaks” and enrolment in collective farms.⁷⁵

After the Soviet education system had been established, and ideological and party control had been established in all educational institutions, a child who was not attending school began to be viewed as a potential threat. On the one hand, he might join a criminal gang, and, on the other hand, he could become an active oppositionist. Therefore, as one researcher of the history of education noted, “every child had to go through a Uniform Labour School, which preached Marxist ideology.”⁷⁶ Without this education, a person could not be considered “trustworthy”. Given this context it is unsurprising that all non-state education institutions (private gymnasiums and schools, religious schools, home schooling), which had developed rapidly in the Russian Empire, were abolished. The school became an important element of the totalitarian system. As a result, the state put up

⁷⁴ *Lenin, V.I.* Complete set of works. 5th edition. V. 38. M., 1969. P. 430 (Russian).

⁷⁵ See: *Ewing, E.T.* The Teachers of Stalinism: Policy, Practice, and Power in Soviet Schools of the 1930s.

⁷⁶ *Sapryki, n D.L.* Educational potential of the Russian Empire. Moscow: Russian Academy of Science, 2009. P. 32 (Russian).

no obstacles to enrolment in school, but there were very serious violations of the right to education in line with the principles of human rights and freedoms.

The right to universal (eight-year) education for citizens of the USSR was enshrined in the Constitution of 1936.⁷⁷ Access to secondary education was guaranteed by Article 45 of the Constitution of the USSR in 1977. Although this referred only to “citizens of the USSR,”⁷⁸ Article 37 of the Constitution of the USSR, as well as Article 13 of the Law “On the Legal Status of Foreign Citizens in the USSR” enshrined the right to education for foreign citizens as well. The Constitution of the Russian Federation, as already mentioned, stipulates in Article 43 the “right of everyone” to education, that is, there is no distinction between Russian and foreign citizens. This further emphasized the right to education without any discriminatory distinctions and exceptions. It created an opportunity to formulate an education system based on respect for human rights and freedoms while maintaining universal access. However, in practice, even in 1990s attempts were made to restrict access to education for entire groups of foreign citizens. Ideological considerations played no role here; the most important priority for a number of governors and departments was the need to reduce financial costs. Some regional authorities could think of no better approach to save resources than by excluding unregistered citizens from the educational system. Many parts of Russian society (including many officials) assumed and continue to assume that if a person is not legally registered, he most likely does not pay taxes, and, consequently, the children of such a citizen should not have access to education. In such cases education is not understood as a fundamental right, but as a service provided by the state. Practically all attempts to restrict access to education arose from the fact that officials regarded access to education as being linked to the legality of the child’s residency in the Russian Federation. They viewed local registration at the place of residence or stay as confirmation of the individual’s legal status, increasing the chances that the individual was paying taxes to the budget and that he or she was subjected to the various systems of oversight linked to the registration scheme.

⁷⁷ <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> (Russian). Accessed on 06.02.17.

⁷⁸ http://constitution.garant.ru/history/ussr-rsfsr/1977/red_1977/5478732/chapter/7/#block_45 (Russian). Accessed on 06.11.16.

From the very start of Russia's post-Soviet history, children of certain groups and nationalities encountered obstacles when they sought to enrol in schools. In the first instance this concerned those who could not resolve their migration status. The Civic Assistance Committee provided help to refugees from Abkhazia, Tajikistan, and Nagorno-Karabakh, including with children's access to schools. According to Svetlana Gannushkina, despite the actions of officials who sought to prevent the registration of these refugees, "at the request of the Human Rights Commission or the Civic Assistance Committee, children were admitted to schools." However, in Russia over the last decade, and especially in Moscow, the situation regarding access to education for children without legal immigration status has remained uncertain.

One of the first significant attempts to legislatively restrict access to education was made at the end of the last century and culminated in the publication on **March 30, 1999** by the Governments of Moscow and Moscow Oblast of **Resolution № 241-28** "On approval of the rules for registration and withdrawal of registration for Citizens of the Russian Federation at the place of residence or place of stay in Moscow and Moscow Oblast." **Paragraph 5** of this resolution authorised the admission of children to schools and kindergartens only on condition that their parents had registration in these two regions of the Russian Federation. The Resolution was as follows: "The authorities of the administrative districts of Moscow and the municipalities of Moscow Oblast shall provide admission to preschool institutions (kindergartens, nurseries), as well as general schools, to children whose parents are registered at their place of residence or stay in Moscow or Moscow Oblast".⁷⁹

The Civic Assistance Committee contested this Paragraph of the Resolution in the Moscow City Court, which found the provision on the registration requirement illegal. An appeal by the governments of Moscow and Moscow Oblast of the court decision in the Cassation Board of the Supreme Court was not upheld. Thus, on **February 5, 2002**, Decree № 101-PP of the Government of Moscow and

⁷⁹ See:

http://refugee.memo.ru/For_ALL/RUPOR.NSF/d0acb8c50b2ffc88c325678f006a2a5c/bdc55b73b3e6298fc3256a2400749cc2!OpenDocument (Russian). Accessed on 09.01.17.

Resolution № 27/4 of the Government of Moscow Oblast were issued, which excluded Clause 5 from Regulation № 241-28.⁸⁰

Decree № 241-28 remained in effect for two more years and was replaced on **April 6, 2004** by **Resolution № 189-PP, Paragraph 1.2** of which states that: “Local registration or lack thereof cannot be set as a condition or provided as grounds for the provision or restriction of the exercise of rights and freedoms of citizens, stipulated by the Constitution of the Russian Federation, or other normative legal acts of the Russian Federation and the City of Moscow.”⁸¹ This paragraph is repeated in Resolution № 859-PP of October 31, 2006, which replaced Resolution № 189-PP, and remained in force until 2012. It is difficult to overstate the importance of this paragraph, since it effectively guaranteed that no restrictions could be placed on access to education in Moscow owing to the absence of registration.

Resolution № 973-PP “On the establishment of regulations for keeping records of children” adopted on **December 6th, 2005**, confirmed the universal right to education and mandated that a record of all children should be made “in order to ensure the realization of the right of all citizens to receive a secondary (comprehensive) general education, to increase the responsibility of authorities, local governments and educational institutions of the city of Moscow to ensure all children receive a general education and that children remain in education until they completed their studies at educational institutions.”⁸² It should be noted that Resolution № 634-PP, last revised on November 7, 2012, is still in force. It specifies in particular that: “All children under 18 years of age who live (permanently or temporarily) or reside in the territory of the city of Moscow, should be recorded every year regardless of the presence (absence) of registration at the place of residence (stay), in order to ensure their constitutional right to receive general education.”⁸³ Unfortunately, as will be shown below, while these records continue to be maintained, access to education in Moscow has already been

⁸⁰ <http://docs.cntd.ru/document/3633846> (Russian). Accessed on 21.10.16.

⁸¹ Ibid. Accessed on 21.10.16.

⁸² <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=MLAW&n=68368&dst=100001#0> (Russian). Accessed on 04.11.16.

⁸³ http://dogm.mos.ru/upload/iblock/e74/pp_m_973_06_12_2005_r12.pdf (Russian). Accessed on 04.11.16

made conditional on “the presence (absence) of local registration at the place of residence (stay)”, and officials try to ignore constitutional law in cases of refusal.

On December 15, 2012 the Moscow government announced that Resolution N 189-PP no longer had any legal force and announced that issues relating to registration would henceforth be determined by federal legislation. Prior to this, however, on February 15th, 2012, the Ministry of Education and Science of the Russian Federation issued **Order № 107** “On the procedure of enrolment of citizens to general educational institutions.” This document contained provisions which could be interpreted as making admission to school across the Russian Federation directly conditional on the possession of registration. The Order instructed schools to admit children into the first year of school who had been registered in the relevant region. This formally but unconstitutionally permitted schools to refuse the enrolment of foreign citizens who were not registered. The Civic Assistance Committee drew public attention to the questionable wording of the law and the unlawful practice that resulted. In response the Ministry of Education and Science published **Letter № IR-535/03 of June 26th, 2012**, in which Igor Remorenko, the Deputy Minister of Education, clarified that “in accordance with international and Russian legislation, restrictions cannot be placed on the right of a child to education owing to a lack of registration documents.”⁸⁴

Unfortunately, the relatively clear legal situation regarding access to education lasted less than two years. On **January 22, 2014**, the Ministry of Education and Science of the Russian Federation annulled Order № 107 and replaced it with a new **Order № 32**, which remains in effect. The latter order has been the basis for the systematic and widespread denial of access to school education for children without local registration.

⁸⁴<http://минобрнауки.рф/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D1%8B/2392> (Russian). Accessed on 09.01.17.

1.4 Order № 32 of the Ministry of Education and Science

In 2014, foreign citizens began to complain to the Civic Assistance Committee that they were unable to enrol their children in school owing to a lack of registration at the place of residence or stay. School head teachers and regional education authorities justified their actions on the basis of Order № 32 of the Ministry of Education and Science of 22 January 2014 “On establishing a procedure for the enrolment of citizens in programmes of primary, general and secondary education.” The new enrolment procedure comprises 20 paragraphs, a number of which (paragraphs 3, 4, 5, 6, 7 and 17) simply reproduce the equivalent articles of the Federal law “On education in the Russian Federation;” however, there are other paragraphs which likely serve as the motivation for drawing up the order. To understand why this legal instrument has led to the widespread violation of the right of children to education, which is guaranteed by the Constitution, it is necessary to study and analyse the order in more detail.

Two paragraphs of the Order (2 and 9) identify foreign citizens as a separate social group. Paragraph 2 states that the enrolment of foreign citizens “is conducted in accordance with international agreements signed by the Russian Federation, Federal Law No 273-FZ of 29 December 2012 ‘On education in the Russian Federation,’ and the procedure set out in this Order.”⁸⁵ There can be no complaints regarding this paragraph; however there are significant questions as to whether the rules subsequently set out correspond to international law and the legislation of the Russian Federation.

Paragraph 9 is the central and longest paragraph of the Order. It sets out the documents required for citizens to be admitted to schools (or as it worded in the document: “In organizations that carry out educational activities for educational programmes of primary, general, basic general and secondary general education.”⁸⁶ Thus, the Order stipulates that admission to schools “is carried out on the basis of a personal application of the child’s parent (legal guardian) upon presentation of the

⁸⁵<http://минобрнауки.пф/%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D1%8B/419/%D1%84%D0%B0%D0%B9%D0%BB/3028/%D0%9F%D1%80%D0%B8%D0%BA%D0%B0%D0%B7%20No%20%2032%20%D0%BE%D1%82%2022%2001%202014.pdf> (Russian). Accessed on 09.01.17.

⁸⁶ Ibid. Accessed on 09.01.17

original document certifying the identity of the parent (legal guardian) or the original document certifying the identity of the foreign citizen and stateless person in the Russian Federation in accordance with Article 10 of the Federal Law № 115-FZ of July 25 2002 ‘On the Legal Status of Foreign Citizens in the Russian Federation.’”⁸⁷ It then lists the information that the parents (legal guardians) should provide in the application.

Paragraph 9 distinguishes three groups of parents:

- 1) “Parents (legal guardians) of children residing in the area assigned to the school shall additionally present the child's original birth certificate or a document proving the relationship of the child to the applicant, a certificate of the child's registration at their place of residence or place of stay in the assigned area or a document containing information on the registration of the child at their place of residence or place of stay in the assigned area in order to enrol the child in the first year of school;”⁸⁸
- 2) “Parents (legal guardians) of children who are not living in the assigned area shall additionally present the child’s birth certificate;”⁸⁹
- 3) “Parents (legal guardians) of children who are foreign citizens or stateless persons shall additionally provide a document proving their relationship to the applicant (or the legal basis for them to represent the rights of the child) and a document confirming the applicant's right to stay in the Russian Federation.”⁹⁰

It was specifically the content of Paragraph 9 that was challenged by the Civic Assistance Committee in the Supreme Court of the Russian Federation in 2015. A detailed overview of the case made by representatives of the Civic Assistance Committee and its interpretation by the Supreme Court, the Ministry of Education and Science, the Ministry of Justice and Prosecutor’s Office are set out in another chapter.⁹¹ Here it will be noted just a few issues. The text of Paragraph 9 is vaguely expressed – one can even say sloppily – which is unacceptable for a document of

⁸⁷ Ibid. Accessed on 09.01.17.

⁸⁸ Ibid. Accessed on 09.01.17.

⁸⁹ Ibid. Accessed on 09.01.17.

⁹⁰ Ibid. Accessed on 09.01.17.

⁹¹ See section 3.4 of this report.

this nature. The text contains several contradictory interpretations that raise several questions:

- 1) Given that only enrolment in first year of school is explicitly mentioned, what documents regulate enrolment to other years?
- 2) What does “shall additionally present” mean? More specifically, does this indicate that they must be presented or can this be interpreted as “if the parent so desires” or “if possible”?
- 3) Does “additionally” required to present a document proving registration at the place of residence or place of stay relate only to the first group, meaning, the parents (legal guardians) of children who “live in the assigned area” or does it include the following two groups of parents as well?

Some regional departments of educations and many schools, especially those in Moscow, interpret the Order as regulating enrolment into all years, understand the term “additionally” as signifying a requirement, and believe that presentation of proof of local registration applies to all groups of applicants. However, the Supreme Court and the Ministry of Education and Science take precisely the opposite view. They interpret the Order as applicable only to those enrolling in first year, “additionally” signifies either “if the parent wishes to” or a requirement, but only for the first group of parents who wish to enrol their children first. According to the interpretation of the Supreme Court and the Ministry of Education, the absence of proof of registration cannot serve as the basis for refusing admission to school. Unfortunately, despite the apparent ambiguity of the wording and widespread misinterpretation of Order № 32, neither the Ministry of Education and Science nor the Supreme Court considered it necessary to change the text.

Several other paragraphs in the text of the Order should also be noted.

Paragraph 5, which reproduces the equivalent article of the Federal Law “On Education in the Russian Federation,” states that “admission to a state or municipal educational organization can be refused only because of a lack of available

places.”⁹² There is a clear problem here relating to where this clause is located in the Order. It is likely that if this paragraph came immediately after Paragraph 9 then it would at least reduce the number of refusals of admission into schools.

Interpreting “additionally” and “if the parent wishes to” is complicated by Paragraph 12. It states that “it is not permitted to demand other documents to enrol children into education establishments.”⁹³ Since no clarification is provided here, one can conclude that schools are allowed to demand the documents listed above for enrolment, including in Paragraph 9.

Paragraph 16 specifies the “order of preference” in the admission of children of certain categories of citizens who do not reside in the area assigned to the school. In other words, who will be considered first for the remaining places. The text of this clause states: “When children who do not live in the area assigned to the school are admitted to fill the vacant places, preference will be given to the children of citizens who have the right of first refusal to the vacant places in accordance with the legislation of the Russian Federation and regulatory legal acts of the subjects of the Russian Federation.”⁹⁴ Needless to say, this paragraph is fraught with risk of abuse and identifies certain “privileged” social groups of citizens. Moreover, the word “preference” itself seems very ambiguous. Given that the right to be admitted to school stems from the universal right to education, it turns out that this paragraph refers to a certain “preferential” right to the universal right to education. There is no clear basis for this, even taking into account the fact that we are talking about children who do not live in the area to which the school is assigned.

There is therefore a question as to the compatibility of this paragraph with the principle set out in international and Russian legislation on the inadmissibility of discrimination of any kind in the provision of a child’s right to education. For example, Article 4 of the **Convention Against Discrimination in Education** mentioned above and ratified by the Russian Federation states that “The State Parties to this Convention shall undertake furthermore to formulate, develop and

⁹² Ibid. Accessed on 09.01.17.

⁹³ Ibid. Accessed on 09.01.17.

⁹⁴ Ibid. Accessed on 09.01.17.

apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education.”⁹⁵ While the preferential enrolment in school of children who live in the area assigned to a particular school may be justified on grounds of convenience and does not violate equality of opportunity, giving preference to children of parents of certain professions is discriminatory. At the same time, it should be noted that children from especially vulnerable groups, for example, children with disabilities or from large families do not enjoy “priority rights” at the federal level.⁹⁶

Finally, Paragraph 17 of the Procedure states: “Children with disabilities are admitted to adapted general education programmes only with the consent of their parents (legal guardians) and following a recommendation from the Special Educational Needs Commission.”⁹⁷ This text almost exactly reproduces Part 3 of Article 55 of the Federal Law “On Education in the Russian Federation”. However, as will be shown below,⁹⁸ the way in which the Commission operates means that a number of categories of foreign citizens do not have access to it.

In general, it can be said that Order № 32 was probably not intended to be a document regulating the admission of all children to school, but a list of rules that would help avoid conflicts related to a shortage of first year places in schools. This is the only explanation as to why it only covers enrolment into first year. The contradictory nature of the text is evident in a number of places, particularly where it stipulates that the refusal to admit a student can only be justified on the grounds of a lack of places while simultaneously stipulating documents that must be submitted, which some categories of foreign citizens are unable to submit.

⁹⁵ http://www.unesco.org/education/information/nfsunesco/pdf/DISCRI_E.PDF Accessed on 01.11.16.

⁹⁶ Special conditions for enrolment can be established in individual educational establishments or at a regional level.

⁹⁷ <http://минобрнауки.пф/%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D1%8B/419/%D1%84%D0%B0%D0%B9%D0%BB/3028/%D0%9F%D1%80%D0%B8%D0%BA%D0%B0%D0%B7%20No%20%2032%20%D0%BE%D1%82%2022%2001%202014.pdf> (Russian). Accessed on 09.01.17.

⁹⁸ http://www.consultant.ru/document/cons_doc_LAW_140174/296acc03f4dfbea960a2b486d6f0c63402a7b5b9/ (Russian). Accessed on 06.02.17.

1.5 The ruling of the European Court of Human Rights in the case of “Timishev v. Russia” and the decision of the Supreme Court of the Russian Federation on the complaint of the Federal Migration Service of the Rostov Region.

There have been several cases to date relating to limitations on access to education in Russia that have reached the highest courts. This section will examine the decision of the European Court of Human Rights, which found it unlawful to restrict the right to education due to a lack of local registration. It will also look at a case considered by the Supreme Court of the Russian Federation, when the migration authorities fined a school because it admitted the child of an undocumented immigrant. A brief analysis of the Supreme Court’s decision regarding the provisions of Order № 32 that were contested by the Civic Assistance Committee is set out in Chapter Three.

In the 1990s, problems regarding access to education were not limited to Moscow, Moscow Oblast and St. Petersburg. This is shown clearly by the case of “Timishev v. Russia”, which was examined by the European Court for Human Rights in 2005. Among other things it clearly demonstrates the inadmissibility of restricting access to school on the basis of a lack of registration – which the Russian government itself acknowledged in the course of the hearings.

The case heard by the European Court of Human Rights was primarily concerned with the right to freedom of movement across the territory of the Russian Federation, but also related to the right of the plaintiff’s children to education. It was therefore considered as a potential violation of Article 2 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In late 1999, the plaintiff, an ethnic Chechen and a Russian citizen, received compensation for property that had been lost in Chechnya. In exchange, he handed over a migration card that confirmed his place of residence in Nalchik, Kabardino-Balkariya, and his status as a forcibly displaced person. On September 1, 2000, his nine-year-old son and seven-year-old daughter went to the school in Nalchik that his son had already been attending for the previous two years. However, the “were refused admission because the applicant could not produce his

migrant's card.”⁹⁹ which, according to the school administration, was needed to confirm his local registration and the legality of his residency in Kabardino-Balkaria. The plaintiff appealed to the Kabardino-Balkaria Department of Education to uphold his children’s rights. After this failed, he appealed to the municipal court of Nalchik. But the court did not find in his favour, noting in the resolution that the applicant “and his family members reside in the town of Nalchik without [appropriate registration of their residence]. In these circumstances his requests to have his children admitted to School no. 8 are unsubstantiated.”¹⁰⁰ An appeal to the Supreme Court of the republic also failed and it left the decrees of the lower courts unchanged. The European Court of Human Rights examined the case in 2005 and concluded that “there has therefore been a violation of Article 2 of Protocol No. 1.”¹⁰¹ It is also important to note that even at the preliminary hearings the representative of the Russian Federation “accepted that the right of the applicant's children to education had been unlawfully restricted”¹⁰² and “confirmed that Russian law did not allow the exercise of that right by children to be made conditional on the registration of their parents' residence.”¹⁰³

Following its examination of the case, the ECHR ordered Russia to pay compensation to the plaintiff for moral damages and court expenses.

The decision of the Supreme Court of the Russian Federation concerned an application submitted by the Federal Migration Service of the Rostov Region requesting a review of the administrative procedures taken against a school for admitting the child of an undocumented immigrant. Chapter two will describe in greater detail how migration authorities have and may still put pressure on schools not to accept children without local registration or documents from their parents confirming the legality of their staying or residency in Russia. One of the tools used to pressure schools that admitted children without registration was to bring action against them under Article 18.9 of the **Code of Administrative Offenses of the Russian Federation**, Part 3 of which concerns: “The provision of accommodation or a vehicle or other services to a foreign citizen or a stateless

⁹⁹ See: [https://hudoc.echr.coe.int/eng?i=001-71627#{"itemid":\["001-71627"\]}](https://hudoc.echr.coe.int/eng?i=001-71627#{) Accessed on 09.01.17.

¹⁰⁰ Ibid. Accessed on 09.01.17.

¹⁰¹ Ibid. Accessed on 09.01.17.

¹⁰² Ibid. Accessed on 09.01.17.

¹⁰³ Ibid. Accessed on 11.01.17.

person who is in the Russian Federation in violation of the established legislation or rules of transit.”¹⁰⁴ It was under this article that the Federal Migration Service of the Rostov Region brought charges against the school. The school head teacher, however, did not agree with the decision, appealed against it and eventually won the case.

The sequence of events was as follows. In April 2014, the staff of the Federal Migration Service of the Rostov Region in the city of Volgodonsk carried out an inspection, during which “it was found that two citizens of Armenia, Arsen Mkrtchyan and Stepan Mkrtchyan, were staying at the given location without documents confirming their right to stay on the territory of the Russian Federation.”¹⁰⁵ The Federal Migration Service launched an investigation into the Staro-Petrovskaya secondary school, in which A.S. Mkrtchyan, the son of S.A. Mkrtchyan, was studying. On July 31, 2014, the Acting President and Chief of the Federal Migration Service for the Rostov region signed a resolution “on bringing administrative procedures against the institution in accordance with Part 3 of Article 18.9 of the Code of the Russian Federation on Administrative Offenses.”¹⁰⁶

The school head teacher appealed against the Federal Migration Service’s decision in the Arbitration Court of the Rostov region, which ruled on January 21, 2015 that: “the resolution of the migration control department of the Federal Migration Service of the Rostov Region date July 31, 2014 is illegal and must be revoked.”¹⁰⁷ The main rationale for the decision was that the employees of the Federal Migration Service did not provide “sufficient evidence for the administrative offence as outlined in part 3 of Article 18.9 of the Code of Administrative Offences of the Russian Federation.”¹⁰⁸

¹⁰⁴ http://www.consultant.ru/document/cons_doc_LAW_34661/b553913f6c77132d02e4214842ae82be45e60857/ (Russian). Accessed on 11.01.17.

¹⁰⁵

http://15aas.arbitr.ru/cases/cdoc?docnd=840921543&nd=840656529&prefix=&numdeal=&yeardeal=&fld_12=&fld_14=&fld_16=&fld_140=&pagedoc=1 (Russian). Accessed on 11.01.17.

¹⁰⁶ Ibid. Accessed on 11.01.17.

¹⁰⁷ http://kad.arbitr.ru/PdfDocument/f8072edf-3f69-48ac-bd0b-e28c5c8b8196/A53-19637-2014_20150121_Reshenija_i_postanovlenija.pdf (Russian). Accessed on 11.01.17.

¹⁰⁸ Ibid. Accessed on 11.01.17.

The Federal Migration Service for the Rostov Region disagreed with the court's decision and filed a complaint with the 15th Arbitration Appeals Court, seeking to show that the school management did not attempt to establish the legality of A.S. Mkrtchyan's residency in Russia. Having examined the case, on March 18th, 2015, the court issued a ruling recognizing the fact that the child did not have any document confirming his right to stay in Russia, but noting at the same time that the Federal Migration Service had not considered a number of fundamental points in the case. Among them, the court noted:

- The guarantee to the right to an education in the Constitution of the Russian Federation;
- The obligation to combat discrimination while ensuring the universal right to education which is stipulated in the "Convention against Discrimination in Education" that has been ratified by Russia;
- The Federal Law "On Education in the Russian Federation," according to Article 5 of which "the right to education is guaranteed in the Russian Federation regardless of sex, race, nationality, language, origin, property, social and occupational status, place of residence, attitude to religion, beliefs, membership in public associations, as well as other circumstances."¹⁰⁹ In addition, clauses 1 and 2 of Article 78, which guarantee the right of foreign citizens to receive an education in Russia in accordance with international treaties and the equal right to "receive preschool, primary general, basic general and secondary general education;"¹¹⁰
- Letter № 01-678/07-01 of the Federal Education and Science Supervision Agency dated July 24, 2006, "On the Right of Children to Education in the Russian Federation," which points out the inadmissibility of "violations of international and Russian legislation by educational institutions;"¹¹¹
- The Convention on the Rights of the Child, in which the parties recognize a child's right to education;

¹⁰⁹ http://kad.arbitr.ru/PdfDocument/e3577f92-2f66-4024-b391-ff4ea2f6a443/A53-19637-2014_20150318_Postanovlenie_apelljacionnoj_instancii.pdf (Russian). Accessed on 11.01.17.

¹¹⁰ Ibid. Accessed on 11.01.17.

¹¹¹ Ibid. Accessed on 11.01.17.

- The European Convention on the Protection of Human Rights and Fundamental Freedoms, as well as a number of other legislative acts and documents

The court concluded that: “the institution did not have the authority to demand any documents confirming the citizenship of the child upon admission to the institution, and moreover, there were no legal grounds for refusing A.S. Mkrtchyan admission to the general education institution.”¹¹² As a result, the migration authorities’ appeal was dismissed.

The Federal Migration Service in the Rostov region also appealed this decision. But the Arbitration Court of the North Caucasus District, largely reproducing the arguments of the previous instance, indicated that the school “did not have legal grounds to refuse A.S. Mkrtchyan admission to the general education institution.”¹¹³ The court also found that the school “does not have the authority to demand any documents confirming the citizenship of the child upon admission to the institution.”¹¹⁴ It was concluded that the lower courts “rightfully pointed to the absence of any guilt in relation to the offences alleged by the plaintiff.”¹¹⁵ The Resolution of July 20th, 2015 states: “The decision of the Arbitration Court of Rostov region of January 21st 2015, and the resolution of the Fifteenth Arbitration Appeals Court of March 18th 2015, in case № A53-19637/2014 remain unchanged, and the appeal is dismissed.”¹¹⁶

Finally, employees of the Federal Migration Service in the Rostov region appealed to the Supreme Court of the Russian Federation. In its decision of January 22, 2016, the Supreme Court did not find grounds for reviewing the decisions of the lower courts and ruled finally that “the complaint of the Office of the Federal Migration Service for the Rostov region is dismissed.”¹¹⁷

¹¹² Ibid. Accessed on 11.01.17.

¹¹³ http://kad.arbitr.ru/PdfDocument/99e08258-ed69-456c-b5b8-946f704d2fe2/A53-19637-2014_20150720_Postanovlenie%20kassacionnoj%20instancii.pdf (Russian). Accessed on 11.01.17.

¹¹⁴ Ibid. Accessed on 11.01.17.

¹¹⁵ Ibid. Accessed on 11.01.17.

¹¹⁶ Ibid. Accessed on 11.01.17.

¹¹⁷ http://www.vsrfr.ru/stor_pdf_ec.php?id=1409478 (Russian). Accessed on 11.01.17.

Thus, it was established through legal action in the European Human Rights and in the Supreme Court of the Russian Federation that:

- A lack of registration and documents confirming the right of a child or parent to stay or reside in Russia cannot be used as a reason to refuse a child admission to school;*
- Educational authorities are not responsible for migration checks;*
- Migration authorities do not have the right to prosecute schools for admitting and providing education to children whose migration status has not been settled, or who lack migration documents.*

Chapter 2. Current problems with access to education in the Russian Federation

2.1 Overview and limited statistical data

Neither the Ministry of Education and Science, nor its regional offices and departments are able to provide – and possibly do not possess – an overall picture of the violations of the right to an education that the children of foreign citizens encounter. Moreover, neither the Ministry of Education and Science¹¹⁸ nor the Department of Education of the city of Moscow, nor the Federal State Statistics Service¹¹⁹ provide data on their websites of how many schoolchildren who are not Russian citizens attend schools in Russia. It would be understandable if it was forbidden to collect such data due to the possibility of it being used by migration services to identify undocumented migrants. However, as will be shown below, some of this information is being compiled, at least in some regions, for exactly this purpose. A small circle of government officials has access to this data. From time to time some information concerning the number of children of foreign citizens in schools is published, but this is done by people who have access to this data.

Analysis is further complicated by the fact there is no official information on the approximate number of school-aged children in the Russian Federation who do not have Russian citizenship. Moreover, since April 2016, when the Federal Migration Service was abolished, monthly statistics on the number of persons on the territory of the Russian Federation with a breakdown by country, age and length of stay are no longer published. These statistics are still collected but are only made available to selected researchers.¹²⁰ As a result there is:

- a) no data on the number of foreign citizens studying in Russian schools;
- b) no data on the number of school-aged foreign citizens who should be attending school;

¹¹⁸ See <http://минобрнауки.рф> (Russian). Accessed on 11.01.17.

¹¹⁹ See www.gks.ru (Russian). Accessed on 11.01.17.

¹²⁰ See for example: Trends and Challenges of Socio-Economic Development // Monitoring of the Economic Situation in Russia. 2016, № 19(37). P. 17. Available at: http://www.ranepa.ru/images/docs/monitoring/2016_19-37_December.pdf (Russian). Accessed on 30.01.17.

c) no data on the number of foreign citizens of school age who are not going to school.

It is possible that information and research are intentionally restricted to limit the ability of civil society and independent experts to assess the scale of the problem. Many officials believe that if independent experts have no data to include in their reports then there is no problem. The rare cases that break through the wall of silence are dismissed by unscrupulous officials as exceptional and isolated incidents. Currently, independent observers are not able to give even a rough estimate as to how many children without Russian citizenship residing on the territory of the Russian Federation are not attending school.

There is substantial evidence¹²¹ that the Ministry of Education and Science and some of its regional departments are collecting relevant data. It will be mentioned just one of them here. For several years, A. L. Arefiev, Deputy Director of the Centre for Sociological Research of the Ministry of Education and Science of the Russian Federation, has regularly published and analysed statistics on foreign citizens in schools and universities in Russia, first and foremost in Moscow and St. Petersburg.¹²² In his research he refers to data from the Department of Education of the city of Moscow and the Education Committee of St. Petersburg¹²³ which goes back to the early 2000s.¹²⁴ Since Arefiev presented data on the number of foreign citizens from different countries who studied in Moscow schools in 2006-2007 down to the level of administrative districts,¹²⁵ one can conclude that detailed statistics do exist.

Among the information that has been made public is data on the number of children from foreign families who attended Moscow schools in the 2014-15 school year. According to the Moscow Education Department, a total of 25,357

¹²¹ An overview is provided in the next section.

¹²² One of the most recent publications on this topic is: *Arefiev, A.L.* Education of the foreign families children in the schools of Moscow // *Vestnik RUDN, Seriya Voprosy Obrazovaniya (Issues of Education)*, 2015, No 5. P 149–160 (Russian).

¹²³ See for example: *Arefiev, A. L.* Trends in the export of Russian education. Moscow; Tsentr sotsialnogo prognozirovaniya i marketinga; 2010, P. 16, 20–23 (Russian).

¹²⁴ *Ibid*, P. 16.

¹²⁵ *Ibid*, P. 23–24.

foreign children were studying in Moscow schools at that time.¹²⁶ Nonetheless Arefiev believes that there are reasons to doubt the accuracy of these figures.¹²⁷ The authors of the report entitled “The situation of migrant children in St. Petersburg” mentioned above also challenge the validity of the data presented by schools.¹²⁸

Due to a lack of statistics any estimate of the number of foreign children who are not attending school in Russia can only be approximate. Several estimates have been made regarding the number of such children. For example, according to Dmitry Poletaev’s research, in 2010-2011 no less than 10% of children of labour migrants based in Russia were not attending school. This would be equivalent to 30-60,000 children.¹²⁹ In an article in 2012, Yulia Florinskaya stated that according to survey data the number of children from labour migrants families in Russia excluded from the educational system could be as high as 25%.¹³⁰ This estimate was made before the Ministry of Education and Science issued Decree № 32 and before the Moscow authorities established the Moscow government services portal¹³¹ as the only way to register to attend a school.¹³² The latter did not make it easier for foreign citizens to access schools in Russia, and particularly in Moscow, thus the current number of children excluded from the education system could be higher than 25%. But it should be emphasized that it is impossible to make even an approximate estimate due to the absence of official data.

An increase in xenophobic and anti-migrant sentiment in Russia in recent years has led to numerous measures aimed at stiffening migration controls and legislation. Such sentiments tend to also apply to children of foreign citizens. Public surveys in

¹²⁶ http://www.dobro-sosedstvo.ru/dobro/ru/etc/o_49460 (Russian). Accessed on 15.01.17.

¹²⁷ Arefiev writes that “these figures are something of an underestimate, but this is a question of the accuracy of record-keeping at the level of the schools themselves, which are submitted to the local education authorities and then to the city department of education, where they are aggregated”

(http://www.dobrososedstvo.ru/dobro/ru/information/o_51098 (Russian). Accessed on 16.01.17.

¹²⁸ Based on a survey conducted in 33 schools in St. Petersburg, the study concludes that “in 25% of cases information provided by the school and the children themselves regarding their citizenship do not match” (The situation of migrant children in St. Petersburg. P 18).

¹²⁹ *Poletaev D.V.*, The labor exploitation of migrant children in Russia on the example of Moscow // *Nauchnye Trudy: Institut Narodnokhozyastvennogo prognozirovaniya RAN*. 2013, No 11, P. 135 (Russian)..

¹³⁰ *Florinskaya Yu.F.*, Children of Labour Migrants in Russia: access to education and medicine // *Demoscope*, 2012: <http://www.demoscope.ru/weekly/2012/0515/analit02.php> (Russian). Accessed on 07.11.16.

¹³¹ <https://oauth20.mos.ru/sps/login.jsp> (Russian). Accessed on 27.11.17.

¹³² Section 2.3 discusses how the introduction of enrolment through the online Moscow government services portal prevents children without registration from accessing school education.

Russia continue to reflect this worrying situation. For example, in a poll by VTsIOM conducted in late November 2016, almost one third of the respondents (29%) said that “I will do everything possible to prevent my child/grandchild from making friends with the children of migrants”, while 61% said they “would not object to my child/grandchild being friends with the children of migrants.” Another 10% were undecided.¹³³ While most of the respondents were not against their children and grandchildren befriending the children of foreign citizens, the fact that one third of people would do “everything possible” to prevent such a friendship on the grounds of nationality is very troubling.¹³⁴

A recent poll of around one hundred teachers in Tatarstan by specialists of Kazan Federal University also provided worrying data. 65% of those surveyed said that they “do not wish to be neighbours of people from the Caucasus, Central Asia, Ukraine and other countries.”¹³⁵ At the same time “all teachers questioned did not want to have migrants’ children in their classes”¹³⁶ since “general academic performance drastically decreased in classes with such children.”¹³⁷ The current system for assessing teachers in Russia, which does not consider their ability to work with foreign citizens, and the tendency to deny children of certain categories of foreign citizens access to education, have clear negative effects, including a rise in intolerance and xenophobia.

2.2 Migration services’ interference in schools

To more clearly understand the obstacles to the right to education in Russia it should be kept in mind that the school system, especially in cities like Moscow and

¹³³ <https://wciom.ru/index.php?id=236&uid=115969> (Russian). Accessed on 01.12.16. 10% of those surveyed could not answer the question.

¹³⁴ It should be noted that the questions in the survey were framed in a vague and unbalanced manner. The first possible answer included the words “do everything possible to prevent,” which could only be interpreted as the respondent taking active and regular measures to prevent a friendship forming. This in effect captures the position of those who are categorically opposed to such a friendship. The second answer was “not against,” which in contrast to the first answer could be understood by some respondents as meaning that they would not actively seek to prevent such a friendship, but doesn’t exclude a certain level of “disapproval.”

¹³⁵ <http://www.evening-kazan.ru/articles/uchitelya-v-tatarstane-ne-rady-detyam-migrantov.html> (Russian). Accessed on 07.02.17.

¹³⁶ Ibid. Accessed on 07.02.17.

¹³⁷ Ibid. Accessed on 07.02.17.

St. Petersburg which attract a large number of migrants, is under the direct control of the migration services. This state of affairs has been developing over the last ten years. As noted by the authors of “The situation of migrant children in St. Petersburg”, the spring of 2011 was a turning point for the second largest city in Russia. In that year the migration services inspected a number of schools after receiving statistics on the number of children of foreign citizens. As a result of this inspection, many children without Russian citizenship were excluded (this is often hidden in official documents behind neutral formulations such as “the child left the school”). According to the authors of the report, in one school alone “52 children left at the end of the 2010-11 school year due to problems with their documents, and only 35 of them managed to resolve their issues over the summer and return to school at the start of the next academic year.”¹³⁸ Such inspections, particularly those that led to the exclusion of children, are obviously not legal.

These actions indicate that officials from the Russian Federal Migration Service (FMS) forced school administrations in some regions to cooperate closely with them, providing regular reports on the number of schoolchildren from foreign families and their migration status. In April 2016 the FMS was abolished and the subdivision of the police service into which its employees were transferred was cut drastically. There is currently not enough data to assess the performance of this new subdivision. It should be noted that prior to the change the police were already responsible for some aspects of migration control; however it was the FMS which worked in “cooperation” with schools. The system of migration control is continuing to undergo changes and it will take some time to assess its new set-up and policy towards schools. There is a small chance that the practice of using schools to identify and punish so-called “illegal migrants” will cease. Nevertheless, undocumented migrants and refugees with unresolved status issues have almost no confidence in the school system. As a result, many refugees and labour migrants do not send their children to school.

As mentioned above, no government institution in the Russian Federation, including the Ministry of Education and Science, publishes any regular statistics or runs analysis regarding the lack of access to education for children of labour

¹³⁸ The situation of migrant children in St. Petersburg. P 22 (Russian).

migrants and refugees. Any statistics gathered by schools in some regions are the result of instructions from the migration services. The main aim in gathering these records is to identify labour migrants and refugees with unresolved migration status and persons with dual and multiple citizenship. Those with unresolved migration status could be deported from Russia. Those with dual or multiple citizenship (one of which is the Russian citizenship) could face prosecution for violating the obligation to inform the relevant government authorities that they are dual citizens, in line with a law introduced in Russia in mid-2014.¹³⁹ Given that the FMS¹⁴⁰ was assigned responsibility for enforcing this law, it is unsurprising that in 2015 the service started using schools in Moscow (the most attractive region for migrants) to collect information on the migration status of children studying in Moscow. Using schools in this way is a violation of human rights, which is why the Ministry of Education and Science of the Russian Federation denied collecting data on the citizenship of schoolchildren when answering questions from the mass media and the Civic Assistance Committee. For example, in a response to a request from the online news service Gazeta.ru¹⁴¹ and the Civic Assistance Committee, the Ministry of Education and Science and the Department of Education of the city of Moscow refused to release information about the number of foreign children studying in schools, claiming they do not collect such statistics. There are strong reasons to doubt this claim given (1) instructions from government officials to collect records have been made public; (2) the data published by Arefiev mentioned above; (3) evidence provided by head teachers of schools; (4) statements from migration establishments officials confirming that this takes place.

1) Court proceedings regarding events that took place over 10 years ago revealed details of how schools were pressured into providing information about foreign citizens studying on their premises. For example, in the case of “Georgia vs Russia” which was heard in 2014 in the European Court of Human Rights, the Georgian party presented several letters dating back to 2006 written by senior members of the Ministry of Internal Affairs (mainly based in Moscow, but also in Samara Oblast). These letters instructed all schools to collect data on children with

¹³⁹ <https://rg.ru/2014/06/06/grajdanstvo-dok.html> (Russian). Accessed on 07.02.17.

¹⁴⁰ As early as April 2015 the head of the FMS K. Romodanovsky reported on the “achievements” of his agency, which had fined 60,000 people. See: <http://www.rbc.ru/rbcfreenews/553904b19a7947af1c702d16> (Russian). Accessed on 07.02.17.

¹⁴¹ <https://www.gazeta.ru/social/2016/09/09/10184939.shtml> (Russian). Accessed on 12.11.16.

Georgian citizenship to “ensuring public order and respect for the law, preventing terrorist acts and tensions between children living in Moscow and children of Georgian nationality.”¹⁴² Representatives of the government of the Russian Federation admitted that such requests had been made but attributed this to excessive zeal on the part of certain officials. Meanwhile they stressed that collecting such information was illegal and said that the officials concerned had been punished.¹⁴³ This case is revealing as (a) the Government of the Russian Federation acknowledged that such actions were inconsistent with Russian legislation; (b) it was law enforcement officials and not officials of the FMS who first sought to impose migration controls on schools; (c) schools continued to actively oppose the collection of such data.

In 2015, the online news service Gazeta.ru obtained direct evidence of the systematic recording of the number of foreign citizens in schools. This was a memorandum signed by the Deputy Head of the Department of Education Marina Smirnitckaya sent to Moscow schools. The letter assigned people responsible for filling in information about the “citizenship” and “second citizenship” of children in a database.¹⁴⁴ The article in Gazeta.ru attributed the letter to an attempt by the inspection services to identify people with dual (and multiple) citizenship, although this is obviously not the only goal. Since data about foreign citizens studying in Moscow schools had been previously made public it is possible that the system has changed. For example, information may now not be collected through a single database to which all head teachers have access, but by means of paper records.

2) Statistics on the number of foreign citizens in Russian schools published by Arefiev presented in the first section of this chapter.

3) Some school head teachers in Moscow and Moscow Oblast admitted to the Civic Assistance Committee that they were forced to cooperate with the migration services to check whether certain children were “legally” resident in the Russian Federation. During court proceedings when lawyers of the Civic Assistance

¹⁴² <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-145546&filename=001-145546.pdf>

Accessed on 12.11.16.

¹⁴³ Ibid. Accessed on 12.11.16.

¹⁴⁴ <http://www.gazeta.ru/social/2016/01/14/8021801.shtml> (Russian). Accessed on 12.11.16.

Committee appealed against the expulsion of children without registration from school № 34 in Tver,¹⁴⁵ the school head teacher openly talked about the school's cooperation with the migration control services. During the proceedings it was also established that "the Tver educational institutions received a memorandum from the FMS of Tver Oblast on June 10, 2014 requesting that they conduct checks on schoolchildren whose legal status in the Russian Federation had not been settled. The document analysed the legal framework relating to these schoolchildren and warned that if cases of migration violations were uncovered the educational institutions they would be held administratively liable for the violation under part 3.4 article 18.0 of the Code of Administrative Offences."¹⁴⁶ Following this request the head teacher of school № 34 conducted the requested "checks" twice (in June 2014 and in December 2015). Officials in the Ministry of Education (probably at the instigation of the FMS) also sought to establish the numbers of foreign citizens in schools in Tver and Tver Oblast. The court ruled that "in order to comply with the request from the Ministry of Education of Tver Oblast on February 3, 2015 the Education Department of the Tver Administration requested that educational institutions provide information about foreign citizens studying and working in those establishments (Letter №24/b/n from the Deputy of Education of the Tver Administration dated February 3, 2015)."¹⁴⁷ This shows that educational institutions in Moscow, Moscow Oblast and St. Petersburg are not the only ones that have encountered pressure from migration services.

4) At times representatives of the FMS have not even sought to hide their close cooperation with educational institutions. For example, during an interview in late 2015 to one of the largest newspapers of St. Petersburg, Dmitry Nikiforov, the deputy head of the FMS in St. Petersburg and Leningrad Oblast openly stated that: "the Educational Committee and schools should be given credit for closely monitoring the legality of foreign schoolchildren's residency in St. Petersburg."¹⁴⁸

It is worth mentioning two more examples that show close ties between the migration services and educational establishments. Responding to a request from

¹⁴⁵ See: Chapter 3 for a full summary of the case.

¹⁴⁶ The Civic Assistance Committee has a copy of the letter.

¹⁴⁷ Ibid.

¹⁴⁸ http://spbvedomosti.ru/news/gorod/legalizuemoe_detstvo (Russian). Accessed on 12.11.16.

the Civic Assistance Committee to provide data on the number of foreign citizens studying in Moscow schools, the Educational Department of the City Moscow replied on November 8, 2016 that “responsibility for monitoring the number of foreign children in Moscow schools lies with the Federal Migration Service of Russia”. This response makes no sense since by November 2016, FMS Russia had not been in existence for more than half a year. At the same time, the reply also indicated the openness of the Educational department and its offices to working with the migration services.

The other example relates to the data released on an exceptional basis on the number of foreign schoolchildren in Moscow at the end of the 2014-15 school year.¹⁴⁹ The most striking aspect of the publication is a comment at the end of the article, which states that “The data were prepared by the Department of Education of the city of Moscow for a meeting of the Public Advisory Council under the Federal Migration Service of Russia in Moscow.”¹⁵⁰ One can only speculate who collected this data and how this was done. It appears likely that records were collected and possibly still are being collected in close coordination between the Department of Education and the migration services.

In St. Petersburg, the process for schools monitoring migration status is described as follows: “Every class teacher has to know and remember the expiry date of the documents proving the legality of stay of a non-citizen. A week before the documents expire the teacher must call the parents and remind them to provide new documents by a certain date. If these documents are not presented, the child must be excluded until all documents are provided (whether it be five or 10 days). “All we have time for is writing ‘arrived/left’ in the register.”¹⁵¹

The fact that schools and regional education departments are closely cooperating with migration services, or are effectively being subordinated to them, raises serious concerns and points to the systematic violations of children’s rights in Russia. One can only hope that the situation will change for the better following the abolition of the FMS.

¹⁴⁹ http://www.dobro-sosedstvo.ru/dobro/ru/etc/o_49460 (Russian). Accessed on 16.11.16.

¹⁵⁰ Ibid. Accessed on 16.11.16.

¹⁵¹ The situation of migrant children in St. Petersburg. P 45 (Russian).

2.3. The requirement to prove the right to stay

Many school head teachers consider it self-evident that evidence of a child's right to stay in Russia should be presented before he or she is enrolled in school. This approach contradicts the understanding of education as a universal right rather than a service, requirement or privilege provided free of charge only to specific groups defined by the government. Unfortunately, the view that education, including school education, should be provided free and unconditionally only to Russian citizens dominates in Russia. According to this view, access to education for foreign citizens depends on their migration status in Russia. Moreover, there is a widespread view among politicians, officials and in society more broadly that even the possession of documents proving the legality of stay on the territory of the Russian Federation does not provide sufficient grounds for gaining access to education. Advocates of this notion believe that only the children of labour migrants who can prove they are paying taxes have the right to education. This view is reflected in initiatives of a wide range of politicians including bill № 350713-6 introduced to the State Duma in 2013 by Duma members A.A. Zhuravlev of the ruling "United Russia" party and S.A. Zhigarev of the "LDPR" party. They were subsequently joined by one more Duma member - N.A. Shaidenko, another representative of the "United Russia" party.¹⁵² It is worth mentioning that N. A. Shaidenko has a Ph.D. in Pedagogy and from 1992 until her election to the Duma in 2011 she was Rector of Tula State Pedagogical University, meaning she was responsible for training future teachers. The bill proposed amendments to the Federal Law "On Education in the Russian Federation" which would oblige migrants to provide a document proving residency in Russia for tax purposes besides the standard paperwork. Furthermore, migrants would have to have held this status for at least a year before applying for a place in school or kindergarten for their children.¹⁵³

Following criticism of the bill it was withdrawn. But the initiative illustrates the widespread belief in Russia that spending on education for children without Russian citizenship needs to be reduced. During her speech at the Gaidar Forum,

¹⁵² The background and text of the bill are available here: [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=350713-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=350713-6) (Russian). Accessed on 08.02.17.

¹⁵³ <http://www.garant.ru/news/497176/> (Russian). Accessed on 10.11.16.

deputy prime minister Olga Golodets said that labour migrants working in Russia “have a negative, not positive impact. Such policies discourage employers from technical modernization which slows down the pace of transition to so-called high-productivity jobs.”¹⁵⁴ According to Golodets, this imposes “major social costs on the government, we have to pay for them anyway, we have to pay for the education of their children, and cover significant expenses.”¹⁵⁵

Decree №32 obliges foreign citizens to provide proof of the legality of their stay in Russia when enrolling their children into a school. It stipulates that the parents of children who are foreign citizens must present a document “proving the right of the applicant to stay in the Russian Federation.”¹⁵⁶ However, Russian legislation does not provide a clear definition of what gives the applicant “the right to stay in the Russian Federation.” Article 2 of Federal law N 115-FZ (last amended on July 3, 2016) “On the legal status of foreign citizens in the Russian Federation” states only that “a foreign citizen present legally in the Russian Federation is a person who has a valid residence permit or a permit for temporary residence, a visa and (or) a migration card, or other documents recognized by federal law or by an international treaty signed by the Russian Federation, which confirm the foreign citizen's right to reside (stay) in the Russian Federation.”¹⁵⁷ In other words, Russian legislation does not provide an exhaustive list of documents.

It is clear that the requirement to provide proof of “the right to stay” automatically makes it impossible for children of undocumented immigrants to gain access to education anywhere in the Russian Federation. Refugee children are also deprived of education if they have been denied asylum, or could not or did not know how to apply for asylum. The latter case (due to the way the asylum system works in Russia) is more often the rule than the exception.¹⁵⁸ Moreover,

¹⁵⁴ The title of the article on the site of the state media company is also indicative – “Golodets accused labour migrants of holding back Russia’s development,” (<http://www.interfax.ru/russia/545026> (Russian) Accessed on 16.01.17).

¹⁵⁵ Ibid. Accessed on 16.01.17.

¹⁵⁶

<http://минобрнауки.пф/%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D1%8B/419/%D1%84%D0%B0%D0%B9%D0%BB/3028/%D0%9F%D1%80%D0%B8%D0%BA%D0%B0%D0%B7%20No%20%2032%20%D0%BE%D1%82%2022%2001%202014.pdf> (Russian). Accessed on 16/01/17.

¹⁵⁷ http://www.consultant.ru/document/cons_doc_LAW_37868/b698269155bb4233fb310d9c514ff51f1b8fd1ba/ (Russian). Accessed on 10.11.16.

¹⁵⁸ See chapter two in *Burtina, E.Y., Korosteleva, E.Y., Simonov, V.I.* Russia as a country of refuge.

officials in educational departments and school head teachers who take it upon themselves to check children’s migration status often do not accept certain documents as proof of the legality of their stay in Russia, such as a proof of an appeal against refusal to grant or prolong temporary asylum, or a certificate showing that an application for temporary asylum is under consideration. It should be noted that the process of applying for asylum, including appeals in the case of refusal, can last for several years, during which time refugee children are left outside the educational system.

2.4 Local registration requirements

Local registration at the place of residence or stay is usually viewed by school head teachers as proof of a foreign citizen’s right to stay in Russia. More importantly, head teachers also see it as confirmation of the right to reside and receive certain “services” in a specific region. This is shown by cases where children with Russian citizenship cannot gain access to education in Moscow without local registration in Moscow. If a Russian citizen has no local registration it is meaningless to say he is in Russia illegally. Cases can also arise where foreign citizens do not have local registration. For example, there is no basis for demanding local registration from refugees who in many cases do not and cannot have a host organisation that could facilitate this. Unfortunately, even police officers who carry out migration controls are not always aware of all legal aspects of the asylum system. There is even less understanding among government official and authorities who, without any legal basis, take it upon themselves to check the legality of foreign nationals’ residence in Russia. This includes school head teachers and employees of educational department employees who demand that registration documents are presented despite the fact that migration control is not their responsibility.

There is another problem connected with local registration. Decree №32 introduces priority enrolment for children who are registered in the area assigned to the school in question, but it also mentions “children who do not live in the assigned area.”¹⁵⁹ However, the Decree does not define what is meant by other areas outside the

¹⁵⁹<http://минобрнауки.рф/%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D1%8B/419/%D1%84%D0%B0%D0%B9%D0%BB/3028/%D0%9F%D1%80%D0%B8%D0%BA%D0%B0%D0%B7%20No%20%2032%20%D0%BE%D1%82%2022%2001%202014.pdf> (Russian). Accessed on 31.01.17.

assigned area. For example, children from other regions, even if they are Russian citizens, generally cannot enrol in the capital's schools.¹⁶⁰ So if a child is registered in Moscow Oblast he may face difficulties when trying to enrol in a school in Moscow even if it is very close to his home.

On the other hand, in some regions outside Moscow and St. Petersburg, especially those with a low share of labour migrants and refugees, the chances of enrolling children without local registration in schools are significantly higher. The Civic Assistance Committee is aware of cases in Moscow Oblast where school head teachers displayed a high level of legal literacy and a humane approach, and accepted children without registration. The head teacher's decision to accept or not accept a child is influenced by various considerations, including instructions from local education departments, the degree of influence of the migration services, how civic-minded the head teacher is, and so forth. It should also be noted that some head teachers require the children to be registered for the whole year, and will not accept registration documents covering shorter periods.¹⁶¹

In 2015, the situation regarding access to education for those without local registration in Moscow worsened further. At the start of the academic year the Moscow administration issued a regulation which meant parents or legal guardians could only enrol their children through the online Moscow government services portal.¹⁶² At the same time, the portal was designed in such a way that parents could not submit an application online without filling in information about their registration. This was not a mistake but an intentional and targeted move, as correspondence between the Civic Assistance and the Department of Education of Moscow confirmed. The rubric in the "Apply to school" section has the same message. For instance, in the section entitled "Enrolling in First Year," with the sub-section "Who can apply for this service" it is stated that the children of parents (legal guardians) will be enrolled who "have been registered at the place of residence in Moscow city by registration bodies" or "have been registered at the

¹⁶⁰ The same applies in Saint Petersburg and possibly also in some other regions.

¹⁶¹ In Russia there is a widespread practice of issuing registration for three-month periods for foreign citizens (in particular labour migrants), who enter Russia on a visa-free basis.

¹⁶² In 2016 the Moscow authorities made it possible to enrol automatically without submitting an application through the portal, but only for children who were enrolled in pre-school institutions attached to the schools where they intended to study. See <https://pgu.mos.ru/ru/> (Russian). Accessed on 30.01.17.

place of stay in Moscow city by registration bodies.”¹⁶³ The section entitled “List of required documents” includes “the child’s registration address at the place of residence or stay in Moscow city.”¹⁶⁴ In the sub-section entitled “Who can apply for this service” of the section entitled “Enrolment in all years” does not mention the need for registration but the section entitled “List of required documents” still specifies that “submission of an electronic application requires information about the child’s date of birth and local registration address in Moscow city.”¹⁶⁵ The situation is the same on the official site of the Moscow Mayor, which at one point states that “enrolment in first year is only possible online through the Moscow government services portal”¹⁶⁶ and that “enrolment in the first year through the Moscow government services portal”¹⁶⁷ requires “the child’s address of local registration at the place of residence or stay on the territory of Moscow.”¹⁶⁸ Moreover, the overall approach to education enrolment is revealing, as it is represented as a government service rather than the realization of the universal right to education.

The Moscow Government’s education policy runs as follows: “‘every Muscovite deserves a good school close to their home that meets all their needs’ – this is the principle that guides all the priorities and reforms of the educational system of Moscow.”¹⁶⁹ But the question remains, who exactly is a Muscovite? Is a labour migrant who has moved to Moscow with his family for a year considered a Muscovite? And what about a refugee family that has not yet found employment and is cooped up with fellow refugees in a small apartment waiting for the decision of migration services? If they are not Muscovites does that mean that the Moscow Government will not try to provide them with a good school? A review of the numerous programs and manifestos of Moscow authorities indicates a clear gap when it comes to the children of foreign nationals. At the same time, Moscow Mayor Sergey Sobyenin never ceases to talk about the “large inflow of

¹⁶³ <https://www.mos.ru/pgu/ru/services/link/2154> (Russian). Accessed on 18.01.17.

¹⁶⁴ Ibid. Accessed on 18.01.17.

¹⁶⁵ <https://pgu.mos.ru/ru/services/link/2167> (Russian). Accessed on 31.01.17.

¹⁶⁶ https://www.mos.ru/services/advisor/story/zapisat_v_shkolu/1/2/3/6 (Russian). Accessed on 18.01.17.

¹⁶⁷ https://www.mos.ru/services/#!/advisor/story/zapisat_v_shkolu/1/2/3/6/8 (Russian). Accessed on 18.01.17.

¹⁶⁸ Ibid. Accessed on 18.01.17.

¹⁶⁹ <https://www.mos.ru/dogm/documents/state-programme-metropolitan-education/> (Russian). Accessed on 04.11.16.

migrants”¹⁷⁰ and the substantial funds needed for “the city’s expenses on integrating migrants and their families.”¹⁷¹ What does this integration involve? Amidst this “major inflow of migrants” neither the 2014 nor the 2015 editions of the voluminous reports on the City Education programme made even a brief reference to the children of foreign nationals or Russian language schools.¹⁷² There is also no information on the website of the Department of Education of Moscow.

School head teachers and teachers in Moscow and some other regions talk privately about an unspoken prohibition on accepting children without registration. This prohibition has been in place for several years now. For instance, a report based on the result of research conducted in Moscow in 2013 quotes some teachers as saying that “...when they consider applications they cannot accept children without local registration in Moscow. If a child doesn’t have a temporary registration, the school has no right to accept the child.”¹⁷³

One head teacher of a gymnasium in St. Petersburg stated in 2011 that in order to enrol children they “must either have registration or instructions from the education department.”¹⁷⁴ This is of course not a question of constitutional or international law but an unspoken rule which teachers and head teachers consider to be above basic human rights law.

In conclusion, it should once again be noted that demanding local registration at the place of residence or stay as a condition for school enrolment leads to the violation of the right to education of a number of categories of foreign citizens. This concerns a) people seeking asylum who have not yet been granted an official status; b) people who have been granted refugee status or temporary asylum who are not able to register because they lack a permanent place of residence or do not have the permission of the landlord; c) all refugees and labour migrants whose migration status has not been resolved.

¹⁷⁰ <http://www.interfax.ru/moscow/538890> (Russian). Accessed on 31.01.17.

¹⁷¹ Ibid. Accessed on 31.01.17.

¹⁷² http://dogm.mos.ru/gosprogramma/gp_so_2012_2018/otchet_2014.pdf (Russian). Accessed on 04.11.16.

¹⁷³ Protection of the rights of Muscovites. Moscow: “Tsentr migratsionnykh issledovaniy,” 2014. P 62 (Russian).

¹⁷⁴ The situation of migrant children in St. Petersburg. P 29 (Russian).

2.5 Problems of access to education for children who do not speak Russian or have poor knowledge of the Russian language and children with disabilities

The low level of education funding, absence of a detailed government strategy and will and the current migration policy are causing difficulties and in some cases inhibiting access to education for children who do not speak Russian or have a poor knowledge of it. The necessity to accommodate and integrate children from other countries¹⁷⁵ has long been discussed in Russia at various levels. It is difficult to assess the general situation but the limited published information and data that has been collected by the Civic Assistance Committee suggests that the current situation is very bad.

For example, at the beginning of 2016 Moscow had only two Russian language schools which provided systematic and free Russian language teaching together with other general subjects.¹⁷⁶ There is information that in the middle of 2017 the number of such schools was reduced to only one school. Meanwhile Moscow has about 700 schools and the number of foreign nationals living in Moscow could be well above 3 million people.¹⁷⁷ There is no public information about the number of children who attended lessons of Russian as a foreign language across the country. Currently there is only data available on the 2014-15 school year. According to this data, only 262 children attended free Russian language classes in Moscow, a further 327 attended “Russian as a foreign language” courses organized in ordinary schools.¹⁷⁸ This is clearly only a very small portion of those who need such courses.

In addition to this, Moscow has several schools with an ethnocultural component, for example the K.A. Kerimov gymnasium №1583 which offers Azerbaijani classes,¹⁷⁹ the Yurgis Baltrushaitis school № 1247 which offers Lithuanian

¹⁷⁵ There was particularly intense discussion of the importance of teaching Russian to foreign citizens in a variety of forums in 2013, however the majority of projects were not implemented.

¹⁷⁶ <http://www.fergananews.com/articles/8878> (Russian). Accessed on 18.01.17.

¹⁷⁷ Even approximate data on the number of foreign citizens in Moscow is provided very rarely. In October 2013 K. Romodanovsky, the head of the FMS, stated that “in the city region” there were currently “3.5 million foreigners, 80% of whom were from the countries of the CIS.” (<http://api.duma.gov.ru/api/transcriptFull/2013-10-23> (Russian). Accessed on 08.02.17).

¹⁷⁸ Ibid. Accessed on 18.01.17.

¹⁷⁹ <http://gym1583s-new.mskobr.ru> (Russian). Accessed on 23.12.16.

language and culture lessons;¹⁸⁰ The Young Iberia school № 1331 which has a lot of pupils from Georgia;¹⁸¹ school № 2042 which specialises in several oriental languages (Armenian, Persian and Arabic among them).¹⁸² However, as far as this author is aware, even these school do not offer a “Russian as a foreign language” programme for children who do not speak Russian or have poor Russian language skills. Some embassies have their own schools but these are few in number and almost exclusively attached to embassies of developed countries (like USA, Poland, Italy, France) whose nationals migrate to Russia in small numbers and very rarely seek asylum.

People appealing to the Civic Assistance Committee whose children barely speak Russian or did not speak it at all have sometimes found that school head teachers refuse to accept their children even with valid registration and documents proving the legality of their stay in Russia. They were informally recommended to learn Russian on their own or, if they live in Moscow, were referred to the single Russian language school. This is clearly not an option of for everyone considering the size of the city. For example, a labour migrant cannot afford to spend one or two hours a day accompanying their child to classes. In this case, labour migrants are forced to take their children back to their home country or, if it is not possible, leave them outside the educational system.

The situation is even more complicated if the child lives outside Moscow since many Russian regions do not offer courses in Russian as a foreign language for such children. For instance, when the Civic Assistance Committee talked to employees of the Educational Department of Noginsk about the children of Syrian refugees who do not speak Russian they responded that the parents were responsible for teaching their children the language. Some school head teachers who seek to accommodate the needs of the child ask Russian language teachers to give additional lessons to them. This is better than nothing, but the problem is that these teachers often do not have the necessary experience or qualifications for this line of work.

¹⁸⁰ <http://schec1247.mskobr.ru/> (Russian). Accessed on 23.12.16.

¹⁸¹ <http://sch1331.mskobr.ru/> (Russian). Accessed on 23.12.16.

¹⁸² <http://schuuz2042.mskobr.ru/> (Russian). Accessed on 01.03.17.

The situation in Russia's second largest city of St. Petersburg is also quite uncertain. One of the few institutions that systematically provides teaching in the Russian language to children of foreign nationals is a non-governmental volunteer organisation called "Children of St. Petersburg".¹⁸³ According to Ekaterina Alimova, the Chairman of the Board, "In St. Petersburg many children of migrants who do not speak Russian cannot go to school and have to stay at home because there are no state-funded courses for these children in St. Petersburg."¹⁸⁴ This observation was made at the end of 2015. A year later, in December 2016, the author of this report contacted Ekaterina again to ask her about the same issue. It turned out that the situation had not significantly changed. Even in cases where free courses for children are available they are difficult to find them. In the case of state schools, everything depends on the attitude of the head teacher. If there is a suitable teacher, the children of migrants may be offered additional Russian language lessons. However, as in Moscow there is still no systematic approach to resolving this issue.

While children of foreign nationals, especially refugees and labour migrants, already represent a vulnerable group whose right to education is constantly violated and not easy to defend, the situation with children with special needs and disabilities is even worse. The difference between these two groups is legally defined, i.e. explained in the Federal law "On Education."¹⁸⁵ A 2015 report by Human Rights Watch showed that even children with Russian citizenship may face difficulties or may even be denied access to a proper education in the Russian Federation.¹⁸⁶ Children with special needs and disabilities without Russian citizenship often do not receive any assistance from the state, and some of these groups of children have virtually no access to education.

¹⁸³ <http://detipeterburga.ru> (Russian). Accessed on 03.01.17.

¹⁸⁴ <http://detipeterburga.ru/%D1%81%D0%BC%D0%B8-13-%D1%87%D0%B5%D0%BB%D0%BE%D0%B2%D0%B5%D0%BA-%D0%BC%D0%B5%D0%BD%D1%8F%D1%8E%D1%89%D0%B8%D1%85-%D0%BF%D0%B5%D1%82%D0%B5%D1%80%D0%B1%D1%83%D1%80%D0%B3-%D0%BA-%D0%BB%D1%83%D1%87/> (Russian). Accessed on 03.01.17.

¹⁸⁵ See Article 79 of the Federal Law "On education in the Russian Federation" (http://www.consultant.ru/document/cons_doc_LAW_140174/708566b2fd52d51c70e2f0c8e02abb2d81a6c22e/) (Russian) Accessed on 28.02.17).

¹⁸⁶ <https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia> Accessed on 27.11.17.

The right to education of people with disabilities is specifically established by the “Convention on the Rights of Persons with Disabilities” ratified by Russia on September 15, 2012.¹⁸⁷ Paragraph 1 of Article 7 on “Children with disabilities” says that “State Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”¹⁸⁸ And Paragraph 2 adds that “In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.”¹⁸⁹ Article 24, entitled “Education,” states that “State Parties recognize the right of persons with disabilities to an education. In order to realize this right without discrimination and on the basis of equal opportunity, State Parties shall ensure an inclusive education system at all levels and lifelong learning...”¹⁹⁰ Paragraph 2 of the same article underlines the obligation of the State Parties not to exclude people “from the general education system on the basis of disability” and children with disabilities “from free and compulsory primary education, or from secondary education, on the basis of disability.”¹⁹¹ Despite all this Russia has a well-established system which indirectly shuts children with disabilities from certain groups of foreign nationalities out of the educational process.

Due to a lack of information from other regions, this report will again focus on the situation in Moscow. Parents or legal guardians of children with disabilities encounter the same requirements for local registration and proof of the right to stay on Russian territory when trying to enrol in schools. Moreover, to enrol children in a special-needs school or get special arrangements for children with disabilities, there is the additional requirement to provide an advisory opinion from the Psychological-Medical-Educational Commission (PMPK).

¹⁸⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en. Accessed on 21.12.16.

¹⁸⁸ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html> Accessed on 27.11.17.

¹⁸⁹ Ibid. Accessed on 18.01.17.

¹⁹⁰ Ibid. Accessed on 18.01.17.

¹⁹¹ Ibid. Retrieved on 18.01.17.

The official website of the Moscow Mayor¹⁹² and special schools confirm that this requirement exists.¹⁹³ The problem here is that in order to get an opinion from this Commission parents have to present special certificates.¹⁹⁴ For example, the website of the Central Psychological-Medical-Educational Commission says that in order to have children with special needs examined by the Commission, parents have to provide “Appendix 3 to the Decree of the Education Department of Moscow of April 1, 2013 № 297,¹⁹⁵ and children with disabilities must provide ‘the original and copy of a certificate from the Medical and Social Expertise Centre (MSE) and from an individual rehabilitation program (IPR).’”¹⁹⁶

The problem is that according to the information letter № 13-5 / 10 / B-36747 of June 25th, 2014 written by the Ministry of Labour and Social Protection of the Russian Federation, only certain categories of foreign citizens may receive an examination at the MSE. Although the letter was written in connection with the “increase in the number of citizens who forcibly left the territory of Ukraine and temporarily reside in the territory of the Russian Federation,”¹⁹⁷ the letter does not imply anywhere that it applies only to citizens of Ukraine and not to all foreign citizens with a diagnosed disability. According to the letter, “foreign citizens who are legally staying in the Russian Federation may have the legal right to social protection in connection with a diagnosed disability.”¹⁹⁸ This can include: 1) “a person who has received a temporary residence permit”; 2) “a person who obtained a residence permit”; 3) “a person with refugee status or applying for recognition as a refugee”; 4) “a foreign citizen (stateless person) who has been given temporary asylum, as well as persons applying for temporary asylum.”¹⁹⁹ At the same time,

¹⁹²https://www.mos.ru/services/#!/advisor/story/Poluchit_zaklyuchenie_Central_noj_psixologo_mediko_pedagogic_heskoj_komissii_CPMPK_1 (Russian). Accessed on 18.01.17.

¹⁹³ See for example, School No. 869: http://schku869.mskobr.ru/conditions/usloviya_priema1/44/ (Russian). Accessed on 21.12.16. School No. 482.

http://schuvk482.mskobr.ru/conditions/usloviya_priema1/pravila_priema_obuchayuvihsya (Russian). Accessed on 21.12.16. School No. 90: http://sch90.mskobr.ru/conditions/usloviya_priema/pervoklassniku/ (Russian). Accessed on 21.12.16. School No. 567: http://schku567.mskobr.ru/conditions/usloviya_priema1 (Russian). Accessed on 21.12.16. School No. 2124: http://sch2124.mskobr.ru/files/pravila_priema_na_obuchenie_2015.pdf (Russian). Accessed on 06.03.17.

¹⁹⁴https://www.mos.ru/services/advisor/story/Poluchit_zaklyuchenie_Central_noj_psixologo_mediko_pedagogic_heskoj_komissii_CPMPK_1/5 (Russian). Accessed on 06.03.17.

¹⁹⁵ https://mcko.ru/pages/vzaim_mskobr (Russian). Accessed on 06.03.17.

¹⁹⁶ Ibid. Accessed on 06.03.17.

¹⁹⁷ <http://www.invalidnost.com/gif/3674-.gif> (Russian). Accessed on 06.03.17.

¹⁹⁸ Ibid. Accessed on 06.03.17.

¹⁹⁹ Ibid. Accessed on 06.03.17.

the letter states that “under the legislation of the Russian Federation the right to social protection does not arise for foreign citizens or stateless persons temporarily staying in the Russian Federation (including those with disabilities), which in consequence means that they cannot be examined in the federal institutions of the MSE.”²⁰⁰ The text includes citizens who arrived in Russia with a visa or do not require a visa, but do not have a residency permit or a temporary residency permit. If it is possible for children with disabilities to be examined in their country of origin, these documents can be registered in Russia and the children can gain access to education. However, disabled children of migrants without a settled status, as well as those appealing against refusal to grant refugee status or temporary asylum, cannot access the school system.

In other words, this letter underlines the barriers to receiving an examination at the MCE, and therefore to accessing education, for children of foreign citizens who are on the territory of the Russian Federation: 1. On the basis of a work permit (a so-called “patent”); 2. With a work, educational or any other visa; 3. Appealing against the refusal to grant or renew their refugee status or an extension of their temporary asylum; 4. Without legal immigration status.

²⁰⁰ Ibid. Accessed on 06.03.17.

Chapter 3. The Work of the Civic Assistance Committee

3.1 Counselling and support

Starting in early 2014, that is, after the publication of Order № 32, foreign citizens began to appeal to the Civic Assistance Committee complaining that their children were not being accepted to schools because of a lack of registration at their place of stay or residence. Since then, Civic Assistance has launched a new work stream aimed at systematically protecting the rights of children to education. Activities include:

- Legal advice, negotiations with head teachers, writing cover letters to schools;
- Assistance to parents in their interactions with courts, the prosecutor's office and other departments to protect the right of their children to education;
- Engagement with the authorities aimed at changing the general situation that has arisen regarding access to education in Russia;
- Organizing Russian classes, particularly in regions with a high concentration of refugees.²⁰¹

Each of these aspects is dealt with in a separate section of this chapter. The first section deals with legal advice provided to people whose children are not being enrolled in school, as well as negotiations with school head teachers.

When foreign citizens come to the Civic Assistance Committee with issues of access to education, our employees will in the first instance conduct an interview to identify the problem. After clarifying the situation, the applicant is offered a possible solution and an action plan is outlined. According to internal statistics, in the last three years (from 2014 to 2016 inclusive) 82 families appealed to the Civic Assistance Committee regarding 135 children whose right to education had in some way been violated. **It should be specially noted that this number does not include the children of Syrian refugees from Noginsk and Losino-Petrovsk**

²⁰¹ See the section of the website of the Civil Assistance Committee on education and adaptation: <http://refugee.ru/projects/dostup-k-obrazovaniyu-i-adaptatsiya> (Russian). Accessed on 18.01.17.

(Moscow Oblast), who will be discussed separately. Of these 135 children, almost half of them are citizens of Afghanistan. This is due to the fact that Civic Assistance has a long history of working with refugees from this country. The small number of citizens from Central Asia, as well as labour migrants in general, is likely due to the low level of dissemination of information among foreign citizens from this group about the work of the Civic Assistance Committee.²⁰² As a result, the statistics below cannot be taken as reflective of the situation in Moscow, and even less so Russia as a whole. The figures only indicate that the problem exists and that those groups of foreign citizens with whom the organization works are facing a violation of their children's right to education.

Country of origin	2014	2015	2016	Total
Afghanistan	19	18	21	58
Belarus		1	2	3
Georgia	1		2	3
Egypt			2	2
Yemen			1	1
Cameroon			1	1
Congo	1	1		2
Kyrgyzstan		1	1	2
Moldova	1			1
Pakistan		1		1

²⁰² The Civil Assistance Committee launched its project aimed at assisting labour migrants relatively recently.

Russia		4			4
Syria	3	5	3		11
Tajikistan	2	6	4		12
Uzbekistan	4	8	2		14
Ukraine	6	9	5		20
Total number of children	37	54	44		135
Number of families	22	37	32		82

Table 1. Number of children from whom the Civic Assistance Committee received complaints about the violation of their right to education (not including appeals from Noginsk and Losino-Petrovsk)

Of the 135 children whose parents appealed to the Civic Assistance Committee, the clear majority of them - 117 children – were refused admission to school due to a lack of local registration, or due to an unsettled migration status. A further 18 children were threatened with expulsion by the school administrations due to the expiration of their registration.

Usually, the first measure taken by the employees of the Civic Assistance Committee is writing a clearly-argued letter addressed to the director (head) of the school. The letter briefly outlines the situation with the child, as well as excerpts from the relevant laws and legislation that clearly specify that access to education must be granted, regardless of whether or not the application is registered at the place of stay or residence. Depending on the situation, additional documents may be attached to the letter, for example, the decision of the Supreme Court of the Russian Federation regarding Order № 32. Usually, parents are also given an application form for the child’s admission to school together and advised that if the administration refuses to admit a child to school they must be given a well-grounded justification for the refusal. Sometimes the presentation of the cover letter and the decision of the Supreme Court of the Russian Federation are

sufficient for the head teacher to change his initial position and for the child to be granted access to the school.

Results of applications for assistance (number of children)	2014	2015	2016		Total
Contact lost with applicant (may have left Russia)	19	13	2		34
Problem currently resolved	18	33	25		76
Children sent abroad to study or parents moved abroad with children [t3]		7	3		10
Problem not resolved		1	14		15
Total number of children	37	54	44		135

Table 2. Data regarding applications in the Civic Assistance Committee for assistance in relation to problems accessing education as of December 31, 2016 (excluding applications from Noginsk and Losino-Petrovsk)

If the school administration continues to deny the child access to education, the subsequent actions of the Civic Assistance Committee depend on the circumstances of the case. For example, did the parents of the child or children received a written and well-reasoned response from the school, and if so, what did it say. In cases of refusal, a personal phone call or a meeting with the head of the school is often required, which in some cases is sufficient to resolve the problem of the violation of the child’s rights. If none of this succeeds, then the applicants are provided with legal assistance and, with the consent of the parents, appeals are made to the prosecutor's office or to the court.

As can be seen in Table 2, only 76 out of 135 children whose parents applied to the Civic Assistance Committee had their problem resolved. The column entitled “Contact lost with applicant” in Table 2 in most cases reflects the movement of

refugees from Russia to Europe, which was particularly significant in 2015.²⁰³ Thus, if we add to this the ten cases when it is known that the children were taken to their country of origin or to third countries, about one third of the 135 children were forced to leave Russia.

How the problem was resolved	2014	2015	2016	Total
Children enrolled in school with the help of the Civic Assistance Committee	1	11	15	27
Following consultations, the issue of registration was resolved	8	9	3	20
The children enrolled in school, but not in Moscow	1	6		7
Children threatened with expulsion, but with the help of the Civic Assistance Committee the children were able to remain in school	7	5	6	18
Children began studying on a fee-paying basis	1	1	1	3
Other		1		1
Total	18	33	25	76

Table 3. Outcomes of appeals to the Civic Assistance Committee regarding access to school as of October 31, 2016 (not including Noginsk and Losino-Petrovsk).

The most common outcome was that children were enrolled in school after the Civic Assistance Committee wrote an appeal to or directly contacted the head teacher. The second most common outcome was that applicants were able to register at their place of residence or stay after receiving advice from the Civic

²⁰³ See: Gannushkina, S.A. "Following The Path Of Refugees" <http://refugee.ru/en/news/following-the-path-of-refugees/> Accessed on 27.11.17.

Assistance Committee. Several parents decided to move to or send their children to another region of Russia. It should be noted that with the exception of two children, who will be discussed in the next section, in all of the cases when school administrations threatened to expel children due to the expiry of their registration, the threats stopped following the intervention of the Civic Assistance Committee, and the children were able to continue their studies.

3.2 The court decision in Tver and the challenge to Order № 32 in the Supreme Court of the Russian Federation

If head teachers will not engage in dialogue and either refuse to enrol children or threaten to expel them, the employees of the Civic Assistance Committee will continue to defend the rights of the children, helping their parents to compose appeals to the prosecutor's office and to defend their interests in the courts. It is important to note that only a few foreign citizens are willing to assert their children's rights to education in Russia by writing official complaints. The main reason for this unwillingness is the fear that appeals may have negative consequences for the applicant's further interaction with the migration authorities. The corruption and arbitrariness of the decision-making process inherent in the asylum system in Russia justify these fears to a certain extent. The situation is aggravated by the fact that the authorities very rarely grant refugee status, which gives the recipient more confidence to defend their rights. As of January 1st, 2017, there were only 598 people in Russia with official refugee status. Since mid-2014, there are many more people who have been granted “temporary asylum” in Russia. This is because of the decision of the Russian authorities to assign this status to migrants from the two Eastern regions of Ukraine. As of January 1, 2017, the number of people possessing this status totalled 228,392 people, of whom 226,044 or 99% had Ukrainian citizenship²⁰⁴. At the same time, temporary asylum is granted for no more than one year and to extend it one must apply to the migration authorities one month before the expiration date, wait a long time at the migration office, and again prove the impossibility of returning to one country of origin. Often refugee status is not extended without any clear or legitimate reason and the

²⁰⁴ About the migration situation in Russia see: <http://refugee.ru/en/publications/39-recognized-refugees-in-2016-russia-abysmal-records-and-why-malta-is-stronger-than-the-largest-country-in-the-world/> Accessed on 28.11.17.

applicant has to start the complex process of appealing against the refusal to renew his or her status.²⁰⁵

All this makes the situation of asylum seekers in Russia extremely unstable and vulnerable. When a foreign citizen lives under constant threat of losing his or her asylum status, or is the processing of appealing against a refusal to grant or extend the status, integrating his children is rarely likely to be a priority. The situation is even more complicated when it comes to refugees with unresolved status. Such foreign citizens are usually afraid to make a formal application to the authorities because they fear they will be deported to the country from which they had to flee. These fears are justified. For example, the migration services of Moscow and the Moscow Oblast are known to call the police to their offices. Hence, people without legal status who apply to migration services for asylum often have charges brought against them and are sent to court, where they are threatened with being placed in a temporary detention centre for foreign citizens. Then, if they are not able to appeal against the court's decisions, they are expelled from Russia.²⁰⁶ The expulsion of these people can have tragic consequences and can put their lives in danger. Moreover, the violation of the right to seek asylum and the expulsion of refugees contradicts the international obligations of the Russian Federation.

There are only a limited number of cases where the Civic Assistance Committee has managed to get the prosecutor's office and the courts to investigate specific violations of the right to education. One such case took place in Tver. On February 10th, 2015, two children with Uzbek citizenship were expelled from Secondary School № 34 in the city of Tver. According to the head teacher, the formal reason for the dismissal order was the expiry of the temporary residence permit for the mother, although their father still had a valid residence permit.²⁰⁷ With the help of the Civic Assistance Committee, the head teacher's decision was challenged in the Zavolzhsky District Court of the city of Tver, which on June 15th, 2015 ruled that expulsion was illegal. The defendants were Secondary School № 34 and the

²⁰⁵ See: *Burtina, E.Y., Korosteleva, E.Y., Simonov, V.I.* Russia as a country of refuge and also the short report "Syrian Refugees in Russia" (the report is available here: <http://refugee.ru/en/publications/syrian-refugees-in-russia/> Accessed on 27.11.17).

²⁰⁶ Ibid.

²⁰⁷ For more information on this case see: <http://refugee.ru/news/detej-opyat-otchislyayut/> (Russian). Accessed on 23.01.17.

Education Department of Tver. To justify her decision, the head teacher referred to a letter from the Federal Migration Service Office of the Tver Oblast, which contained an order to “monitor children whose legal status is not settled studying in educational institutions.”²⁰⁸ In addition, the letter contained a warning that “in cases where migration legislation has been violated, charges will be brought against the educational institution in relation to Article 18.9, Part 3.4 of the Code of Administrative Offences of the Russian Federation.”²⁰⁹ The court did not consider the defendants' arguments convincing, while representatives of the Federal Migration Service of the Tver Oblast simply did not attend the trial. As a result, the head teacher was ordered to cancel this illegal order, the children's rights were restored, and they continued their education.

The decision of the Zavolzhsky court is also noteworthy because, based on Article 61 of the law “On Education in the Russian Federation”, the court established a full list of reasons for terminating a child's education. There are limited in number:

- completion of education (end of studies);
- decision of the student or parents (legal guardians);
- as a disciplinary measure, but only for children fifteen or over;
- due to circumstances beyond the control of the school or parents, foreexample, as a result of the closure of the educational institution.²¹⁰

The court also stated that it was inadmissible for a school to carry out the functions of the migration services. The court ruled that the decision to expel the child “was taken by the educational establishment with reference to the violation of migration law, whereas responsibility for monitoring and implementing migration legislation of the Russian Federation lies exclusively with the relevant state authorities.”²¹¹ The court also ruled that “the administration of an educational establishment do not have the right to assess the legality of a foreign citizen's stay on the territory of the

²⁰⁸ The Civic Assistance Committee has a copy of the order.

²⁰⁹ Ibid.

²¹⁰ See the Federal Law “On education in the Russian Federation,” in particular Article 61: http://www.consultant.ru/document/cons_doc_LAW_140174/a01bc71a8144d13961c4a1b502062aa2d9399ac9/ (Russian). Accessed on 23.01.17.

²¹¹ The Civic Assistance Committee has a copy of the decision.

Russian Federation or to discontinue their education on these grounds.”²¹² The decision of the Zavolzhsky Court in Tver was an important step in stopping the expulsion of children from schools for reasons related to their parents’ compliance with migration legislation. Presenting this decision to school head teachers has allowed employees of the Civic Assistance Committee to prevent the expulsion of children with irregular migration status. Nevertheless, after the court case in Tver, there remain problems relating to the refusal to enrol children without registration in schools, which head teachers often justified with reference to Order № 32.

In May 2015, employees of the Civic Assistance Committee and the lawyer Michail Kushpel prepared and submitted to the Supreme Court of the Russian Federation an application to recognise that Order № 32 of the Ministry of Education and Science of the Russian Federation “On establishing a procedure for the enrolment of citizens in programmes of primary, general and secondary education,” was unlawful as it related to the parents’ duties to prove the legality of their stay in Russia and to provide a certificate of the child’s registration. The application sought to establish the following as unlawful:

- “To enrol their children in first year, parents (legal guardians) residing in a given region are additionally required to present the original of the child's birth certificate or a document confirming their relationship to the applicant, a certificate of the child's registration at the place of residence or at the place of stay in the given region or a document confirming the registration of the child at the place of residence or at the place of stay in the given region.”²¹³
- “Parents (legal guardians) of children who are foreign citizens or stateless persons are additionally required to present proof of their relationship to the applicant (or the legality of the representation of the child’s rights) and a document confirming the applicant's right to stay in the Russian Federation.”²¹⁴

²¹² Ibid.

²¹³ <http://минобрнауки.рф/%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D1%8B/419/%D1%84%D0%B0%D0%B9%D0%BB/3028/%D0%9F%D1%80%D0%B8%D0%BA%D0%B0%D0%B7%20No%20%2032%20%D0%BE%D1%82%2022%2001%202014.pdf> (Russian). Accessed on 23.01.17.

²¹⁴ Ibid. Accessed on 23.01.17.

The petitioners were a refugee woman from Syria representing the interests of her daughter (born in 2007) who was refused admission to a school in Moscow owing to the absence of registration, and a citizen of Uzbekistan who was also challenging an order to expel his sons in the Zavolzhsky court in Tver. The appeal to the Supreme Court indicated that in several cases the provisions of Order № 32 were interpreted by school head teachers as meaning that registration at the place of residence or stay, as well as a document confirming the right of a foreign citizen to stay in the Russian Federation, were required in order to enrol and continue education in Russian schools.

The final hearing was held on August 27, 2015 (case № AKPI15-694). By this time, the Zavolzhsky District Court in Tver had already declared the expulsion of children illegal, and, consequently, it was possible to attach this decision to the materials of the case to be considered by the Supreme Court. Michail Kushpel, the lawyer representing the petitioners, proposed to amend the wording of the order by adding the following paragraph regarding registration: “In accordance with international and Russian legislation, the child's right to education cannot be restricted due to the lack of registration,” and to delete the paragraph on the need to provide documents confirming the right of foreign citizens to stay on the territory of the Russian Federation.

Responding to the arguments and specific examples of the unlawful interpretation of Order № 32 by school head teachers and regional education administrations, the representative of the Ministry of Education and Science merely noted that all necessary legal procedures had followed for Order № 32 to come into force. She also noted that “the petitioner’s arguments relate more to implementation, but incorrect enforcement does not mean that the order in general contradicts the law.” The official did not dispute the need to enrol all children in school, regardless of the presence or absence of registration, although she did not consider it necessary for the Ministry of Education and Science to specifically and unequivocally stipulate this. The position that the problem is not the Order № 32 itself, but its misinterpretation, was also taken by the Supreme Court. The court’s decision is a vivid example of a casuistic approach where, on the one hand, it was asserted that the controversial Order № 32 does not prevent the enrolment of children without registration in school, while on the other hand claiming that misinterpretations,

although they do occur, are not inherent to the framing of the Order, and also do not indicate its unlawful basis. This implies that the essential character of a law or normative legal act, and its practical interpretation and application exist separately. At the same time, if the law or normative legal act is systematically interpreted incorrectly, then it does not say anything about the nature of the law or normative legal act itself.

The decision of the Supreme Court stated in particular that the disputed provision “does not prevent citizens from enrolling in an educational organization, including foreign citizens and stateless persons who do not reside in the region where the educational organization is based, if there are vacant places.”²¹⁵ Moreover, it stipulates that “the provisions of subsection 11 of Paragraph 9 of the Procedure for presenting additional documents, in particular certificates of registration of the child at the place of residence or at the place of stay, ... do not determine the grounds for refusing to enrol a child in an educational organization.”²¹⁶ In addition, “the absence of these documents, which it is optional to include with the personal application ... cannot be a reason for refusing to admit a child to an educational organization if there is a vacant place.”²¹⁷

The decision of the Supreme Court also contains an observation that could be interpreted as an assertion that it is not necessary for parents to confirm their right to stay in the Russian Federation when enrolling their children in school. Nevertheless, the wording is not clear enough: “For the same reason, regulations requiring parents (legal guardians) of children who are foreign citizens or stateless persons to present a document confirming the right of the applicant to reside in the Russian Federation cannot serve as the basis for refusal. This normative provision also does not allow for the refusal to admit to an educational establishment a child who is legally staying with one of his parents (legal guardians) in the Russian Federation.”²¹⁸ Instead of stressing the unlawful nature of any attempt by school administrations to determine the right of foreign citizens to stay in Russia, the decision of the Supreme Court establishes that the absence of documents

²¹⁵ http://www.vsrfr.ru/stor_pdf.php?id=1367310 (Russian). Accessed on 08.02.17.

²¹⁶ Ibid. Accessed on 08.02.17.

²¹⁷ Ibid. Accessed on 08.02.17.

²¹⁸ Ibid. Accessed on 08.02.17.

confirming the legality of an individual's stay on the territory of Russia cannot be a reason for refusing admission to school, but that this only applies to those who are lawfully in Russia. In other words, it is not necessary to check the legality of an applicant's stay, but only for those who are here legally. One can only guess how this ruling will be applied in practice.

After considering the case, the Supreme Court did not uphold the complaint of the Civic Assistance Committee and the other petitioners, and consequently left Order № 32 unchanged. As a result, the problem of access to schools remains, and the decision of the Supreme Court only helps in those cases (and not always), when it is possible to explain the meaning of the decision to school heads.

3.3 Correspondence with authorities

Almost immediately after the decision of the Supreme Court it became evident that neither the Moscow Government nor the Moscow Department of Education nor the Ministry of Education and Science intended to take any practical measures based on the results of the last court session to avoid continued misinterpretations of Order № 32. The most serious violation of the right to education was and continues to relate to enrolment in Moscow schools, which, as outlined above, is organized in such a way that parents without registration cannot apply. The Civic Assistance Committee decided to demand that the Moscow authorities correct the existing system.

In September 2015, appeals were made to the Department of Information Technology, as well as to the Education Department of Moscow to establish an enrolment system on the Moscow state services online portal in accordance with the Constitution of the Russian Federation and the decision of the Supreme Court. In October, a response was received from the Department of Education that contained no substantive answer to the request, but instead provided 1) a general description of the powers of the department; 2) confirmation of the order to enrol children in schools via the portal; and 3) a reference to Federal Law № 109 "On Migration Registration of Foreign Citizens and stateless persons in the Russian Federation," indicating the duty of foreign citizens to register at the place of residence or stay. It is obvious that this answer made no sense, since it did not

concern the actual issue, but only confirmed the fact that in contravention of the law the Department of Education had taken on itself responsibility for migration control. This response as well as an outline of the issue was sent to the Ministry of Education and Science and to the Moscow Government. The Department of Information Technologies of Moscow denied any responsibility in the matter and referred the questions to the Department of Education. In their response they stated that “the interactive application forms for the provision of public services ‘Enrolling in First Year’ and ‘Enrolling in all Years’ on the portal are developed in accordance with the requirements of the Department of Education of Moscow.”

In its reply on December 10, 2015 the Ministry of Education and Science explained that “the certificate of registration is only a confirmation of the fact that the child lives near the educational organisation, which means that the absence of a certificate of registration cannot be a reason for refusing admission to the educational organisation.” Nevertheless, no measures were taken to stop the legal violations by the Moscow Department of Education, and in cases of specific violations it was recommended to apply to the Prosecutor's Office of the Russian Federation. The reply from the Moscow Government dated December 11, 2015 contained a reference to Order № 32, which was interpreted in such a way that “when enrolling in an educational organization, foreign citizens and stateless persons should present: a document certifying the identity of the parent (legal guardian), an original birth certificate of the child or a document proving its relationship to the applicant (the legal right to represent the rights of the child), a document confirming the applicant's right to stay in the Russian Federation, a document confirming the registration at the place of residence or at the place of stay on the territory of the city of Moscow.” As can be seen from these answers, *the Government of Moscow, and the Moscow Department of Education, in spite of the decision of the Supreme Court, which they also received, continues to interpret Order № 32 as establishing the requirement to present registration as a necessary condition for admission to school. At the same time, the Ministry of Education and Science, while it notes the inaccuracy of this interpretation, is not taking any practical steps to remedy the situation.*

The Civic Assistance Committee drafted an appeal to the Moscow Public Prosecutor's Office with a description of the infringements regarding the enrolment

of children in schools that were committed by the Moscow Government in the design of the online services portal, as well as the refusal of the Department of Education and the Government of Moscow to correct the current registration system. However, the request was redirected from the Prosecutor's Office to the Moscow City Government, in violation of Article 10, Paragraph 5 of Federal Law № 2202-1 “On the Prosecutor's Office of the Russian Federation,” which states: “It is prohibited to forward a complaint to a body or official against whose decisions or actions a complaint has been made.”²¹⁹ This was noted in a second letter to the Moscow Prosecutor's Office, along with a request to remind the relevant departments of the inadmissibility of violating children's right to education. The response of the Moscow Prosecutor's Office of April 18, 2016 did not provide a meaningful assessment of the situation, but merely noted that on the one hand, “admission to a state or municipal educational organization can be refused only because of a lack of available places,” but, on the other hand, “in accordance with Art. 64 of the Family Code, the protection of the rights and interests of children is the responsibility of the parents.” The letter concluded that “under these circumstances, there is no need for the Prosecutor’s Office to take further steps.” A repeated request to give a direct assessment of the legality of the guidelines that the documents required to enrol a child in Moscow schools include registration did not lead to any result.

In autumn 2016, the Civic Assistance Committee attempted to draw the attention of the Children’s Rights Ombudsman of the Russian Federation, Anna Kuznetsova, and the new Minister of Education and Science Olga Vasilieva to the problem of registration requirements as a prerequisite for admission to schools. The answer of the Ministry of Education and Science contained nothing substantially new, and the newly appointed Children’s Rights Ombudsman did not respond to the request.

From this correspondence, it can be concluded that the Ministry of Education and Science acknowledges the inadmissibility of the infringement of child's rights, but cannot or does not want to take any steps to eliminate those violations. The Moscow Department of Education and the Government of Moscow continue to interpret Order № 32 in a way that contradicts the Constitution of the Russian

²¹⁹ http://www.consultant.ru/document/cons_doc_LAW_262/f429000abb1a74d014270ebd49006c0bde9eea0f (Russian). Accessed on 23.01.17.

Federation, Russia's international obligations and the decision of the Supreme Court. The Prosecutor's Office does not consider it necessary to assess the legality of the existing system of admission to schools, which would entail the need for a large-scale reform of an unlawful policy relating to children's right to education, but is ready to deal only with individual cases where no systemic changes are required.

3.4 Refugee children, courses in Noginsk and Losino-Petrovsky

For the reasons discussed above, the parents of some groups of foreign citizens in Russia do not even attempt to independently enrol children in school. These groups include a significant number of Syrian refugees, many of whom are denied asylum by the Russian migration authorities.²²⁰ During interviews conducted by experts of the Civic Assistance Committee, it was found that a significant number of refugees from Syria (according to some estimates, more than two thousand) live in two towns in the Moscow Oblast, Noginsk and Losino-Petrovsky.²²¹ The overwhelming majority of those refugees with children could not enrol them in schools, with the effect that the latter received no education.

Since 2014, representatives of the Civic Assistance Committee have regularly visited the city of Noginsk to assist the Syrian refugees living there. Soon the idea emerged to offer lessons to children who were not in school. The architect and organizer of those courses was the Syrian journalist and Arabic translator Muiz Abu-Aljadail.

In large part thanks to his enthusiasm and active work, the first classes began in the end of 2014.²²² Vital support for this project was provided by UNHCR. A small room was rented in which lessons in Russian, Arabic, and English were held.

²²⁰ For a short description of the situation facing Syrian refugees in Russia see: <http://refugee.ru/en/publications/syrian-refugees-in-russia/> Accessed on 27.11.17.

²²¹ This is a significant number for Russia. For Germany or Turkey, it is of course a small number.

²²² <http://refugee.ru/news/samyj-uchebnyj-novyj-god/> (Russian) Accessed on 23.01.17.

Muiz himself taught mathematics. About 30 child refugees from Syria started to attend classes on a regular basis. Along with this, the employees of the Civic Assistance Committee made several attempts to solve the problem of access to public schools for such children. However, they encountered active resistance from individual officials, foremost among them the head of the Department of Education in Noginsk, N.S. Asoskova. The latter took an uncompromising position and simply refused to acknowledge the presence of children in her region if they did not have registration at place of residence or stay. Her behaviour, as well as an invitation to representatives of the Civic Assistance Committee to a meeting with the Russian Federal Migration Service, once again demonstrated the close connection between officials of the department of education and the migration authorities.²²³ Moreover, at the end of August 2015, after a visit by employees of the local migration department, the courses in Noginsk were discontinued. The formal reason for closing the courses was the fact that Muiz had registered the location under his name as a private individual.²²⁴ For a while, the classes had to be stopped, both because a new location had to be found, and because Muiz had left Russia.

Husam Eddin, a former engineer from Damascus, replaced Muiz as the organiser of the lessons and immediately established contact with the Syrian community. According to Husam, in 2015 there were at least 60 school-aged children of Syrian refugees (7-13 years old) in Noginsk who were not attending school.²²⁵ In the autumn of 2015, members of the Civic Assistance Committee tried again to enrol the children in school, but managed to get only one child admitted, thanks to a head teacher who was not afraid to take a child without registration.²²⁶ The child's good knowledge of Russian also helped, which she had learned independently from watching children's television programmes. It was not possible to enrol children in other parts of the town, and school head teachers preferred to refer them to the Department of Educational, in other words to Asoskova. It was clear that the

²²³ For a description of one of the meetings with Asoskovaya, and also attempts to resolve the problem of access to education, see: <http://refugee.ru/news/sirijskie-deti-i-rossijskie-chinovniki/> (Russian). Accessed on 23.01.17.

²²⁴ <http://refugee.ru/en/news/ripe-for-exploitation-how-syrian-refugee-children-are-treated-in-russia/> Accessed on 27.11.17.

²²⁵ As Husam was not able to talk to all of the refugee families from Syria, it is likely that the number of children is higher.

²²⁶ <http://refugee.ru/en/news/syrian-children-enrolled-in-noginsk-schools/> Accessed on 27.11.17. After the first child was accepted, it appeared that the situation had been resolved, however this conclusion turned out to be premature.

state education system could not be counted on to give access to schooling for this group of children. On March 9th 2016, with the help of the UNHCR, the Civic Assistance Committee once again started offering courses for the children of refugees from Syria. Apart from teaching Russian, English and Arabic, the centre also offered Russian lessons for adults and help with questions regarding migration.²²⁷ According to the available data, at the end of 2016, 30 children regularly attended classes and at the beginning of the 2016-17 academic year three children were placed in state schools. At the same time, the officials in charge in Noginsk continue to actively obstruct the children's education. In one case, after a Syrian family applied to enrol their child in school the police visited their flat and brought administrative charges against them for living there without registration.

On November 21, 2016, the Civic Assistance Committee, with the support of UNHCR, started offering Russian language courses for adults and children, and opened a legal centre and humanitarian aid centre in Losino-Petrovsky.²²⁸ A month after the opening, 6-8 children were regularly attending classes. The number of children wishing to attend is expected to rise as refugees share information about the course among themselves. In addition, it is worth mentioning that in Moscow the Civic Assistance Committee hosted the "Centre for Adaptation and Training of Refugee Children" for a long time before it moved to a separate location in 2010. In February 2016, the centre was forcibly evicted from this location by the Moscow city authorities. Despite all the problems associated with losing premises, the centre continued to operate, renting in various locations in Moscow. Thanks to the efforts of volunteers and civic activists the teaching of children of refugees, internally displaced persons and labour migrants continued.²²⁹ In 2016, about 55 children regularly attended the centre.

²²⁷ <http://refugee.ru/en/news/yes-is-for-da/> Accessed on 27.11.17.

²²⁸ http://inlosinopetrovsk.ru/novosti/gorodskoy_okrug/21-noyabrya-v-losino-petrovskom-sostoyalos-otkrytie-kursov-russkogo-yazyka-dlya-zhiteley-sirii-bezhavshih-ot-voyny-v-rossiyu (Russian). Accessed on 03.02.17.

²²⁹ See the website of the centre: <http://takie-zhe-deti.ru/> (Russian).

Conclusion

Given the above, there is every reason to state that there are **serious and systematic violations of children's right to education in Russia**. Specifically:

- Despite the fact that international and Russian law guarantees the right of everyone to free primary and secondary education, the reality in Russia is that a child whose parent cannot prove their right to stay in the Russian Federation does not have access to education;
- On the issue of foreign citizens' access to schools, Russia educational institutions tend to defer to, and in some cases completely subordinate themselves to regional authorities and law enforcement services, particularly those responsible for controlling migration. As a result, schools take on functions for which they are not legally responsible, specifically, migration control and determining the legality of foreign citizens' stay in the Russian Federation.
- In Moscow, the largest region which attracts the largest number of refugees and labour migrants, the right to education is denied to those who do not have a Moscow registration, through the establishment of special rules for enrolling children in schools. Children without registration are also not accepted to schools in St. Petersburg, the second largest city in Russia. There have also been cases of denial of access to education in other Russian regions due to a lack of registration;
- In Moscow, St. Petersburg, the Tver Oblast, and Moscow Oblast, there have been numerous cases of schools threatening to expel children when, in the view of the school, their parents have overstayed their legal stay in the territory of the Russian Federation. There have also been cases where children have been expelled;
- The existing system of referral to special-needs schools, as well as the provision of special educational support, functions in such a way that

children with disabilities are deprived of access to education (or access is significantly hampered) if their parents are staying in Russia: 1) On the basis of a patent; 2) On a work, educational or any other visa; 3) If the foreign citizens are appealing against the refusal to grant or extend their refugee status or temporary asylum status; 4) Without migration documents.

- It is very difficult for foreign citizens who do not know Russian well or at all to enrol in school. Head teachers often prefer not to take these children, which makes access to education more difficult for children whose parents are not in a position to defend their rights.

In summary, the approach of governmental bodies in Russia to the problem of access to education for children of foreign citizens without local registration or undocumented immigrations can be characterised as follows. Regional education administrations and schools will typically not provide a written refusal to admit the children, but in face-to-face conversations will often refuse to enrol the children. If parents continue to insist, head teachers often try to avoid providing an official response, prevaricate, defer a decision on the basis documents are missing, and also try to take advantage of foreign citizens' lack of knowledge of their rights. Oral and written refusals to admit children often contain various kinds of disinformation, references to Order № 32, to the requirements of federal migration services and so on. The close connection between schools and migration control bodies often hinders access to education for children of foreign citizens. Finally, Moscow has established an online enrolment system that makes the enrolment of children without registration technologically impossible.

In cases where the parents were insistent and the employees of the Civic Assistance Committee provided legal support and explain the legislation to schools, the head teachers tended to admit the children. At the same time, such an approach does not change the system, and only provides access to school on a case-by-case basis for the most persistent parents, and only if they have documents confirming their right to stay in the Russian Federation. Under the current system in Russia, the children of undocumented migrants and refugees who have not yet been recognized by the state as refugees tend to be refused access to education. In cases where parents have a legal migration status, but have not been able to register

at their place of residence and stay, much depends on the region and the head teacher. In Moscow, for example, if parents are ready to go to court, and competent legal support is provided, it is possible to gain admission to school. If the parents for one reason or another cannot or do not want to enter long legal procedures to protect their child's right to education, the child is either forced to go to another region or country, or remains outside the education system.

Recommendations

To the Ministry of Education and Sciences of the Russian Federation. Provide an official clarification concerning Order № 32: “On establishing a procedure for the enrolment of citizens in programmes of primary, general and secondary education,” and in particular the following lines: “Parents (legal guardians) or children, who are foreign citizens or stateless persons, are additionally required to provide a document that proves their relationship to the applicant (or the legal basis for representing the rights of the child) and a document that proves the right of the applicant to stay in the Russian Federation”. The purpose of the clarification must be that the document proving the legality of the applicant’s stay in the Russian Federation should only be presented to representatives of educational institutions (including schools), if the applicant himself agrees. At the same time, the absence of a document confirming the right of children and/or their parents to stay in the Russian Federation cannot be a reason for refusing or delaying admission to school, or excluding them from educational organizations (including schools);

To the Ministry of Education and Sciences of the Russian Federation. Provide an official clarification concerning Order № 32: “On establishing a procedure for the enrolment of citizens in programmes of primary, general and secondary education,” and specifically the following lines: “For admission to an educational institution: parents (legal guardians) of children with residence in a given region, must also provide the original birth certificate of the child, or a document confirming the relationship to the applicant, and a certificate of the registration of the child at the place of residence or stay at the area assigned to the school, or a document proving the child’s registration at the place of residence or stay in order to enrol in first year of school.” The clarification should make clear that the provision of registration is not mandatory or necessary document to be admitted to preschool, primary or secondary educational institutions. At the same time, the lack of a child or parent’s registration should not serve as a reason for refusing or delaying admission, or for excluding them from educational organizations (including schools);

To the Department of Education of the city of Moscow. Amend the information on the Portal of State and Municipal Services (functions) of the City of Moscow

(www.pgu.mos.ru), and in particular the section “Enrol in first year” (<https://pgu.mos.ru/ru/Services/link/2154>) and the information in the section “Entry to all years” (<https://pgu.mos.ru/en/services/link/2167>), as well as the application form for admission to school to bring it into accordance with the international and Russian legislation, and the judgement of the Supreme Court of the Russian Federation of August 27? 2015 (number AKPI15-694), namely: *a) Remove registration from the list of required documents, and from the list of conditions for applying for this public service; b) The procedure for submitting an application for admission to school should allow the applicant to include the actual address child where the child is living;*

To the government of the Russian Federation. Put before the legislative assembly an amendment to the Federal Law “On the Legal Status of Foreign Citizens in the Russian Federation”, which would ban migration authorities from demanding any documents or information relating to the migration status of schoolchildren or their parents from state and municipal educational institutions that provide pre-school, primary general, basic general and full secondary general education;

To the Government and the Ministry of Education and Science of the Russian Federation. Provide the required amount of Russian language courses in all regions of the Russian Federation so that any child who does not know the Russian language in any region of Russia will have free and convenient access to these courses.

To the Ministry of Education and Science of the Russian Federation, as well as to all regional departments and the Ministries of Education. Provide information on the websites of the ministry and all regional educational institutions about schools in which children of foreign citizens who have limited or no knowledge of Russian can receive education and study Russian;

To the Ministry of Education and Science of the Russian Federation, the Ministry of Labour and Social Protection of the Russian Federation, and the Government of the Russian Federation. Create the necessary legal framework to ensure that children with special needs and children with disabilities receive medical, social, pedagogical, and psychological assessment and assistance in order to receive a

referral to the appropriate school regardless of their migration status and whether or not the children or parents have registration. Ensure that such children are educated in accordance with their educational needs, including on specialized courses and special-needs schools;

To the Ministry of Education and Science of the Russian Federation. Consider creating a sub-department to manage questions concerning the education of children of foreign citizens in preschool, primary, and secondary educational institutions, and furthermore the possibility of appointing an individual responsible for coordinating links with civic organisations on issues relating to access to education in schools for children of foreign citizens.

To the Ministry of Education and Science of the Russian Federation. Together with Russian and international human rights organisations, and in coordination with the UN Committee on the Rights of the Child, prepare a resource pack for the heads of educational institutions on the universal right to education. Among other things, the pack should make clear the inadmissibility of refusing to enrol or excluding a child from school if the child or his parents do not have local registration.