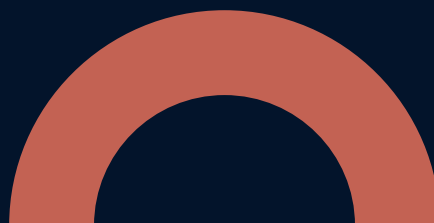




Report 2019

# “Lost in Russia”

A critical assessment of Norway referring to Russia  
as a safe third country and safe country of origin



Norwegian  
Helsinki Committee

Preface

# Arbitrary protection in Russia



In autumn 2015, the Storskog border crossing between Norway and Russia became a new route for refugees from Syria, Afghanistan and some other countries. Despite the approaching winter in this Arctic region, as well as a prohibition to approach the border by foot, almost 5 500 asylum seekers crossed the border during a few weeks using bicycles, cars and mini-buses. The Norwegian authorities initially responded by attempting to return the applicants to Russia, without considering their asylum applications on the merits.

This report analyses the situation of asylum seekers and migrant workers in Russia. It also shows why Russia remains a country of origin of asylum seekers. The report covers Russia as it was in 2015, as well as recent developments.

The report draws, among other sources, on assessments by the United Nations High Commissioner on Refugees (UNHCR). Like in previous publications by the Norwegian Helsinki Committee (NHC) on refugee and migration issues in Russia, sources also include the Human Rights Centre Memorial’s *Migration and Rights Program* and the *Civic Assistance Committee*. Both organisations have been monitoring the situation for refugees, migrants and asylum seekers in Russia since the 1990s. They also provide legal aid and consultations through Memorial’s representative offices in more than 40 regions of Russia.

The NHC is an internationally oriented non-governmental organisation based in Norway, working to ensure that human rights are respected in legislation as well as in practice. Its main working methods are monitoring, reporting, teaching and support to local human rights groups. It primarily works in Europe, Central Asia and North America, while also engaging in global actions related to fundamental freedom, accountability and integrity issues.

The situation of people living in or escaping from military conflict or brutal repression has always been at the top list of the organization’s priorities. In recent years, many European countries have become less willing to protect people fleeing from such situations by among other measures, deferring them to seek refuge in countries known to provide inadequate protection or no protection at all.

In this report we document fundamental problems with Russia’s asylum system. Norwegian authorities as well as authorities in other states that have obligations to provide protection to asylum seekers should therefore be careful when assessing whether it is safe to send individual applicants back to Russia.

In many cases, it is not.

**Bjørn Engesland**  
Secretary General



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Civic Assistance Committee provides Russian language lessons to migrants, refugees and asylum seekers.  
Photo: Denis Bochkarev.

Chapter 1

“Russia should not be regarded as a safe third country.”

**LGBT**  
Initialism of Lesbian, Gay, Bisexual, and Transgender.

# Summary and recommendations

The sudden increase in the number of asylum seekers arriving to Norway in 2015 through the Russian-Norwegian border via Storskog border crossing, which totalled 5473 persons by the end of the year, prompted an almost immediate reaction from the Norwegian government and the parliament. As Norway suddenly became a new first Schengen country of asylum, the parliament passed legislative changes in an expedited procedure in November 2015.

The changes weakened the rights of persons in need of international protection seeking asylum in Norway. In some cases, applicants were being denied access to the asylum procedure. Of the Storskog applicants, 1322 persons have not had their cases considered on the merits because Norway deemed Russia to be a safe third country.

The Norwegian Helsinki Committee and other human rights organizations argued that by being returned to Russia, the applicants risked chain-*refoulement* and breach of other rights guaranteed to refugees by international law.

The report argues that Russia should not be considered a safe third country, given fundamental weaknesses and flaws in its asylum system. It also points to Russia having remained a country of origin of asylum seekers for over 20 years, further underlining the weak protection of human rights for certain groups. Special sections of the report describe human rights problems of migrant workers, and the precarious human rights situation in Chechnya for some groups of the population, including LGBT persons.

Among the problems within the Russian asylum system are non-admission to the asylum procedure, unfounded refusals, ineffective appeals and arbitrariness. Asylum seekers are at risk of arrest, detention and expulsion at all stages of the asylum process.

A major shortcoming of the 1997 Refugee Act that regulates the handling of asylum cases is that it does not explicitly prohibit refoulement. It could be argued that lacking a guarantee that asylum seekers will not be forcibly returned to the country they fled and where they risk persecution or grave human rights violations, the law fails its central purpose.

Another serious problem is that asylum seekers who enter Russia illegally, i.e. without documents confirming a legal right to enter and stay, may be prosecuted under The Law on Entry and Exit and under article 322 of the Criminal Code, for violations of the rules on entering or residing in Russia. This is in violation of the Refugee Convention, which obliges states not to prosecute persons who enter a country illegally to seek asylum.



Access to asylum in Russia is difficult with low recognition rates, inadequate assessment of claims, poor reception facilities, corruption among migration officials and a significant risk of detention and refoulement. Political considerations by authorities may also influence treatment of applicants from different countries.

The report describes how Ukrainian asylum seekers were offered better conditions than others, such as Syrians in 2015. Hundreds of Temporary Migrant Accommodation Centres (PVR) were set up for them; which provided food and medical aid. Ukrainian citizens could apply for asylum at the temporary centres; an arrangement which had never happened before in Russia.

Even where Russia's failure to grant protection (i.e. a residence permit) would not directly lead to deportation, there are breaches of other rights enshrined in the Refugee Convention, for example the right to engage in wage-earning employment.

Russia has about 11 million migrant workers; the second largest migrant population in the world. Their situation is often uncertain, with weak protection of rights. The report shows that some of the same institutional weaknesses and abuse as asylum seekers experience are also felt by migrant workers. The human rights of migrants are neither fully guaranteed in legislation nor implemented by authorities or employers in practice.

Despite a worsening human rights situation in Chechnya since 2016, there have not been significant changes in Norwegian asylum practices. The Norwegian Directorate of Immigration (UDI) memo on practices and procedures refers to UNHCR recommendations, and states that it follows them. It is, however, difficult to see that current practice is fully in line with these recommendations.

In section 6 of the report, a 2009 letter from UNHCR to the Norwegian Helsinki Committee is quoted, specifying that some groups may face particular safety risks and human rights violations, such as human rights activists, persons who have held official positions in the previous administration of former President Aslan Maskhadov, those who may have lodged complaints with regional or international human rights bodies and, in particular circumstances, women and children.

In addition to these groups, journalists, victims of torture, LGBTI persons, and witnesses of human rights violations may be at risk. A UNHCR letter of September 10, 2018 to the Norwegian Helsinki Committee and the Civic Assistance Committee further underlined the need for "applications for international protection lodged in third countries by certain categories of nationals from the Russian Federation ... to be examined on the basis of a thorough assessment of the individual merits of the case."

There are difficult problems related to getting reliable corroborating information from the region. Individuals are afraid of contacting the few journalists and human rights activists who are available, due to the risk this poses for the person and his or her family. There is therefore limited information that could confirm the claims of asylum seekers about their protection needs. According to international law, however, any doubt should benefit the asylum seeker.

The internal flight alternative is frequently used by Norwegian immigration authorities for asylum seekers who meet protection criteria. Norwegian authorities accept that some Chechens cannot safely return to Chechnya but decide that it is safe for them to reside in other parts of Russia. However, once a persecuted Chechen appears in another region of Russia, he or she must register at his or her new place of residence. This registration may easily be known by authorities in Chechnya. It may prove next to impossible to stay under the radar of Chechen authorities even if you are living thousands of kilometres away from Grozny.

#### Recommendations:

- Russia should not be regarded as a safe third country;
- In assessing asylum applications from Russian citizens from the North Caucasus, Norwegian authorities should follow-up on recommendations by the UNHCR on which groups have reasons to fear for their safety;
- Chechen asylum seekers may be in possession of valuable information on human rights violations and international crimes. When granting protection, Norwegian authorities should secure that witnesses in important cases of human rights violations or international crimes are given opportunities to present their testimonies;
- Internal flight in Russia entails serious risks for refugees from Chechnya. There should be a very high threshold for Norwegian authorities to apply this alternative, in particular in cases where a person is found to be persecuted by Chechen authorities.



Head of Civic Assistance Committee  
Svetlana Gannushkina with some of the  
bikes left behind at the Storskog border  
by the asylum seekers. Photo: Lene  
Wetteland/NHC.

Chapter 2

“Ratifying the relevant conventions does not automatically mean that asylum seekers are treated in conformity with their standards.”

# Norway’s perception of Russia as a safe third country

The first reports of unprecedented increase in arrivals of asylum seekers crossing the Russian-Norwegian border via Storskog appeared in March 2015. The Norwegian Broadcasting Corporation (NRK) informed on March 4, 2015 about the arrival of five Syrian asylum seekers through Storskog in the previous ten days and a total of almost ten asylum seekers so far that year. Normally, this number is equivalent to the number of asylum seekers who would arrive through the border crossing during an entire year.<sup>1</sup> In the following few months, the number of arrivals increased rapidly, and international media, including the Wall Street Journal, informed about the new *arctic route*.<sup>2</sup>

According to statistics from the Norwegian Directorate of Immigration (UDI), 5473 persons arrived in Norway via Storskog in 2015.<sup>3</sup> Of these, 1322 persons have not had their cases considered on the merits because Norway deemed Russia to be a safe third country. The Dublin regulation has been deemed applicable to three persons. Protection has been granted to 1109 persons and, after assessment on the merits, denied to 1831 persons. Due to various reasons, the cases of 1151 persons have been dropped, including in cases where asylum seekers decided to travel further to other countries in Europe. The remaining 57 persons had their cases pending as of June 2017.

## 2.1 Immediate change of practice

On October 20, 2015, NRK informed that Russia had begun issuing expulsion decisions to asylum seekers leaving from Russia to Norway. In this way, Russia could prevent their return to Russian territory.<sup>4</sup>

The Norwegian Ministry of Justice and Public Security reacted quickly. On the same day, it instructed UDI to apply relevant provisions of the Norwegian Immigration Act to deny persons arriving through Storskog the right to have their asylum cases considered on the merits.<sup>5</sup> Two specific provisions were mentioned:

- 1. A provision applicable in cases where the asylum seeker had already benefited from international protection in another country;<sup>6</sup>
- 2. Another provision applicable in cases where the applicant arrived in Norway after having stayed in a country where the applicant does not face persecution and where his or her asylum case “will be assessed.”<sup>7</sup>

Hardly consistent with the two provisions, the same instruction further specified that the issue of whether the Russian authorities accept the applicant back to Russia was to be considered irrelevant.

The instruction to refuse to consider asylum claims on their merits and, at the same time, to disregard whether the Russian authorities readmit applicants to Russia created





No one is allowed to cross the Storskog border on foot, so local merchants made good money on sale of bikes.  
Photo: Lene Wetteland/NHC.

“refugees in orbit”. Such refugees end up in limbo without access to proper status determination, as the responsibility for the assessment of their cases is shunted from one state to another. This is a long-known issue, which is often manifest in situations where states apply a safe third country concept without proper legal safeguards.<sup>8</sup>

In the absence of a special agreement to the contrary between the states concerned, the Refugee Convention<sup>9</sup> must be presumed to be based on the principle of individual responsibility of each state party.<sup>10</sup> In our view, denial of rights guaranteed under the Convention to refugees within Norwegian jurisdiction, especially in cases with no prospect of readmission to another country where their asylum cases would be fairly assessed, violated Norway’s international obligations under the Convention.

“Norway’s non-refoulement obligations include the obligation not to expose asylum seekers to the risk of chain-refoulement.”

A separate issue was whether asylum seekers with an uncertain residence status in Russia, if readmitted from Norway to Russia, would get their asylum applications considered in Russia in a fair and effective asylum procedure. Norway’s *non-refoulement* obligations include the obligation not to expose asylum seekers to the risk of *chain-refoulement*.

**Non-refoulement**

*Non-refoulement* is a principle enshrined in both international treaty law and customary law, prohibiting states from expelling, returning (“refouler”) or extraditing a non-national to a country where the person would risk persecution or a severe human rights violation, including torture or inhuman or degrading treatment or punishment. The principle is explicitly mentioned in article 33(1) in the Refugee Convention and article 3 in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, Article 3 (and later also article 2) of the European Convention on Human Rights was first interpreted by the European Court of Human Rights as prohibiting *refoulement* in 1989 in *Soering v. UK* (app no. 14038/88). The Court has since maintained that the principle must be understood as absolute (i.e. not allowing for any exception), including in *Saadi v. UK* (app. no. 13229/03).

**Chain-refoulement**

*Chain-refoulement* (sometimes also termed “indirect *refoulement*”) refers to sending a person to a country in which the person might risks being sent further to a country where she would face persecution or a severe human rights violation

In its letter of September 10, 2018 to the Norwegian Helsinki Committee and the Civic Assistance Committee, the UNHCR reiterates its view that “the national asylum system of the Russian Federation, ... has ... significant gaps in the protection afforded to asylum seekers and refugees. Access to the territory and to the asylum procedure needs to be reinforced in order to reduce the risk of detention and refoulement that presently exist for a number of asylum-seekers and refugees in the Russian Federation.”<sup>11</sup>

Russia has ratified both the Refugee Convention as well as the European Convention on Human Rights.<sup>12</sup> However, as clarified by the European Court of Human Rights (ECtHR) in *M.S.S. v. Belgium and Greece*, it is not enough to assume that asylum seekers would be treated in conformity with the Convention standards. On the contrary, the removing country is bound to first verify how the authorities in the country of destination apply their legislation on asylum in practice.<sup>13</sup>



Civic Assistance Committee provides legal aid and guidance to migrants, asylum seekers and refugees trying to find their way in the Russian bureaucracy. Photo: Dmitry Kozlovskiy .

### Chapter 3

“Without a guarantee against forcible return to the country the asylum seeker fled, the Russian Refugee law fails its central purpose.”

## Treatment of asylum seekers in Russia

Many of the problems in the Russian asylum system are similar to persistent problems in other institutions. When the Norwegian Parliament on November 16, 2015 approved draft amendments presented by the government few days earlier, removing the safeguard requiring that an applicant’s asylum claim “will be assessed in [the safe third] country” he or she is returned to, the flaws of the Russian asylum system were well known. Both national and international reports pointed to disregard for international human rights standards and described institutions that were not abiding by laws and regulations. Asylum seekers were at risk of arrest, detention and expulsion at all stages of the asylum process.<sup>14</sup>

The problems within the asylum system are illustrative of pervasive human rights problems and lack of safeguards in the country. In 2017, the European Court of Human Rights found that Russia had violated the European Convention on Human Rights (ECHR) more times than any other country. The Court issued in total 305 judgements concerning Russia, with 293 judgements concluding that at least one violation of the ECHR had occurred.<sup>15</sup>

Russia also performs badly in terms of institutional integrity. In Transparency International’s 2017 perceptions of corruption index, Russia ranks 135 out of 180 countries.<sup>16</sup>

The US human rights organization *Freedom House* has rated Russia as *not free* since 2005. The description of the judiciary in the 2016 country report is telling:

“The judiciary lacks independence from the executive branch, and career advancement is effectively tied to compliance with Kremlin preferences. (...) The Supreme Arbitration Court had been widely respected as one of the most independent of Russia’s courts. In April 2016, a Russian court ruling on a dispute over prisoners’ voting rights was the first to use a 2015 law that allows the Russian judiciary to reject international court decisions; in this case, the international ruling had come from the European Court for Human Rights.<sup>17</sup> In November, Putin withdrew Russia from the International Criminal Court after the body issued a report of preliminary findings calling the fighting in Crimea and eastern Ukraine an “international armed conflict” between Ukraine and Russia.”<sup>18</sup>

In Norway’s State Budget for 2016, the description of Russia resembles the description provided by Freedom House (our translation):

“President Putin’s domestic policy is about preserving the central political and economic control and preventing threats to the stability of the country. The fundamental power relations in Russia are increasingly characterized by concentration of power around the



executive power. A range of laws that restrict freedom of speech and restrict the conditions for opposition activity have been adopted over the last years. In sum, these laws weaken the conditions for human rights and the civil society, and give a clear signal to the world about Russia's choice of values and direction.”<sup>19</sup>

A range of civil society organisations attempt to hold the authorities accountable to their human rights obligations. However, such organisations have come under increasing pressure in recent years. Organisations active on refugee and migration issues, such as the Human Rights Centre Memorial and the Civic Assistance Committee, have also experienced such pressure. Both organisations have been put on the list of so-called *foreign agents* according to the amendments which entered into force on November 21, 2012.<sup>20</sup>

“Organisations active on refugee and migration issues, such as the Human Rights Centre Memorial and the Civic Assistance Committee, have been put on the list of so-called foreign agents.”

The list contains at any time around 80 organisations that, according to the state, conduct political activities funded from abroad.<sup>21</sup> In 2017, the law was extended to also include media outlets. Due to extensive negative propaganda and the historic memory of the Russian population from the Cold War, the term “foreign agent” is perceived very derogatory and undermines the legitimacy of non-governmental organisations in the eyes of the population. In addition, the organisations are burdened with extensive administrative reporting requirements and are subject to frequent inspections by security officers and other authorities.<sup>22</sup>

Despite such legal impediments, organisations like the Civic Assistance Committee and the Human Rights Centre Memorial still manage to carry out their tasks. They are in many cases the only independent source of information and assistance to vulnerable groups in areas where international organisations like the UNHCR do not have access.

Similarly, despite legal restrictions and physical threats, journalists with independent newspapers like Novaya Gazeta can report on cases of human rights violations, often in cooperation with lawyers and human rights activists.

Together, these actors are an indispensable source of information on human rights issues in Russia, including for the UNHCR and other international organizations dealing with refugee and migration issues. Paradoxically, in spite the negative stamp as foreign agents, both the Human Rights Centre Memorial and the Civic Assistance Committee cooperate with the Russian Federal Migration Service.

The way asylum seekers and migrants are treated by Russian authorities, are in many ways symptomatic of how Russian public institutions function in general. According to the Russian political scientist Ekaterina Schulman, the issues described above make Russia meet the criteria of a *hybrid regime*. Such regimes simulate democracy outwards through apparently democratic institutions that are, however, inherently empty of genuine content.

A hybrid regime seeks to promote passivity in its population rather than to mobilize them as totalitarian regimes do.<sup>23</sup> Therefore its courts selectively facilitate impunity for well-connected and high-placed violators of human rights while neglecting national and international laws binding upon Russia. The Parliament has no genuine opposition parties and fulfil the role of rubberstamping the draft laws. Civil society and media are subject to severe restrictions that limit their scope of action.

On this background, it is not surprising that asylum seekers and migrants to Russia face multiple challenges when they try to avail themselves of the rights they are entitled to according to international and national law. They often experience that these rights remain unfulfilled and that treatment is arbitrary.

In general, treatment of Ukrainian and non-Ukrainian refugees differs significantly. Russian authorities have put in place simplified procedures for Ukrainian refugees to obtain residence permits, while for non-Ukrainian refugees there are serious obstacles. Among these are hindered access to the territory, non-admission to the asylum procedure, high rejection rates of persons in need of international protection, and lack of integration opportunities for temporary asylum holders and recognized refugees.<sup>24</sup>

### 3.1 Applying for asylum in Russia

In 1993 Russia acceded to both the 1951 Refugee Convention and its 1967 Protocol.<sup>25</sup> Thereafter, the system of asylum began to develop with the adoption of the Law on Refugees the same year.<sup>26</sup> The law was amended in 1997 (hereafter the 1997 Act). According to the Law, persons who need international protection can apply for refugee status or temporary asylum status.<sup>27</sup>

The Federal Migration Service was the agency responsible for the state's migration policy. It had branches in all of Russia's Federal subjects. In mid-2016, the Service was dissolved, and its functions transferred to the General Administration for Migration Issues under the Ministry of Interior (MoI). Its headquarters are in Moscow, while it retains branches (territorial agencies) in all 85 federal subjects of the Russian Federation.<sup>28</sup> These regional bodies are responsible for processing applications for protection status, issuing documents regarding the allocation of status as well as communicating refusal to provide a requested status.

A person who wants to be recognized as a refugee can submit an application either 1) to a Russian Federation diplomatic mission or consular office outside the country of her or his citizenship if the person is outside the territory of the Russian Federation; 2) at the border crossing to the Federal Security Police (FSB); or 3) to the General Administration for Migration Issues, including from detention centres or prisons.<sup>29</sup> If the entry is illegal, special rules apply which we will return to. Once an application is submitted, the procedure for determining refugee status comprises of two stages: the *preliminary examination* of an application for granting refugee status and the *examination of an application on the merits*.

If the preliminary examination results in a decision to proceed with an investigation of the application on the merits, Russian officials must, within six working days, issue the applicant with a three months' certificate. This is the time frame given within the legislation for the examination of an application on the merits.<sup>30</sup> The certificate is of crucial importance to asylum seekers as it functions as a legal status for residency

within Russia and allows the applicant to avail of certain rights provided for under article 6.1 of the 1997 Act.

After the final examination, the General Administration for Migration Issues can either deny or grant refugee status. If an applicant is denied refugee status, article 12.2(2) provides for the possibility of temporary asylum for humanitarian reasons, a status that creates the possibility for a foreign national or a stateless person to stay temporarily in Russia.<sup>31</sup>

To obtain temporary asylum, a person must prove that because of humanitarian reasons she or he cannot be expelled.<sup>32</sup> The law, however, does not specify what reasons can be regarded as “humanitarian”. Therefore, granting temporary asylum largely falls within the discretion of the General Administration for Migration Issues. The process of applying for temporary asylum is similar to the process of applying for refugee status, as outlined above.

A person may also apply for temporary asylum directly, without applying for refugee status first and being denied. In this case, the person must be qualified to be recognized as a refugee to obtain ‘temporary status’.<sup>33</sup>

A person may, however, also be granted temporary asylum if he or she have no reason to be recognized as a refugee under “the circumstances provided for by this Federal Law, but for humanitarian reasons cannot be expelled (deported) from the territory of the Russian Federation”.<sup>34</sup>

Refugee status is in principle indefinite, while temporary asylum is only granted for one year, thereafter reviewed annually.<sup>35</sup> Persons who receive either status may however lose it. There are several cases of persons whose refugee status was revoked<sup>36</sup> or their temporary asylum status not extended,<sup>37</sup> even though they continue to need international protection.

Although the 1997 Act establishes a procedure for determining refugee status, it has several defects that are contradictory to Russia’s obligations under the 1951 Convention. The Act adds additional grounds for rejection of asylum applications, beyond the criteria established by the Convention, and does not contain any explicit safeguard against *refoulement*. A new Federal Law on Asylum, with a view to harmonise Russian legislation with international norms, has been in the process of being developed since 2010-2011 but remains to be adopted.<sup>38</sup>

Even more concerning is that the system as it currently operates, makes it difficult if not impossible, for many asylum seekers to file an application for international protection. There is *inter alia* a 24-hours deadline for presenting the application to relevant authorities after entering the country, which for many is hard to meet. Even if you manage to counter all practical and logistical hurdles inherent in such a short deadline and present the application in time, asylum is difficult to achieve due to low recognition rates, inadequate assessment of claims, corruption among migration officials and a significant risk of *refoulement*.<sup>39</sup> It is fair to conclude that in practice, the 1997 Act has been ineffective in improving the legal status of asylum seekers.

A major shortcoming of the Act is its lack of an explicit prohibition against *refoulement*. The principle of non-*refoulement* constitutes a crucial guarantee of protection bestowed on refugees by the Convention. It is part of refugee law,

international human rights treaty law, and is widely considered to be part of customary international law.<sup>40</sup>

It could be argued that lacking a guarantee that asylum seekers will not be forcibly returned to the country they fled and where they risk persecution and/or grave human rights violations, the law fails its central purpose. In addition, the 1997 Act includes numerous articles, which function as precursors, allowing *refoulement* to occur, as exemplified below.

“Even more concerning is that the system as it currently operates, makes it difficult if not impossible, for many asylum seekers to file an application for international protection.”

Other legislation adds to this failure of guaranteeing protection. The law on exit and entry into the territory of the Russian Federation provides that foreigners and stateless persons may enter Russia using valid identification documents and a visa.<sup>41</sup> Article 25(10) stipulates that violation of the rules and of the requirement to have a valid visa, subjects persons to liability under relevant legislation.

International protection of asylum seekers from such liability is guaranteed under article 31.1 of the Convention, which provides that asylum seekers who enter a country illegally to seek asylum, cannot be prosecuted because of this breach of national law.<sup>42</sup> Russian legislation, however, does not contain any corresponding guarantee. As a result, asylum seekers who enter Russia illegally, i.e. without documents confirming a legal right to stay, can be prosecuted under the law on entry and exit and under article 322 of the Criminal Code of the Russian Federation, for violations of the rules on entering or residing in Russia.<sup>43</sup>

To avoid losing her or his rights to file an application for protection, article 4.1 (3) of the 1997 Act, requires that a person entering Russia without proper documents must apply for refugee status within 24 hours after crossing the border. Article 5.1(7) stipulates that a violation of the 24 hours timeframe can be a basis for denial of an asylum claim. Article 4.1(3) read in conjunction with article 5.1(7) gives legal grounds for *refoulement*, by denying protection on formal grounds. Even though the law in article 4.1(3) provides for a possible extension of this deadline, there are several problems inherent in this requirement. It is therefore in most cases imperative that an application be made within the 24-hour deadline.

This 24-hour deadline may be very difficult to meet in practice. This is due to several factors including access, lack of efficient information relating to the application procedure and problems occurring at both General Administration for Migration Issues offices, border controls and airports.

Regarding *information*, according to the 1997 Act Article 6.1(1), the right to access information and access to an interpreter only arises after an asylum seeker’s application is registered and a certificate is issued. In other words, both the right to access relevant information and to access an interpreter rely on an asylum seeker already knowing how to make an application and acting upon that knowledge.

The problem here is that the General Administration for Migration Issues does not maintain a presence at airports or other border points and do not adequately publicize that asylum seekers can request access to the agency. This information is only provided at the official websites of the General Administration for Migration Issues and only in Russian.<sup>44</sup> This leaves asylum seekers reliant on the goodwill of border guards and airline personnel to call immigration officials. Otherwise, they face immediate return to their countries of origin, including in some cases to countries where they may have a reasonable ground to fear persecution.

When trying to submit an application, asylum-seekers face problems both at the border, including in transit zones in airports, and at General Administration for Migration Issues offices. The right to submit an asylum claim is often denied at the border as the border guard service does not accept them, resulting in asylum seekers immediately being sent back to the country they arrived from.<sup>45</sup> The UNHCR and its partner organizations have dealt with several cases where, despite extensive efforts, asylum applications are not accepted by the personnel of the Border Guard Service without providing a reason.<sup>46</sup>

If, nevertheless, an asylum seeker succeeds in submitting an application to the General Administration for Migration Issues, she or he must remain in transit zone until the preliminary investigations have concluded. The European Court of Human Rights has issued judgments pertaining to the prevailing conditions in transit zones declaring them to be in violation of article 3 (prohibition on torture or inhuman and degrading treatment) and article 5 (right to liberty and security) of the European Convention on Human Rights.<sup>47</sup>

3.2 Challenges in obtaining access to the asylum procedure

As explained, it is often difficult for asylum-seekers to get access to the General Administration for Migration Issues to submit an application for asylum in time, or to get an appointment for interview and to receive the documents that protect the applicant from arrest and detention.<sup>48</sup> Civil society organizations report that applicants pay informal “facilitation fees” of approximately 33,000 roubles (\$500) to General Administration for Migration Issues administrators to have their application reviewed. Applicants who do not speak Russian have to pay themselves for a private interpreter. Reports also indicate that newly arrived asylum seekers in large cities such as Moscow and St. Petersburg, are forced to apply in other regions, allegedly due to full quotas.<sup>49</sup>

Procedure not followed

Once an application for refugee status or temporary asylum status is registered, the 1997 Act prescribes a three months period for the General Administration for Migration Issues to make a first instance decision. The applicant can stay in Russia in this period upon receiving a certificate indicating that he or she has applied for asylum in the country (Article 4 (6-7)). Partners of the Norwegian Helsinki Committee has experienced, however, that in practice there are significant delays in formal registration and certificates are not issued by some General Administration for Migration Issues branches.

Many refugees experience paying bribes as an unavoidable part of getting access to the asylum procedure. General Administration for Migration Issues employees may demand that bribes be paid for their application to proceed in a fast and trouble-free

manner. If bribes are not paid, the receipt of the application may be postponed indefinitely on various pretexts or without any reason.<sup>50</sup>

It also happens frequently that employees of the General Administration for Migration Issues call the police to bring charges against the applicants for illegal entry.<sup>51</sup> The asylum seekers are then brought directly from the offices of a General Administration for Migration Issues office to a police station. The next step is that they are sentenced by a court to pay a fine and/or are deported.<sup>52</sup>

If a person is under investigation for illegal entry she or he can be placed in a pre-trial detention centre.<sup>53</sup> In detention, there are serious obstacles to submit the application. There are several obstructing factors, such as staff lacking enough knowledge on procedures, migration officials delaying visits to the centre to initiate proceedings, and that the UNHCR lack access.<sup>54</sup>

At trial an asylum seeker can be sentenced to pay a fine and released, giving her or him the opportunity to make an application at a General Administration for Migration Issues office or, sent to deportation centres (SUVSIG) waiting for a decision or an implementation of a deportation order under article 18.8 of the Russian Federation Code of Administrative Offences. An application can also be submitted at deportation centres, but is subject to similar difficulties posed in detention centres.<sup>55</sup> This can be crucial as receipt of an application allows for ground to appeal a deportation order. In contrast, it could also not be of any real value as receipt of an asylum application does not lead to automatic termination of a deportation order. Applicants may still be deported regardless of having an application for asylum pending.

The absence of a guarantee in Russian legislation for asylum seekers not to be prosecuted if arriving or staying in Russia illegally, is not only problematic when considering the 24-hours deadline and article 5.1(7) of the 1997 Act. It is also problematic when having regard to article 5.1(1), which allows for a refusal to examine an application on its merits if criminal proceedings have been initiated against the person for the commission of a crime on the territory of the Russian Federation. Article 5.1(1) is in violation of the Refugee Convention as it goes beyond the exclusion clauses permitted.<sup>56</sup>

Lack of registration, legal status and documentation, i.e. certificates, can all be considered “crimes” and subject an asylum seeker to sanctions in accordance with article 5.1(1). This is even more worrying when considering the obstacles discussed above regarding the difficulties of submitting an application and obtaining legal status of residency.

Taking this into account, in combination with the 24-hours timeframe, it is almost certain that most asylum seekers will fall victim to article 5.1(1) or 5.1 (7).

An example of article 5.1(1) in operation is seen from the following scenario. Under the 1997 Act, if it is decided at the preliminary hearing that an application for asylum be examined on its merits, article 4.6 asserts that authorities must issue a certificate to the applicant within six working days.<sup>57</sup> This certificate is issued for three months, which under the law is the time frame given to authorities to examine an application on its merits (Article 7.1(2)). It serves as a legal status for residency and is crucial for asylum seekers who have entered Russia illegally. However, in practice Russian authorities do not usually grant certificates within six working days but after two-three weeks, sometimes not issuing them at all.<sup>58</sup>





During the 2018 FIFA World Cup in Russia, migrants and refugees played a friendly match on Moscow's famous Red Square, drawing attention to their difficult situation in Russia. Photo: Anna Gorovets.

As a consequence, many asylum seekers reside in Russia without certificate or any proof that they have submitted an asylum application. This makes them susceptible to being found to have committed a crime and being expelled based on article 5.1(1).

In conclusion, numerous articles of the 1997 Act allow for *refoulement* to occur while denying an asylum seeker her or his right to apply for protection. The Russian asylum system fails to provide international protection in compliance with the Refugee Convention, putting asylum seekers at risk of being returned to persecution or grave human rights violations.

“In conclusion, numerous articles of the 1997 Act allow for *refoulement* to occur while denying an asylum seeker her or his right to apply for protection.”

3.3 Emblematic cases

The Civic Assistance Committee has provided several examples on how the system fails to protect against *refoulement*. In January 2014, four Syrian citizens tried to apply for asylum upon arrival at Vnukovo airport in Moscow. The border guards found a mismatch in their documents, and without providing any explanation in a language they understood, took them to the airport's transit area. Representatives from the Civic Assistance Committee tried to mediate, but to no avail. All four were sent back to Damascus.<sup>59</sup>

The case of *Ali Feruz* (or Khudoberdi Turgunaliyevich Nurmatov, his real name) a 30-year-old gay journalist from Uzbekistan, illustrates some of the problems.<sup>60</sup> Feruz fled Uzbekistan in November 2008 after being detained and tortured.<sup>61</sup> He lived in the Kyrgyz Republic until March 2009, and then in Kazakhstan until June 2011. He separated from his wife and moved to Russia in July 2011, where he started to report for *Novaya Gazeta* on hate crimes, discrimination against LGBTI people and migrants, and the political situation in Uzbekistan.

Feruz applied for asylum in Russia in 2015, but the then Federal Migration Service dismissed the application on grounds that “belonging to a particular social group (non-traditional sexual orientation) does not justify his application for asylum.”<sup>62</sup>

In 2016, *Novaya Gazeta* made several attempts to regularise his residence in Russia, but to no avail. He applied for temporary asylum, referring to a high risk of being tortured if deported to Uzbekistan. His application was finally rejected on April 27, 2017. He was arrested on August 1, 2017, being charged with failure to leave Russia after his visa-free stay had expired. The same day, a Russian court ruled that he was to be deported to Uzbekistan.

On August 4, 2017, the European Court of Human Rights made a Rule 39 decision, instructing Russia not to deport him to Uzbekistan while his case was being considered. Due to substantial pressure from human rights activists and diplomatic representations, Ali Feruz was eventually released and later obtained protection in Germany.<sup>63</sup>

The case illustrates the arbitrariness in the system's handling of well-founded cases and the lack of protection against being deported to a country where there is a high risk of torture or ill-treatment. The case is unusual, though, in that very few people succeed in garnering the level of attention necessary to change its outcome.

Some refugees have spent over 20 years in Russia, but still cannot be sure that their status or place of residence is permanent since they only receive temporary protection or do not receive any formal documents at all.

One example is to be found in the Solntsevo region, not far from Skolkovo, where several families of Armenian refugees are living. They left Azerbaijan during the conflict between the two countries in the 1990s. They have been living there for 20 years, organized by the then Migration Service. However, they were never provided with any formal registration documents, which would state their residence address and entitlement to the property they were provided. The group thus had no formal documentation to prove their right to the housing they were provided for by the Russian state and inhabited for 20 years.

In July 2017, 143 of the families were forced by local authorities to leave their apartments – without any court order. Apparently, the authorities needed the properties for other purposes, and since the families did not have documents proving that they were entitled to live in their flats they were not protected.<sup>64</sup>



At Vestleiren camp, Svetlana Gannushkina met one of her Syrian clients from Moscow. Failing to manoeuvre through the Russian asylum system he continued to Norway through the Northern Route. Photo: Lene Wetteland/NHC.

Chapter 4

“The inconsistent treatment of asylum seekers from Syria and Ukraine illustrates the politicized and legally unpredictable system.”

# Syrian and Ukrainian asylum seekers

The differences in the treatment of asylum seekers from Syria and Ukraine illustrate the politicized and legally unpredictable nature of the system.

In 2014, which was a year with large influx of asylum seekers due to the conflict in Eastern Ukraine, 6,980 people from 64 countries applied for refugee status, while 267,764 people requested temporary asylum. About 99% of the applicants were from Ukraine; 5,789 applied for refugee status while 265,448 applied for temporary asylum. There were also substantial numbers from Syria (473 refugee applicants and 1,435 temporary asylum applicants) and Afghanistan (301 and 396 respectively).<sup>65</sup>

According to UNHCR statistics, 218 280 persons had been recognized for refugee status or temporary protection by the end of 2014. Most of these people were refugees from Eastern Ukraine who must reapply for their temporary protection status every year.<sup>66</sup> By mid-2017, over 1 million Ukrainians had sought asylum or other forms of legal stay in the Russian Federation since the outbreak of the conflict in South-Eastern Ukraine in April 2014.<sup>67</sup>

By December 1, 2014, only 808 persons were registered with refugee status in the whole of Russia. The number of persons registered with a refugee status as of October 2017 had dropped to only 589.<sup>68</sup> Most of them were Ukrainians who had arrived since 2014 and Afghans who had arrived during the 1980s. Only two of them were Syrians; one of them arriving after 2011, when the conflict in Syria started.

“There is a perception that it’s difficult for Syrians to get refugee status in Russia. This is not true. It is actually impossible,” Svetlana Gannushkina, head of the Civic Assistance Committee said.<sup>69</sup>

## 4.1 Syrian asylum seekers

Asylum seekers from Syria have been coming to Russia since 2012. Initially, the then Federal Migration Service did not grant protection to any but a few Syrian asylum seekers, stating that the authorities in Syria, despite a “difficult situation”, had the situation under control and provided the necessary assistance to the population. Syrian asylum seekers were perceived not to need protection, as the Russian authorities meant they “cannot be persecuted or be treated inhumanly by their authorities”.<sup>70</sup>

In 2013, the then Migration Service reversed this view, stating that “the authorities in Syria are not able to provide effective protection to their citizens suffering from the illegal actions of the oppositional forces”.<sup>71</sup> In 2013, 1191 Syrians received temporary protection, up from 49 in 2012.

In 2014, the policy changed again. A memo by the Ministry of Foreign Affairs and the then Federal Migration Service, stated that “the main problem of the Syrian Arab



Republic is unemployment”, and “the UN humanitarian organisations have considerably overrated the scale of humanitarian assistance to Syrians”. In the memo, which is still directing policies, the perception of the events in Syria had changed character from “large-scale internal armed conflict” to “a large-scale counter-terrorist operation”. The local nature of the armed opposition is emphasized, whereas human rights violations, the death toll, and information about internally displaced persons and refugees are absent. Rather, the positive news of revival of air services between Moscow and Damascus is underlined.<sup>72</sup>

The memo describes the migration flow from Syria to the Russian Federation as not connected with war or the risk of persecution. Syrian citizens that have arrived in Russia are put in three categories: 1) ordinary citizens believing that Russia is quieter and that there are also more opportunities to earn money; 2) businessmen having business interests in Russia; and 3) descendants of migrants from the North Caucasus interested in returning to the historical homeland.<sup>73</sup>

“The memo describes the migration flow from Syria to the Russian Federation as not connected with war or the risk of persecution.”

In 2015, around 12 000 asylum seekers from Syria were registered in Russia. About 8000 of them had their applications rejected while about 2000 received temporary asylum. About 2000 had stayed in Russia since before the recent conflict and had other types of permission to stay.<sup>74</sup>

By mid-2016, there were some 7000 Syrian nationals left on Russian territory; most of them living without legal status. If caught by police, Syrians without legal documents would be sent to migration detention centres and risk deportation. Such deportations were rare, but sometimes took place. According to the Civic Assistance Committee, there were several dozens of deportation cases, including Syrians put on flights to Turkey.<sup>75</sup>

Syrians of Circassian decent, were treated differently than other Syrians. For them it was easy to prove that they had ties to Russia, since their historical homeland is within Russia's borders.

Other Syrians often experienced that their application was rejected. In 2015, 1302 Syrians received temporary status while 695 applications were rejected. The arguments for rejecting applications were *inter alia* that “their relatives live in Syria, therefore an asylum seeker in Russia cannot be in more danger than them” and that “the whole population in Syria suffers”.

In 2017, 1317 Syrians received temporary status, while in 2018 the number was 1128.<sup>76</sup>

#### 4.2 Ukrainian asylum seekers

Ukrainian asylum seekers were offered better conditions than Syrians. Hundreds of Temporary Migrant Accommodation Centres (PVR) were set up for them; which provided food and medical aid. Ukrainian citizens could apply for asylum at the temporary centres; an arrangement which had never happened before in Russia. In 2014, 223 407 persons received temporary asylum, while 218 were recognized as refugees. The latter were mostly members of the Ukrainian security services *Berkut* and military officers. During 2014, only 13 persons from other countries received refugee status while 1763 received temporary asylum.<sup>77</sup>

Many Ukrainians have also found other ways to obtain legal residence in Russia, and on July 12, 2017, the State Duma passed an amendment to its citizenship law. The amendment made it easier for Ukrainians to acquire Russian citizenship.<sup>78</sup>

On July 22, 2014 two legal acts were introduced in the Russian Duma. Legal Act number 690 simplified the procedure for granting temporary protection to Ukrainians to three days rather than the previous three months. Legal Act Number 691 introduced quotas in Russian regions that were to relocate the refugees from Ukraine. Moscow, Moscow region, St. Petersburg, Leningrad region, Rostov region (which borders Ukraine) and Chechnya were granted *zero quotas*. However, most of these regions, except for Chechnya, already had large number of asylum seekers from Ukraine.

After the legal acts were adopted, the asylum registration in Moscow and Moscow region was stopped. The Civic Assistance Committee complained against the zero quotas, which were slightly changed.<sup>79</sup>





North Korean slave worker constructing the Zenit Arena in St. Petersburg for the 2018 FIFA World Cup.  
Photo: Denis Sinyakov.

Chapter 5

“Migrant workers face some of the same institutional weaknesses and abuse as asylum seekers.”

# Vulnerable migrant workers

Russia has about 11 million migrant workers; the second largest migrant population in the world.<sup>80</sup> Their situation is often uncertain, with weak protection of rights. We therefore include sections in this report to show that some of the same institutional weaknesses and abuse as asylum seekers experience are also faced by migrant workers. The human rights of migrants are neither fully guaranteed in legislation nor implemented by authorities or employers in practice.

Migration policies in Russia after the collapse of the Soviet Union, have been designed to curb illegal immigration and improve regulation of those who are provided work permit. Between 1998 and 2000, 1,5 million migrants resided in Russia illegally. Their number increased to between 3 million and 5 million in the early 2000s.<sup>81</sup>

In efforts to reduce illegal immigration, the Russian government introduced simplified procedures for obtaining work permits and registering temporary residence. In 2010, two new procedures for accessing the labour market were introduced: a “patent” system for citizens of former Soviet countries with visa-free entry, and simplified rules for the recruitment of highly qualified specialists.<sup>82</sup>

In 2012, the President approved the State Migration Policy Concept, which sets policy until 2025. It aims to make immigration policy more balanced and includes substantial new legislation. However, most of the concept’s goals of regulating different categories of migrants have not been reached. Low-skilled seasonal workers and for example health-care workers must still fulfil the same rules to access the labour market. Illegal immigration and migrants working without work permit is still widespread.

Most of the migrant workers are from former Soviet republics in Central Asia, such as Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. Even if there are simplified procedures for their work and residence in Russia, they nevertheless face a range of challenges in practice.

Of an estimated 1,2 million migrants living in Moscow, only a minority is working legally.<sup>83</sup> Due to ignorance or exploitation, the majority work without official work permit, which is often preferred by employers. Taxes are not paid, and an employer can easily get rid of an inconvenient worker. Corruption is rife, and few migrants dare to complain.

Federal authorities have in recent years initiated several round-ups to clean up the migration situation, in compliance with policies shared through international organisations the Russian Federation is part of, such as the Commonwealth of Independent States (CIS), the Shanghai Cooperation Organisation (SCO), and the Collective Security Treaty Organisation (CSTO). These organisations focus on migration mainly in the context of security and anti-terrorism, which may have serious consequences for both migrants and asylum seekers. They may be returned to the country from where they escaped persecution under the pretext of fighting terrorism or other threats to security.<sup>84</sup>

According to the Federal Service of State Statistics, the underground economy in Russia constitutes about 14% of the country's BNP, in some sectors up to 50%. In the construction sector the percentage is between 16 and 18.<sup>85</sup>

The migrants become victims of several types of abuse. They are often not paid or paid late and too little; they are working under dangerous conditions and have very long working hours. Outside the work place they may also face serious problems, such as being frequently stopped by the police and having falsified cases of drug storage or complicity in terrorism brought against them. They risk being deported at any time.<sup>86</sup>

## “The migrants become victims of several types of abuse.”

Migrants are victims of racial attacks and discrimination. According to *the Sova Centre*, which monitors xenophobia and racism in Russia, persons perceived by the attackers as *ethnic outsiders* constituted the largest group of victims of hate violence in 2016. Sova documented 44 ethnically motivated attacks (seven of the victims died) in 2016, compared to 38 in 2015. Migrants from Central Asia normally constitute the largest group of victims, with two persons killed and 22 injured in 2016 and four persons killed and six injured in 2015. Numbers for 2017 show a small decline in racially motivated attacks, while the number of ideologically motivated attacks (against perceived “traitors”) increased.<sup>87</sup> In 2018, at least 57 people suffered from racist and other ideologically motivated violence (four of the victims died).<sup>88</sup>

In addition, there were victims of unspecified *non-Slavic appearance* (one person killed and seven injured in 2017). Since people in this group were often described as *Asian* in appearance, most of them are likely migrants from Central Asia. In 2015, there was one person killed and 10 injured in this group. Victims from the Caucasus region include two persons killed and one injured in 2016 and no killings and five injured in 2015.<sup>89</sup>

Such assaults are usually not investigated by the police. This prevailing impunity contributes to a culture of acceptance for right-wing movements, violent groups and extreme nationalist attacks on migrants.

Central Asians also face discrimination in the rental market. Rent advertisements may explicitly state *for Slavs only*, and flat owners are reluctant to register migrants on their property. All foreigners, including migrant workers and asylum seekers, must register at a General Administration for Migration Issues Office. To register, a migrant worker must have a formal employer or a valid visa, a migration card, and a specific home address in Russia. Any of these can be hard to obtain, leaving migrants without proper documents and status, vulnerable to abuse and discrimination.<sup>90</sup>

The story of *Umarali Nazarov*, a five-month old baby of Tajik migrants who died in police custody in St. Petersburg in 2015, is telling of the lack of protection of migrants' human rights. Both his parents had been accused of violating migration rules. On October 13, 2015 the police visited the apartment where they lived.

The father was not at home when the police came. They arrested the mother, Zarina Unusova, who brought with her Umarali to the police station. At the station, the healthy baby was removed from his mother. One day later, the police reported that he was dead. It took, however, four more days before the parents got to see the corpse. On November 16, 2015 Zarina left Russia with a small coffin.<sup>91</sup>



Labour migrants from the former Soviet Union are frequently subject to discrimination and ill-treatment in Russia. Aktam Akhmetov from Uzbekistan was shot by the police during an arrest. Photo: Vlad Doshkin.

The story generated strong reactions and extensive media coverage both in Russia and internationally. Russian officials, including Prime Minister Dmitry Medvedev and the Ombudsman for Children's Rights, Pavel Astakhov, demanded investigation. However, on October 20, 2016 the Russian Investigative Committee closed the criminal case against the police officers, having found no trace of failure to properly fulfil professional duties.<sup>92</sup>

Most migrants work in construction, agriculture and housekeeping. Many of them manage to send money home, while some bring their families with them. In many cases, not only the worker but also other family members have difficulties, as one Uzbek journalist told the Civic Assistance Committee: “I live in constant fear for my wife as neighbours keep complaining about migrants living in the building. My wife and child sit at home all day long. She even asks me to lock the door from the outside.”<sup>93</sup>

### 5.1 Slave labour at FIFA World Cup construction sites

During the Spring of 2017, the Norwegian journalist *Haavard Melnaes* together with Russian investigative journalist *Artem Filatov*, documented that citizens of North Korea were working under slave-like conditions at the construction sites for the 2018 FIFA World Cup.<sup>94</sup>

The situation of migrant workers at the FIFA World Cup construction sites illustrates the weak protection of their rights in Russia. The matches of the 2018 FIFA World

Cup were played at 11 cities all over Russia. As with the Olympic Games in Sochi in 2014, hosting the World Cup was prestigious for Russian authorities. Several law amendments came into force on June 1, 2017, limiting freedom of assembly and freedom of movement primarily in the cities where the World Cup matches took place. Interestingly, the restriction period coincided with the pre-election period for the March 18, 2018 Presidential elections.

Although such high-profile sports events are aimed at raising national unity and pride, the construction periods are frequently tainted by scandals of corruption, embezzlement, abuse of migrant workers and repression of protests. Research by civil society organizations and media on preparations for the 2014 Sochi Winter Olympics exposed large scale corruption and failure to pay migrant workers, who came mostly from Central Asia.<sup>95</sup> Research on the conditions at construction sites for the FIFA World Cup exposed even worse conditions, including the use of workers from North Korea on slave-like contracts.<sup>96</sup>

Melnaes discovered North Korean workers at the building site for the Zenit Arena in St. Petersburg. His coverage in the Norwegian football magazine *Josimar* created headlines in international media and a challenging situation for FIFA.<sup>97</sup> The migrant workers were not paid, they did not have contracts, and labour regulations were ignored. The workers were victims of racist attacks and discrimination without having access to any effective remedies. There were even reports that some attacks ended with workers being killed.

The North Korean workers were brought to Russia as part of a 2009 agreement between the two countries.<sup>98</sup> According to the then General Administration for Migration Issues, 30 000 North Koreans were estimated to be working in Russia as of 2015.<sup>99</sup> Even though the agreement raises serious human rights issues, it retains a façade of legality as it underlines that the countries should respect each other's laws and regulations pertaining to the labour sphere.

Its true face was disclosed by a project manager for subcontracts. He was approached by a North Korean middleman and offered a deal to use North Korean workers. He stated that, "the price was six million roubles [to construct Zenit Arena]. Four million were to be paid to the government of North Korea. The rest would be split between the [contractor's] company and the workers. The workers were to be paid 600 roubles (80 NOK) daily. I rejected the offer."<sup>100</sup>

The North Koreans had their passports confiscated upon arrival to Russia. They were not able to move on their own as they were followed by security officers. They worked almost all-day around, without breaks. They lived either in special labour camps, barracks or houses hidden from public view, guarded by security officers.

“The North Koreans had their passports confiscated upon arrival to Russia. They were not able to move on their own as they were followed by security officers.”

In recruiting the workers, North Korean authorities deliberately chose workers with family obligations. They kept the families of the workers as hostages back home to prevent that the workers defected. Very few did. Even if some tried, they would probably not succeed. On February 2, 2016, another agreement was signed between Russia and North Korea allowing the countries to exchange captured prisoners.<sup>101</sup> If a captured North Korean was deported to his home country, he would likely be severely beaten and tortured, and his family would be punished.

The Civic Assistance Committee knows several cases when North Korean migrants escaped from labour camps and tried to apply for asylum. The Committee could save only very few of them. In such cases, the North Koreans had to sacrifice family or friends at home and never see them again.<sup>102</sup>





The Russian republic of Chechnya was tormented by wars in the 1990s and 2000s, leaving scars in a whole generation of Chechens. Photo: NHC.

Chapter 6

“Chechnya is a legal black hole where brutality, fear and arbitrariness reign.”

# Russia as a country of origin

Further underlining the weak protection of human rights for certain groups, Russia has remained a country of origin of asylum seekers for over 20 years. Some of the asylum seekers crossing the border at Storskog in 2015 were Russian citizens. They all had, however, their cases handled on the merits by Norwegian authorities. The new regulations that were enacted as a response to the Storskog situation were not applied to Russian citizens.

In previous parts of the report, failures by Russian authorities to protect the rights of asylum seekers and migrants have been outlined. These failures make Norway’s reference to Russia as a safe third country problematic. The abusive treatment of some of Russia’s own citizens further adds weight to this argument. Prevailing patterns of abuse against some of Russia’s own citizens make it unlikely that Russian authorities will develop systematic and effective approaches to providing protection of non-citizens fleeing regimes that Russia is supporting and/or stay on friendly terms with.

In the following, we also show that Norwegian policies towards asylum seekers from the Russian Federation is based on some of the same unfounded assumptions which were inherent in the safe third country argument used by Norwegian authorities related to the Storskog situation.

Norway has over the years granted protection to about 8 000 asylum seekers fleeing from Russia due to violent conflict, a precarious security situation and widespread human rights violations in the North Caucasus region, especially in Chechnya. Norwegian asylum practices concerning North Caucasian applicants, developed from a rather liberal practice during the late 1990s and early 2000s to a stricter practice from 2007.<sup>103</sup> From August 2008, Chechen asylum seekers who were found in need of protection were as a rule referred to the internal flight alternative.<sup>104</sup>

Before 2007, more than 75 per cent of asylum seekers received refugee status. After 2007, a practice developed which eventually resulted in about 85 percent of the applications being rejected. An agreement between Russia and Norway of 2007 facilitates return of rejected asylum seekers to Russia.<sup>105</sup>

Norway receives only about 1 % of Russian asylum seekers fleeing to European countries.<sup>106</sup> In the first 11 months of 2018, Norway received 57 asylum seekers from Russia.<sup>107</sup>

## 6.1 Sources of information

A few comments on sources of information from the North Caucasus may be appropriate. There are in general limited sources on human rights issues in the region. The main sources are a few Russian and international non-governmental organisations, such as the Human Rights Centre Memorial, the Nizhniy Novgorod Committee Against Torture, Human Rights Watch, the International Crisis Group, as well as a few independent media outlets such as Caucasian Knot and Novaya Gazeta.

The Parliamentary Assembly of the Council of Europe has appointed rapporteurs on the region that also provide reports. Russian authorities, however, provided limited if any cooperation with the rapporteurs, reducing their ability to gather first-hand information.<sup>108</sup>

On November 1, 2018 the Moscow Mechanism of the Human Dimension of the OSCE was invoked by 16 participating states, including Norway, about the Russian Federation. On December 21, 2018, the Rapporteur’s report was launched; an investigation of a range of grave abuses against LGBT persons and other vulnerable groups in Chechnya from January 2017 and up to the present. The report also assesses whether any accountability measures had been taken against those responsible for the abuses.<sup>109</sup>

The Norwegian Helsinki Committee in cooperation with eight Russian and international human rights groups has established the Natalya Estemirova Documentation Centre (NEDC) to gather and systematize documentation of human rights violations and international crimes as well as to strengthen reporting in the future.<sup>110</sup>

6.2 Chechnya remains deadly repressive

Authorities in Chechnya conduct vicious crackdowns on its critics or persons perceived to support opposition forces and their family members. There are widespread unlawful, punitive detentions and attacks against critics of President Ramzan Kadyrov’s regime, including abductions, disappearances, death threats and physical threats. For more than a decade, Kadyrov with the tacit support of Russia’s Federal President Vladimir Putin has “steadily tried to eradicate all forms of dissent and gradually built a tyranny within Chechnya”.<sup>111</sup>

In April 2017, it became known by *Novaya Gazeta* reporting that over 100 men in Chechnya who were believed to be gay were abducted, tortured, ill-treated and even killed in secret prisons. Escaped survivors reported a campaign of violence co-ordinated by the authorities. Some captives were handed over by the authorities to their families for “honour killings” under “local traditions”. Federal investigative bodies failed to initiate effective investigation into the cases.<sup>112</sup>

The abovementioned report by the OSCE Moscow Mechanism Rapporteur confirmed these allegations. The overall conclusion of the report was that “evidence clearly shows that the allegations of very serious human rights violations in the Chechen Republic of the Russian Federation have been found confirmed. This concerns in particular allegations of harassment and persecution, arbitrary or unlawful arrests or detentions, torture, enforced disappearances and extrajudicial executions. In particular, several waves of violations of human rights and abuses of persons based on their sexual orientation and gender identity in 2017 could be confirmed. New purges were identified affecting alleged drug addicts and even teenagers.”<sup>113</sup>

In *Aslakhanova and Others v. Russia*, the European Court of Human Rights found violations of the right to life, prohibition of inhuman or degrading treatment and the right to liberty and security.<sup>114</sup> The case concerned the disappearances of eight men in Chechnya between March 2002 and July 2004, having been arrested in a security operation. The Court noted that it had regularly found violations of the same rights in similar cases in more than 120 judgments, resulting from the disappearances in the Northern Caucasus since 1999. It concluded that the violations in the case resulted from *a systemic problem of non-investigation of such crimes*.

In a memo by the Norwegian Directorate of Immigration (UDI) of March 2017, the situation for the civilian population in Chechnya is described as better than it has been since year 2000. The general situation of its inhabitants is not of a character giving grounds for protection on its own. The UDI underlines that each asylum case is treated on an individual basis.<sup>115</sup>

An important element in UDI’s evaluation of the situation is that there is no armed conflict today, as it was during the 1990s and the early 2000s. However, even if there has been no armed conflict since Vladimir Putin became president in 2000, practices of suppressing dissent, silencing moderate religious leaders and enforcing collective punishment have prevailed. Federal authorities have relied on *a forced solution of the conflicts* in the region.

The anti-terror operation in Chechnya was officially declared to end in May 2009. The reality, however, is that anti-terror operations are still regularly conducted, and there are bomb explosions and attacks on police stations taking place in the whole North Caucasus region.

The North Caucasus region

The North Caucasus or Ciscaucasia is the northern part of the Caucasus region between the Sea of Azov and Black Sea on the west and the Caspian Sea on the east, within European Russia. As part of the Russian Federation, the Northern Caucasus region is included in the North Caucasian and Southern Federal Districts and consists of Krasnodar Krai, Stavropol Krai, and the constituent republics, approximately from west to east: The Republic of Adygea, Karachay–Cherkessia, Kabardino-Balkaria, North Ossetia–Alania, Ingushetia, Chechnya, and the Republic of Dagestan.

In certain respects, Chechnya differs from other republics of the North Caucasus and Russia. Even if Chechnya is a Federal Republic and subject to Federal laws, regulations and policies, President Kadyrov runs it on his own terms. People remain under strict state control with no freedoms. Journalists, lawyers and human rights activists are persecuted, jailed, and even murdered. Any dissenting opinion is struck down and dissenters are pressured to express apology in public.

“Even if Chechnya is a Federal Republic and subject to Federal laws, regulations and policies, President Kadyrov runs it on his own terms.”

After the 2009 murder of *Natalia Estemirova*, a renowned human rights activist leading the work of the Human Rights Centre Memorial in the region, the Nizhny Novgorod Committee against Torture created the *Joint Mobile Group* program, which allows teams of human rights lawyers to take on human rights cases on a rotation basis. Despite its office being put on fire twice and its lawyers having been physically attacked several times, the operation is ongoing.

In mid-January 2018, the Human Rights Centre Memorial suffered two heavy setbacks in the region. The head of its Grozny office, *Oyub Titiev*, a leading human rights activist in Chechnya, was arrested on January 9 on trumped-up drug possession



charges.<sup>116</sup> On January 17, an arson attack directed at Memorial's office in neighbouring Ingushetia took place.<sup>117</sup> The court proceedings against Titiev were still ongoing one year later.

Ordinary people are also at risk if they criticise authorities. An example is the case of *Ramazan Dzhahalaldinov*. He published a self-made video addressed to Federal President Vladimir Putin, revealing the poor infrastructure and economic situation in his home village Kenkhi. He criticised local authorities for failing to address the situation. Other residents in the area confirmed his account.

After publishing the video, Dzhahalaldinov was threatened by representatives of the Ministry of Interior of Chechnya. He was told that he risked suffering the same fate as Natalia Estemirova and *Boris Nemtsov*; a famous opposition politician shot dead close to the Kremlin on February 27, 2015. A criminal case against Dzhahalaldinov was initiated, his house was burnt to the ground, and his family members, including wife and daughter, were severely beaten. Finally, he had to appear on public television to apologise for his "lies", in a room full of elderly villagers who denounced him.<sup>118</sup>

The case illustrates how President Kadyrov enjoys absolute power, while local security services commit serious abuses with impunity. It also illustrates that Kadyrov's interpretation of *sharia* and Chechen customary tradition *adat* prevail over Russian legislation.

Society in the North Caucasus is regulated by three sets of laws: *federal law*, *adat* local and customary law and *Sharia*. *Adat*, which is orally transmitted, is an informal legal system implemented by knowledgeable elders. It has blended with Sharia and is increasingly being replaced by it. According to the International Crisis Group,

"In Chechnya and Ingushetia, family and property disputes are normally resolved by Sharia, but *adat* is generally used when they have a criminal aspect. *Adat* also regulates disputes arising from abductions of brides, insults, public humiliation, and adultery. The lack of a uniform legal environment is an important factor when analysing mediation, conflict resolution and post-conflict reconciliation in the region. The most controversial form of *adat* – blood feuds – has tended to prolong conflicts for years, sometimes decades, especially in Chechnya and Ingushetia and more rarely amongst Avars, Kumyks and other peoples of Dagestan."<sup>119</sup>

In 2014 and 2015, there was a substantial reduction in the number of violent attacks by rebel forces both in Chechnya, and in the wider North Caucasus region. A likely theory is that many active fighters left the region to take part in the conflicts in Syria and Iraq, becoming fighters for the Islamic State (IS).<sup>120</sup> However, due to the subsequent defeat of IS, it is reported that some of the fighters return. In 2016, the number of attacks increased again. In 2017, it dropped somehow again but remained on a level much higher than in 2015.<sup>121</sup>

On December 17-18, 2016, a series of attacks on policemen in Grozny left three of them killed in fighting and one dead at the hospital. As a response, local authorities prosecuted three groups of rebels, consisting of 16 persons. In addition, security services started a new wave of anti-terror operations, collectively punishing the relatives of the rebels by burning their houses and keeping whole villages hostage. Many lost their jobs while 22 men were detained and tortured. Most of them were later released. There were reports, however, that criminal cases were prepared against them.<sup>122</sup>

On July 10, 2017 Novaya Gazeta published an article, which included a list of 27 persons who had been arrested as part of the anti-terror operations, who according to anonymous police sources, had been secretly executed on January 25-26, 2017 in Grozny. They were allegedly executed by officials from the Ministry of Interior of the Chechen Republic.<sup>123</sup>

The practice of so-called forced *people's gatherings* has also become commonplace to punish the relatives of alleged wrongdoers. The whole village is gathered and yells at those who have dared to speak out or are suspected of crimes; shaming him and forcing him to leave the village. Even the wrongdoer's relatives, wife and children, are forced to leave as they are perceived as guilty in having brought shame upon the village. Houses are put on fire as part of the collective punishment.<sup>124</sup>

The fight against international terrorism, gaining impetus from the temporary advancement of IS in Syria and Iraq, may also have created support within some circles of society for murdering alleged terrorists with impunity. Such extrajudicial killings were allegedly used by the Kadyrov regime, violating not only Russian legislation, but also *adat*.

According to *Alexander Bortnikov*, the head of the Federal Security Services (FSB), 164 rebels were killed in the North Caucasus in 2016 and more than 900 rebels were detained or surrendered. Simultaneously, the Federal Service National Guard, a new unity created on July 3, 2016 reported about 125 alleged rebels killed, 47 000 detained and more than 40 000 crimes solved in the year since their creation.<sup>125</sup>

These numbers are not verified but indicate a trend of increase rather than reduction in terrorist activities. It should not be a surprise that many persons continue to flee the region for various reasons and remain at risk if returned.

### 6.3 Vulnerable groups in Chechnya

Indicators point to a worsening human rights situation in Chechnya since 2016. The tense situation on the border between Belarus and Poland in July 2016, where around 1000 Chechens unsuccessfully tried to cross the border, is one of the signs of a precarious situation. The Chechens were forced back by Polish border guards.<sup>126</sup>

This deterioration has, however, not led to significant changes in Norwegian asylum practices. A factor contributing to this, may be that UNHCR did not publish formal recommendations and guidelines regarding Chechnya since 2004.<sup>127</sup> On June 2, 2009, the agency wrote the following in a letter to the Norwegian Helsinki Committee:

"Military incidents, however, still take place in the Chechen Republic. There are also continuing reports of human rights concerns which may place personal safety or rights at risk. In particular, UNHCR is aware that members of illegal armed formations and their relatives, political opponents of the federal or Chechen authorities, human rights activists, persons who have held official positions in the previous administration of former President Aslan Maskhadov, those who may have lodged complaints with regional or international human rights bodies and, in particular circumstances, women and children, are among the groups who have raised concerns about their safety or rights."



In addition to these groups, journalists, survivors of torture, LGBTI persons, witnesses of human rights violations and applicants to the European Court of Human Rights should in the current situation be considered as especially vulnerable.<sup>128</sup>

After the murders of Anna Politkovskaya in 2006 and Natalia Estemirova in 2009, persecution of lawyers, journalists and human rights activists has made it hard to obtain information from the region. People in the region are afraid to contact the few journalists and human rights activists who are available due to the risk this poses for the person and his or her family.

This may also be an important factor in explaining why asylum seekers from the region fail to convince Norwegian authorities about their protection needs. There is limited information available that could confirm their claims.

Among those who apply for asylum in Norway there may be persons that possess valuable information, which could help in building an accurate picture of the dire situation in the region. They could also function as witnesses in important human rights or international crimes cases – if protected.

6.4 Internal protection alternative

The existence of an effective internal protection alternative is frequently used as an argument for refusing to provide protection to persons from the Chechen Republic in Russia.<sup>129</sup> Applicants who are deemed to meet protection criteria may still be rejected by reference to internal protection in Moscow or other parts of Russia. However, reports from a range of human rights organisations, research conducted by the Norwegian Helsinki Committee as well as cases exposed by journalists demonstrate that internal flight in Russia for persons from Chechnya is often not safe.

Any Russian citizen, including Chechens, moving to another region is obliged to register at her or his new place of residence, and such registration may easily alert authorities.<sup>130</sup> Police and security services in different parts of Russia are in general well connected, and Chechen authorities also have additional networks to obtain information from other parts of the Russian Federation. It may prove next to impossible to stay under the radar of them even if you are living thousands of kilometres away from Groznyy.

The 1993 Law on Forced Migrants allows for citizens of the Russian Federation who are forced to leave their permanent residence to receive assistance from the authorities on the place where they are relocated. However, the law does not take into consideration cases where persecution by local authorities is the reason for the need to relocate.

There are three main conditions in Norwegian and international law that must be fulfilled when applying the internal protection alternative: 1) internal flight must be safe and accessible for the applicant; 2) reference to internal protection must not be unreasonable; and 3) the decision must be based on a forward-looking approach assessing the needs for protection and whether internal actors of protection are able and willing to provide such protection. The immigration services have the burden of proof that these conditions are met.<sup>131</sup>

Based on studies on how immigrations services in 11 EU Member States apply the internal protection alternative,<sup>132</sup> a group of European refugee and human rights

organisations has developed a set of recommendations to improve practises.<sup>133</sup> The EU Qualification Directive and its recast set out the concepts of *actors of protection* and *internal protection alternative* to streamline application among EU Member States.<sup>134</sup> However, the study shows that there is a long way to go before the countries apply the concepts in a unified way.

Among the main weaknesses in their application of the concepts are that they fail to assess the durability of protection and whether the applicant can assess it. They also sometimes fail to assess whether a legal prohibition of persecution in a country is followed up in practice.<sup>135</sup>

Some of the recommendations of the organisations are that:

- Where state agents are the actors of, or tolerate, persecution or serious harm, effective protection should be considered to be unavailable;
- [they] should interpret the criterion that protection must be “non-temporary” to mean that it must be established that the factors, which formed the basis of the refugee’s fear of persecution, have been permanently eradicated, and that there are no further well-founded fears of being exposed to acts of persecution or a risk of serious harm, including by actors other than the original actor of persecution;
- The availability of protection for the applicant must be demonstrated in practice, not merely in principle, it must be available to the particular person concerned or similarly situated persons, not merely in general terms. It should be demonstrated that the applicant can be effectively protected by a specific actor of protection and will have access to protection and that the protection is not temporary;
- Applicants are not required in law, and should not be required in practice, to exhaust all possibilities to find protection in the country of origin prior to their flight. The assessment of protection needs is forward-looking and should be clearly separated and distinct from credibility assessments;
- In evaluating protection needs, Member States should clearly distinguish between assessing a risk of persecution or serious harm and assessing the availability of protection against that risk;
- Because the internal protection alternative is a discretionary provision under the Qualification Directive and is neither a principle of international law nor mentioned in the 1951 Refugee Convention, states must give priority to their protection duties under international law and need not consider the internal protection alternative at all.<sup>136</sup>

Even though the Qualification Directive is not binding on Norway, which is not a member of the EU, it has extensively influenced legislation and practice. The recommendations are therefore relevant for Norwegian immigration policies and practices.<sup>137</sup> As we interpret the recommendations, if applied to Chechens in need of protection from persecution by Chechen authorities, they imply that the threshold for referring to alternative protection in other entities of the Russian Federation should be very high. Other Federal entities are likely to comply with requests from Chechen authorities to have a Chechen individual arrested and transferred to Chechnya. Protection will therefore not be effective and durable.



Although the war is over in Chechnya, most of the asylum seekers from Russia originate from the republic also today. Photo: NHC.

The UNHCR has specifically dealt with the application of the internal protection alternative related to Chechens persecuted by Chechen authorities. In a letter to the Norwegian Helsinki Committee in 2009, the UNHCR warned against the Norwegian practice of referring to the internal flight alternative:

The question whether or not an internal flight or relocation alternative is available should be assessed on a case-by-case basis in light of the requisite relevance and reasonableness analysis and taking into account the individual circumstances of the case.<sup>138</sup> UNHCR’s assessment is, however, that an internal flight or relocation alternative should not be considered to be available within either the Chechen Republic or other regions of the Russian Federation for Chechen asylum-seekers fleeing persecution in the meaning of Article 1 A of the 1951 Convention.<sup>139</sup>

This assessment is confirmed by research carried out by the Norwegian Helsinki Committee. A questionnaire was sent to the more than 40 regional offices of Memorial’s refugee program in 2013 and in 2016-2017. Staff of these offices are lawyers with first-hand experience from various situations where Chechens move from Chechnya to other parts of Russia. Analysis is still ongoing, but some preliminary findings have been confirmed during two rounds of analysis.<sup>140</sup>

Most of the respondents confirmed that if a Chechen is wanted by Chechen authorities, they have the means to find his new location. Chechen police, in cooperation with federal security services such as FSB, can track Chechens in the

whole territory of the Russian Federation. There is a joint information base for all of Russia (“Samara”). According to the Chelyabinsk Memorial office, if a Chechen is found not to want to register at a new location, local police will request information about him from Chechen police.

According to the Memorial Murmansk office, it is possible for people from North Caucasus to live other places in Russia. The mere presence of the many North Caucasians living outside their region is evidence to that. – “The question is how comfortable and easy it is for them [to find accommodation and work]. And in a case where there is a criminal charge against a person, motivated on political or religious grounds, internal flight is no alternative.”

According to law, a Russian citizen must register at a new location within 90 days, and for that she or he needs a place of residence. For Chechens it has proven difficult both to buy or to rent property, and to have the owner register a Chechen national on her or his property.

Another issue is that when a person succeeds to register on a new residence, authorities will verify whether the person has de-registered from her or his previous residence. If the person is wanted by Chechen authorities, this information will very likely be known to them.

An additional challenge arises from growing anti-Chechen sentiments in Russia. An understanding of Chechens as terrorists culturally different from Russians has solidified. Research carried out by the Levada Centre in 2013 indicated that 24% of Russians would be very happy if Chechnya became separate from Russia (compared to 14% in 2009); 52% of Russians think that the threat of terrorism from North Caucasus has increased over the last years, and 72% of Russians describe Chechnya as an “intense” or “explosion prone” region.<sup>141</sup>

“An additional challenge arises from growing anti-Chechen sentiments in Russia.”

The risks associated with referring Chechens with protection needs to internal flight is illustrated by two known cases, where both rejected asylum seekers were found dead under suspicious circumstances after being returned from Norway to Russia.

*Umar Belimkhanov* possessed detailed information about the Kadyrov regime and its criminal activities when he applied for asylum in Norway. He was not a torture survivor himself, but since he originated from Tsentoroy, the home village of President Kadyrov, he had sensitive information about the regime’s methods of repression. In addition, Belimkhanov’s brother Adam was a member of an illegal military group, *boeviki*, and was a well-known figure before he was murdered in May 2009 and his body shown on Grozny TV.

When interviewed by Norwegian migration services, Belimkhanov shared the information he had. His asylum application was, however, rejected despite verification letters from the Norwegian Helsinki Committee, the Human Rights Centre Memorial and the Committee against Torture Joint Mobile Group.

Norwegian immigration authorities agreed that Belimkhanov could not return to Chechnya but referred him to an internal protection alternative. He was deported to Moscow in November 2011. Already upon arrival in Sheremetyevo airport he was interrogated by security officers. His money was taken from him, and he was directed to board a train departing to Chechnya.

Shortly after his arrival to Chechnya, he was detained, tortured, and his passport confiscated. At this point Belimkhanov's case was still under consideration by a Norwegian court, and he hoped that the negative decision could be changed. The Norwegian Helsinki Committee was in contact with him at several points during his return, and advised him to visit the Human Rights Centre Memorial, which could provide additional evidence in his case.

However, a year later, in December 2012, Belimkhanov was found dead at the site of a car accident under suspicious circumstances. His case has been investigated and described in detail by the Norwegian freelance investigative journalist Øystein Windstad, and first published in Norwegian news magazine, *Ny Tid*,<sup>142</sup> the Human Rights Centre Memorial and the independent news outlet Caucasian Knot.<sup>143</sup>

*Apti Nuzjiev's case* was also covered by Windstad and published in *Ny Tid*. His asylum application was rejected by Norwegian immigration authorities, referring him to internal flight. After being returned to Russia, his dead body was found in a river in Chechnya with traces of torture, documented by medical experts.<sup>144</sup>

A well profiled case was that of *Murad Amriev*, a mixed martial art champion from Chechnya, who was detained and tortured by security services in 2013. The Nizhniy Novgorod Committee against Torture represented him in the court.<sup>145</sup> The reason for the detention and torture of Amriev, was that the police was seeking information about his older brother who had fled Chechnya years earlier. Amriev then left Chechnya for Ukraine but held on to his Russian citizenship as he wanted to be able to represent Russia in tournaments.

In June 2017, Murad entered Russia to renew some documents. He was detained in Bryansk, a Russian town not far from the border with Ukraine. Chechen security officers then came all the way to Bryansk to take Murad to Chechnya. He tried to escape but was taken by the Belarusian border patrol.<sup>146</sup>

The case became known in Russian and international media, and thanks to public exposure, Amriev's life was saved, and his name was removed from a federal wanted list in Russia. But far from everyone is able to garner such attention.

Even if the case ended well for Amriev, it illustrates well a wider problem of illegal arrests, torture and persecution which makes life unpredictable and hard to many Chechens. They are not safe outside of Chechnya, or in other parts of Chechnya. Similar stories concerning less known ordinary people do often not end well. But we never hear about them.

### 6.5 Persecution of LGBT

In April 2017, reports surfaced that documented anti-LGBT persecution in North Caucasus, confirming that regional authorities participated in multiple violent campaigns against LGBT people, often accompanied by physical and psychological

abuse and even honour killings by relatives.<sup>147</sup> Novaya Gazeta published several articles on how the authorities in Chechnya detained and tortured LGBT persons. Due to the discoveries and cooperation with human rights activists in Russia and internationally, many received protection abroad, whereas others are still in urgent need of protection.<sup>148</sup> Several detained persons were tortured to death. In an interview with *The New Yorker*, Novaya Gazeta reporter Elina Milashina underlined that:

“(...) they had all been tortured, so that they would give up the names and contacts of other gay men, who were then themselves detained, and the cycle spread from there. It became clear very quickly that this was a purposeful campaign against gays. (...) Honour killings against women – that is, women who, in the opinion of their relatives, somehow disgraced the family or their clan – are, sadly, rather common. Before this current campaign, we did not have a record of such honour killings targeting men in Chechnya. If a man was found out to be gay, he was not killed, but very often Chechen security forces would use it as an excuse for blackmail. The taboo was a pretext for extortion. But there were never killings, let alone on a mass scale. This became possible only after the signal passed from above, from the Chechen authorities.”<sup>149</sup>

Instances of torture, ill-treatment and cruel and degrading punishments against people in retribution for their supposed homosexuality has also been documented by international human rights organisations.<sup>150</sup>

It should be kept in mind that when Milashina refers to “Chechen security services” or “Chechen authorities” these also are “Russian authorities”. President Kadyrov, whose outspoken homophobia is well known,<sup>151</sup> is subordinated to the Federal President and Government.

The Chechen republic is a part of Russia and enjoys a particularly favourable position. Chechnya is one of the republics most dependent economically on Federal donations. The close relationship between President Kadyrov and Federal President Putin is documented most clearly by the impunity of Kadyrov's security services all over Russia; sometimes to great frustrations for other parts of the Federal security apparatus.<sup>152</sup>

The above-mentioned report of the OSCE Moscow Mechanism Rapporteur confirms the major allegations and “show that there is a problem of total impunity of the security forces”. His report pays attention to the cases of Oyub Titiev, who is “on trial on obviously fabricated evidence” and Maxim Lapunov, “who is the only victim of the purges of LGBTI persons who made a formal complaint, which, however, was turned down.”<sup>153</sup> The report also covers recent raids on alleged drug addicts and teenagers as well as the shrinking space for human rights defenders and the media.

It further contributes to a picture of Chechnya as a legal black hole where brutality, fear and arbitrariness reign.



Endnotes

1 NRK Finnmark, "Politiet frykter ny flyktningerute til Norge via Russland", March 4, 2015, available at: <http://bit.ly/2DCiLCU>

2 The Wall Street Journal, "To a New Home via the Arctic: Some refugees head north for a safer route to Europe", 04.09.2015, available at: <http://on.wsj.com/2DcQhCV>

3 Utlendingsdirektoratet (UDI), "Saksbehandling av Storskog-saker", statistics last updated on June 21, 2017, available at: <http://bit.ly/2Db3098>

4 NRK Finnmark, "Russland utviser flyktninger for å forhindre retur", available at: <http://bit.ly/2DeRGJ4>

5 Justis- og beredskapsdepartementet, *Instruks til Utlendingsdirektoratet for behandlingen av asylsøknader fremsatt av personer som har reist inn i Norge fra Russland*, GI-12/2015, 10.10.2015, available at: <http://bit.ly/2B437gL>

6 Norwegian Immigration Act, § 32 (1) (a).

7 Norwegian Immigration Act, § 32 (1) (d).

8 See e.g., Judith Kumin, "Protection of, or protection from, refugees?", Refugees Magazine Issue 101 (Asylum in Europe), September 1, 1995, available at: <http://bit.ly/2wUx6q7>

9 UN General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://bit.ly/1BPsvvc>

10 International Law Commission (ILC), Annual Report (2001), Commentary to the Articles on State Responsibility, Chap. IV, Commentary to Article 47, para. 3; see also: Violeta Moreno-Lax, "The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties", in G.S. Goodwin-Gill and P. Weckel (eds), *Migration & Refugee Protection in the 21st Century: Legal Aspects*, The Hague Academy of International Law Centre for Research, Leiden/Boston: Martinus Nijhoff, 2015, pp. 693-694.

11 The letter from UNHCR to NHC and CAC dated 10.09.2018 is available at: <https://bit.ly/2E8h4zi>

12 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), as amended by Protocols Nos. 11 and 14, November 4, 1950, ETS 5, available at: <http://bit.ly/1H2LiOS>

13 *M.S.S. v. Belgium and Greece* (app. no. 30696/09), ECtHR, para. 359, available at: <http://bit.ly/2DBGacL>

14 For a summary of UNHCR assessments of the situation for asylum seekers in Russia at the time and up to the present, see: *Global Focus, the Russian Federation 2014-2018*, available at: <https://bit.ly/2lWujpG>  
See also UNHCR submission to the Universal Periodic Review 3rd cycle, available at: <https://bit.ly/2FibSeu>

15 <https://bit.ly/2KWZqzF>

16 <https://bit.ly/2BJaDBF>

17 For more details on this case, please see: <https://bit.ly/2lCMT6m>

18 "Freedom in the World 2016: Russia Profile". *Freedom House*. 2016, available at: <https://bit.ly/2KhnOLc>  
Russia had not ratified the Rome Statute of the International Criminal Court, but only signed it in 2000. In November 2016, Russia withdrew its signature, thereby indicating that it no longer had an intention of ratifying or acceding to the treaty, see: <http://bit.ly/2ggCQ9b>  
Ratification could have granted the ICC jurisdiction over crimes committed on Russia's territory or by Russian citizens committing international crimes anywhere. For a thorough analysis of the revised Russian Federal Law on the Constitutional Court, see the Council of Europe's Commission for Democracy through Law (the Venice Commission)'s Final Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court adopted in June 2016, available at: <https://bit.ly/1Uhhnln>

19 Norway's National Budget 2016. Prop 1 S (2015-2016), 7 October 2015, Ministry of Defence, Section 2.2.6 on Russia, available in Norwegian at: <https://bit.ly/2Kixaqd>

20 The Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation Regarding Regulation of Activities of Non-Profit Organizations Performing the Functions of a Foreign Agent" was adopted in response to the demonstrations in May 2012, when several hundred thousand people protested falsifications of the Parliament and the President elections in 2011 and 2012.

21 For more details on the law and the organisations on the list, see: <https://bit.ly/1JEFiu7>

22 The Council of Europe Venice Commission considered "that the legitimate aim of ensuring transparency of NCOs [non-commercial organizations] receiving funding from abroad cannot justify measures which hamper the activities of NCOs operating in the field of human rights, democracy and the rule of law." The Venice Commission's evaluation of the law is available at: <https://bit.ly/2rDkWAG>. The International Commission of Jurists and the Norwegian Helsinki Committee have also analysed the law in terms of Russia's human rights obligations, see: <https://bit.ly/2KjOY61> and <https://bit.ly/2wAgoRz>. The Council of Europe Commissioner for Human Rights' evaluation is available at: <https://bit.ly/2lBgb52>

23 See inter alia Paul Goble, "Hybrid regimes' simulate not only democracy but democracy too, Schulman says", in: *The Interpreter*, August 18, 2014, available at: <https://bit.ly/2GI3vi6>

24 Cf. UNHCR submission to the Universal Periodic Review 3rd cycle, page 2, available at: <https://bit.ly/2FibSeu>  
Applications from Ukrainian citizens are handled in a simplified procedure, meaning that they are processed within three days. According to law, applicants from other countries may have to wait up to three months to get a decision on their case. Ukrainian applicants must, however, otherwise comply with similar requirements as non-Ukrainian applicants, including submitting the same documents and applying to the same bodies. See: <https://bit.ly/2BsYpMU> and <https://bit.ly/2GCSdpO>

25 UNHCR, *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, page 4, available at: <https://bit.ly/2RnSkqL>

26 Elena Yourieva Burtina et al., *Russia as a Country of Asylum*. Civic Assistance Committee, 2015, available at: <http://bit.ly/2FTjzEj>.  
See also the Norwegian Country of Origin Information Centre report on the subject, available at: <https://bit.ly/2EKPzJB>

27 Temporary Asylum status is provided for under Article 12 of the Law on Refugees and is further regulated by Russian Federation, Resolution No. 274 of 2001 On the Granting of Temporary Asylum in the Territory of the Russian Federation, 9 April 2001, see: <https://bit.ly/2lzuL7>

28 The Russian Federation has consisted of 85 federal subjects since March 18, 2014, although the two most recently added subjects (the Republic of Crimea and Sevastopol) are recognized by most states as part of Ukraine. <https://bit.ly/2NODRmr>

29 Law on the Russian Federation No. 4528-1 of February 19, 1993, article 4.1. The law is available in English translation at: <https://bit.ly/2zyjVxQ>

30 Law on the Russian Federation No. 4528-1, article 7.  
See also Section 4 and 5 of Resolution No. 274 of 2001 On the Granting of Temporary Asylum in the Territory of the Russian Federation, available at: <https://bit.ly/2Gm7F9C>

31 Law on the Russian Federation No. 4528-1, article 1.

32 Law on the Russian Federation No. 4528-1, article 12.

33 Law on the Russian Federation No. 4528-1, article 12.2(1).

34 Law on the Russian Federation No. 4528-1, article 12.2(2).

35 Law on the Russian Federation No. 4528-1, article 12, cf. UNHCR, Op. Cit., page 1. Cf. also April 9, 2001, N 274 Decree of the Government of the Russian federation, Article 12.

36 UNHCR observations regarding the processing of asylum claims from persons who have arrived in Norway from the Russian Federation, 15 February 2016, page 5. Available at: <https://bit.ly/2DqyAiG>

37 Ibid.

38 UNHCR submission to the Universal Periodic Review 3rd cycle, page 1, available at: <https://bit.ly/2FibSeu>

39 ECRE, 29 January 2016, available at: <https://www.ecre.org/concerns-over-forced-deportation-of-asylum-seekers-from-norway-to-russia/>

40 For more information, see: UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (2007), available at: <https://bit.ly/2rDgamQ>.  
See also Aoife Duffy, "Expulsion to Face Torture? Non-refoulement in International Law", *International Journal of Refugee Law*, vol.20, Issue 3 (2008), available at: <https://bit.ly/2rFerhy>

41 Law on Exit and Entry from/to the Russian Federation N 114-FL, August 12, 1996, article 6. Available at: <https://bit.ly/2SpsCa8>

42 Article 31.1 states, "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

43 The provision is available in English translation at: <https://bit.ly/2wDvK7B>

44 For more information on access to information, see section 2.1 of Civic Assistance, *Russia as a Country of Asylum*, 2015. English version available at: <http://bit.ly/2DzbGDI>

45 See Submission by the Office of the United Nations High Commissioner for Refugees in the case of Khasan Mohamad YASIEEN v. Russia (Application no. 3028/16) before the European Court of Human Rights, available at: <https://bit.ly/2rFZVp5>

46 Ibid., page 3.

47 Z and Others v Russia, available at: <https://bit.ly/2FTjzEj>

48 UNHCR observations regarding the processing of asylum claims from persons who have arrived in Norway from the Russian Federation, 15 February 2016, page 4. Available at: <https://bit.ly/2DqyAiG>

49 US Department of State, 2016 Country Report on Human Right Practices: Russia. Available at: <https://bit.ly/2jWaK2U>

50 Civic Assistance Committee, *Russia As a Country of Asylum*, 2015, page 62. Available at: <https://bit.ly/2RHjhp9>

51 Ibid.

52 Ibid.

53 UNHCR observations regarding the processing of asylum claims from persons who have arrived to Norway from the Russian Federation, February 15, 2016, page 6. Available at: <http://bit.ly/2DqyAiG>

54 For further information on obstacles faced in detention centres in making an application, see section 2.3 and 2.4 of Civic Assistance Committee, *Op. Cit.*

55 Civic Assistance, *Op. cit.*, page 67.

56 1951 Refugee Convention Article 1F

57 The authorities should render the decision within five working days and then send the certificate to the person within one day after the decision has been made (Art.4.5, 4.6 and 4.7).

58 Civic Assistance, *Op. cit.*, page 205.

59 Op. cit., page 74.

60 His story was covered by the independent newspaper Novaya Gazeta, see: Elena Racheva, "What is happening with Ali Feruz?" *Novaya Gazeta*, August 4, 2017, No.84 (2661), available at: <https://goo.gl/iBGDDr>

61 For the facts of the case, see: Khudoberdi Turgunaliyevich Nurmatov v. Russia (Application no. 56368/17), paragraph 21-22, available at: <https://bit.ly/2lfbvCO>

62 Ibid.

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