

Alternative Joint-report of
*The Civic Assistance Committee (Russia) and the
International Federation for Human Rights (FIDH)*

To the Attention of
The Committee on the Elimination of Racial Discrimination
(CERD)

**Migrant Workers in the Russian Federation:
The Use of Forced Labour**

July 2008

FIDH

**Permanent Delegation to the United Nations
15 rue des Savoises, CH-1205-Geneva
Tel: +41 22 700 12 88, Fax: +41 22 321 54 88**

Introduction

Since the collapse of the Soviet Union in 1991, Russia has been at the very centre of an influx of migration from the entire Region, with the first wave of migrants at the beginning of the 1990s mainly being refugees, while those who have been migrating to Russia since the late 1990s have primarily been coming for employment. The number of labour migrants is estimated at between 3 and 5 million people every year, with seasonal fluctuations, although precise figures are difficult to obtain in as far as the bulk of these migrants are illegal migrants¹.

The problem of the illegal situation of migrants was already highlighted by the Committee on the Elimination of Racial Discrimination (CERD) in 2003, as well as the problem of racism, with migrants from Central Asia and the Caucasus increasingly becoming victims, including by the police and by the administration. Thus, in its conclusions of 2003, the CERD deplored the fact that “a large number of former Soviet citizens who previously resided legally in the Russian Federation have been considered illegal migrants since the entry into force in 2002 of the Federal Laws on Russian Citizenship and on the Legal Status of Foreign Citizens in the Russian Federation” (12), and it was “concerned about numerous reports that residence registration is used as a means of discriminating against certain ethnic groups” (14). It also “notes with concern the absence of a definition of racial discrimination in domestic legislation” (10), stated that it was “is concerned at reports of racially selective inspections and identity checks targeting members of specific minorities, including those from the Caucasus and Central Asia” (13) and recommended “that the State party strengthen its efforts to prevent racist violence and protect members of ethnic minorities and foreigners, including refugees and asylum-seekers” (27)

However, this racial violence has rather dramatically increased over the last few years, with the Movement against Illegal Immigration (DPNI) having become particularly known for its targeting of migrants, following the model of other neo-nazi or skinhead youth organisations. Recently, an investigation has been opened, following the broadcasting of a video of the execution of two “migrants” on the Internet².

The situation of migrant workers, whether they come from the former Soviet Union or from some “far-distant land”, is all the more precarious as they are isolated, victims of xenophobia, and they meet with major difficulties trying to find accommodation and legal employment. The new measures taken in 2006, i.e. the “Law on the census of immigrants”³, and the amendments to the “Law on the legal status of foreigners”⁴ were aimed at facilitating the legalisation of foreign workers, mainly with regards to employment. Yet, this new regulation has at the same time introduced further measures of discrimination, such as, for instance, prohibiting migrants access to certain professional activities, e.g. working on markets.

In March 2007, FIDH and the “Civic Assistance Committee” have issued a joint report about the new rules and regulations for migrants, as well as the crisis between Georgia and Russia of autumn 2006. The report concluded that the situation of migrants was extremely precarious and that migrants were extremely vulnerable, and highlighted the responsibility of the Russian authorities in

1 According to the Federal Department of Migration (FMS), there were 10 illegal immigrants for every foreigner working legally in the mid-2000s.

2 In June 2008, the Russian public prosecutor’s office opened an investigation, following the authentication of a video broadcast in 2007, showing the assassination of a Tajik and a Daghestani by a neo-nazi group named “Combatant Detachment of the Russian National-Socialists” in a forest, in front of a flag with a swastika.

3 Russian Federal law no.°109 “*O migratsionom utchiote inostrannykh grazhdan*”, promulgated on 18 July 2006

4 Russian Federal law no.°110 “*O vnesenii izmeneniy v Federalnyy Zakon "O pravovom polozhenii inostrannykh grazhdan*”, 18 July 2006

the persecutions against certain minorities⁵.

Twelve months after the adoption of new immigration laws, the Civic Assistance Committee and the FIDH draw a conclusion on the situation, and point to one situation which is particularly problematic, i.e. the fact that migrant workers become victims of forced labour.

Amendments to the legislation about foreign labour

The amendments to the law “on the legal status of foreigners” were adopted on 18 July 2006 and were to enter into force on 15 January 2007, following the drafting of decrees of application. These amendments simplified considerably the application for a work permit and abolished quotas for workers not requiring visas.

However, in October 2006 (following the uprisings in the town of Kondoponga and the crisis with Georgia⁶), leaders of a number of regions, including, first and foremost, the powers of Moscow, started to denounce almost hysterically the dangers of an invasion of Russia by migrants. Consequently, on 7 January 2007, “amendments to the amendments” were made to the law on the legal status of foreigners, that re-established the quota system.

In addition, on 15 November 2006, the government adopted Decree No. 683 “on establishing an acceptable proportion of foreign workers employed by economic actors in the area of retail on the territory of the Russian Federation”⁷. This decree makes it illegal for foreigners to sell alcoholic drinks (including beer) and pharmaceutical products. The share of foreign workers employed in retail on markets or on stalls outside shops should not be more than 40 percent after January 2007, and a “0 quota” after 1 April 2007.

On 29 December 2007 the government adopted Decree no. 1003, that has prolonged these “0 quotas” for 2008. It also has added restrictions to the employment of foreigners as trainers in the field of sports and games, with no more than 50 percent of foreigners until 1 April 2008, and no more than 25 percent thereafter.

It should be highlighted that these rules do not affect all foreign citizens, but only those called “migrant workers”, i.e. foreign nationals who are temporarily on the territory of the Russian Federation. By contrast, they do not affect those who hold permanent resident permit cards (*vid na zhitelstvo*, 5 years), temporary residence permits (*razreshenie na vremennoe prozhivanie*, 3 years), or those who have refugee status. The Ministry of Health and Social Development has published these conditions on its website, while these explanations are, however, not known to migrants or civil servants in the regions.

As far as work permits for foreigners not requiring a visa are concerned, the rules which had been simplified by the laws passed in July 2006 have not been amended ever since.

5 Les migrants en Russie, premières victimes des crises internes et externes. (“Migrants in Russia: Fragilized Populations, the First Victims of Internal and External Crises ”); Report by the FIDH and the Civic Assistance Committee.

6 The autumn of 2006 was successively the scene of two events which contributed to a hardening of the official line on immigration and a spreading of the concept of a «tolerance threshold», with the revolts against Caucasians largely fuelled by the DPNI in the small town of Kondopoga in Karelia; then, in October, the official campaign against the Russian Georgians in response to a diplomatic crisis between the two countries led to the expulsion of several thousand of them to Georgia, accompanied by countless human rights violations.

7 Decree No. 683 adopted by the Government of the Russian Federation on 15 November 2006: «*Ob ustanovlenii na 2007 god dopustimoy doli inostrannykh rabotnikov, ispolzuemykh khozhaystvuyuschimi subektami ossuschestvlyayuschimi deatelnost' v sfere roznichnoy trgovli na territorii Rossinskoy Federatsii*»

Work permits are issued by the FMS (Federal Department of Migration) of Russia⁸ or its regional branch. Four documents are required to obtain it:

1. A declaration to apply for the granting of a work permit
2. A proof of identity
3. A migration card (issued when crossing borders)
4. A receipt certifying payment of the 'ad-hoc' tax (1000 rubels).

The response must be obtained within 10 days. Refusal by the FMS to issue a work permit may be challenged.

The laws of July 2006 have also modified the registration procedure of migrants. Prior to these changes, a foreign person could be registered with the address of his place of residence only. The modifications have introduced the possibility for foreign nationals to be now officially recorded with the address of the workplace.

On the one hand, these changes have somehow legalised the practice of housing workers on their workplace. The lack of precision about the scope of responsibility for housing causes employers to commit widespread abuses by housing their workers in totally inappropriate accommodation with a lack of sanitation (such as plywood hangars on building sites, cardboard boxes on markets or basements of secret sewing workshops).

On the other hand, this new possibility of being "officially recorded" is a protection for migrant workers. Over the last few years, the entire sector of the construction industry in Moscow has relied almost exclusively on the use of forced labour by illegal migrants housed in inhumane conditions and paid miserable wages for their labour, and sometimes even no wages at all. The previous legislation prevented these migrant workers to stand up to defend their rights: the absence of registration made it easy for a policeman to fine them and for the court to take the decision to extradite them immediately. They could be easily replaced by new migrants from Tajikistan or from Uzbekistan, or by unemployed Moldavians, all prepared to work for mediocre wages.

Now, the worker may be granted a work permit independently from his employer. In theory, the employer, who will have signed an employment contract with his worker, is under an obligation to register him with the migrant authorities and to have him recorded by the official census for the length of his employment. The responsibility for a violation of the labour regulations lies with the employer who may be asked by *Rostrud* (employment services), the tax authorities, as well as the epidemiological and sanitary agencies to comply with the existing regulations.

This new legal requirement, if strict compliance is guaranteed, offers the possibility for foreign workers to rise out of the darkness and to escape the system of exploitation which is currently widespread. Nonetheless, there are still countless obstacles to the process of legalisation, including

8 FMS- Federal Department for Migration. This body was set up in 1993, when Russia joined 1951 Convention on the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. With President Putin coming to power in 1999, the FMS was restructured. On 17 May 2000, the FMS was dissolved by Presidential decree no. 867, and a new Ministry of the Affairs of the Federation, National and Migration Policy was created, based on the Ministry of Nationalities. Eighteen months later (Presidential decree no. 1230 of 16 October 2001), this new Ministry was abolished by President Putin, and the area of migration policy was transferred to the Russian Home Office. In addition, the FMS was restored (by Presidential decree no. 232 of 23 February 2002), this time as part of the 'Home Office' (Ministry of the Interior). In May 2004 (decree no. 649), the Ministry of the Interior was directly subjected to the President, and the FMS transformed into a department controlled by the Ministry. The FMS was given charge to grant asylum (by virtue of the UN Convention of 1951) or temporary asylum to refugees but also to enforce (but not to draft) the policy for migrants and economic migration. Since May 2004, it has had the passport and visa services under its control (formerly controlled by the commissariats). Foreigners obtain their residence and work permits from the FMS.

the attitude of employers, who are used to draw on forced labour.

Administrative expulsion and Deportation

It should be recognized that the risk of being expelled from Russia is still pending like having the Sword of Damocles hanging over the heads of foreign workers. The following numbers of expulsions and deportations were recorded over the last four years:

Year	expelled	deported
2004	88,260	260
2005	75,756	15
2006	55,800	11
2007	28,050	45

The main problem is the inaccuracy of the legislation which has not been sufficiently thought out. As a matter of fact, there are two concepts in Russian legislation: “administrative expulsion” (*administrativnoe vydvorenie*) and deportation (it should be noted that the law does not prohibit administrative expulsion or deportation of foreign nationals to countries where there is a risk of torture).

“Administrative expulsion” is the forced removal of the foreign national (or stateless person) outside the Russian Federation, or the voluntary departure of that person, carried out in accordance with the “Code of Administrative Offences” of the Russian Federation, whereas expulsion takes place following a court decision (article 32.10 of the Code of Administrative Offences).

In the majority of cases, expulsions take place for illegal activities, absence of a temporary registration (*registratsiya po mestu prebyvaniya*), or, since 15 January 2007, the fact that a person has not been officially counted as a migrant. According to article 18-8, a violation of the rules of residence within the Russian Federation is liable to a penalty of “5 to 10 minimum wages”, with or without administrative expulsion. Article 18-10 on the violation of the labour regulations is drafted along the same lines. Thus, expulsion, rather than being used as a measure for preventing that the offence or violation is repeated, becomes a sort of extra punishment, in addition to the payment of the penalty.

The mechanism for the application of article 18.8 of the Code of Administrative Offences is very simple. During an ID check, the police discovers that a foreigner is not carrying the counterfoil of the card which certifies that he is officially registered (or they even tear that card themselves). As a result, the foreign national will be taken to court where he will be sentenced to a penalty or to administrative expulsion within a matter of just a few minutes. Often, the accused is not even called into the court room, so that he does not even have a chance to explain himself before the court or to use a lawyer.

According to point 5 of article 32 of the Code of Administrative Offences, the migrant against whom a court decision for expulsion has been made may be detained for an indefinite period of time.

Deportation is the forced return of a foreign national (or stateless person) from Russia, when there are no legal reasons that would justify his further presence (residence) in the Russian Federation (see last paragraph of part 1 of article 2 of the Federal Law “on the legal status of foreign nationals”).

Deportation (article 32 of the Law “on the legal status of foreign nationals”) may only be executed if:

- if a person’s length of residence within the Russian Federation is reduced;
- if a person’s temporary residence permit is cancelled;
- if a person’s permanent residence permit is cancelled;
- if a person who has refugee status or who has been granted temporary asylum is deprived of this status (article 13 of the law on Refugees). Article 13 mentions deportation, followed by the word “expulsion”, into brackets. In this precise case, the law-maker clearly shows that the procedures for expulsion and for deportation are the same.

The decision about deportation is taken by the Director of the FMS of Russia, upon the request of the Ministry of the Interior, the Ministry of Foreign Affairs or the FSB.

But why is there any need for two very similar procedures? This is probably a poor adjustment in the legislation. The Federal law “on the legal status of foreign nationals” sets out the circumstances in which a foreign national is forced to leave the country. For example, if it is found that a person has been invited by a fictitious firm, his visa will be cancelled and he will be asked to leave. If he does not want to lose the right to take up residence in Russia, he must get out within 24 hours and come back with a genuine invitation. If, after the cancellation of his visa, the foreign national does not leave the country within the stipulated deadline, he commits a violation of the rules of residence in Russia and consequently falls under the provisions of article 18-8 of the Code of Administrative Offences applicable to expulsion.

Hence, the result of a poor handling of these texts of legislation is a doubling up of the expulsion or deportation procedures and the difficulty to challenge them. As a result, arbitrary practices and corruption are on the increase, as shown by the case of Serguey Zavialov, a citizen of Uzbekistan who had been working on the construction of the Moscow underground (SMU-1 of Metrostroy) for 12 months, and who ended up filing a complaint with the local district court of *Zamosskvoreche*, claiming the 500,000 RUB which his employer still owed him.

In May 2007, when Serguey Zavialov went to court for his case, many employees of the FMS, which had been called by the leaders of the company charged, showed up. In a room next to this court the decision was made to extradite Zavialov and to keep him locked up until he could be deported. Consequently, S. Zavialov spent 9 months in detention. It was only after human rights activists intervened that the Court of Moscow cancelled the decision, insofar as at the moment when it had been taken, S. Zavialov was registered and possessed a work permit.

In November 2006, at its 37th session, the UN Committee Against Torture (CAT) considered that the legal situation and the practices in the field of expulsions deserved its attention. The Committee underlined “the widespread and broad use of administrative expulsion according to article c 18.8 of the Code of Administrative Offences for minor violations of immigration rules.” It specified in its recommendations that “the State party should further clarify the violations of immigration rules which may result in administrative expulsion and establish clear procedures to ensure they are implemented fairly. The State party should ensure compliance with the requirements of article 3 of the Convention for an independent, impartial and effective administrative or judicial review of the decision to expel”⁹.

The highest Russian court is of the same opinion. In its decision of March 2, 2006, the Constitutional court of Russia noted that article 18.8 of the Code of Administrative offences prescribes a fine

9 UN Committee Against Torture (CAT), *UN Committee against Torture: Conclusions and Recommendations, Russian Federation*, 6 February 2007. CAT/C/RUS/CO/4. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/465edff52.html>

“with or without administrative expulsion” for breaching the rules of stay in the Russian Federation. There is no distinction amongst the offences according to their severity or the danger they pose to society, and the criterion of application of one or the other of the sanctions is not fixed, which leaves a wide latitude of action to the ministry for the Interior.

“At the same time” the decision continues “by qualifying the violation of such or such rule of stays of foreigners in Russia as an offence, and more precisely as an administrative offence, which consequently requires the application of measures of official coercion, including expulsion out of the limits of the Russian Federation, (...) the bodies of executive power and the courts are obliged to respect the requirements of equity and proportionality which arise from the Constitution of the Russian Federation and which imply a differentiation of the public and legal responsibility according to severity of the acts, the dimension and the character of the caused injuries, the degree of culpability of the perpetrator of the offence and other essential conditions determining the individualization of the sanction”.

The Supreme court already cancelled some decisions of expulsion with the following formula: “Insofar as administrative expulsion in article 18.8 of the Code of Administrative offences of Russia is perceived to be an additional sanction, which can be inflicted on the perpetrator of the offence in addition to the principal sanction (fine), the essential character of its application must be justified by the judge in any case”.

“The decision of the judge to apply an additional sanction in the form of administrative expulsion out of the Russian Federation must be based on data which confirm the essential character of the application of this measure to the perpetrator of the offence, as this is the only possible way of obtaining a good balance of the public and private interests within the framework of the administrative law”. (Decision of February 17th, 2006 in the business № 11-ad 06-1).

More than once, the representatives of NGOs have requested the deputies of the Duma to improve the legislation in this field, but in vain.

Evaluation of the changes in 2007

Konstantin Romodanovski, director of the FMS of Russia positively evaluates the changes in the field of work migrations in 2007¹⁰. For him, “today, particularly because of the de-bureaucratisation of the process of obtaining a work permit for the citizens of the CEI, as well as because of the coordinated work of all the authorities concerned (...) the volume of illegal work migrations has decreased by half”. One can doubt such an assertion, insofar as illegal immigration is by definition difficult to measure. It is true nevertheless that part of the illegal work immigration has passed into the legal field.

We can suppose that the successful legalization of the work of foreigners, note in the report of the FMS, is not due solely to the legal changes, but also to the fact that the quotas were more important. Indeed, in 2007, the quotas of work permits were 6 million for the foreign citizens not needing visas, and 309,000 for the other foreign workers (including those who were already present on Russian territory). So at the end of 2006 the number of legally working foreigners was 570,000, it was 4 times more important than at the end of 2007, and the number of delivered work permits exceeded 2.1 million, which made a third of the quota exactly. In fact, all the foreign citizens who wanted to obtain a work permit were given the right to work.

10 See the report on the http://www.fms.gov.ru/press/publications/news_detail.php?ID=9792 site. This part uses figures provided by the FMS

It would have been natural not to change the quotas for 2008, so that the illegal migrations continue to decrease. However, in 2008, the Russian government decided that the quotas of work permits would amount only to 1,828,245, including 600,000 for the citizens with which Russia has a system of visas. A small reserve of 30% was envisaged if the delivered quotas are not enough. Thus, it will not be possible to increase the number of legal migrants in 2008, since they will quite simply not receive a work permit.

There will be also a serious problem for the workers whose work permits end in the middle of year, and who will not be able to renew it because of the exhaustion of quotas. The situation is even more inextricable juridically that the labour law of Russia does not give the possibility to the employer of putting an end to the employment contract for this reason.

Moreover, the attempt to reinforce the responsibility of the employers by establishing exorbitant fines (up to 800,000 Roubles, approximately 35,000 USD, for each migrant employed illegally), will not be able to achieve its goal. Even in 2007, when the quotas did not prevent from engaging migrants, the employers did not feel obliged to warn the bodies of the FMS of the fact that they were recruiting foreigners, as opposed to what the law demands. There are about twice as few official declarations of employment of foreigners at the FMS than of officially delivered work permits. It is not very difficult to conclude that for the employer, it is always more advantageous not to declare his employees: the employee will depend completely on him, and the employer will not feel any responsibility towards him.

Lastly, the State does not seem either very interested by the legalization of the migrants, even if the fines which are paid to the Treasury cannot compensate for the losses in taxes that migrants, obliged to remain in the illegality, do not pay.

In 2007, more than 166,000 employers were prosecuted for various offences. Fines of 4,6 billion Roubles were announced, of which 50% were really paid. The Budget received approximately 3 billion Roubles from the taxes collected from the delivery of work permits, the total expected taxes amount to 50 billion roubles.

Konstantin Romodanovski recognizes that “the building sector was the least affected by the positive changes. It is precisely on the building sites that the greatest number of violations of the rules of the migratory right continues to be noted. But when those are raised, only the project superintendent takes responsibility, whereas the real owner escapes any prosecution”. This last remark is fundamental: the existing legislation makes it is possible for transitory companies to employ workers, then to disappear without leaving any trace, while the real owner profits from the result of the free work of the builders.

This is why the FMS prepared an amendment to the Code of Administrative offences, whose adoption would make it possible to fill this legal gap. The FMS also prepares amendments which would withdraw from the local authorities the capacity to define the quotas of foreign labour, to confer it to the federal centre. The goal is to prevent the situation of 2008 reproducing itself, where at the end of April the quota for the Russian Federation as a whole was already half spent, with only 1% of it left in Moscow.

In his report, K. Romodanovski raises the “problem” which according to him the uncontrolled arrival in Russia of employees without qualification constitutes. The FMS worked out a program to attract qualified migrants to Russia. It aims to attract migrants with a basic knowledge of the Russian language; professional training and entering Russia to take a precise employment. It also envisages the exchange of information between the local and federal bodies of the executive, as well as the non-official bodies inviting and using a foreign labour force.

Konstantin Romodanovski underlines that “the regulation of the process of work migrations is not possible without a multi-factorial evaluation of the developmental economic, social and demographic perspectives of the country and its regions. The need or not for attracting a foreign labour force must be based on these forecasts. One needs a federal bank of vacancies and regional employment centres”.

These good intentions, which are still very far from being realized, reflect the will of the Russian politicians responsible for migrations to direct the society, rather than to study its laws and its trends of development. The risk seems great to create here a new program which does not work. It has already been the case with the supplementary programme for the transfer of “compatriots” living abroad¹¹, which expected 130,000 people over two years but was used by only a few hundred compatriots. Now, the program has been made more attractive, with the addition of financial advantages, but has not met real success insofar as the installation of the compatriots is limited to certain areas, and that the areas are not ready to implement it.

In addition, according to our information, the Council of the Federation is preparing a law on private employment agencies, to which the State would delegate the reception and the recording of foreign workers. This law causes great concerns. If they follow the practices of the companies which currently act as intermediaries, these agencies are likely to grasp most of the budget which could be used to pay the work of the migrants, the level of corruption will increase, and the defence of the rights of migrants will be all the more reduced. In particular, the risk is that the foreign workers will not be able to reach the job market without these agencies any more.

One last point, concerning the policy aimed at driving out the foreigners from the markets: this one is unreasonable and harmful not only for the foreign workers, but also for the local population. Only the owners of supermarkets and those who sell alcoholic drinks and pharmaceutical products get some benefit from the limitation of foreigners on the markets. The markets get impoverished, and in certain areas in a very brutal way. If the Chinese merchants were to leave the markets of the Russian Far East, those would lose 90% of their current volume. Since 2007, the population, the direction of the markets and the administration of the cities and villages are anxious to see the Chinese merchants leave. Some by-paths were found, the true owners hiding behind Russians employed as merchants or as the figureheads presented as owners of their firms. The consumer was obliged to go into the shops, where the price of the products of food and first need items (such as clothes, shoes) was 2 to 3 times more.

The local producers do not benefit from this policy either, even if these measures were intended to give them access to the markets. It would seem that a space was freed up for them which they were not ready to occupy. Another approach would be necessary here: to fight against the situations of monopoly on the markets, to support the local producer and to help him become competitive by economic measures (tax cuts, new technologies, attractive credit facilities, ease of transport, etc.).

The situation is especially difficult for some of the migrant workers working in the markets. Among these are the former citizens of Afghanistan and their children who had supported the Najibullah regime and to whom Russia has so far not given legal status; Russians from former Soviet

11 Adopted in 2006, the program aimed at fulfilling the needs for labour by calling upon the “compatriots” living in other Republics of the former USSR. The majority of independent experts estimate that the programme failed because of the confusion of its objectives (bring labour in the areas where they are needed / repatriate Russian speakers from Republics of former Soviet Union), but also because of the practicalities of its implementation (limitation to certain areas, absence of real financial incentive, implementation managed exclusively by the regions and the federal centre). In fact, the FMS itself was obliged to recognize that only 890 compatriots and members of their family had benefitted from the program in 2007, whereas 80,000 were awaited (<http://www.fss.ru/digest/2006/obzor29082006.doc>)

Republics who have not been able to obtain Russian citizenship; Georgians from Abkhazia who have still not obtained refugee status; political refugees from Uzbekistan; those who, after enormous efforts, received temporary asylum and thought that their right to reside and earn a living legally in Russia was assured for at least one year. For these people, the sole jobs on offer to support their families were on the markets, and the quotas established by government are truly a tragedy. Workers are obliged to pay employees to hold their place behind the stall, thereby limiting their income. The coordination centre for the « Migration and Rights » network has obtained information about many of these tragic cases occurring in the regions of Volgograd, Rostov, Moscow, Saint Petersburg, and Kazan.

Violations of the rights of migrant workers

The Civic Assistance Committee, as well as the « Migration and Rights » network from the « Memorial » Human Rights Centre have recently started working on defending the rights of migrant workers and have already faced a multitude of serious human rights violations. Meetings with migrant workers which are intended to orient them to the local laws, regulations and procedures are of minimal importance when compared to what is really needed. In many cases, what is needed is not a consultation on labour law, but rather a lawyer to defend their interests in cases in criminal courts.

In some cases, violations of foreigners rights begin even prior to their arrival Russia, and may result in either being expelled from Russia without being paid, or in being accused and arrested.

Some of the more frequent violations are:

1. Lack of respect for employment laws during the recruitment process:

- recruiting through false advertising and the signing of fraudulent contracts in the country of departure;
- providing travel to Russia with the promise of work (usually in the building trade) and ensuring travel expenses will be paid, then demanding that the money spent on travel and meals be repaid;
- confiscation of passports;
- fictitious migration census, with the risk of being arrested any time by the police and expelled;
- no contract is signed, or if there is one, the Federal Migration Service (FMS) is not informed.

2. Violations in the area of employment:

- unpaid salaries, partial payment or withholding of salaries;
- implementation of a system of unjustifiable fines;
- absence of insurance, medical benefits, and lack of decent work conditions;
- unacceptable living conditions and poor nutrition.

3. Fraud and persecution:

- system of unpaid or partial payment of salaries;
- threats, violence, humiliations;
- expulsion of people who create a disturbance;
- accusation of crimes.

Some of these violations have been reported in the following three cases:

1. *The Istrinsk case in the Moscow region*

This case concerns Uzbeks working on the building site of high-end summer homes «Svetlogoria» in the district of Istrinsk in the Moscow region. One part of the workers is from the Namangan region, and the other is from the Khiva region. The stories of both groups are very similar, each depicting a specific type of abuse.

The tactic used against the Uzbek workers from Namangan is to call their work «poorly done». These *Namangantsy* numbered more than 70. Unemployed at home, they were recruited through official recruitment agencies. They were promised manual work on Russian construction sites for no less than

15,000 RUB per month (about 650 USD). They arrived in Moscow in early December 2007 having paid for their own travel. They were received and provided with lodging and then their passports were confiscated, apparently for registration. The passports were not returned to them until they reimbursed the money that was spent on them for lodging and registration. They were told not to worry about getting work permits, as the work site was under the control of FSB (special services), which the FMS does not visit. They were taken to a work site in the Moscow region, and were given between 50 and 100 RUB (from 2 to 4 USD) a day for meals.

These Uzbek came to the Civic Assistance Committee in March 2008. They reported they had not been paid between December and March. In spite of not having their passports, many left the work site in search of other work opportunities. By March, there were only 13 of them remaining in «Svetlogoria». The Civic Assistance Committee found itself in a delicate position, knowing that if an official complaint about this case caught the attention of FMS, the migrants would be the first victims. The Committee tried to convince the employer to pay the salaries, reminding them that they could be attacked for non-payment of salaries and for hiring foreign workers without permits. But the employer refused to cooperate, and other people involved in the business said that the Uzbeks were not able to do anything, that the quality of their work was poor, and that as a result they had not earned any money. They also said that the workers still owed money for lodging, food, and work clothes.

Just when the Civic Assistance Committee was trying to negotiate with the employer, an unidentified detachment of the Public Order Force arrived in the village unexpectedly. Some workers had time to flee into the forest, some were arrested and taken to the local police station (ROVD) where they had to pay in order not to be expelled. The fate of the others is unknown.

The Migration Service of the Moscow Region had no knowledge of the raid. The Istrinsk police had confirmed that the Moscow FMS and special police forces (OMON) were involved, but the regional FMS denied it, stating that the Moscow FMS had no jurisdiction in that region. It's quite possible that these «Moscovites» were hired by the employer or foremen to teach the employees who had complained a lesson, or even to get rid of them. No response was received to the written request from the Civic Assistance Committee, but the Moscow police (GUVD) called to say that the Committee's allegation of what happened was not possible because it was illegal.

Another type of exploitation was used against the Khiva Uzbeks which can be called a «positive experience». The *Khivintsy's* differed from the *Namagantsy's* in that they were experienced builders, having already worked for several years in Russia. At first, it was suggested that they finish building a house in «Svetlogoria». They completed the work and were paid. They were then asked to build another house from scratch. Since they had received full payment for the previous construction work, they felt confident about tackling this second job. At first they were promised a pay-cheque every week, and then every two weeks. But these promises were not kept. They were then told that they would be paid once the job was completed. The construction workers understood they were being cheated, in the same way the previous builders had been cheated. They insisted on

being paid for the work they had completed, but this was denied to them. Believing they would receive no money, the workers left. It is possible that they knew the police was about to invade the building site. The *Khivintsy*'s fled from the village the day just before the raid.

So now, it is quite probable that the employer will hire another work crew, pay them, and obtain a ready-made home after having saved 85% on salaries.

2. *The Orel Case* (See Appendix for more details.)

Between September 2006 and June 2007, several Orel dealers who run car wash services kept their Uzbekistan workers in servitude-like conditions. Their identification papers and cell phones were confiscated, and they were not allowed to leave the work site. They were given a meal allowance but were not paid for their work. They were also beaten, and those who resisted received death threats for disobeying or for trying to run away. One worker was taken out to the forest for rebelling and was submitted to a mock execution.

Similar cases have been mentioned in the media from time to time. What makes this case unique is that it made it to the courts. Two of the four dealers and the boss who gave orders were brought before the judge. The police who had investigated the case showed honesty and professionalism and did their best to take the case to the court. The prosecutor took a rather soft approach, and during the trial the defence lawyers took over the court saying anything and everything. They ridiculed the victims openly, and prolonged the trial in order to extend it to the deadline of the accused's detention time and so that the Uzbeks would finally leave Russia and not be available to act as witnesses. It is noteworthy that not a single lawyer from the area wanted to defend the interests of the victims.

Dionis Lomakin, a lawyer with the Civic Assistance Committee, was able to trace the victims who had left Orel. One of them came back from Uzbekistan to be witness at the trial. The case is currently being examined. The Civic Assistance Committee approach shows how difficult it is to offer support to migrant workers in such cases. One has to deal with the challenges of the accused, not only at the government level, but also at the criminal level. If a contract with a dishonest employer is broken, a migrant worker loses not only his lodging and his minimal means of subsistence, but more importantly his legal status in the Russian Federation territory.

3. *The Filipino Workers Case*

The third case the Civic Assistance Committee dealt with is the situation of *Filipino Workers*. It shows proper legal status does not prevent migrant workers to end up in servitude. The Consulate of the Philippines in Russia approached Civic Assistance Committee after it had received a number of complaints from Filipino women working in Russia. All these women were hired by the SA agent «Trustworthy people». When they were recruited to work as domestic workers in affluent homes in Russia, they were promised a monthly salary of 800 USD and they signed a contract to that effect. But upon their arrival in Russia, they had to sign a new contract for 500 USD, and ended up being paid only 250 USD. This second contract contained an appendix specifying that the employer would put 250 USD aside monthly, which they would receive before leaving if they had done a good job. Naturally, the Filipinos could not understand the wording of the appendix and refused to sign. They were also mistreated, being forced to work up to 16 hours a day without time off, to clean not only the homes but also other apartments or offices in Moscow. One of the women complained of sexual harassment by the employer. These women have left their employers and have asked for help from the embassy.

The company director Natalia Solntseva went to the police (ROVD of Kliazminsk) to find and

retrieve one of these women, Hai Faithful Valente, and accused her of stealing. The Consulate of the Philippines received a strange letter from the ROVD, asking that it be informed if Faithful contacted the Consulate, so that the ROVD could come and get her. When Dionis Lomakin, lawyer from the Civic Assistance Committee went to ROVD to ask about the letter, the ROVD opened a criminal file on the missing worker to justify its interest in her whereabouts. It is interesting to note that in the «victim's» (the employers) declaration, the accusations of stealing are not the most important issue. Rather, the employers demand the return of their employees using such terms as if they were their personal properties. Mme Solntseva has gone to the Consulate of the Philippines and threatened the diplomats by saying she has ties to the FSB (ex-KGB).

Shkurinski, the chief of police from Pushkino where Hai had worked, manipulates the young judge by making decisions for him without being involved directly with the case. His ties to Solntseva are evident. Because of him, Hai Faithful was detained for five days. She was released by the judge on the conditional guarantee of the Consulate and the president of the Civic Assistance Committee. The prosecutor of Pushkino agreed not to detain her. However, the party who had laid the charges is convinced of its impunity and is not ready to drop the case. There is a risk that Hai Faithful may lose her Russian visa for breaking her work contract, and in this case she could be legally detained.

Forced labour and debt bondage

The practices described here are cases of forced labour as defined in the 1930 ILO Convention on forced labour: “the term “forced or compulsory labour” shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” (art 2)¹². In addition, the Convention recalls that “The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.” (art 4.1). Moreover, the 1957 ILO Convention on the abolition of forced labour recalls in its preamble that “wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment”.

Indeed, the practices consisting of “bonding” migrant workers to their employment, by forcing them to work to refund debts supposedly contracted at the time of the journey, by preventing them from changing employment, are frequently mentioned in the cases treated by the Civic Assistance Committee. It was also raised in a recent investigation of ILO¹³, which stressed that “forced labour can have a number of different aspects: coercion to work additional time; coercion to fulfil additional functions; coercion to work without remuneration (for example, on account of a debt); coercion to work under conditions which are not compatible with the notion of decent work; coercion to live and work under control (restriction of movement, limitation of freedom; bans on medical treatment, etc.) labour”. The investigation also raised that “Eighteen percent of respondents

12 The “Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”, presented to the 93rd session of the International Labour Conference in 2005, underlines in particular that “labourThe ILO's definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily.”. These threats can be “of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal [...] Other penalties can be of a financial nature, including economic penalties linked to debts; the non-payment of wages; or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract or of national law. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour”. The report/ratio also notes that “labourMany victims enter forced labour situations initially on their own accord, albeit through fraud and deception; only to discover later that they are not free to withdraw their labour. they are subsequently unable to leave their work owing to legal; physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.”

<http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/kd00012fr.pdf>

13 E. Tyuryukanova: *Forced Labour in the Russian Federation today*, ILO, 2005

in Moscow, 15 percent in the Stavropol region and 7 percent in Omsk, an average of 12 per cent, said that they had a debt which they had to work off”¹⁴. “Debt bondage” is regarded as a practice similar to slavery, defined by the 1956 ILO Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.

Thus, one can speak about massive recourse to forced labour, but also in certain cases of a situation of bondage. Prohibited by the European Convention on Human Rights¹⁵, the constraint can be analysed as “the state of a person who is the object of a constraint exerted by and with the profit of another person, constraint which, denying his freedom, prohibits him to move freely and to change legal condition”¹⁶.

The situation of particular fragility, in which the foreigners living in Russia and migrant workers are, is in addition contrary with International International Convention on the Elimination of All Forms of Racial Discrimination, which recalls in its article 5 that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: : [...] (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration [...]”.

The work migrations are currently the most favourable ground for the revival in Russia of this form of servitude which is forced labour for several reasons:

1. Foreign citizens, in particular those who have not lived in the former USSR, do not know Russia and its laws. Often, they speak Russian badly or not at all and have no ties in Russia, neither anywhere to stay upon their arrival, nor people to ask for help. They are by definition weaker and powerless in comparison with the local workers. They cannot (or they think that they cannot) do without intermediaries to obtain their legalization, accommodation, employment; it makes them all the more dependant on not very scrupulous intermediaries or employers and creates a favourable ground for exploitation. Those who do not come to Russia for the first time or have established solid bonds are less likely to fall in servitude. Of course, the system of forced labour also affects the least protected groups of Russian citizens, in particular people originating from areas of Russia where armed or ethnic conflicts take place.

2. The legislation of the Russian Federation does not take into account the fact that the foreign workers are a group at risk who must be defended against forced labour. In spite of the liberalization of the legislation concerning migrant workers, no protection mechanism is envisaged. It is currently easier for them to be legalized, and an employer who employs workers illegally is likely to ruin himself in fines. These amendments, dictated by legitimate tax considerations, do not protect the migrants against servitude.

The cases described above illustrate it well: the illegal migrants are the most fragile, but the fact that migrant workers are legal is not a guarantee against forced labour. It is thus essential to work out special measures of defence for foreign workers.

14 www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5879

15 Article 4 prohibits slavery and forced labour: «1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. »

16 CEDH, Siliadin C. France, request N° 73316/01, 26 July 2005
[/http://assembly.coe.int/Documents/WorkingDocs/doc01/FDOC9102.htm](http://assembly.coe.int/Documents/WorkingDocs/doc01/FDOC9102.htm)

3. If work migrations are the grounds of “revival” of servitude, it is also because of the xenophobic atmosphere, which encourages treating the nationals of the Asian countries like lower people. The Uzbeks who worked on the “Svetlogorie” building site confirm that the inhabitants of the village (from the managing director to the guard) did not consider them as human beings. The Filipino workers also speak of the scorning and insulting attitude of their employers and the director of the firm “Trustworthy people”. Such an attitude is the consequence of the policy “to divide to reign” that the Russian authorities have largely used over the last few years, regularly exciting society against such or such group of “foreigners”: Chechens, Georgians, Muslims, migrants in general.

Recommendations to the Russian government:

- ensure the effective respect of the social protection and labour legislation of migrant workers;
- implement effective prosecutions against employers using forced labour or servitude, following articles 127-1 (trafficking of human beings) and 127-2 (use of forced labour) of the Penal code;
- implement as soon as possible 2003 CERD recommendations to the Russian Federation, in particular to regularize the position of former Soviet citizens¹⁷, and to stop the practice of identity checks by law enforcement authorities targeting members of specific minorities¹⁸;
- implement as soon as possible the recommendations of the Committee for Human Rights against xenophobic statements and racial profiling by the Russian authorities;¹⁹
- implement CERD General Recommendation 30 “Discrimination against non-citizens”, in particular its chapters 4, 5 and 6 on Access to citizenship, Administration of justice and expulsion and deportation of non-citizens;
- protect victims of forced labour or servitude by taking measures of protection and social assistance, administrative and legal, by developing special programs for their protection and their rehabilitation, and by generalizing the granting to these victims of a renewable residence permit;
- set up effective programmes working against corruption in the administration, the police force and in all the structures in contact with migrants;
- coordinate the efforts of the official structures and NGOs in the fight against practices similar to slavery. To disseminate information on NGO providing free legal aid;
- amend article 18-8 of the Code of Administrative offences of the Russian Federation which provides that a person who has broken the rules of stay is subjected to a fine “with or without expulsion” in order to establish clear procedures and leave no room for arbitrary police practices. To amend article 18-10 of the same Code on the violation of the rules of work similarly;
- sign and ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the European Convention on the Legal Status of Migrant Workers;
- respect relevant Conventions of the International Labour Organisation; to respect in all circumstances the principles and provisions provided in the international and regional instruments of protection of the human rights ratified by the Russian Federation.

17 Concluding observations of the Committee on the Elimination of Racial Discrimination : Russian Federation, CERD/C/62/CO/7, 21 March 2003, § 12

18 *Idem*, § 13

19 Concluding observations of the Human Rights Committee : Russian Federation, CCPR/CO/79/RUS, 06 November 2003, § 24

APPENDIX - The Orel Case

In January 2008, the International Organization for Migrations (IOM) asked the Russian organisations defending human rights for help with the defence of a group of workers of Uzbekistan, recognized like victims in a lawsuit against their employers in Orel. The network "Migration and Right" already knew the case thanks to reports from its lawyers in Orel, Alexandre Erin and Anatoli Zaitsev. The attempt to find a lawyer in Orel had failed: the accused employers were defended by the best lawyers, and nobody wanted to enter in competition with them nor with their clients, personalities of the city.

The office of the IOM, within the framework of the programme "fight against the traffic of human beings in the Russian Federation", in collaboration with Russian Home Ministry, helped the Uzbek workers a lot: they solve the issue of their legalization, supported them financially and paid for the journey back to Uzbekistan. But the difficulties in finding a lawyer remained. It is the Moscovite lawyer, Dionis Lomakin, who has worked for more than 10 years in the network "Migration and right" who went to Orel. The details of the case were reported by the victims themselves.

For nearly one year (from September 2006 to June 2007) 24 Uzbek citizens, who had come to Russia to work, found themselves in a situation of virtual slavery in Orel²⁰. Their employer, A.N. Prygunov, owns a car wash network (registered in the name of a front man), and is also a trainer at the Olympic Reserve Specialist School, chairman of the Federation of All-in/Greco-Roman Wrestling and chairman of the local Anti-corruption Commission. He forced them by deception, threats, physical and psychological violence to work for him without pay at various building sites and at his car-wash outlets. The workers were held in the car-wash premises against their will and in intolerable living and working conditions.

The Uzbeks had no employment contracts, and their passports had been confiscated on the pretext of obtaining their registration and work permits. The promised salary of 300 USD was not paid; they sometimes received around 100 RUB per day for food, which they otherwise had to buy themselves from customer tips. Forced to live in an unheated building at the second floor of a car wash in Priborostroiteley Street, they were banned from leaving the premises. The working day started at 8am and ended at 10pm, or sometimes later. For breakfast, they had to make do with tea of coffee made on an electric ring in their bedroom. When the Federal Migration Service called to carry out checks, the workers were order to "run away and hide where they could".

In Uzbekistan, the Lieutenant-Colonel of Police, Pulat Sharipov, who was in contact with Prygunov, persuaded his compatriots to go to Russia to work, promising them a good salary and decent living conditions. Petr Mikhailovich Shmakov, a colleague of Prygunov in the Federation of All-in/Greco-Roman Wrestling (in which they were chairman and vice-chairman respectively), who had highly placed contacts in Moscow, met each incoming group of illegal workers at Moscow railway station and accompanied them to Orel. In addition, Prygunov employed a manager at each car wash, whose duties included not just checking the quality of the employees' work, but also threatening them and physically punishing them. Any disobedience (such as attempting to get in touch with family and friends to ask for help, quitting work and leaving Orel) were punished at the very least by severe beatings, or sometimes by outright torture.

Victims remember Alexey Bochkarev, who managed one of Prygunov's sites, and used a baseball bat to "maintain work discipline", and another manager, the Daghestani Arsen, who was not above taking part in the mistreatment himself. One form of punishment was to make the Uzbeks line up

²⁰ In fact, there were more than 24 Uzbek workers, but not all of them were included among the victims.

when there were no customers in the car wash and to force them to stand to attention for long periods, beating anyone who moved.

According to the victims, the most fearsome managers were A.A. Larin and A.V. Agoshkov. They were the ones who entered the Uzbeks' bedroom in the night to beat the sleeping men, and led the least docile into the woods to threaten them with death and to fire above their heads with a sub-machine gun. This is how they punished a worker named Sunat, who had asked for sick leave. The Uzbek workers lived through this hell for more than a year. Their employers threatened to "sort them out" for the least disobedience, and everyone knew that Prygunov had a rifle and that Larin kept a sub-machine gun in his Audi.

Ulukbek Radzhabov in particular was targeted for mistreatment after his brother Otabek escaped. Ulukbek, perceived to be a brave and decisive man, had a leadership role among the workers: his employers initially used him as a foreman, but with time his independence started to bother them.

As for Otabek Radzhabov, in order to ensure subsistence supplies, he started to leave work secretly – practically risking his life – in order to work as a loader at a food depot. This source of additional revenue did not remain a secret to his employees for long: in June 2007, Otabek spoke about it to Slava, one of the employees of the car wash. He was immediately barred from entering the car wash and told that his brother Ulukbek would lose a part of his salary for each day that he had worked elsewhere. Moreover, that evening he was threatened with additional punishments. Believing that he risked a beating, or even death, and knowing that all his compatriots would also suffer, Otabek decided to escape.

He had the possibility of doing so: his brother Ulukbek had managed to buy back his passport for 2000 RUB, and the Radzhabov brothers had an acquaintance who was able to offer him shelter. Otabek made off, hitching a lift out of Orel. For three days, he tried to contact his brother and those who had worked with him at the car wash, but their mobile phones had been cut off.

On 15 June, Ulukbek is taken by car to the woods outside the village of Znamenka, where Prygunov's dacha is located. He is beaten. Threatened with a Kalashnikov, he is forced to call the Uzbek Lieutenant-Colonel Pulat Sharipov, who had persuaded them to come, and to assure him that all is well, that the workers are living in good conditions and regularly paid the money owed to them. Ulukbek is then taken back to Priborostroiteley Street, where Larin and Agoshkov, in a state of high excitement, started to beat all the Uzbek workers, confiscating phones from anyone who had one.

Two days later, it all starts again. Ulukbek Radzhabov and some others are ordered to leave "without their belongings" and are taken to the car wash at 2nd Kursk Street, where they are violently beaten for nearly an hour, while Agoshkov shouts: "so, who else wants to go home?" The employers threaten to drown Ulukbek in the lake.

After this attack, the workers, their bodies covered in bruises, were locked up for 24 hours without food or drink in an empty room containing only a 5-litre bucket as a toilet; here they spent the night lying on the floor. The following day, the employers opened up the room and demanded that they work as usual.

However, Ulukbek Radjabov had a piece of luck: in the car wash he found a mobile phone that had no SIM card but enabled him to call the emergency services on 112. He explained to the operator that he and his compatriots were being held against their will at the car wash, that they had been beaten, that they were at the end of their tether and that they needed to contact the police. The duty officer promised that a patrol would come soon, but no one came in the next half hour. Ulukbek therefore called back on the same number and asked to be put through to the FSB. The latter responded quickly: five minutes later a patrol arrived at Priborostroitelej Street and took away the Uzbek workers; Uzbeks working at other sites belonging to Prygunov were also rescued shortly afterwards.

A criminal case was rapidly initiated against Prygunov and Chmakov. On 21 June 2007, on the orders of the Sovetskij District Court for the region of Orel, Prygunov was detained for the duration of the investigation, as was Chmakov on 22 June. To begin with, they were accused only of "organising illegal migration" under article 322.1, section 2a.

The information that the Uzbeks gave to the police revealed a much more frightening picture: exploitation, physical and psychological violence, death threats, deception. It became clear to the investigators that these "businessmen", who had been holding workers in servitude, were responsible for a crime that could not be reduced to the fact that they had helped foreigners to live and work illegally in Russia. Wording from article 127.2 section 3 of the criminal code appeared on the charge sheet: "participation in a criminal gang using forced labour for the purposes of personal enrichment". After a while, similar charges were brought against Larin and Agoshkov, but they had had time to hide and are still being sought. Prygunov was released on 16 August 2007, and immediately rearrested and imprisoned, as he stands accused of a crime representing a particular danger for society. According to D. Lomakin, such charges are very rare in Russian jurisprudence, and generally relate to cases of prostitution: this trial may therefore set a legal precedent.

Admittedly, some of the investigation's conclusions are hard to understand. In the criminal gang, Prygunov and Shmakov were the two most important figures, but they had several subordinates who compliantly obeyed their orders.

In the Orel trial, the third accused was the foreman A.B. Kolomets. This person did in fact work for Prygunov on the various sites, but the victims make little mention of him and there is no information to suggest that he tortured the Uzbeks or threatened them with weapons. On the other hand, the manager S.A. Abzeiger is not among the accused, even though he played a significant part in organising the illegal migration, particularly by confiscating passports. Of those who perpetrated acts of violence and torture, only Larin and Agoshkov may have to answer for their actions, and they are still on the run. The managers referred to in the victims' statements as "Micha" and "Slava", Alexey Bochkarev (who carried a baseball bat) and Arsen (who managed a car wash in Kursk Street and was one of those who "gave a lesson" to the ill Sunat) are all carrying on with their lives in Orel, as if nothing had happened. There are of course many ways in which they can influence the investigation by putting pressure on victims and witnesses.

It is hard to understand why Prygunov and Shmakov face only two charges under the criminal code. Even a superficial knowledge of the case suggests that the crimes committed cannot be reduced to the exploitation of illegal migrants. Death threats, violence and torture are all punishable acts under the criminal code, but for unknown reasons they have been left off the charge sheet.

The trial itself did not start until December 2007: the investigation took time, because there were 24 victims. Many of them do not speak Russian well and need an interpreter. In addition, most of them still do not have ID documents and have to undergo a legal process to establish their identity. The accused categorically deny their guilt and deny having retained the Uzbeks' passports. Not all the Uzbek citizens whose evidence is important are able to stay in the Orel region until the end of the trial. Some are returning home, as they cannot find work in Russia or provide for their needs; some are leaving to earn money in Moscow; and some have simply been obliged to return to Uzbekistan, as they have illegal status in Russian territory and risk being deported.

Most important of all, the Uzbeks are frightened to remain in Orel and fear acts of revenge by their former employers. Since the investigation has opened, friends and relatives of the accused have tried to put pressure on the former workers. Attempts to buy them (by promising to pay them their one-year-back-pay and their ID documents) alternate with blackmail and threats. They threaten that

those who have had the temerity to give evidence will regret it. When a number of victims were placed at the IOM rehabilitation centre, associates of Prygunov and Shmakov went there offering money in exchange for them to change their statements.

The Uzbeks say that even their stay in detention cells, where the police had been obliged to put them, was more a blessing than a punishment: they felt safer from the violence that could be perpetrated by those who had an interest in seeing them disappear from the Orel region.

When the trial opened, the case already ran into eight volumes. The case is proceeding very slowly, notably because of the strategy adopted by the counsels for the defence. Prygunov and Shmakov are being defended by well-known barristers in the Orel region: Ms N.I. Sherepina and Ms T.B. Kalifulova, former director of the criminal procedure department at the Legal Institute of Orel. According to D Lomakin, they are trying every way of preventing the trial from running normally, by lodging a multitude of complaints and petitions which while mostly baseless have to be examined during the court's sessions, as required by the code of criminal procedure. Indeed, the defence knows that the longer the hearings last, the greater the chance of a favourable outcome for the accused. It is obvious to experienced barristers Cherepina and Kalifulova that the prosecution case is based on victim statements. They are trying to "wear down" the Uzbeks who are appearing as victims, relying on financial and administrative difficulties to force them to leave Orel before the completion of the trial.

The defence team is also using every possible means to portray the witness and victim statements in the case file as unreliable. Prygunov's defence counsels are not contesting the facts mentioned, but say that the statements have either been falsified or negligently drafted. For example, they object to the Uzbek translators who were present during the investigation on the pretext that they do not have a sufficient command of the language or are professionally incompetent.

On 9 January 2008, Cherepina objected to the translator Nurmatzhanov, on the basis that in her view he had a poor command of Uzbek. On 11 January 2008, Cherepina claimed that the statements recorded in K. Kurbanov's translation were not admissible. She accused the translator of collaborating with the police to fabricate the case, because he had served for a time in the police and had retired at the rank of lieutenant-colonel.

In the same petition, Prygunov's defence counsel tried to prove that the lawyer representing the victims, I.P. Melnik, had used a false mandate in order to be present when the statements were taken. She claimed that an identical mandate bearing the same number had been issued to a different lawyer on the same day.

Counsels for the defence are attempting to portray the prosecution witnesses and victims as ignorant, uneducated and of limited intellectual capacity, "incapable of making a distinction between a barrister and a state prosecutor" or of expressing their thoughts clearly. They interrupt them, and do not give them a chance to answer the court's questions; they laugh openly at their pronunciation and try in every way to humiliate them. Bearing in mind that the Uzbeks do not all understand Russian very well and that practically none of them has any experience of the courts or is familiar with Russian legislation and procedural standards, it is understandable that such pressure from counsel for the defence can only have the effect of disorientating them.

The lawyer initially defending the workers soon withdrew from the case, even though the workers had sweated to raise sufficient funds to cover his fees. The victims found themselves caught between two evils – on the one hand, during the legal proceedings they would have to face professional jurists if they wanted to defend their right to at least say something; and on the other hand, they were still afraid of their former employers.

E. Lomakin, the lawyer sent by the Civic Assistance Committee, first participated in the proceedings on 7 February 2008 and the counsels for the defence immediately challenged his right to represent the victims in court, claiming that he could not have made a contractual agreement with all the victims, as the majority of them had already left Orel. Once it had been established that contracts had indeed been signed, Kalifulova and Cherepina changed tactics and started insisting that Lomakin have all the victims come to court, since he was in contact with them. Lomakin was even accused of being a collaborator of the UBOP (anti-organised crime unit) and of ethical misconduct. He also received threats and insults. One of the lawyers even accused him of using the facts to compromise his clients, apparently forgetting that Lomakin, as counsel for the victims, would be behaving very strangely if he focussed on clearing the accused!

When it became clear that six of the victims would have to leave Russian territory by 16 March, and Judge L. I. Kourlaeva had scheduled the hearing for 14 March so that the victims could be present, the lawyers of the accused decided quite simply not to attend the trial. The previous day they had left the courtroom without warning before the end of the hearings, showing a blatant lack of respect for all the other participants. On 14 March 2008, Judge L.I Kourlaeva was forced to send a letter to the president of the Orel regional bar, S. I. Malfanov, asking him to use his influence concerning the scandalous behaviour of Tcherepina and Kalifoulova.

In addition, the court was obliged to examine on three occasions the legal control measures concerning the accused. Ms. Cherepina, defending Mr. Prygounov, requested that he be released on bail or on oath not to leave the city, for reasons of ill health, aggravated by injuries received from the police when he was arrested. Ms. Kalifulova, defending Mr. Shmakov, asked that he be released on bail on oath not to leave the city, claiming he suffered from a serious disease of the joints requiring constant medical supervision, and had several young children to feed. If these hearings had been conducted in normal conditions, these petitions might have been granted. But the court refused three times because of the real risk that once released, the accused would put pressure on the witnesses and victims.

E. Lomakin tells how he has often seen pressure used on victims to force them to change their statements or not appear at the trial. The repeated attempts to intimidate or bribe the Uzbeks were not entirely in vain: thus, contrary to his fellow workers, E.B. Sarimsakov declared that Prygounov offered them conditions that were perfectly tolerable, and that the statements made by the others were the result of a simple misunderstanding. At one point he began to support the adverse party entirely and to approve each petition brought by the defence counsels.

Ulukbek Radzhabov and his comrades told Lomakin that when they were working for Prygunov, someone was reporting back to the employer everything they said or did. Ulukbek did not hide the fact that they all suspected Sarimsakov, who was having an affair with the niece of the one of the cruellest managers, the Daghestani named Arsen. Outside the courtroom, and in the presence of the lawyer and the other victims, Sarimsakov assaulted Ulukbek, promising him that Arsen would be informed of what he had said and that he would be punished for having talked.

“The most awful and most important things never take place in the courtroom, but in the corridor when the session is over,” remarked Lomakin. “However, my position remains the same and is very simple: after studying the facts of the case, I have come to precise and unequivocal conclusions. And even if right up to the verdict, no one has the right to qualify the accused as guilty, I have no doubts concerning the crimes and their perpetrators. In this trial I am entirely on the side of the victims and I am going to ask the court that those found guilty be given the most severe sentences, and that these should be enforced and not deferred.”

The lawyer Lomakin intends to bring another suit, this time a civil one, against the former employers and to obtain compensation for the material and moral damages his clients have suffered. However, even if this action is successful, many similar cases go unpunished. To fight against these practices, it is necessary not only to sentence the physical criminals but to change a system where foreign citizens powerless when confronted to the arbitrary of crooks .