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RUSSIA: 15 months in deportation centre so far

By Victoria Arnold, Forum 18 (<https://www.forum18.org/>)

18 months after officials secretly stripped Yevgeny Kim of Russian citizenship (his only citizenship) and 15 months after he completed his jail term for exercising freedom of religion or belief, the now-stateless 45-year-old Muslim remains in the foreigners' detention centre in Khabarovsk. Uzbekistan – where he was born – refuses to accept him. In June, he asked for identity documents enabling him to leave Russia voluntarily for Turkey.

More than a year after the stripping ("annulment") of his Russian citizenship and his release from prison, 45-year-old Muslim Yevgeny Kim remains in the detention centre for foreign nationals and stateless persons in the far eastern city of Khabarovsk. Uzbekistan – where he was born, but whose citizenship he has never held – is refusing to accept him, two court appeals have failed, and he has as yet no documentation which would allow him to leave Russia legally for a third country.

In June, Kim asked for identity documents enabling him to leave Russia voluntarily for Turkey (see below).

Kim was transferred to the detention centre in April 2019 after completing a jail term on "extremism"-related charges handed down to punish him for exercising freedom of religion or belief by meeting with fellow Muslims to read and discuss the works of the late Turkish theologian Said Nursi (see below).

Interior Ministry officials secretly stripped Kim of Russian citizenship (his only citizenship) in January 2019. Prison staff only informed him of this the day before his release in April 2019 (see below).

On the day of his release, a Khabarovsk court found Kim guilty of violating the residence requirements of the Russian Federation by not having the correct documents, and ordered his deportation. Kim did not have any documents because officials had confiscated his Russian passport the previous day (see below).

On 10 June 2020, a Vladivostok court rejected Kim's latest appeal against the April 2019 deportation order (see below).

A May 2017 Constitutional Court decision directed legislators to "amend the Administrative Code so that it ensures reasonable judicial control over the timeframes of the detention of stateless persons subject to forced expulsion in specialised institutions". They have not done so (see below).

Stateless persons continue to be detained. Sometimes they are released if bailiffs apply to court indicating the impossibility of carrying out deportation. In other cases, judges have ordered their release with reference to the Constitutional Court ruling (see below).

"This law on the annulment of citizenship is vicious," Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis, commented to Forum 18.

"It is unacceptable that Yevgeny Kim has not been issued with documents as a stateless person," Verkhovsky added. "With these documents, he could go, say, to Turkey. But it seems that the authorities either are not satisfied with an outcome so favourable to him, or they fear that once he has these documents he will not leave" (see below).

Forum 18 asked the Human Rights Ombudsperson for Khabarovsk Region Igor Chesnitsky:

- what conditions are like in the Khabarovsk detention centre;
- what measures have been taken to protect detainees from coronavirus;
- and how Kim might be able to obtain documents allowing him either to live in Russia or leave the country legally.

Forum 18 has received no reply (see below).

In April 2020, the authorities stripped two jailed Jehovah's Witnesses of citizenship (http://www.forum18.org/archive.php?article_id=2583). The two men are likely to be ordered deported (to Uzbekistan and Ukraine respectively) upon their release, despite their long residence in and close ties to Russia, including being married to Russian citizens.

Still in detention 15 months on

Yevgeny Lvovich Kim (born 5 October 1974) remains in the detention centre for foreign nationals and stateless persons in Khabarovsk, more than a year after his release from prison. Uzbekistan – where he was born, but whose citizenship he has never held – is refusing to accept him, two court appeals have failed, and he has as yet no documentation which would allow him to leave Russia legally for a third country.

Kim was released from Labour Camp No. 3 in Khabarovsk on 10 April 2019 (http://www.forum18.org/archive.php?article_id=2478), after serving one year and seven and half months under Criminal Code Article 282.2, Part 1 ("Organisation of the activity of a social or religious association or other organisation in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity") and Article 282, Part 1 ("Actions directed at the incitement of hatred [nenavist] or enmity [vrazhda], as well as the humiliation of an individual or group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, or social group").

Kim was punished for meeting with fellow Muslims to read and discuss the works of Said Nursi.

Prosecutors characterised this as "continuing the activities" of "Nurdzhular" (an organisation which Muslims in Russia deny exists, but which was outlawed as extremist in April 2008), and the exertion of "active influence on the sub-consciousness, consciousness, will, and behaviour of people attending the gatherings, with the aim of formulating in them a feeling of hatred and enmity, and also of humiliating the dignity of a person or group of people on grounds of religion and social grouping". (http://www.forum18.org/archive.php?article_id=2310)

After his arrest in December 2015, Kim was tortured in pre-trial detention (http://www.forum18.org/archive.php?article_id=2332). Against Russia's legally binding international obligations, no arrests or prosecutions of those who tortured Kim, or those who facilitated the torture, are yet known to have happened.

Blagoveshchensk City Court in Amur Region sentenced Kim to three years and nine months' imprisonment on 19 June 2017. He completed his prison term in April 2019 because of the time he had spent in detention during the investigation and trial, and while his appeal was pending (http://www.forum18.org/archive.php?article_id=2478).

Under amendments to Criminal Code Article 72, signed into law in July 2018 but applied retroactively, one day in detention is taken as equivalent to a day and half in a general-regime labour camp.

Kim was (unbeknown to him) stripped of his Russian citizenship in January 2019 as a direct result of his conviction, rendering him stateless. Camp officials seized his Russian passport on 9 April (http://www.forum18.org/archive.php?article_id=2478), the day before his release.

When he was released the following day, Kim was immediately charged under Administrative Code Article 18.8, Part 1.1 ("Violation by a foreign citizen or stateless person of the residence regime of the Russian Federation, taking the form of the absence of documents confirming the right to residence in the Russian Federation").

On 10 April 2019, Khabarovsk's Railway District Court fined Kim 3,000 Roubles and ordered his expulsion from the country, stipulating that he should in the meantime be kept in detention. (http://www.forum18.org/archive.php?article_id=2478)

Kim remains on the Federal Financial Monitoring Service (Rosfinmonitoring) "List of Terrorists and Extremists", whose assets banks are obliged to freeze (although small transactions are permitted). (http://www.forum18.org/archive.php?article_id=2215)

European Court of Human Rights ruling on detention of stateless persons

The Anti-Discrimination Centre Memorial and the Russian Migration and Law Network raised the situation of stateless persons detained in Russia before the European Court of Human Rights (ECtHR) in Strasbourg in the case of Roman Kim (no connection to Yevgeny Kim). Roman Kim was a stateless person held in a detention centre in St Petersburg for two years because he could not be deported to his birthplace of Uzbekistan.

The ECtHR ruled in July 2014 (Kim v. Russia, Application no. 44260/13 (<http://hudoc.echr.coe.int/eng?i=001-145584>)) that Russia had violated:

- Article 3 ("No one shall be subjected to inhuman or degrading treatment or punishment") by the maintenance of inhuman conditions of detention;

- Article 5, Part 1 ("Everyone has the right to liberty and security of person") by extended detention without the prospect of expulsion;

- and Article 5, Part 4 ("Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful") by denying detainees the right to appeal.

The ECtHR stipulated that Russia should adopt measures to ensure court oversight of the detention of stateless persons.

Constitutional Court ruling on stateless detainees' right to appeal

On 23 May 2017, as the result of an appeal by Noe Mskhiladze (a stateless person repeatedly detained for not having the necessary documents, but again, unable to be deported), Russia's Constitutional Court ruled that Administrative Code Article 31.7 ("Termination of fulfilment of an administrative sentence") and Article 31.9 ("Time limit on fulfilment of an administrative sentence") were unconstitutional.

The Court decided that these Administrative Code Articles were unconstitutional insofar as they do not permit stateless persons, who had been ordered deported and sent to migration detention centres, to appeal in court against their continued detention if they cannot be expelled from the country.

Administrative Code Article 31.7 lists the grounds for halting the execution of an administrative punishment and Article 31.9 stipulates a two-year time limit. Neither article, however, considers the impossibility of a sentence being carried out (e.g. the impossibility of deporting a stateless person) – or, in the case of a stateless person, how to prevent them from being caught in a cycle of repeated prosecutions, detentions, and unfulfilled expulsion orders.

The Constitutional Court cited the ECtHR's 2014 judgment and directed Russian lawmakers to "amend the Administrative Code so that it ensures reasonable judicial control over the timeframes of the detention of stateless persons subject to forced expulsion in specialised institutions".

The Court also ruled that, until such amendments come into force, detained stateless persons "must be granted the right to apply to a court to check the legality of their further deprivation (restriction) of freedom upon the expiry of three months from the day the court decision on expulsion was adopted".

Legislators drew up relevant amendments in the wake of the Constitutional Court's decision, but these have not yet passed through Parliament. Stateless persons continue to be detained. Sometimes they are released if bailiffs apply to court indicating the impossibility of carrying out deportation. In other cases, judges have ordered their release with reference to the Constitutional Court ruling.

Grounds for deprivation of citizenship

Article 6 of the Russian Constitution states that individuals cannot be stripped of their citizenship. Kim (and, more recently, two jailed Jehovah's Witnesses (http://www.forum18.org/archive.php?article_id=2583)), however, was deprived of his Russian citizenship on the basis of an amendment to Article 22 of the 2002 Citizenship Law which entered legal force on 1 September 2017.

Citizenship Law Article 22 states that citizenship can be annulled if it was awarded on the basis of forged documents or "false information". The 2017 amendment added that conviction under particular articles of the Criminal Code, including Article 282.2 ("Organising" or "Participating in the activities of a banned extremist organisation", with which Jehovah's Witnesses and Muslim readers of Nursi's works are most commonly charged) and Article 282.3 ("Financing extremist activity", with which many Jehovah's Witnesses have also been charged), is taken as equivalent to knowingly presenting false information in a citizenship application.

As a result, therefore, authorities may annul the citizenship of a person who has been found guilty of one of these offences, and who acquired Russian citizenship by naturalisation rather than by birth.

"This law on the annulment of citizenship is vicious," Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis, commented to Forum 18 from Moscow on 8 July. "It assumes that the person, when applying for citizenship, was already going to undermine the constitutional order, and in this sense gave false information about themselves, and therefore the decision to grant citizenship is invalid."

Verkhovsky pointed out that a person then could change their views over time. "They might not even have imagined that their views imply a change to the constitutional order," he added.

Indefinite detention?

Because Kim is stateless, there is technically no country to which he can be deported, and so his punishment as decided by Khabarovsk's Railway District Court in April 2019 cannot be fulfilled.

Administrative Code Article 31.9 places a time limit of two years on the execution of administrative punishments (not specific to offences under migration law). Once this time is up, in April 2021, Kim's deportation order will lapse and he will have to be released from the detention centre.

Without citizenship of any country or any documents permitting him either to stay in Russia or legally depart, however, Kim would therefore again be liable to administrative prosecution, further detention, and another unfulfillable deportation order.

Attempting to cross the border in either direction without documents is a criminal offence under Criminal Code Article 322, Part 1. This carries a fine of up to 200,000 Roubles, an assigned work sentence of up to two years, or up to two years' imprisonment.

On 11 June 2020, according to a fellow Muslim who is following the case, Kim wrote to the Department for Migration Issues at the Khabarovsk Region branch of the Interior Ministry, requesting that he be formally recognised as a stateless person (litso bez grazhdanstva). He also asked to be given identity documents enabling him to leave Russia voluntarily for Turkey. Forum 18 has been unable to find out whether he has received any response.

"It is unacceptable that Yevgeny Kim has not been issued with documents as a stateless person," Verkhovsky of the SOVA Center for Information and Analysis commented to Forum 18. "With these documents, he could go, say, to Turkey. But it seems that the authorities either are not satisfied with an outcome so favourable to him, or they fear that once he has these documents he will not leave."

Kim's detention centre address is:

680003, Khabarovskiy kray

g. Khabarovsk

ul. Repina 3

Tsentr vremennogo sodержaniya inostrannikh grazhdan

Detention centre conditions

The Anti-Discrimination Centre Memorial notes in its 2017 report (<http://adcmemorial.org/en/publications/imprisoned-stateless-persons-in-russia-the-search-for-a-way-out-of-a-legal-dead-end>), "Imprisoned stateless persons in Russia: the search for a way out of a legal dead end", that detention centres for foreign nationals and stateless persons are frequently overcrowded and unsanitary. Many have beds for four people close together in one room, and toilet and shower facilities either separated from living space by only a curtain, or shared between many cells on the same floor. These conditions are of particular concern during the present coronavirus pandemic.

Amenities vary between detention centres, but are often worse than in labour camps where most people given jail sentences in Russia serve their terms, in that a detention centre has no library, gym, or on-site medical facilities, no system for inmates to earn or spend their own money, and nothing for them to do except watch television. Outdoor exercise periods tend to be limited to one hour per day in summer and 30 minutes in winter.

Forum 18 wrote to the Human Rights Ombudsperson for Khabarovsk Region Igor Chesnitsky before the start of the Khabarovsk working day of 9 July, asking:

- what conditions are like in the Khabarovsk detention centre;
- what measures have been taken to protect detainees from coronavirus;
- and how Kim might be able to obtain documents allowing him either to live in Russia or leave the country legally.

Forum 18 received no reply by the end of the Khabarovsk working day of 13 July.

On 19 March 2020, Ombudsperson Chesnitsky's website reported that he had conducted an inspection of the detention centre, during which he "pointed out shortcomings in the organisation of walks, information support, and medical care for detainees". After the

inspection, the findings would be sent to the regional Interior Ministry branch, and the district prosecutor's office would also take (unspecified) measures, the report noted.

The Ombudsperson's visit was triggered by an inspection by Khabarovsk Region Public Chamber on 16 March, which also recorded detainees' complaints of shortages of particular medicines and a lack of daily walks.

A brief report of the Public Chamber's inspection, posted on its website on 17 March, noted that 29 people were in the detention centre, two to four to a room, and that plumbing and ventilation systems were in working order. Photographs show shared shower facilities and notices of the mask-wearing and hand-washing regime instituted on 10 February in light of the coronavirus pandemic.

Unsuccessful appeals

On 31 March 2020, according to the court website, Kim lodged an administrative suit at Khabarovsk's Railway District Court, challenging the legality of his continued detention, as he is permitted to do under the Constitutional Court's 2017 ruling.

Kim's suit disputed "the inaction of the Department of Migration Issues of Khabarovsk Region Interior Ministry and the Interdistrict Department of Bailiffs for the Fulfilment of Special Enforcement Proceedings, insofar as they are taking no measures to fulfil the ruling of the judge of Railway District Court of 10 April 2019", according to court documents seen by Forum 18.

The court rejected this suit without consideration on 13 April 2020 because it had been submitted under the wrong legal code. Kim's appeal against this rejection was itself refused on 2 June 2020 because it had not been submitted within the 15-day appeal period.

Kim has also appealed directly against the conviction under Administrative Code Article 18.8, Part 1.1 which resulted in his deportation order. According to the court website, he lodged a cassational appeal at the 9th Cassational Court in Vladivostok on 15 April 2020. This was unsuccessful on 10 June 2020.

According to the written verdict, seen by Forum 18, Kim argued that he had not had the opportunity to obtain the necessary documentation to reside in Russia, as he had been serving a jail sentence. The judge dismissed this point, concluding that Kim had had from 29 January 2019 (the date that he was stripped of his citizenship) until 9 April 2019 (the date his passport was confiscated) to challenge the decision or obtain residence papers, and that incarceration does not prevent a person from submitting written applications.

According to fellow Muslims who have been following the case, however, Kim did not learn that he had been stripped of citizenship until 9 April 2019, the day before his release, when the prison authorities informed him of the fact.

As the organisations responsible for ensuring court rulings are carried out, bailiffs' departments sometimes apply to courts in an attempt to resolve the legal limbo in which stateless persons find themselves, ADC Memorial noted in its 2017 report.

In Kim's case, Bailiff Svetlana Fedyanina of Khabarovsk Region Interdistrict Department of Bailiffs for the Fulfilment of Special Enforcement Proceedings wrote to Railway District Court on 6 May 2020 to request that the court halt the fulfilment of its ruling of 10 April 2019 (Kim's administrative conviction) with regard to the deportation order.

Bailiff Fedyanina withdrew this request once she learned that Kim had appealed to the 9th Cassational Court. It remains unclear what the bailiffs' department will do now that this appeal has proved unsuccessful. Forum 18 wrote to the department before the start of the Khabarovsk working day on 8 July, asking if it had received any response from the court and what was likely to happen to Kim. Forum 18 had received no reply by the end of the Khabarovsk working day of 13 July.

The letter of 6 May 2020, seen by Forum 18, confirms that Kim was stripped of his citizenship on 29 January 2019 by the Department for Migration Issues at Sverdlovsk Region branch of the Interior Ministry (the body which originally granted it), and that "to deport Kim to the Republic of Uzbekistan is impossible, as he is not a citizen [of that country]". It gives as the basis for the request the Constitutional Court ruling of 23 May 2017.

Kim lodged an appeal against his original criminal prosecution at the European Court of Human Rights (ECtHR) in Strasbourg in February 2018 (Application no. 8301/18). The ECtHR has not yet decided whether the case is admissible. (END)

Full reports on freedom of thought, conscience and belief in Russia
(<http://www.forum18.org/archive.php?query=&religion=all&country=10>)

For more background see Forum 18's survey of the general state of freedom of religion and belief in Russia (http://www.forum18.org/archive.php?article_id=2246), as well as Forum 18's survey of the dramatic decline in this freedom related to Russia's Extremism Law (http://www.forum18.org/archive.php?article_id=2215).

A personal commentary by Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis

<http://www.sova-center.ru>, about the systemic problems of Russian anti-extremism legislation
(http://www.forum18.org/archive.php?article_id=1468)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments
(http://www.forum18.org/archive.php?article_id=1351)

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If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY