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Usually Forgotten

Second Alternative Report on the Conformity of the Position
of Homeless and Un-registered Individuals in the Russian Federation
With the International Covenant on Economic, Social and Cultural Rights

1. Introduction

In November, 2003 a group of Russian non-governmental organizations together with the International Federation for Human Rights (FIDH) presented the UN Committee on Economic, Social, and Cultural Rights (hereafter Committee) with an Alternative Report on the situation of street homeless in Russia. It indicated the non-compliance of this situation with Articles 6, 7, 8, 9, 10, 11, 12, and 15 of the Covenant. The report coincided with the Committee's review of the Fourth Periodic Report of the Russian Federation "On Measures Adopted and the Progress Made in Achieving the Observance of the Rights Recognized by the International Covenant on Economic, Social, and Cultural Rights" (HR/CESR/NONE2003/5).

We are grateful to the Committee for urging the Russian authorities in its Concluding Observations of the 31st Session to:

- ensure that lack of residency registration and other personal identity documents do not become an obstacle to the enjoyment of economic, social, and cultural rights.
- take effective measures to ensure that no one will be deprived of their legal status and enjoyment of rights as a consequence of the expiry of Soviet passports;
- ensure that programs to promote employment are targeted to the groups that are most affected;
- ensure that the increase in available funds in the State budget is also used to promote an adequate standard of living for all citizens;
- strengthen its efforts to address the problem of homelessness and to undertake a study into this problem;
- ensure that the ongoing reform of the health sector will improve the quality and the equitable access to health services;
- intensify its efforts to fight tuberculosis;
- engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

We are grateful to the Committee for the recommendations meant to assist the Russian authorities in responding to these appeals and create the conditions for the enjoyment by each individual residing on Russian territory of the rights recognized by the Covenant.

Regretfully, we must acknowledge that during the time that has passed since the Russian authorities received these recommendations, the legal and socio-economic situation of the homeless in Russia has not improved. The societal structure of homelessness has changed. As a result of the economic crisis, economic migrants have joined the ranks of Russian homeless. The homeless have become younger; their average age is 40 and the percentage of women has increased by 30%. Young people who moved from depressed regions to large cities in order to find a job have the possibility to rent a room or an apartment, but cannot obtain residence registration. This would be possible only if they own an accommodation or rent it officially. The Russian housing rental market is illegal and apartment owners do not register their boarders. As a result, Russian migrants without registration are deprived of the possibility of enjoying the majority of their rights.

The present Alternative Report coincides with the review of the Committee of the Fifth Periodic Report of the Russian Federation “ On Measures Adopted and the Progress Made in Achieving the Observance of the Rights Recognized by the International Covenant on Economic, Social, and Cultural Rights.” Unfortunately, this formal report of the Russian government, as the Fourth Periodic Report prior to him, does not contain any mention of the problem of homelessness, of the socio-economic and legal position of the homeless and those without registration, or any measures adopted by the authorities to create conditions whereby these people may enjoy the rights recognized by the Covenant..

The objective of this Alternative Report, in the light both of the individual rights recognized by the Covenant and of the state’s obligations to create the conditions for their implementation, is to inform the Committee of the discriminatory nature of Russian legislation and law enforcement practices as regards the homeless and those without registration. We hope this report will assist the Committee in preparing recommendations whose implementation in Russia will facilitate the formation of effective mechanisms to prevent homelessness, to resocialize the homeless, and to create the conditions whereby un-registered individuals in Russia may enjoy rights recognized by the Covenant.

2. Preliminary Observations

2.1. Preliminary observations regarding several terms in the present Alternative Report

The following terms will be used in the present Alternative Report:

homeless person — an individual without a residence or a place of stay, and accordingly without the possibility of registering at a place of residence or place of stay.”¹

un-registered Russian citizen — an individual that has a residence but does not have registration either at a place or residence or a place of stay

place of stay — a hotel, sanatorium, rest home, vacation site, camping site, tourist area, hospital, or other similar institution, or any other accommodation where a citizen lives temporarily;²

place of residence — residential building, apartment, official housing, specialized buildings (dormitory, shelter hospital, temporary public housing, special home for solitary elderly, home for the disabled, for veterans, or others), as well as other accommodation in which a citizen lives permanently or mostly as an owner, under a rental or tenancy contract (sublease) or on another basis provided for by the legislation of the Russian Federation.³

It is worth noting that, in the Russian legislation, a place of residence is not the place where a citizen lives permanently, but where he lives “as an owner, under a rental or tenancy contract (sublease) or on another basis provided for by the legislation of the Russian Federation”; in other words, where he is a rights holder. It is in this specific meaning that the concept “place of residence” is used in the present Alternative Report.

The related concept of “homeless” includes people that spend their nights outside of housing. They represent the chronic population of homeless individuals who live on the streets, in basements and

¹ In official Russian documents in place of the term “homeless” the term “persons without fixed abode” (abbreviated “BOMZH”) or “persons without fixed abode or occupation,” as well as “persons engaged in vagrancy” are used.

Information on the number of homeless is contained in Addendum 1.

² Article 2 (paragraph 2) of the Law of the Russian Federation No. 5242-I of 25 June 1993 “On the right of citizens of the Russian Federation to freedom of movement and to choice of place of stay or residence within the Russian Federation.”

³ Article 2 (paragraph 3) of the Law of the Russian Federation No. 5242-I of 25 June 1993 “On the right of citizens of the Russian Federation to freedom of movement and to choice of place of stay or residence within the Russian Federation.”

attics, at technical facilities, and similar places not outfitted for habitation.

“Un-registered Russian citizens” are citizens living in housing that does not belong to them (with relatives, friends, or acquaintances) and who are latent (hidden) homeless, their situation being socially compensated to some extent. These two categories are both legally identified by the absence of registration.

2.2. Preliminary observations on the registration system of citizens and its influence on the enjoyment of their rights.

Violating residence registration rules should be raised to criminal liability...We just recently decided that registration in a city such as Moscow should be conducted in providing a notification via the Internet...Apparently we were a little too hasty in adopting this liberal form of registering citizens.

Vladimir Putin at a session of the State Council. 27 December 2010

In the Russian Federation a system of registering citizens according to place of stay and place of residence does exist. Registration of one's place of residence or place of stay is a citizen's obligation.⁴

Article 3 Section 3 of the Law of the Russian Federation N. 5242-I of 25 June 1993, namely the law “On the right of citizens of the Russian Federation to freedom of movement and to choice of place of stay or residence within the Russian Federation” provides that registration of citizens according to place of residence and place of stay shall be free of charge. However, this norm is only due to a lack of a state duty on the registration procedure itself. In practice, complying with the required state registration obligations involves expenditures for certificates and other documents that are needed in order to register. Thus, the Council of Deputies of the Municipal District of Saransk (Republic of Mordovia) in its Resolution No. 267 of 26 February 2009 approved the cost of services the municipal enterprises provided to citizens upon registration and deregistration according to place of residence. According to this Resolution the issuance of a certificate confirming the composition of a family should cost 20 rubles, the issuance of an extract from the house register, 40 rubles, and to obtain documents to be taken off the residence registry, 100 rubles (about 2,50

⁴ Article 3 (paragraph a) of the Law of the Russian Federation No. 5242-I of 25 June 1993 “On the right of citizens of the Russian Federation to freedom of movement and to choice of place of stay or residence within the Russian Federation.”

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The Government of the Russian Federation makes attempts to simplify the registration procedure, but traditionally ties the possibility of registering to housing. This practice remains from Soviet days when the state allocated social housing. In market conditions with private property the connection between property and registration deprives a large number of Russian citizens of the opportunity to be registered.

Thus the last Decree No. 688 of 08 September 2010 of the Government of the Russian Federation “On the introduction of changes to Point 24 of the Rules on registration and removal of Russian Federation citizens from the registration by place of stay and place of residence within the borders of the Russian Federation” provides that registration according to place of stay by the homeless shall be conducted according to addresses of social service institutions.

The problem, however, is that these institutions do not exist in all federal administrations of the Russian Federation, even less within municipal units and localities. Without a sufficient network of these institutions the concept of registration for the homeless is practically meaningless in these places. Thus, in 2002, according to the all-Russian census of 2002, there were 28,874 street homeless and 279 places in night shelters.

Since there is no form of registration that is unconnected with specific premises or institutions, citizens who do not have a place of residence or stay are not included in the existing registration system.

When speaking of the institution of registration by place of residence or stay, Russian authorities usually assert that the institution has no effect on a citizen's opportunity to enjoy human and citizen rights and freedoms. They rely on the provision of the second part of Article 3 of the Law of the Russian Federation of 25 June 1993 No. 5242-I “On the right of citizens of the Russian Federation to freedom of movement, choice of place of stay or residence within the Russian Federation,” which provides: Registration or non-registration may not serve as a ground or condition for the enjoyment of the rights and freedoms of citizens provided for by the Constitution of the Russian Federation, the laws of the Russian Federation, or the Constitutions and laws of the republics within the Russian Federation.”

It is worth noting the obvious contradiction between this provision and the first paragraph of the very same Article and law, which provides that registration of Russian Federation citizens according to place of stay or residence within the boundaries of the Russian Federation shall be

introduced in order to provide the necessary conditions for a citizen of the Russian Federation to enjoy his rights and freedoms and to perform duties to other citizens, the State, and society. In essence this means that registration of citizens according to place of residence or stay is a condition for the creation of the conditions (a proto-condition) for the enjoyment of human and citizen rights and freedoms.

This provision, rather than the declaration denying that enjoyment of rights and freedoms depends on the existence of registration, is actually the one in force in contemporary Russia. The mechanisms of enjoying practically all rights and freedoms of the person and of the citizen, including the rights and freedoms recognized by the International Covenant on Economic, Social, and Cultural Rights are connected with the presence of a place of residence or stay and to the presence of registration.

See Addendum 2.2 A: Social support depends on residence registration: analysis of decrees and Supreme Court rulings.

The enjoyment of the rights recognized by the Covenant on Economic, Social, and Cultural Rights is very closely connected with the issue of their protection, including judicial protection. Therefore, lack of registration involves for these rights that they cannot be properly protected.

Article 131 of the Civil Procedural Code of the Russian Federation (CPCRF) provides that a complaint shall be filed with a court in written form and must indicate the plaintiff's place of residence. Failure to indicate it will be treated as failure to fulfill a requirement established by Article 131 of the CPC, which in accordance with Article 1 (paragraph 1) of the CPC is a basis for the complaint to be held in abeyance. If the petitioner does not bring the complaint into compliance with the requirements of Article 131 of the CPC within a designated time period, it will be dismissed and returned to him with all its attachments (Article 136 (paragraph 2) of the CPC). Since the homeless cannot comply with the requirement to indicate one's place of residence, they are de facto deprived of the possibility of appealing to court for the protection of their rights, including the rights recognized by the Covenant.

The European Court of Human Rights (ECHR) recently established that a lack of registration affects the possibility of judicial protection of rights in the Russian Federation.

See Addendum 2.2 B: Case of Sergei Smirnov vs. the Russian Federation – 22.12.2009.

People without registration not only cannot rely on judicial protection but are also deprived of the opportunity to participate in regional elections. Deprived of the right to vote, they are of no interest to politicians, none of whose pre-election programs made any mention of the problems of the homeless and people without registration. The result is that regional plans of social and economic development are assembled without considering the interests of this population.

2.3. Preliminary observations on the effects of the registration system on the possibility for the homeless to obtain a passport

Homeless citizens experience serious problems in obtaining passports and restoring lost documents.

According to data from the interregional study "Social and Legal Aspects of the Problem of Homelessness," conducted in 2004-5 in Veliky Novgorod, Vladimir, Murmansk, Petrozavodsk, St. Petersburg, Tolyatti, Arkhangelsk, and two cities in Arkhangelsk Province, Severodvinsk and Novodvinsk, among the street homeless, only 33.4% had a Russian citizen passport, while 0.2% had a temporary certificate of Russian citizen. In other words, only one out of three chronically homeless individuals had a personal identity document.⁵

Frequently, people who are released from prison are deprived of their passports, in violation of existing law. In 2008, in Kemerovo Province, 1,813 individuals were released from prison.⁶ Many of them become homeless after being released.

The enjoyment of human and citizen rights and freedoms in the Russian Federation is impossible without a passport as a proof of Russian citizenship. Indeed, passport is required upon appealing to practically any governmental agency, organization, or institution. As the Supreme Court of the Russian Federation noted, the presentation of a passport is one of the conditions of enjoying Constitutional rights and freedoms by Russian Federation Citizens.⁷

A typical example is the provision of paragraph 69 of the Administrative Regulation for reviewing petitions by citizens to the government of Khabarovsk Territory, according to which "Citizens are

⁵ Social and Legal Aspects of the Problem of Homelessness in Russia. Based on Materials From an Interregional Study. St. Petersburg, 2006.

⁶ Information from the Report "O sobliudenii prav i svobod cheloveka i grazhdanina i deiatel'nosti upolnomochennogo po pravam cheloveka v Kemerovskoi oblasti v 2008.

⁷ Ruling No. KAS 03-166 of 15 May 2003 of the Cassation Board of the Supreme Court of the Russian Federation.

received in order by presenting a personal identity document.”⁸ Such regulations on the procedure for appealing to governmental agencies means that the majority of street homeless cannot correspond with them. They cannot go in person without a personal identity document. An answer cannot be received through the mail because there is no return address, and no answer will be received at the post office since items are given to recipients upon presentation of a personal identity document, which they do not have. As a result, a significant portion of homeless citizens find themselves deprived of any opportunity whatsoever to appeal to the authorities in order to request help and support, and demand the enjoyment of their rights.

Appeals by citizens are one of the most important sources of information of the authorities on problems of the population, including problems that are a consequence of decisions the authorities have made. As a result of such regulations, the authorities have practically no field information regarding the situation of the homeless or regarding their problems.

A second result of the above is the exclusion of the homeless from public policies.

A rare exception are the regions in which, following efforts by social organizations, a registry has been set up for homeless and Russians without registration. Thus in St. Petersburg a “Plan of fundamental actions to prevent homelessness and develop a system of social support to persons lacking a defined residence and persons released from correctional facilities, for the years 2008-2010,” was adopted following the work of the NGO Nochlezhka, which has been keeping track of Russians without registration since 1991.

3. 3. Economic, Social and Cultural Rights of homeless and citizens without registration in the Russian Federation

A Russian citizen without registration is discriminated against in comparison to other citizens of the Russian Federation. This is a violation of Article 2 of the Covenant.

The lack of registration deprives a Russian citizen of the opportunity to enjoy the right guaranteed by Article 6; finding legal work for person without registration is rendered extremely difficult, and

⁸ Administrative regulation confirmed by Decree No. 180 of 25 December 2007 of the Governor of Khabarovsk Territory.

state retention programs and programs to protect against unemployment are inaccessible. Deprived of the opportunity to work legally, people automatically become consumers of state social services. But social services (assistance, payments, and compensation for adults and children) for a homeless person and a person without registration and his family members are inaccessible (a violation of Article 9 of the Covenant). Under these conditions a citizen without registration and his family are in a highly vulnerable situation; they are deprived of sources of income and cannot maintain an adequate standard of living (Article 11). Inclusion in the system of Mandatory Medical Insurance which ensures the receipt of planned medical assistance is also connected with the existence of registration. A homeless person and a citizen without registration cannot receive medical assistance on an equal basis with other Russian citizens (a violation of Article 12).

3.1. The right to work (Article 6 of the Covenant) and the right to fair, just, and favorable conditions of work (Article 7 of the Covenant)

Article 37.3 of the Constitution of the Russian Federation states: "Each shall have the right to work in conditions which meet the requirements of health and safety, to remuneration for labor without any discrimination whatever, and to the minimum amount of payment for labor established by federal law, and also the right to protection against unemployment."

Unfortunately, homeless are discriminated against both in the labor market and in the matter of protection from unemployment. According to data of the interregional study "Social and legal aspects of the problem of homelessness," on average only 2.8% of the homeless have formal work. Among those who were able to preserve their documents this percentage is significantly higher, although only one in five has a formal work among them.⁹

Without the possibility to formally work, the homeless are forced to agree to any work, including some which violate health and safety requirements.

3.1.1. The impossibility of finding work in connection with the lack of a passport

Article 65 of the Labor Code of the Russian Federation provides that an individual shall present a series of documents to his employer when he signs an employment contract, including a passport or another personal identity document. In the Russian Federation the employment of foreigners is limited. A passport not only verifies the citizen's identity but it also affirms his Russian citizenship. The absence of passport, even with other documents that verify the identity of a potential

⁹ Social and Legal Aspects of the Problem of Homelessness in Russia. Based on Materials From an Interregional Study. St. Petersburg, 2006.

employee, deprives a person of the opportunity to get a formal job in practice. In connection with this, the significant portion of the homeless who do not have a passport cannot obtain a formal job.

3.1.2. Discrimination as a result of violations of labor law by employers

The practice of violating the Russian Constitution and the labor legislation is widespread. Frequently, employers demand of applicants to supply a proof of registration and place of residence within the Russian Federation.

This widespread phenomenon can be observed through job offers that are published in various periodicals, including specialized ones (“Rabota,” “Vakansiia,” and others), on Internet resources (such as <http://rabota.mail.ru/vacancy/>), and through other means. Many job offers contain information about this requirement. There is every reason to assume that in a significant part of those instances when an announcement does not contain it, it will be brought up at the interview stage, and when the absence of a place of residence coupled with registration is discovered during the interview or review of documents, it will serve as a factual basis for a refusal to hire.

This practice is not only prejudicial to the homeless when it comes to the question of enjoyment of the right to work recognized by Article 6 of the ICESCR and Article 37 of the Russian Constitution, but also contradicts Articles 19 and 27 of the Russian Constitution, Articles 2, 3, and 64 of the Labor Code of the Russian Federation, as well as Article 1 of the 1958 ILO Convention No. 111 on discrimination in employment and occupation, which was ratified by an Decree of the Presidium of the Supreme Soviet of the USSR on 31 January 1961.

Such a violation is often permitted by the state agencies themselves, along with the state structures subordinated to them. For example, a residence permit is required in the following job offers in St. Petersburg and Leningrad Province: a firefighter at the First State Firefighting Service Department of the Ministry of Civil Defense for St. Petersburg,¹⁰ a senior communications official in Squad 7 of the Federal Anti-Fire Service for St. Petersburg,¹¹ and a policeman in Division 1 of the Ministry of Internal Affairs for the Metro.¹²

Besides the illegal requirement for residence registration, a tax identification numbers (TIN) is often required from job applicants.¹³ With the exception of individual instances provided for by law (state

¹⁰ <http://rabota.mail.ru/vacancy/406769/>

¹¹ <http://rabota.mail.ru/vacancy/543154/>

¹² <http://www.rjb.ru/svac.cgi?p=4&code=vrucnyep>

¹³ The correct name for this document is “Certificate of Registration with the Tax Agency by a Natural Person According to Place of Residence on the Territory of the Russian Federation.”

and municipal services) this requirement is also illegal.¹⁴

Illegal requirements for a TIN can be encountered in job offers published on the Internet,¹⁵ in periodicals (the newspapers “Rabota,” “Vakansiia,” and others), and displayed on stands. There is every reason to assume that, in a significant part of those instances, when an offer does not require any proof of residence, the issue will be brought up during interview. If it turns out the applicant does not have any proof of it, one can assume it will serve as a basis for a refusal to hire.

This requirement is not only illegal but impossible since “registration of homeless individuals with tax agencies of the Russian Federation is not provided for by legal standards of the Russian Federation”.¹⁶

These violations have been occurring for many years, and everywhere. This demonstrates that state bodies, including the procuracy, do not take sufficient efforts to eradicate such illegal and discriminatory practices.

3.1.3. Legal regulation of homeless access to the labor market, and protection from unemployment (Article 6.2 of the Covenant)

In accordance with Article 3 (paragraph 2) of the Law of the Russian Federation of 19 April 1991 No. 1032-1 “On the Employment of the Population in the Russian Federation”, a decision to recognize a citizen as unemployed is made by employment services agencies according to the citizen’s place of residence. Similar standards are provided for by the Decree No. 458 of the Government of the Russian Federation of 22 April 1997 “On the confirmation of the procedure for registering homeless citizens” and Order No. 847 of 30 September 2010 of the Russian Ministry of Health and Social Development “On the confirmation of the procedure for registering homeless citizens.”

The law does not provide a mechanism for citizens without a place of residence to be recognized as unemployed. This excludes the possibility of homeless citizens being recognized as unemployed and consequently excludes the possibility for them to be assigned and to receive an unemployment compensation, or to be provided with other measures of assistance. It also

A TIN is a taxpayer’s individual taxation number that is contained in this document.

We use the term “TIN” here since in accordance with the laws of linguistic economy it is more frequently used in advertisements for vacancies and in oral communication.

¹⁴ Article 65 of the Labor Code of the Russian Federation..

¹⁵ For example, in vacancy announcements for the position of cleaning person in an office or business center (<http://rabota.mail.ru/vacancy/160782/>) or a truck driver for a trading company (<http://rabota.mail.ru/vacancy/541791/>).

¹⁶ The quote is from a letter No. 06-04/01236 of 12 January 2009 by A. B. Bychkov, Deputy Director of the Interregional Inspectorate No. 11 of the Russian Tax Service for St. Petersburg.

excludes the support to which citizens recognized as homeless have a right.

3.1.4. Regional mechanisms

Under conditions when federal legislation does not provide aid mechanisms for unemployed homeless citizens, regional authorities take individual measures on their level that are aimed at increasing access to legal employment for the homeless.

Unfortunately these measures are ineffective.

See Addendum 3.1.4: The social and economic development program of the Republic of Buryatia from 2008-2010 and until 2017, adopted by Law No. 2595-III of 9 November 2007.

3.1.5. Violation of the rights to fair labour conditions.

Lacking the possibility of working formally, the homeless need to work informally (13.6% have regular informal work and 43.0% have occasional informal work)¹⁷. They consent to practically any work, including some which violate labor health safety requirements. Employment contracts are not filled out.

Frequently these informal workers have a workday that exceeds the legal limit and are not provided with periodic paid holidays or with remuneration for public holidays. Often after completing work the salary is not paid or is paid in a significantly smaller amount than was agreed. Frequently, employers deprive the homeless of their freedom, forcing them to work practically like slaves. The homeless may be deceived or even kidnapped to work as slaves. To frighten them, some use violence, threats of murder or serious injury to health. Instances of homeless people trafficking in order to exploit them are encountered.

Homeless people do not have access to formal employment, which makes them easy prey for criminals who use promises of paid employment as bait.¹⁸ This issue leads to major crimes.¹⁹

¹⁷ Social and Legal Aspects of the Problem of Homelessness in Russia. Based on Materials From an Interregional Study. St. Petersburg, 2006.

¹⁸ The other most important conditions that facilitate homeless being used as slaves are their social isolation and

If this condition is not eliminated, all the efforts by law enforcement agencies to expose such occurrences and prosecute those who are responsible, will not change the situation.

Case study – Gubakha (Perm territory)

From 2003 to 2008, three employers from the city of Gubakha in Perm Territory made their living by using slave labor. They searched for homeless people within the city of Gubakha and forcibly housed them as unskilled laborers at a metallurgical base they owned (OOO “Metallopromyshlennaiia kompaniia”) that was located in Gubakha. They also took away the men’s passports and forbade them to leave the base. The men were not paid for their labor, which consisted of reprocessing scrap metal. For their work they received only bread, bouillon cubes, grits, and alcohol. Those who were poor workers or tried to run away were severely punished by the owner in order to frighten the other workers. After one of the victims managed to escape and go to the police, both owners were detained by law enforcement. One of them hid out and a warrant has been issued for his arrest.²⁰

In the summer of 2007 eleven men, mostly homeless, were tricked into being taken from Kemerovo Province to a distant village in Altai Territory to build residential housing. Their passports and telephones were taken away, their freedom of movement restricted, and they were forced to work 15 hours a day. They were not paid and those who attempted to escape were beaten.²¹

A prosperous peasant family from the village of Spassk in Verkhneursalsk District, Chelyabinsk Province, enticed homeless men with promises of good pay and a roof over their heads into their household economy and turned them into slaves. They were forcibly kept on the premises, locked in a shed and guarded by dogs. They received practically no food and had to eat feed mash. Upon threat of death they were forced to perform difficult physical labor tending to the animals while enduring mistreatment by the family. In order to threaten them, the head of the household used a wooden mallet meant for mixing the feed, which resembled a baseball bat.²²

stigmatization, and the lack of appropriate scale and standards for the problem of the system of social assistance to the homeless.

¹⁹ Illegal deprivation of freedom under Russian law is a crime (Article 127 of the CCRF). Using slave labor is also a crime, under Article 127.2 of the CCRF. Kidnapping, including for profit is a crime under Russian law (Article 126 of the CCRF). Assault is a crime under Russian law (Article 116 of the CCRF). Threatening murder or serious bodily harm is a crime under Russian law (Article 119 of the CCRF). Trafficking in persons for the purpose of exploiting them is a crime under Russian law (Article 127.1 of the CCRF).

²⁰ Information from the website of the General Procuracy of the Russian Federation (<http://www.genproc.gov.ru/news/news-9696/>).

²¹ Information from the Informational Server “Bankfaks” with a link to the office of the Maiminsk District Court of the Republic of Altai (<http://www.bankfax.ru/page.php?pg=61963>).

²² “Rossiiskaia gazeta” - Southern Urals No. 4382 of 6 June 2007 (<http://www.rg.ru/2007/06/06/reg-ygural/sarai.html>).

3.2. The right to social benefits and social insurance (Article 9 of the Covenant) and measures of protection and assistance for the family, motherhood, and childhood (Art. 10 of the Covenant)

The Constitution of the Russian Federation guarantees everyone a social security for age, illness, disability, loss of breadwinner, nurturing children, and in other instances established by law (Article 39.1). Article 39.2 of the Russian Constitution provides that “state pensions and social benefits shall be established by law.”

However, the homeless in Russia are systematically discriminated against.

3.2.1. Seniority insurance

According to Article 7 of Federal Law No. 173-FZ of 17 December 1991 “On employment pensions in the Russian Federation,” men who reach the age of 60 and women who reach the age of 55 have the right to an age-related pension. An age-related employment pension is assigned upon the existence of no less than five years of seniority insurance.

In connection with the fact that the homeless are practically prohibited from entering formal employment and are forced to work in the absence of a contract, they cannot accumulate any seniority insurance.

This lack deprives the homeless of the opportunity to obtain an age-related employment pension, and they can claim only to receive a social pension which, first of all, is assigned five years later (to men upon attaining 65 and women upon attaining 60);²³ secondly, the age-related pension is significantly less than the employment pension (by the end of 2009 the average amount of an employment pension comprised 6,280 rubles and the average amount of a social pension only attained the subsistence level of a pensioner, or 4,294 rubles).

²³ Article 11.1.5 of the Federal Law No. 166-FZ of 15 December 2001 “On state pensions in the Russian Federation.”

3.2.2 Disability

In the case of disability, the homeless would be granted according to Article 8 (paragraph 4) of the Federal Law No. 173-FZ of 17 December 1991 “On employment pensions in the Russian Federation,” a social (disability) pension.

However, they can count only on receiving the social disability pension, which is significantly less than an employment pension.

3.2.3. Mandatory state social insurance

In accordance with the Federal Law No. 125-FZ of 24 July 1998 “On **mandatory state social insurance** against industrial accidents and occupational diseases,” able bodied persons performing work on the basis of an employment agreement concluded with a policyholder are entitled to mandatory social insurance against industrial accidents and occupational diseases. Able bodied persons performing work on the basis of a retainer services contract are entitled to mandatory social insurance against industrial accidents and occupational diseases if the policyholder has to pay insurance premiums to the insurer in accordance with said contract.²⁴

The impossibility of obtaining formal employment, added to the lack of legally concluded employment agreements and retainer services contracts deprives the homeless of the opportunity to be compensated for harm incurred through industrial accidents and occupational diseases.

3.2.4. Maternity

In connection with the impossibility of formal employment and the lack of employment agreements, the homeless cannot receive payments under mandatory social insurance in the event of temporary inability to work or in connection with maternity, as provided for by Federal Law No. 255-FZ of 29 December 2006 “On mandatory social insurance for temporary disability and pregnancy”, including:

assistance due to temporary disability;

assistance due to pregnancy and childbirth;

lump-sum assistance to women who have registered at medical institutions at the early stages of pregnancy;

lump-sum assistance upon the birth of a child;

²⁴ Article 5.1 of the Federal Law No. 125-FZ of 24 July 1998 “On mandatory social insurance against industrial accidents and occupational illnesses.”

monthly assistance during maternity leave;
social assistance for burial expenses.

3.2.5. No access for homeless to social benefits provided to specific categories of workers

The illegal nature of work performed by the homeless deprives them of the opportunity to receive the social assistance provided for individual categories of workers.

For example, homeless individuals, who live and work informally in rural areas and workers' settlements in the Tambov Province, have no access to measures of social support provided for by the Law of Tambov Province No. 23-3 of 31 March 2006 "On measures of social support for individual categories of citizens who work in rural areas and workers' settlements of Tambov Province."

3.2.6. No special measure is taken to help the homeless

An analysis of the legislation and the practice adopted demonstrates that the homeless are not only excluded from the majority of mechanisms of social protection, but often also do not have special measures of social support that are necessary to them as homeless.

3.2.7. Conditions of leaving in rehabilitation centers

The measures of social support for the homeless provided for by law from time to time do not correspond to the content of the concept "social assistance" and "social protection". Indeed, they are more of a punishment and torture.

Thus, the list of state social welfare services provided to the population by social services institutions of Saratov Province, confirmed by the Order No. 223 of the Ministry of Social Development of Saratov Province of 5 March 2010, stipulates a "provision of living space of at least 2.25 square meters per cot in Social and Labor Rehabilitation Centers for homeless individuals."

That is, the size of the living space for one homeless rehabilitant in such centers in Saratov Province can be 1.8 to 2.7 times smaller than the standard established by the European Prison Rules for holding individuals sentenced to punishment by deprivation of freedom,²⁵ and even smaller than the standard provided by Russian legislation for the majority of types of institutions

²⁵ According to European Prison Rules (updated in 2006), the minimal standards are four meters per person in a common cell and six meters per person in a solitary cell.

enacting such punishment.²⁶

Clearly in such conditions there can be no thought either of health or of any effective rehabilitation.

3.2.8. The homeless are more likely to suffer from the cold

Most of Russia is located in the northern latitudes. The temperature in winter dips below 20 degrees. The last severe winters took the lives of thousands of homeless people, while even more became disabled due to cold-related injuries. The issue of arranging seasonal warming stations by the authorities has not been resolved at the federal, regional, nor municipal level

Specific Groups

3.2.9. Homeless Families

The lack of understanding by the authorities of the multi-faceted nature of homelessness leads, for example, to organizing of social institutions for housing the homeless that completely ignores the existence of homeless families, including those with children (a violation of Article 10 of the Covenant). The possibility of family housing is not even provided for. As a result, if a family loses its accommodation and ends up on the street, including as a result of eviction by court decision without being providing alternative housing solution, it either remains on the street or is forced to be divided among various institutions (for children and adults) or premises (for men and for women).

Social assistance to families who have found themselves homeless is not provided by national social service standards, including the national standard of the Russian Federation GOST R 52885-2007 "Social service of the population. Social services to the family"²⁷ and the National GOST Standard of the Russian Federation R 53064-2008 "Social service of the population. Types of social services institutions and social services to individuals without a fixed abode and occupation."²⁸

3.2.10. Homeless Women

Assistance to the homeless is not organized to take into account possible victimizations, and even

²⁶ Under the standards of Article 99 of the Criminal Executive Code of the Russian Federation, the standard living space for one prisoner in corrective colonies must not be less than two square meters, in prisons no less than two and a half square meters, in women's colonies no less than three square meters, in educational colonies three and a half square meters, and in treatment systems five square meters.

²⁷ Confirmed by Order No. 563-st. of 27 December 2007 of the Federal Agency on Technical Regulation and Metrology. Entry into force on 1 January 2009.

²⁸ Confirmed by Order No. 441-st. of 17 December 2008 of the Federal Agency on Technical Regulation and Metrology. Entry into force on 1 January 2010.

less regarding women, who can be subjected to sexual harassment. Providing a separate intake for men and women due to this issue, which is desirable in such a situation, is not provided for. For many homeless women who have been victimized or who fear becoming victims of such crimes, the necessity for receiving assistance in one area (such as a hall or waiting room) full of men raises an insurmountable psychological barrier as a result of which even the existing forms of assistance become inaccessible to them; they cannot eliminate the barrier and do not seek help.

3.2.11. Former prisoners

In the last five years the Russian prison population has regularly exceeded 800,000 individuals.²⁹ According to data of Alexander Konovalov, the Minister of Justice, mentioned within the framework of the "Parliamentary Hour" at the 263rd session of the Federation Council (3 January 2010), around 300,000 people are released from correctional facilities every year. "A significant number of these people have broken social connections and lack a continual source of income and a place to live," the minister emphasized. Under such parameters, the issue of preparing prisoners for release preparing their post-prison adjustment and resocialization, as well as the issue of social assistance to persons released from correctional facilities are highly important

Unfortunately the system of preparing citizens for release works unsatisfactorily and resocialization is not arranged. An incident described in the 2007 Report on the Activity of the Plenipotentiary for Human Rights of the Republic of Kalmykia that "A citizen U., aged 60, who had spent most of his life in places of deprivation of freedom addressed the Plenipotentiary. Having served his sentence, he faced difficulties to find an accommodation and a job. In connection with the lack of sufficient employment service, Citizen U did not have the possibility or right to obtain an employment pension. He could not be allocated a social pension until he reached the age of 65. He barely maintained an existence. He was a vagrant and occasionally earned a living. With the assistance of the Plenipotentiary, the petitioner was temporarily provided with accommodation and employment at one of the enterprises in the Tselin District. Unfortunately, as he had suffered psychological privations over many years, he was incapable of keeping his new job.

This example is typical of the difficulty for a former prisoner to find a job without any proper system of social rehabilitation in the Russian Federation: barely surviving after his release, he turned to the Plenipotentiary for human rights; then on an individual basis, the Plenipotentiary

²⁹ In 2004 there were 763,000 persons in correctional facilities. In 2005 there were 823,400, in 2006 there were 871,600, and in 2007 there were 883,400. According to data from the Federal Penitentiary Service as of 1 January 2010 there were 864,000 individuals in correctional facilities.

attempted to help,, proceeding from his own understanding of social rehabilitation to provide him accommodation and work.³⁰ There was no personal rehabilitative process, no preparation of the homeless for the lifestyle he was offered. In this case a long-standing result of “rehabilitation” was simply not going to happen.

Not only this man failed to rehabilitate, but he was also held responsible for the failure.

3.3. Right to an adequate standard of living (Article 11 of the Covenant)

3.3.1. Food and clothing

Since they are discriminated against in employment and social protection, homeless people cannot enjoy the right to an adequate standard of living, including providing themselves with sufficient food and clothing.

3.3.2. Risk groups

The legislation of the Russian Federation, which regulates relations in the housing sector, does not provide sufficient guarantees to the homeless (citizens lacking a residence). In connection with this, some categories of citizens became risk groups for homelessness (orphan children, military wives, and others).

3.3.3. No access to subsidized accommodation

Homeless citizens do not benefit from state and municipal housing funds: they cannot enjoy the right to housing by receiving subsidized accommodation.

3.3.4. Violation of the principle of equality of citizens

The lack of harmonized rules established by federal legislation, especially in the realm of housing and social protection for homeless citizens, creates a precondition for the violation of the constitutional principle of the equality of citizens (Article 19 of the Russian Constitution).

In a series of normative legal acts of the federal administrations of the Russian Federation, the

³⁰ Usually in such circumstances low-paying unskilled work is provided.

homeless are not found subjects of the right to receive housing for social protection.

See Addendum 3.3.4: Housing for social protection

3.3.5. Homeless citizens are deprived of the opportunity to use measures of state support for building and obtaining housing.

The existing network of institutions that provide the homeless with the opportunity for night shelter is insufficient in scope and is inaccessible for the majority of street homeless.

For example, there are 279 places in the night shelter facilities in St. Petersburg. This clearly does not correspond to the number of street homeless; the 2002 census found 28,874 street homeless in St. Petersburg.

Some Russian federal administrations are spread out on a territory equal to the size of a European country or even larger. In these administrations, there are only one or night shelter(s) which is absolutely insufficient not only from the point of view of corresponding to the scope of the problem but from the point of view of direct accessibility. Thus in Khabarovsk Territory, an area twice as large as the territory of Germany³¹ there is only one such institution, the Territorial State Institution “Khabarovsk Territory Center of Adjustment of Citizens in Extreme Situations” with 50 places.³²

In several federal administrations, there are no such institutions at all. For example, in Murmansk Province, an area larger than Greece,³³ there is no single night shelter, no single social hostel for homeless at all. This, despite the fact that Murmansk Province is located above the Arctic Circle, in the permafrost zone.

Facilities for homeless such as shelters, night shelters, hostels and others are not included in regional and local urban planning standards. Kindergartens, schools, stores, polyclinics, and other types of social infrastructure are included, but shelters, night shelters, and rehabilitative centers for the homeless are not. Accordingly, their construction is not provided for when planning territorial

³¹ The size of Khabarovsk Territory is 788,600 km²; the size of Germany is 357,021 km².

³² For comparison: according to data from the 2002 Russian census, there were 1,578 street homeless in Khabarovsk Territory..

³³ The size of Murmansk Province is 144,900 km²; the size of Greece is 131,940 km².

development.

See Addendum 3.3.5: analysis of the legislation referring to the possibility for the homeless to enjoy the right to housing by the homeless.

The development of social institution infrastructures for the homeless is excluded from the general urban planning process. As a result, tremendous problems arise with the location of such facilities. This causes significant difficulty with resolving issues related to organizing assistance to the homeless. For example, even if the Murmansk authorities took the decision to create a night shelter facility some years ago, it took them many more years to find a proper place where to build it.

3.4. The right to the highest attainable standard of physical and psychological health (Article 12 of the Covenant)

“Unfortunately we do not have a license to shoot the homeless and there are no other legal methods of dealing with them.”

Anatoly Mikhalev, Mayor of Chita, during a report before the deputies of the municipal Duma. 24.02.2011.

3.4.1. The impossibility of enjoying the right to an adequate standard of living, including adequate food, clothing, and housing, hinders homeless citizens from enjoying the highest attainable standard of physical and psychological health.

An interregional study demonstrates that no fewer than 62.4% of street homeless suffer from some sort of illness. The high level of tuberculosis is a particular cause for concern; according to survey data, it was disclosed in 16.75% of the homeless surveyed.³⁴ ³⁵

According to data from the above surveys, out of the entire responses received from the regular

³⁴ For comparison, according to data from the Natalya Antonova, Deputy Director of the Division of Specialized Medical Assistance of the Department of the Russian Ministry of Health for Providing Medical Assistance to the Population, in 2002 the average level of tuberculosis was .083%, or 828 infected persons per 1 million people (Elena Vansovich. Tiur'ma – luchshee lekarstvo // Kommersant, 25.03.2003).

In 2006 105,108 cases of the first appearance of tuberculosis were registered, or 734 infected persons per 1 million people (.073%) (Ministry of Health Protection and Social Development of the Russian Federation. Russian Academy of Medical Sciences. State Report “O sostoianii zdorov'ia naseleniia Rossiiskoi Federatsii v 2006 godu.”).

³⁵ Social and Legal Aspects of the Problem of Homelessness in Russia. Based on Materials From an Interregional Study. St. Petersburg, 2006.

homeless about where they spent the night, those who mention residential premises comprise only 36.4%, and as a place of first mention (the most likely place of night shelter) only 27.8%. The vast majority respond with places that cannot be considered either living or furnished quarters (60%). Among them are technical facilities (27.6%), office buildings and general use buildings (20.6%), and uninhabited buildings (11.7%). In other words, the majority of the chronically homeless spend the night in premises that do not comply with the rules of personal hygiene. As a result more than a third of the homeless are deprived of the opportunity to observe socially acceptable rules of personal hygiene with regard to water usage and around half do not have the opportunity to wash their clothes.

This data speaks to the clear lack of health well-being of the chronically homeless.

As a result of lack of access by the homeless to safe drinking water and lack of conditions to observe basic health standards, there are high rates of lice, mange, worms, and suppurative and fungal illnesses.

With no sufficient food and chronic stress, the homeless are more likely to suffer from infections. The cold greatly influences the beginning and progression of illnesses.

Medical technology used to provide assistance does not help to eradicate the problem. For example, the hospital anti-tuberculosis treatment often is interrupted under the pretext that the homeless patient has violated the regime (by drinking, arguing with the staff, and so on) and he is discharged from the hospital insufficiently treated. As a result, multi-resistant strains of tuberculosis-develop in the patient's body, the latter tending to react to the treatment in a lesser extent.

The situation of homelessness itself, especially regular homelessness³⁶ is the strongest psycho-traumatizing factor that leads to the development and exacerbation of psychological problems and alcoholism.

3.4.2.Lack of documents hinders medical assistance

According to data from the interregional study, only 33.4% of street homeless³⁷ had a Russian

³⁶ According to data from the interregional survey, the average length of homelessness was seven years.

citizen passport, while 0.2% had a temporary certificate proving their citizenship (a personal identity document); only one out of three regular homeless individuals had a personal identity document. Just 14.9% (one in seven) had medical insurance. 38.2% had no documents at all.

Moreover, almost 26% of the homeless who stated they had no documents whatsoever had been refused a request for medical assistance. Among the homeless who have a Russian citizen passport and who had requested medical assistance, 13.5% were refused assistance, but among those who did not have a passport the number was 50% higher (21.5%). Among those with a mandatory medical insurance policy (MMI), 8% were refused and for those without documents, the number rose to 21%.

Thus the vast majority of the regular homeless do not have even one of two documents that are important to receive medical assistance, and a significant portion (more than a third) have no documents at all. According to survey data, a clear correlation can be observed between the presence of documents and the possibility of receiving medical assistance.

3.4.3. General negative attitude towards the homeless

While refusal to provide ambulatory and planned medical assistance to the homeless can be explained by the fact that such assistance is not provided by normative legal acts,³⁸ it should also be noted that medical assistance is not provided because of the society and medical workers' negative attitude toward the homeless. This attitude has been widely observed on online forums and discussions on the theme of providing medical assistance to the homeless.

Ambulances will often refuse to come for the homeless.

3.4.4. Difficulty to receive appropriate treatment and care, even in a hospital

Even when a homeless person winds up in a hospital, it still does not mean he will be provided with appropriate treatment and care.

³⁷ The data obtained by researches on the existence of passports among the homeless agrees with the statistical results of many years of observations conducted, specifically, by the Moscow medico-social station of the organization "Doctors Without Borders" (see: Nevidimye obitateli ulits. Moscow: Doctors Without Borders, 2004, p. 6..

³⁸ Responsibility in this regard belongs significantly more to the executive agencies, who issue laws and subordinate acts that govern relationships in the health protection sector than to the medical service workers who carry out these laws and subordinate acts..

A situation has recently become a subject of litigation in the European Court of Human Rights. It is true, that in this case, the person taken to the hospital was not homeless, but the reason he was not provided with assistance was that he was taken for being homeless.

See Addendum 3.4.4: Newspaper article: "Russia's Attitude Toward Its Own Citizens Is Described As Torture".

3.4.5. Since many homeless individuals do not have relatives and cannot defend their rights themselves, in connection with standard time limits, they are discharged from hospital treatment institutions untreated.

The website of "Rossiiskaiia gazeta" often discusses the reasons which motivate doctors to discriminate the homeless.³⁹ One of the site's participants in discussing the article "Homeless take-out. Doctors held responsible for the first time under the law for refusing assistance to a homeless man," was apparently a doctor and wrote: "The doctors are pressed on all sides. The hospitals squeeze you, the insurance companies squeeze you, and for every illness a strict limit of time spent in the hospital is set out. If these limits are exceeded, the insured is not even compensated; the treating doctor is fined, along with the director and the department itself. The longer assistance is provided to a homeless person the less my already paltry salary is paid anyway. And to 'transfer' such a treasure into a shelter and so on is impossible; nobody has any use for them."

Sometimes even those homeless who are clinging to life are discharged from the hospital.

See cases in Addendum 3.4.5.

4. 4.Conclusion

All the above clearly demonstrates that:

-the homeless in Russia lack the opportunity to enjoy the rights recognized by the Covenant and are totally discriminated against and stigmatized;

³⁹

-the Russian Federation has taken practically no measures to improve the position of the homeless and thus has ignored the observations made by the Committee to the Fourth Periodic Report of the Russian Federation "On Measures Taken and Progress Toward Achieving Compliance With Rights Recognized By the International Covenant on Economic, Social, and Cultural Rights." (HR/CESR/NONE2003/5).

-the measures taken by the Russian authorities to provide assistance to homeless and to promote their resocialization do not correspond to the scale and specifics of the problem. They are completely ineffective and reactive in nature. In the programs and laws that have been developed, homelessness is viewed as vagrancy and not connected with the problem of registration.

-all the attempts made by the Russian government to formulate social policy with regard to preventing homelessness and resocialization of the homeless have a systemic nature and are sequential to an extreme degree.

Thus in December, 2007 the Russian government developed a "Plan of measures to prevent vagrancy and for the social rehabilitation of persons without a fixed abode for the years 2008-2010." Out of 19 points of the Plan only the law of introducing changes into the registration rules (criticized previously) and standards for state services were developed.

The Russian Ministry of Health and Social Development in the Department plan of draft legislation work for 2008 (Order 55 of 7 February 2008) confirmed the development of a "Law on preventing vagrancy and social rehabilitation of persons without a fixed abode" by May 2008. To this day the law has not been developed.

5. 5. Recommendations.

Organizations providing this Alternative Report request the UN Committee on Economic, Social, and Cultural Rights to demand from the Russian authorities the fulfillment of the following recommendations, which are necessary for the elimination of violations of the social, cultural, and economic rights of homeless and Russians without registration.

1. To take measures to eliminate discrimination against Russians on the basis of the lack of residence registration., in accordance with the provisions of Article 2 of the Covenant, t
2. To modernize the registration system so that the possibility of registering is not connected anymore with the right to property or any other right to housing, and so that a person can register according to his place of residence.

3. To take measures in accordance with the provisions of Article 7 of the Covenant, including to improve legislation in the field of employment and protection from unemployment so that:
 - homeless individuals and Russian citizens without registration who are willing and able to work be registered as unemployed by employment service institutions according to their factual place of residence;
 - when obtaining employment, the lack of registration is not a direct or indirect reason to refuse to hire.
4. To take measures to change existing legislation which hinders access to social assistance and payment service facilities for men, women and children, in accordance with the provisions of Article 9 of the Covenant, t.
5. To take measures to ensure an adequate standard of living for the homeless and unregistered individuals, in accordance with the provisions of Article 11 of the Covenant.
For which:
 - guarantee access to safe temporary housing by the homeless (especially during the winter) and to healthy food and potable water, taking into consideration gender, family circumstances, and health limitations.
 - to provide financial support in resolving housing problems for individuals in particularly difficult financial positions.
 - α. review the legislation on social housing with the goal of providing homeless and unregistered individuals access to social housing;
 - β. take measures to legalize the market of rented housing in order to prevent homelessness and ensure the rights of a tenant.
 - χ. In accordance with the provisions of Article 12 of the Covenant, followi the “Fundamental recommendation No. 14 on the right to health”:
 - α. provide citizens without residence with access to the system of mandatory medical insurance and health care; provide them with access to medical equipment, medications, and sanitary services;
 - β. provide them with access to the minimal subsistence support sufficient to keep them from hunger;
 - χ. conduct educational work among medical personnel on the necessity of observing the right to health care.
6. 6. To follow the “Fundamental recommendation No. 14 on the right to health ”, in accordance with Article 12 of the Covenant, :

7. grant citizens without registration an access to a medical insurance and health service's system;
8. guarantee them an access to medical facilities, medicine and health services;
9. guarantee them an access to the minimum amount of food one needs to live properly, in order to prevent them from hunger;
10. raise awareness among the medical personal on the necessity to respect rights to health assistance.

AN ANALYSIS OF THE LEGISLATION
GOVERNING LEGAL RELATIONSHIPS IN THE HOUSING SECTOR

The right to housing is recognized by Article 40 of the Constitution of the Russian Federation

The right to housing requires not only recognition and protection from the state but the creation of the conditions for all to enjoy it. In accordance with Article 40.3 of the Russian Constitution, “Indigent and other citizens specified by law who are in need of housing shall be granted such free of charge or at an affordable rent from state, municipal, and other housing funds in conformity with the norms established by law.”

Housing legislation lies within the joint jurisdiction of the Russian Federation and the federal subjects of the Russian Federation.⁴⁰ It consists of the Housing Code of the Russian Federation (HCRF) and the federal laws adopted in accordance with it; edicts issued in accordance with them by the President of the Russian Federation; decrees of the Government of the Russian Federation; regulations (normative legal acts) of federal executive agencies; laws and other regulations of the federal subjects of the Russian Federation; local agency regulations on self-government.⁴¹

The relevant standards of the Civil Code of the Russian Federation (CCRF), which establish the rules for residential rental (Chapter 35), and relevant ownership law and other property rights to housing (Chapter 18) also apply to legal relationships in the housing sphere.

In applicable situations, legal relationships in the housing sector may be governed by standards of ownership and other property rights to land (Chapter 17), as well as gratuitous use (Chapter 36 of the Civil Code).

In analyzing the legislation that governs legal relationships in the housing sector in relation to homelessness, two fundamental aspects are taken in consideration:

-whether existing housing legislation provides sufficient guarantees for citizens in possession of housing to retain their rights to the premises they occupy;

-whether existing housing legislation allows homeless citizens⁴² to enjoy

⁴⁰ Article 72.1(k) of the Constitution of the Russian Federation, Article 5.1 of the HCRF.

⁴¹ Article 5.2 of the HCRF.

⁴² Herein the term “homeless” means an “individual without a residence or a place of stay, and accordingly without the possibility of registering at a place of residence or place of stay.” The terms “place of residence” and “place of stay” have the meanings given to them by Article 2 of the Law of the Russian

their constitutional right to housing.

The first aspect is important from the perspective of preventing homelessness, while the second takes into consideration social rehabilitation (resocialization) of homeless individuals.

Section 1. Legislation governing legal relationships in the housing sector and the prevention of homelessness

Unfortunately the legislation that governs relationships in the housing sector does not provide sufficient guarantees to prevent a person who has a residence or place of stay with corresponding registration from being classified as homeless.

The most obvious legislative precondition for these persons are the standards of the Housing Code of the Russian Federation (HCRF), under which citizens can be evicted without being provided with other housing.

Under the Housing Code this measure can be applied to various individuals or groups:

tenants and/or their family members residing with them who use the housing inappropriately, who systematically violate the rights and legal interests of the neighbors, or who do not maintain the basic upkeep of the housing unit (Article 91.1 of the HCRF);

citizens whose parental rights have been terminated if a court has determined that living with the children is impossible (91.2 of the HCRF);

citizens living in special housing (Article 103 of the HCRF).

Unfortunately, the legislature could not find a balance between the right to housing of citizens who may be evicted without being provided with other housing on one side and, on the other side, the legally protected rights and interests of other individuals, that would have permitted the resolution of such conflicts without citizens being placed into the category of individuals who do not have a residence.

In evaluating legislative standards that permit citizens to be evicted without being provided

Federation No. 5242-I of 25 June 1993 "On the right of citizens of the Russian Federation to freedom of movement and to choice of place of stay or residence within the Russian Federation."

other housing, it should also be noted that the rules of evictions from dormitories and official housing contained in Article 103.2 of the HCRF No. 188-FZ of 29 December 2001 differ significantly from the former standards contained in Articles 107, 108, and 110 of the Housing Code of the RSFSR of 24 June 1983 (see Table 1).

First, the list of categories of citizens who cannot be evicted without being provided with other housing has been drastically shortened (from 12 to 4).

The list no longer includes single people with minors living with them; members of the Ministry of Internal Affairs or the State Fire Service who were disabled as a result of injury, concussion, or mutilation received in the line of duty; individuals having worked at enterprises, institutions, organizations that provided them with official housing for at least 10 years; or individuals who were unemployed as a result of an enterprise, institution, or organization being liquidated or downsized.

Second, the description of the categories of citizens who cannot be evicted has been altered in such a way that it excludes individual categories of citizens from those who cannot be evicted without being provided with other housing.

Thus, in accordance with Article 108.1 of the Housing Code of the RSFSR, war veterans and military personnel who became disabled as a result of injury, concussion, or mutilation received while defending the USSR in the line of military duty or as a result of illness must be provided with housing upon eviction. Now, in accordance with Article 103.2.4 of the HCRF, only those disabled military personnel who became disabled as a result of injury, concussion, or mutilation received in the line of military duty or as a result of illness connected with military service and who were assigned to disability categories I or II cannot be evicted without being provided with other housing.⁴³

Military personnel who are disabled and assigned to Group III, and who became disabled as a result of injury, concussion, or mutilation received in the line of military duty or as a result of illness connected with military service found themselves from the moment the current HCRF entered into force in a category of those who could be evicted without being provided with other housing upon rescission or termination of a rental agreement for specialized housing.

The families of military personnel who had previously not been subject to eviction without being provided housing, now only had that right if these military personnel had died or were

⁴³ The issue of the extent to which being assigned to a disability group corresponds to actual disability is beyond the scope of the present Analysis.

missing in action.

Third, a new condition was introduced in the law: the requirement to register for need of housing. Compliance with this new condition was mandatory for each category of citizen listed in Article 103.2 of the HCRF in order not be subject to eviction without being provided with other housing.

Table 1

Standards of the Housing Code of the RSFSR of 24 June 1983 prohibiting eviction from dormitories and official housing without being provided with other housing, and the analogous standard from the HCRF of 29 December 2004 No. 188-FZ

<p>Housing Code of the RSFSR of 24 June 1983</p> <p>Article 108. Eviction from official housing with provision of other housing:⁴⁴</p>	<p>Housing Code No. 188-FZ of the Russian Federation of 29 December 2004</p> <p>Article 103. Eviction of citizens from specialized housing</p>
<p>The following may not be evicted without being provided with other housing in the event described in Article 107 :</p> <p>1) War veterans and other disabled military personnel who became disabled as a result of injury, concussion, or mutilation while defending the USSR, in the line of military duty or as a result of illness</p> <p>2) Participants in the Great Patriotic War who have served in the present army;</p> <p>3) Families of military personnel and partisans who perished or are missing in</p>	<p>2. The following people may not be evicted from official housing and dormitories without being provided with other housing if they are not tenants under subsidized housing agreements, family members of tenants under subsidized housing agreements, or owners of housing or family members of owners of housing, and have registered as in need of housing:</p> <p>1) Family members of military personnel, officials, and employees of the Federal Security Service, the tax agencies of the Russian Federation, the agencies of the State Fire</p>

⁴⁴ For eviction from a dormitory, the standards of Article 108 of the Housing Code of the RSFSR applied, according to the rules of Article 110.2 of the Housing Code of the RSFSR.

action while defending the USSR or while fulfilling other military obligations;

4) Families of military personnel;

5) Invalids from the rank and file or commanding officers of agencies of the Ministry of Internal Affairs or the State Fire Service who were disabled as a result of injury, concussion, or mutilation received in the line of duty;

6) Individuals having worked in enterprises, institutions, or organizations that provided them with housing for at least 10 years, but who are not provided with permanent housing upon the conditions provided for by Federal Law No. 76-FZ of 27 May 1998 "On the status of military personnel." This does not include individuals who live in official housing assigned by the Ministry of Defense of the Russian Federation or another federal executive agency in which military service is provided for by law

7) Individuals who have lost their employment in connection with which they had been provided housing but who remain employed with the enterprise, institution, or organization that provided that housing;

8) Individuals having worked at enterprises, institutions, organizations that provided them with housing for at least 10 years, but who are not provided with permanent housing upon the conditions provided for by Federal Law No. 76-FZ of 27 May 1998 "On the status of military personnel." This does not include individuals who live in official housing assigned by the Ministry of

Service, the agencies that monitor trafficking in narcotics and psychotropic substances, or the institutions and agencies of the correctional system who have perished (died) or are missing in action in the line of military duty ;

2) Recipients of age-related pensions;

3) Family members of a deceased worker who was provided with official or dormitory housing or housing in a dormitory;

4) Persons of Groups I and II whose disability occurred as a consequence of mutilation during employment due to the fault of the employer; the disabled of Groups I and II whose disability occurred as a result of occupational illness in connection with the fulfillment of labor obligations; the disabled in Groups I and II who are military personnel and became disabled as a result of an injury, concussion, or mutilation received in the line of military duty or as a result of illness connected with military service.

Defense of the Russian Federation or another federal executive agency in which military service is provided for by law.

9) Recipients of age-related and personal pensions;

10) Family members of a deceased worker who were provided with housing;

11) Disabled persons of labor of Groups I and II, as well as military personnel and comparable individuals;

12) Single individuals with minor children

The above citizens shall be provided with housing corresponding to the requirements of Article 97 of the present Code.

Changes in housing legislation that occurred when the Housing Code of the Russian Federation of 29 December 2004 No. 188-FZ came into effect had a negative impact on the legal position of a number of categories of citizens living in dormitories and official housing. This created new groups at risk of being homeless.

Article 31 of the HCRF allows an owner of an accommodation to utilize the courts to evict so-called "former family members" for whom the owner does not have (or provide) support obligations.

Protection against becoming homeless for citizens living in commercial rental housing is infinitely small. The legal relationship between the tenant and the landlord are governed by the rules of Chapter 35 of the Civil Code of the Russian Federation (CCRF).

The Civil Code provides several measures intended to protect the tenant's interests. However, the required prior notice by the landlord that the contract will not be renewed, the fact that the landlord may refuse to extend the contract upon a decision not to rent the accommodation at all for a period of at least a year (Article 684 of the CCRF), the prohibition on one-sided changes

in the rent, with the exception of instances provided for by law or contract (Article 682.2 of the CCRF), upon a contract's rescission whether a tenant leaves the category of individuals who have a residence and enters the category of persons who do not have a residence, **depends solely on his personal qualities** (primarily on his ability to pay and ability to quickly find a new appropriate variant). If a tenant is unable to find alternate housing upon termination of a rental contract, he has no state-provided guarantees against homelessness.

In evaluating legislation in the area of protecting citizens from homelessness, particular attention should be paid to the legal position of orphans and children left without parental care.

In accordance with Article 57.2 of the HCRF, subsidized housing must be provided on a priority basis upon leaving educational or other institutions. This includes social service institutions, foster care, and family-type children's homes.

Officially, the rules of this Article indicate that subsidized housing should be automatically provided on a priority basis for the categories of citizens enumerated upon the occurrence of appropriate circumstances (leaving an educational or other institution, foster care, etc.).

However, neither the laws of the federal subjects of the Russian Federation, which in accordance with this Article establish a procedure for a local agency of self-determination to register citizens as in need of housing, nor the subordinate acts and regulations of agencies of local self-government provide for the same sort of automatic action.

The form for applying to register as a citizen in need of housing, confirmed by the Decree No. 1082 of 03 November 2006 of the Administration of the City of Alatyry of the Chuvash Republic "On confirming the form of application to be registered as in need of housing, the registration log, and the order of citizens to receive housing," provides that orphans and children without parental care upon leaving educational or other institutions may apply in the name of the head of the city of Alatyry to be registered as in need of housing.

A change has thus occurred from the concept of "being provided with subsidized housing on a priority basis" to the concept of "applying to register in need of housing." As a result of this change, these individuals, upon leaving educational or other institutions, including social service institutions, foster care, and family-type children's homes, are not provided with housing but only with the opportunity to "apply to register as in need of housing." This includes those upon termination of guardianship, upon conclusion of service in the armed forces of the Russian Federation, or release from correctional facilities

Article 7.1 7 of Law No. 459 of 17 December 2004 of the Evenki Autonomous District "On additional guarantees for the social protection of orphans and children without parental care" provides that "The former shall be provided by executive agencies on a priority basis **according to place of residence** to housing equivalent to that previously occupied by them or their parents with a living space of a similar standard.

Because this legal standard provides for a living space equivalent to that previously occupied by them or their parents, a child whose origins and therefore his previous residence (if there was one) cannot be established, or a child born to a woman without documents and left in the maternity hospital, find themselves excluded from the individuals who "shall be provided by the executive agencies...with living space in the above-enumerated circumstances"

Since the law places the obligation to provide housing to orphans and children without parental care upon the executive agencies **according to place of residence**, homeless children cannot be provided with living space on a priority basis.

In fairness it should be noted that the laws of the federal subjects of the Russian Federation can provide for measures significantly improving the legal position of these categories of citizens in the area of legal relationships as they relate to housing.

Law No. 95-OZ of 30 June 2007 of Kemerovo Province "On an incentive for individual categories of orphans, children without parental care, individuals among orphans and individuals among children without parental care," encourages educational achievement by citizens from these categories, provides housing opportunities to these individuals if they register as in need of subsidized housing, are graduates of general educational institutions, and have received a gold or silver medal "For Particular Achievement in Learning"; and to graduates of institutions of primary, secondary, and higher professional education who have received a diploma with honors or who have been awarded a gold or silver medal "For Particular Achievement in Learning."

Nevertheless, this law does not provide an unconditional right to receive housing ; instead it gives the provincial administration the right to provide housing ownership to them as an incentive.

The existence of termination standards in the law should be taken into account in discussing the provision of housing to orphans and children without parental care. Under these standards, priority status continues only until the age of 23. As a result, if a citizen who belongs to a given category due to illiteracy or other circumstances, has not submitted an application to register as an individual in need of subsidized housing, they will lose the priority basis for being provided with

housing.

It is essential to note that several regulations provide that orphans and children without parental care and children under guardianship who do not have fixed housing, upon leaving educational or other institutions upon termination of guardianship, upon conclusion of service in the armed forces of the Russian Federation, or upon release from correctional facilities shall be provided not with subsidized housing. This standard appears, for example, in Article 17.1 of the Statute on the procedure for providing housing from the Municipal District of Syktyvkar, confirmed by decision No. 24/03-361 of 16 March 2006 of the Municipal Unit Territory Council of the Municipal District of Syktyvkar.

The Federal Law No. 76-FZ of 27 May 1998 “On the status of military personnel” contains rules for providing housing to military personnel and family members residing with them. Unfortunately the legislature did not consider the possibility of a military family splitting up. As a result, military wives who do not have housing find themselves at risk for becoming homeless in the event of a family break- up.⁴⁵

All this completely underscores the thesis stated at the beginning of the section regarding the lack of guarantees to prevent a citizen who has a residence or place of stay and a corresponding registration from joining the ranks of the homeless.

Section 2. The possibility of homeless citizens receiving housing from the state and municipal housing fund

In considering the possibility for homeless citizens to receive housing from the state and municipal housing fund, the possibility for them to receive subsidized housing due to poverty or need of social protection must be analyzed.

Article 52.3 of The HCRF provides that “citizens shall be registered as in need of housing by a local government agency on the basis of applications by said citizens (hereafter applications for registration) submitted by them to said agency according to their place of residence. For instance, citizens may submit applications to be registered even if it is not their place of residence. Incompetent citizens may be placed upon the registry based on applications submitted by their

⁴⁵ It is unlikely this was intended as a measure to strengthen military families.

legal representatives."

The HCRF plainly omits standards that would permit registering citizens without a residence as being in need of housing, but allows for the existence of such standards in other laws.

An analysis of federal regulations and regulations of the federal subjects of the Russian Federation indicates that neither contains these standards.

Law No. 55-PZ of 28 July 2006 of the Kabardino-Balkar Republic "On the regulation of housing relationships in the Kabardino-Balkar Republic" provides that "subsidized housing from the state housing fund of the Republic (hereafter republic housing fund) shall be provided to citizens residing in the Republic. They are recognized in accordance with the legislation of the Russian Federation and the legislation of the Kabardino-Balkar Republic as in need of housing. This is only the case if they have lived in a given locality for at least 5 years" (Article 2), but "the registry of citizens in need of subsidized housing shall be conducted by an agency of local self-government according to the citizens' place of residence" (Article 4).

Similar standards are contained in Law No. 31-3RT of 13 June 2007 of the Republic of Tatarstan "On the enjoyment of the rights of citizens to housing from the state housing fund of the Republic of Tatarstan and the municipal housing fund for subsidized housing" and in other regulations of the federal subjects of the Russian Federation.

Legislative regulation of the provision of housing for the social protection of citizens is unfortunately far from uniform.

Law No. 55-PZ of 28 July 2006 of the Kabardino-Balkar Republic "On regulation of housing relationships in the Kabardino-Balkar Republic" mentioned above indicates the provision of housing to homeless citizens (Article 2 Subsection 2(d)); however it does not provide the conditions and procedures upon which housing for the social protection of individual categories of citizens would be provided. This obligation is placed on the government of the Republic (Article 20.2 of the Law).

Law 491-3 No. 997-III of 12 July 2007 of the Republic of Sakha (Yakutia) "On determining the categories of citizens in need of special social protection for the purpose of providing housing for gratuitous use" does not include the homeless in the list of categories of citizens in need of special social protection for the purpose of providing housing for gratuitous use. Moreover even those

citizens whom the law categorizes as “in need of special social protection for the purpose of providing housing for gratuitous use” can receive such housing only if they have not lost the capacity for self-help and register with the agencies of local self-government as in need of housing.⁴⁶ Considering the information provided above regarding the procedure for registering citizens as in need of subsidized housing, it is clear that homeless citizens in the Republic of Sakha (Yakutia) cannot lay claim to housing from the housing fund for the social protection of individual categories of citizens.

The form of the regulations permits multiple interpretations, and applying the corresponding standards to the homeless depends on how the corresponding standard is interpreted.

For example, Article 17.2 of the Statute on the procedure for providing housing from the municipal specialized housing fund on the municipal unit territory of the Municipal District of Syktyvkar, confirmed by decision No. 24/03-361 of 16 March 2006 of the Municipal Unit Territory Council of the Municipal District of Syktyvkar provides that housing for the social protection of individual categories of citizens in need of special social protection shall be provided “to citizens who find themselves in difficult living situations.” Thus, whether homeless citizens may be provided with housing from the municipal specialized housing fund depends on whether homelessness is interpreted as a “difficult living situation”.

Since the homeless are not a single social group, in assessing housing legislation from the perspective of creating the opportunity to obtain housing, it is worth examining the possibility of whether or not the homeless could utilize other measures of support besides providing housing from the state or municipal housing fund. This could include state support for the construction or acquisition of housing.

⁴⁶ Article 1. Categories of citizens in need of special social protection who have the right to be provided with housing.

1. The following shall be considered citizens in need of special social protection:

1) veterans of the Great Patriotic War who are solitary or who are married couples;

2) widows of participants who perished (died) in the Great Patriotic War;

3) elderly citizens who are solitary (women older than 55 and men older than 60) and elderly married couples;

4) solitary invalids of Groups I and II, as well as married couples in this category, who have registered with local agencies of self-government as in need of housing after 1 January 2005.

Solitary citizens are those without children or whose children objectively cannot care for them due to their disability or distant residence (in another federal subject of the Russian Federation).

2. The citizens indicated in Part 1 of the present Article who have not lost the capacity for self-care and locomotion and who are registered with agencies of local self-government as in need of housing have the right to be provided with housing for gratuitous use..

Subsection 3(a) of the Procedure for forming lists of recipients of state support for construction (acquisition) of housing in the Morgaush District in 2006, confirmed by Decree No. 331 of 14 September 2006 of the Head of the Administration of Morgaush District provides that only citizens who permanently reside in Morgaush District⁴⁷ have the right to receive state support for the construction (acquisition) of housing.

A citizen who permanently resides within the district but who does not have housing nor residence registration there could theoretically claim state support for the construction or acquisition of housing. In order to do that, one would only need to establish the legality of their permanent residence within the district through a legal proceeding.

The problem with Article 266 of the Civil Procedural Code of the Russian Federation requires a petition to establish a legal fact be filed in court according to one's place of residence. A homeless citizen is therefore deprived of this opportunity.

Conclusion

The above brief analysis of legislation governing legal relationships in the housing sector enables the following conclusions to be drawn:

1. Legislation does not provide sufficient guarantees to prevent citizens from joining the category of homeless (citizens without a residence). In this regard, a number of categories of citizens are at risk for homelessness (orphan children, military wives, and others).
2. The rules indicated by housing legislation for providing housing from the state and municipal housing fund, with rare exceptions, do not permit homeless citizens to enjoy the right to housing by receiving subsidized housing.
3. The lack of uniform rules established by federal legislation—for example on the issue of providing housing for the social protection of individual categories of citizens—gives rise to inconsistent standards of regulation among the federal subjects of the Russian Federation and municipal units. This creates a precondition for the violation of the constitutional principle of the equality of citizens (Article 19 of the Russian Constitution).
4. Homeless citizens are deprived of the opportunity to receive state support for the construction and acquisition of housing.

⁴⁷ Subsection 3(a) of the Procedure for forming lists of recipients of state support for construction (acquisition) of housing in Morgaush District in 2006, confirmed by Decree No. 331 of 14 September 2006 of the Head of the Administration of Morgaush District.

Thus, existing legislation does not serve the purposes of preventing homelessness nor integrating the homeless within the Russian society.

Addendum 2.2 A: Social support depends on residence registration: analysis of decrees and Supreme Court rulings

The description “permanently residing on the territory...” which is frequently used in regulations for the category of citizens who have a right to receive state services or measures of social support, seems at first to have no connection with the institution of registration and the concept of “residence.” In practice, however, the connection between this description and the institution of registration is a very close one. The ruling of the Supreme Court of the Udmurt Republic demonstrates this quite clearly: “Whether a citizen permanently resides in a given place must be determined by his registration.”⁴⁸

Thus Point 2.1 of the Decree No. 438 of 09 October 1999 of the Government of the Kabardino-Balkar Republic “On the mechanism of mortgage lending principles for housing construction in the KBR” (its current version is the Decree No. 328-PPP of 13 November 2004 of the Government of the Kabardino-Balkar Republic) provides that the right to obtain housing on credit is provided on a competitive basis to citizens “*who are registered according to place of residence in the cities and districts of the KBR.*”

The Decree No. 641 of 11 June 2009 (as amended 10 July 2009) of the Head of the City of Vladivostok “On the confirmation of statutes establishing the amounts and procedures for the allocation of municipal assistance and the provision of targeted assistance provided for by Municipal Legal Act No. 100-MPA of 11 October 2007 of the City of Vladivostok ‘Municipal Targeted Program ‘The Older Generation’ for the years 2008-2010,’” contains measures of social support only for members of the relevant categories of the population who are registered in the city of Vladivostok according to place of residence. These only include:

- senior citizens, registered according to place of residence in Vladivostok and who have a per capita income less than subsistence level. They shall be allocated a municipal assistance to pay for baths and haircuts (Addendum No. 2 to Decree No. 641 of 11 June 2009 of the Head of the City of Vladivostok);

- low-income senior citizens who are solitary. They may claim excursions for health resort

⁴⁸ From a summary of the Supreme Court of the Udmurt Republic of 27 June 2008 «Summary of the practice of examination by magistrates of the Udmurt Republic of cases of administrative violations, liability for which is provided for by Articles 12.8 and 12.26 of the CAVRF, that were dismissed, as well as of the investigation by district (municipal) judges of complaints (appeals), which resulted in magistrates’ rulings being overturned in matters of administrative violations, the liability for which is provided for by Articles 12.8 and 12.26 of the CAVRF.»(The CAVRF is the Code of Administrative Violations of the Russian Federation No. 195-93 of 30 December 2001).

treatment (Addendum No. 3 to Decree No. 641 of 11 June 2009 of the Head of the City of Vladivostok);

- senior citizens who are registered according to place of residence in Vladivostok and fall into a difficult life situation. They may receive coupons for free food (Addendum No. 4 to Decree No. 641 of 11 June 2009 of the Head of the City of Vladivostok);

- particularly needy citizens of the “older generation” (low-income retirees, invalids, those who have fallen into a difficult life situation). They are registered according to place of residence in Vladivostok and may receive a lump sum once every six months ranging from 500 to 50,000 rubles (Addendum No. 5 to Decree No. 641 of 11 June 2009 of the Head of the City of Vladivostok);

Addendum 2.2 B: Case of Sergei Smirnov vs. the Russian Federation – 22.12.2009.

A sixty-year-old homeless man named Sergei Smirnov appealed to the courts many times for the protection of his rights, indicating a post office box for his address; however, his complaints were not reviewed since he was unable to provide information on his registration in them. Lacking the possibility of protecting his rights in Russian courts, Smirnov appealed to the ECHR.

The ECHR agreed that the lack of a registration stamp in Mr. Smirnov’s passport deprived him of the opportunity to resolve his problems through a court proceeding. According to the ECHR decision, observation of the formalities, despite the fact that they were established by the rules of civil procedure, violated Mr. Smirnov’s right of access to the courts. “The requirement to indicate the petitioner’s place of residence is not in itself incompatible with Article 6. It...enables the court to contact the petitioner and serve summonses and decisions upon him,” wrote the ECHR in its decision... “[A]n address for correspondence indicated by the applicant was obviously sufficient to enable the courts to keep contact with him... [T]he Russian courts demonstrated excessive and unjustified formalism by insisting that the applicant indicate his place of residence, a requirement that was known to be impossible in the applicant’s situation.” The ECHR required the Russian Federation to compensate Sergei Smirnov for moral harm in the amount of 2,000 Euros.

Addendum 3.1.4.: Regional mechanisms

The social and economic development program of the Republic of Buryatia from 2008-2010 and until 2017, adopted by Law No. 2595-III of 9 November 2007, planned to achieve the following results in near future:

Indicators	2008	2009	2010	2011 projected	2012
Percentage of the homeless who are capable of finding a job after they appealed to the program (%)	5	15	18	25	30

Not only the size of the indicator but the indicator itself is worth noting. The percentage of those employed is not calculated from the number of able-bodied homeless people within the territory, but from the number of those who appeal to social protection agencies. The question of how accessible social protection agencies are to homeless individuals is greatly important.

In 2008, the city of St. Petersburg adopted a number of regulations. One of them governs relationships within the labor market; the other governs relationships that arise during the provision of social assistance to the homeless, including assistance in obtaining employment. In addition, a number of previously-adopted regulations provided employment assistance to the homeless.

Article 28 of Law No. 230-42 of 04 June 2007 of St. Petersburg "On prevention of crime in St. Petersburg,"⁴⁹ provides that employment assistance for the homeless shall be supplied by the agencies and institutions of the system of crime prevention. According to Point 2.7.4 of the Action Plan for Implementing Law No. 230-42 of 16 May 2007 of St. Petersburg "On prevention of crime in St. Petersburg" for the years 2008-2010, confirmed by Decree No. 5 of 15 January 2008 of the Government of St. Petersburg, the responsibility for providing employment assistance to homeless persons shall be borne by the Committee for Employment of the Population, the Committee for Labor and Social Protection, and the administration of the district of St. Petersburg.

Among other powers, Law No. 342-56 of St. Petersburg of 11 June 2008 "On delineating the powers of St. Petersburg's executive agencies in the realm of providing employment assistance to the population of St. Petersburg," adopted to replace Law No. 435-45 of 25 September 2000 "On employment of the population of St. Petersburg", assigns to the government of St. Petersburg the

⁴⁹ As amended by the Laws of St. Petersburg No. 610-121 of 13 December 2007 and No. 470-75 of 09 July 2008.

power to organize paid public works, to develop and implement programs providing employment assistance to the population, including employment assistance programs for citizens in particular need of social protection who are having difficulty finding work.⁵⁰ This gives the government of St. Petersburg the opportunity to adopt managerial solutions aimed at assisting homeless citizens in finding work.

The “Plan of fundamental actions to prevent homelessness and developing a system of social support for homeless people and individuals released from correctional facilities” from 2008-2010, as confirmed by Decree No. 298 of 21 March 2008 of the Government of St. Petersburg provides employment assistance to homeless persons, as well as individuals released from correctional facilities. Specifically:

- δ.the creation and maintenance of job fairs that include housing;
- ε.holding job fairs for homeless persons and individuals released from correctional facilities;
- 2 holding professional orientations at correctional facilities.⁵¹

The Committee on Employment of the Population of St. Petersburg was placed in charge of these programs.

Unfortunately, this Plan contains no information regarding the results that are supposed to be achieved due to its implementation. This calls into question its goal for attaining concrete and significant results. Despite the lack of information, the possible (attainable) efficiency of the program can be extrapolated from the realities of the labor market. Thus, in order to evaluate the efficiency of creating and maintaining a job fair for positions that include housing, one needs to only search for appropriate vacancies online. According to data from the Federal Service of Labor and Employment, published on the website “Work in Russia (<http://www.trudvsem.ru>)” within a two-month period in St. Petersburg there were 26 vacancies that offered dormitory accommodations and 14 vacancies that offered official housing. As a result of a search conducted on sites that specialize in providing information about vacancies, approximately 15 employment advertisements were found that mentioned positions which included housing, including dormitories and housing allowances. One of these requires a residence permit within St. Petersburg and Leningrad Province,⁵² while another contains information on an advertisement for a police officer

⁵⁰ Art. 2.

⁵¹ Sections 5.1-5.3.

⁵² Senior communications official in Squad 7 of the Federal Firefighting Service for St. Petersburg(<http://rabota.mail.ru/vacancy/543154/>).

providing security and transport for suspects and defendants,⁵³. For the latter, one may assume, a homeless person would never be hired, and even less a person who has just been released from prison.

Simply put, the number of vacancies is sufficient for the number of able-bodied homeless individuals who cannot find work.

The fact that this plan makes no claim to be effective, even at the developmental stage, is underscored by the system of funding the data provided by the plan. In other words, the financing of the programs is supposed to be collected from what is left over from other programs, which even in the best of times is not efficient. During the financial and economic crisis, there will be no money.

Law No. 875 of 22 July 2007 of St. Petersburg "On individual measures to implement the Law of St. Petersburg 'On state standards for social service to the population of St. Petersburg'" provides the following standards for social service to the homeless:

1 the standard of social services provided to elderly citizens who have lost the ability to take care of themselves either in whole or in part, to homeless persons, and "providing public works downtown and on an adjacent territory" ;

2 the standard of social services provided to elderly citizens who have lost the ability to take care of themselves either in whole or in part and to homeless persons in temporary shelters and "arranging employment in workshops" is 144 times per client per year);

3 the standard of social services provided to homeless citizens of working age in a temporary hospital setting are:

for providing employment positions in workshops (at least 10 people), 12 times per client per year;

for providing employment positions in workshops downtown and in adjacent territories (at least 10 people), once per client per year;⁵⁴

Considering that the general capacity of homeless shelters is 279 beds, this standard cannot have any serious influence on the employment of the homeless.

Paradoxically, the standards for social services to able-bodied homeless persons do not

⁵³ <http://rabota.mail.ru/vacancy/129241/>

⁵⁴ This standard uses a calculation period of exactly one month per year.

provide any assistance in finding employment.⁵⁵

The Program for Labor Market Development in St. Petersburg for 2006-2015, confirmed by Decree No. 1192 of 03 October 2006 of the Government of St. Petersburg (amended 30 October 2008) does not take into account homeless labor in the market. Employment of the homeless is not provided for by the Obligations of the Government of St. Petersburg, the Inter-Regional Union of “Federal Professional Unions of St. Petersburg and Leningrad Province nor the Regional Association of Employers “Union of Manufacturers and Entrepreneurs of St. Petersburg” for 2008.⁵⁶ Information on the labor market situation and in the St. Petersburg employment sector in January and February 2008, was placed on its website by the Committee on Labor and Employment of the Population of St. Petersburg (previously the Committee on Employment of the Population). This website does not contain information about employment assistance for the homeless, nor information on the implementation of programs whose organizer this committee is according to the “Plan of fundamental actions to prevent homelessness and develop a system of social support for homeless persons and individuals released from prison for the year 2008-2010.”⁵⁷

All this indicates that the task of assisting the homeless in obtaining work is not considered significant by the government of St. Petersburg and the designated committee that handles employment issues.

On 26 November 2009, a specialized city-wide job fair was held for people released from prison and persons and homeless persons by the Committee on Labor and Employment of the city of St. Petersburg and OOO “NVT,” in accordance with the “Plan for fundamental actions to prevent homelessness and develop a system of social support for homeless persons and individuals released from prison.” Within three hours the job fair had been visited by 600 people. More than 70% of them received employment offers, more than 100 received legal consultations, and 30 received a psychological consultation.⁵⁸ It cannot be determined from the information for the Committee on Labor and Employment of the Population of St. Petersburg how many of the citizens who visited the job fair and received services there were actually homeless. Judging by the

⁵⁵ The standard of social services provided to citizens of working age without a fixed abode (homeless) in a non-hospital setting in a social service institution; the standard of social services provided to citizens of working age without a fixed abode in a night shelter.

⁵⁶ Addendum to the Trilateral Agreement of St. Petersburg for 2008-2010, signed on 24 January 2008.

⁵⁷ <http://www.rspb.ru/jobmarket/toda.html>

⁵⁸ Information from the website of the Committee on Labor and Employment for the Population of St. Petersburg (http://www.rspb.ru/index.php?option=com_content&view=article&id=364:2009-12-02-13-18-49&catid=93:2009-02-25-23-37-36).

information from the official website of the Committee on Labor and Employment of the Population of St. Petersburg, this program was the only one to provide the homeless with employment assistance for the entirety of 2009.

It is evident that the question providing employment assistance to the homeless is posed and addressed unsystematically and ineffectively, while the homeless themselves are continuously discriminated against.

Addendum 3.3.4: Housing for social protection

In accordance with subsection 6 of Article 6.1 of Law No. 100-15 of 4 April 2006 (amended 02 July 2007) “On the specialized housing fund of St. Petersburg,” homeless citizens who previously had a permanent residence in St. Petersburg⁵⁹ and were registered with the authorized social protection agencies shall be provided with housing in St. Petersburg.

Article 6.5 provides that “the conditions for providing individual citizens in need of special social protection with housing as well as the procedure of recognizing citizens in need of special social protection, shall be established by the Government of St. Petersburg.”

First, it should be noted that this law does not take into consideration the provision of housing for the social protection of individual categories of citizens to homeless citizens who previously did not reside in St. Petersburg.

Second, the Statute on the procedure and conditions for recognizing citizens in need of special social protection and providing them with housing, confirmed by Decree No. 1164 of 18 September 2007 of the Government of St. Petersburg, does not provide a procedure for registering homeless citizens in need of housing. No other documents governing the conditions of the provision of housing of the homeless for the social protection of individual categories of citizens and the procedure for recognizing them as in need of special social protection have been adopted by the Government of St. Petersburg. As a result the standard of the Law No. 100-15 of 4 April 2006 of St. Petersburg, which provides housing to homeless citizens is an example of an unenforceable right (Nudum jus).

Third, the concept of “special social protection” has appeared in modern Russian legislation, specifically in Article 98 of the Housing Code of the Russian Federation No. 188-FZ of 29 December 2004. However this concept has not been defined in federal law. The lack of a

⁵⁹ The text of the law reads...“**permanent** place of residence in St. Petersburg...” In accordance with the Law of the Russian Federation “On the right of citizens of the Russian Federation to freedom of movement, choice of a place of stay, and residence within the Russian Federation” the concept of “place of residence” includes a (primarily) permanent residence. Federal legislation does not contain the concept of “permanent place of residence.”

legislative definition on “special social protection” has given rise to a lack of clarity in regards to citizens being recognized as in need of **special** social protection.

Fourth, Article 6.3 Paragraph 3 of Law No. 100-15 of 4 April 2006 (amended 02 July 2007) “On the specialized housing fund of St. Petersburg” provides that housing owned by St. Petersburg shall be provided to homeless citizens. However, only homeless citizens who previously had a permanent residence in St. Petersburg and were registered with the authorized social protection agencies were eligible. The housing will be temporary during the period the special social protection is being provided and shall be “calculated on the basis of **no more** than six square meters of living space per individual.”

As a result, in St. Petersburg there is no minimum size for the provision of housing to homeless individuals, only a maximum. Article 6.3 Paragraph 3 of the Law No. 100-15 of 04 April 2006 of St. Petersburg provides for the opportunity to legally violate basic standards of hygiene. It would also be “legal” to provide housing to homeless citizens based on mathematical calculations that resulted in providing one square meter per person.

The homeless in St. Petersburg can be provided with housing the size of a pack of cigarettes for each of them. How can social assistance of this kind be effective?

This provision of Article 6.3 (paragraph 3) of Law No. 100-15 of 04 April 2006 of St. Petersburg (amended 02 July 2007) “On the specialized housing fund of St. Petersburg” is senseless discriminatory. If one compares it with the provision of Article 6.3 (paragraph 1) of the same law it becomes obvious that the standard contained in Paragraph 3 discriminates against the homeless in comparison with other categories of citizens who must be provided with housing for social protection of **no less** than 6 square meters per person.

This discrimination directly contradicts to the standards of Article 19.1 and 19.2 of the Russian Constitution, the standard of Article 20.1 of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (Minsk, 26 May 1995), and the principle of equal treatment for all members of the human family that is enshrined in the Preamble to the International Covenant on Economic, Social, and Cultural Rights.

Addendum 3.3.5 : analysis of the legislation referring to the possibility for the homeless to enjoy the right to housing

These goals (see supra) are not included in the Guidelines for Urban Planning of Lipetsk Province, confirmed by Decree No. 119 of 30 May 2008 of the Administration of Lipetsk Province, nor in the Guidelines for Urban Planning of Tambov Province, confirmed by Decree No. 1038 of 24

September 2007 of the Administration of Tambov Province, nor in the Guidelines for Urban Planning of the Municipal District of the City of Tambov, confirmed by Resolution No. 695 of 30 July 2008 of the Tambov Municipal Duma, nor in the Regional Urban Planning Guidelines of the Republic of Mordovia, confirmed by Decree No. 612 of 29 January 2008 of the Government of the Republic of Mordovia, nor by the local urban planning guidelines of the Municipal District of Saransk, confirmed by Resolution No. 193 of 28 October 2008 of the Council of Deputies of the Municipal District of Saransk.

Addendum 3.4.4.

“Russia’s Attitude Toward Its Own Citizens Is Described As Torture”⁶⁰ (abbreviated):

On 29 June 2001, Denis Vasilyev and his friend Timur Nurullaev went for an evening walk. They were attacked in the courtyard of their own home. They had received serious blows to the head which rendered them unconscious. Residents called the police and two sergeants of the Ministry of Internal Affairs for the Sokolnaia Gora area in the Eastern Administrative District of Moscow arrived. They decided that the young people were drunk and therefore simply dragged them to a garbage heap so passers-by would discontinue calling the police. The criminal case record reads: “Officer A. V. Zharov testified that...they found two young people, one of whom was lying silently while the other was mumbling incoherently. Nearby were traces of vomit. Based on their external appearance the officers decided that the men were under the influence of alcohol or drugs. After dragging them away...they left.”

In the early morning of 30 June 2001, the bodies lying by the garbage heap were noticed by oncoming traffic, and someone called an ambulance. As a result Denis was taken to Hospital No. 33 and Timur to Hospital No. 1 (Timur, being fortunate, received timely assistance and is not disabled today). The ambulance, like the police, did not even try to revive the victims. *The doctors decided that Denis was drunk and homeless; before arriving at the hospital everything had been taken from him and he was without documents or money.*

As a result, unclothed, unconscious, and with a fractured spine and skull, closed head trauma, and worsening cerebral edema, Denis lay in the hospital corridor for 33 hours. By then his mother had found him. The doctors immediately took him to surgery and performed a trepanation, which resulted in an infection. He then fell into a coma and was taken to the Burdenko Military Hospital.

There he remained in a coma until the end of July. When he regained consciousness he was given a tracheotomy and transferred to the neurosurgery ward where he remained in critical condition until August 10. Over the next several months he underwent one operation after another due to osteomyelitis (decay) of the skull and became disabled. Two years after being released, in June of 2003, yet another operation was performed on him at the Burdenko Hospital. In July, 2004 the osteomyelitis in the skull became aggravated. Moreover, right-sided hemoparesis set in (his right hand and leg would no longer work) as well as post-traumatic epilepsy with seizures.

/.../ A criminal case against the medical personnel of Hospital No. 33 due to failure in providing assistance was closed after Denis's medical records, which had been removed by an investigator in the Burdenko Hospital in order to conduct "additional forensic medical consultations" disappeared. "The file's whereabouts could not be ascertained..." wrote E. Maskaeva, the Deputy Supervisor of the Division of the Investigative Committee of the Ministry of Internal Affairs. Soon afterwards Denis's mother was officially informed: "The necessary scope of medical assistance in accordance with the illnesses of your son, D.V. Vasilyev was provided in Municipal Clinical Hospital No. 33." Later the case was again transferred from one investigator to another, then closed and re-opened multiple times.

The ECHR stated in its decision regarding the actions of the doctors of Municipal Clinical Hospital No. 33: "The Court considers the medical care that was provided to the patient in hospital No. 33 to be inadequate." It was equal to torture and inhuman treatment.

With regard to how the investigation into the actions of the doctors at of Municipal Clinical Hospital No. 33 was performed the ECHR decision stated: "The manner in which the investigation was conducted demonstrates a desire on the part of law enforcement to rid themselves of this issue quickly and carelessly. The case was transferred from one agency to another and one investigator to another. As the ECHR decision indicates, over the course of three years decisions to close the case were made only because the very first investigation had not been conducted in the necessary manner."⁶¹

It should be noted that Denis Vasilyev was lucky. He is not actually homeless; he has a mother who fights for him, and as the son of a Hero of Russia who died in combat, has the right to treatment at one of the best clinics in the country.

If he had indeed been homeless, Denis most likely he would have simply died at Municipal Hospital No. 33 and there would have been no investigation, let alone an ECHR decision.

⁶¹

Addendum 3.4.5

Unfortunately these facts are fairly typical and only become the subject of investigation in isolated instances. Court decisions in such cases can be counted on one hand.

On 10 December 2008 in the court of the Central Region of the city of Tolyatti (Samara Province) sentence was passed on a former Chief of Neurosurgery and a neurologist at Municipal Hospital No. 2. The former Chief was found guilty of neglect under Article 293 of the Criminal Code of the Russian Federation (CCRF) and sentenced to a conditional sentence of two years in a correctional facility with loss of his medical license for ten years.⁶² The neurologist was found guilty under Article 124 of the Criminal Code of “Failure to render assistance to a sick person” and received an 18-month conditional sentence in a correctional facility with the loss of his medical license for ten years.⁶³

Here is a brief description of the case, compiled from publications in “Rossiiskaia gazeta,”⁶⁴ the newspaper “Pravo i poriadok,”⁶⁵ and other media publications.

On 31 May 2007 thirty-seven year old Sergei Chugunov wound up in Municipal Hospital No. 2 with signs of having been severely beaten. The night before he had been beaten by unknown persons. He suffered from head trauma and four fractured ribs. The list of his injuries in the criminal case file takes up half a page. He remained in the neurosurgery ward until 20 June.

On 20 June, despite the fact that he still required care, the chief of the department ordered the treating physician to discharge him from the hospital. Mr. Chugunov was in serious condition and could not walk on his own (although according to the discharge documents he was completely healthy). Dressed in shorts and a T-shirt, he was transported on a stretcher and left on a bench in the courtyard of one of the buildings.

⁶² Article 293.2 of the CCRF provides that neglect that causes the death of a person or other grave consequence shall be punished by deprivation of freedom for a term of up to five years and can include loss of the right to engage in specific occupations or activities for a period of up to three years.

⁶³ Article 124.2 of the CCRF provides that failure to render assistance to a sick person if it entails the death of the sick person or the causing of grave harm to health shall be punished by deprivation of freedom for a term of up to three years and can include loss of the right to engage in certain occupations or activities for a period of up to three years.

⁶⁴ Kozlova, Natalya. Bomzh navynos. Vpervye vrachi otvetyat po zakonu za otkaz pomoch' bol'nomu. // Rossiiskaia gazeta (federal'nyi vypusk). 2008. 23 sent. No. 4756.

⁶⁵ Kerzhaeva, Valeriia. Delo Sergeiia Chugunova poka ne zakryto // Pravo i poriadok. 2008. 12 apr. No. 39 (804).

Ordinary citizens who witnessed this became concerned and began calling for an ambulance. They were informed none would come for the homeless. Eyewitnesses filmed the gruesome sight on their cell phones and called local journalists, finally reaching Ella Artemenko, the representative for human rights of Samara Province. She in turn informed the regional Human Rights Commissioner, Irina Skupova. The Human Rights Commissioner's request for an ambulance was also initially refused. Only thanks to her calling the Provincial Ministry of Health did an ambulance come for Mr. Chugunov and take him to the therapeutic ward of Municipal Hospital No. 1. On the morning of 21 June he died.

A number of journalists noted the odd delays in the investigation into the matter, as well as its unique nature considering the prevalence of similar situations in the practice of medical institutions. It is also worth noting that the workers of the emergency service who many times refused to come to Mr. Chugunov's aid experienced no further consequences.