

**The Situation and Legal Status of Meskhetians
in the Russian Federation**

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Part I. Scope of the Meskhetian question

1. Historical overview

The Meskhetians (or Meskhetian Turks) are a Turkic people of Muslim faith who speak the Turkish language. They inhabited a borderland region of South Georgia, part of the historical province Meskheta. In November 1944, approximately 86,000 Meskhetians were deported to Uzbekistan, Kazakhstan and Kyrgyzstan. The deportation was carried out in accordance with the USSR State Committee of Defence Resolution No.6279ss of 31 July 1944¹. It was justified by the alleged disloyalty of Georgia's Turkic minorities to the Soviet State and by their involvement in espionage. Most Meskhetians identify themselves as Turks, a small part consider themselves Georgian Muslims or Meskhs. To date, Meskhetians have not been allowed to return to the places where they had been displaced from, or to Georgia in general.

In June 1989, Meskhetians living in the Fergana oblast (province) of Uzbekistan became the victims of violent inter-ethnic clashes. All Meskhetians resident in Fergana (approximately 17,000 people) were evacuated to Central Russia. In the following year and a half, more than 70,000 Meskhetians were forced to leave other regions of Uzbekistan in fear for their safety. Meskhetians moved spontaneously to Russia and Azerbaijan, while a smaller number settled in Ukraine and in Kazakhstan.

Currently, there are approximately 270,000 to 290,000 Meskhetians living within the former USSR. It is further estimated that 50,000 to 70,000 reside in Russia and 40,000 to 60,000 of them are forced migrants from Uzbekistan. Most of the Meskhetians in Russia have, over the years, locally integrated and acquired Russian citizenship. In some places Meskhetians are suffering from human rights violations and/or discrimination. In this respect, the deepest concern is connected with Krasnodar Krai (region) of the Russian Federation.

The Meskhetians who were coming to Krasnodar Krai from 1989 were denied local propiska (in practice, an authorised domicile; in 1993 "propiska" was formally replaced by "registration at the place of residence"). Since 1989-90, from 10,000 to 13,000 Meskhetians have remained without propiska or residence registration in Krasnodar Krai. Their property rights to the dwellings and plots of land purchased have not been recognised by local authorities. Krasnodar Krai is the only region of Russia where the Meskhetians at large have been denied residence registration, related rights and social benefits.

Therefore, the "Meskhetian question" should be viewed as a combination of two different issues: 1) it is necessary to develop an appropriate legal framework in Georgia that would allow return and access to Georgian citizenship for those who wish to do so; 2) at the same time, the legal status of Meskhetians in their countries of current residence should be secured, including access to citizenship and safeguard of their rights, freedoms and security, regardless of whether they wish to live permanently or to emigrate. It is important to stress that the perspective of return to

¹ See Annex # 1

Georgia does not replace the parallel approach of improving the legal status of the Meskhetians in their countries of present residence.

2. The integration of Meskhetians in the various regions of the Russian Federation (other than Krasnodar Krai)

Currently, approximately 15,000 to 18,000 Meskhetians live in Krasnodar Krai, 15,000 to 20,000 in Rostov-on-Don oblast, 5,000 to 5,500 in the Republic of Kabardino-Balkaria, 4,000 to 5,500 in Belgorod oblast, 4,500 to 5,000 in Volgograd oblast, 3,500 to 4,500 in Stavropol Krai, 2,500 to 3,000 in Voronezh oblast, and smaller communities in the Republic of Kalmykia, the Chechen Republic, Astrakhan, Kursk, Orenburg, Oryol, Tula, Smolensk and other oblasts. Out of 17,000 Meskhetians who were evacuated in June 1989 to Central Russia, only 10,000 to 11,000 remain there, while the rest moved because of the climate and difficult living conditions mainly from Oryol, Tver and Smolensk oblasts to other regions of Russia or to Azerbaijan.

Approximately 10,000 Meskhetians, who already lived in the Russian Soviet Federal Socialist Republic (RSFSR) before 1989, had propiska. For those Meskhetians who resettled to the RSFSR from Uzbekistan in 1989 and after, there has been no special long-term integration programme. The Meskhetians' resettlement to the RSFSR was approved by Resolution No.503 of the Council of Ministers of the USSR of 26 June 1989² and by Resolution No.220 of the Council of Ministers of the RSFSR of 13 July 1989³ (see annexes). Both acts envisaged the distribution of small allowances among the Meskhetians resettled to rural areas of Central Russia as well as measures to facilitate their economic and social integration. The RSFSR Council of Ministers Resolution No.220 listed six oblasts where these measures were to be undertaken: Belgorod, Kursk, Oryol, Tver (at that time - Kalinin), Smolensk and Voronezh oblasts (i.e. those regions where the Meskhetians had been evacuated). It is important to note that Resolution No.220, while making provision for integration measures in those regions where the Meskhetians had been evacuated, did not contain any instructions for the Meskhetians to settle exclusively in these regions. The Meskhetians who were resettled there or arrived on their own were granted propiska automatically. The Meskhetians, who arrived in the other regions of Russia in 1989-1991, as a matter of practice also acquired propiska, like most of the common Soviet citizens travelling within the USSR used to do. In particular, the Meskhetians who came to the Republics of Kalmykia and Checheno-Ingushetia, Stavropol Krai, Astrakhan, Orenburg, Rostov-on-Don, Saratov and Volgograd oblasts, (i.e. regions not mentioned in the RSFSR Council of Ministers Resolution No. 220) were granted propiska. In general, the local authorities did not obstruct the Meskhetians from getting propiska. Some minor exceptions were in Stavropol Krai and Kabardino-Balkaria Republic where small groups of the Meskhetians were denied propiska. However, these people were gradually registered at their places of residence, in the 1990s. Krasnodar Krai remains the only one region of Russia where the Meskhetians have been deprived of residence registration.

² See Annex # 2

³ See Annex # 3

Under Article 13 of the RF Law "On Citizenship of the Russian Federation" of 1991, former Soviet citizens who *permanently resided* in the RSFSR on the date the law entered into force (6 February 1992) and who did not decline their Russian citizenship within one year afterwards, were deemed Russian citizens (so-called acquisition of Russian citizenship "by recognition"). In practice, the Russian authorities competent to process citizenship applications have interpreted the term "permanent residence" (which concept is not defined by law) in a restrictive manner, as meaning possession of propiska⁴. Consequently, Meskhetians were recognised as Russian citizens to the extent that, by the time of entry into force of the RF Law on Citizenship (6 February 1992), they were in possession of "propiska" or residence registration. This was not a problem in most of the regions of the Federation since, as mentioned in the paragraph above, the local authorities had been issuing "propiska" to the concerned persons. However, it became an obstacle in Krasnodar Krai, where the authorities had unduly refused to issue "propiska" to Meskhetians.

Almost all Meskhetians in the Russian Federation reside in rural areas. They are spatially dispersed. Local communities consisting of more than 100 households in an individual settlement are exceptional. The Meskhetians earn their living usually by cultivating vegetables on leased lands or plots of land attached to their houses, by a small scale wholesale or retail trade at bazaars and by running small shops. They also work as manual labourers at industrial, agricultural or infrastructure enterprises.

3. Situation of Meskhetians in Krasnodar Krai

The number of Meskhetians who arrived in the region before 1989 is estimated at 3,000; almost all of them have residence registration. Approximately 13,600 Meskhetians have arrived in the region from 1989 onwards; 2,200 of them are registered at their place of residence. The total number of Meskhetians in Krasnodar Krai is estimated between 16,000 and 18,000, which constitutes approximately 0.3% of the Krai's five million population. The Meskhetians are settled primarily in the western (Krymsk and Abinsk districts) and south-eastern (Apsheronensk and Belorechensk districts) parts of the region. Approximately 9,000 Meskhetians live in Krymsk district (representing 6.5% of the district population), 2,000 in Abinsk district (representing 2.0% of the district population), 1,500 in Apsheronensk district (representing 1.5% of the district population), 2,500 in Belorechensk district (representing 2.5% of the district population) districts, and 1,000 or more in other districts (Kushevskaya, Labinsk, Slaviansk and Anapa) and in the city of Novorossiysk. The overwhelming majority of Meskhetians live in rural areas. The Meskhetians cultivate vegetables on leased lands or plots of land attached to their houses, run small-scale wholesale or retail trade, work as temporary manual labourers.

Most of the Meskhetians (10,000 to 12,000) have been refused residence registration in Krasnodar Krai by the regional authorities. The lack of residence registration

⁴ Such administrative practice has often been corrected by the courts of law, including the RF Supreme Court (see section 6 below). The establishment of "permanent residence" through alternative means than "registration at the place of residence", for the purpose of recognition of RF citizenship, was also positively considered by the courts of law for other former USSR citizens; cf. recognition of RF citizenship for (South Osset) Georgian refugees in North Ossetia-Alania, Russian Federation, i.a. based on the possession of refugee status being granted prior to the entry into force of the RF citizenship law, as an evidence of "permanent residence" in Russia.

results in denial or restriction of almost all civil, political and social rights. The Meskhetians cannot be employed officially. The Meskhetian marriages are not registered and fatherhood is not recognised and recorded in birth certificates. In some cases, local registrars refused to make official records of the births of Meskhetian children. The ownership and possession rights to the houses and plots of land purchased by the people without local residence registration including the Meskhetians are not recognised. The Meskhetians cannot receive or restore personal identity documents including internal passports and passports to travel abroad. These people cannot legally sell or purchase cars and other motor vehicles. They are deprived of the right to receive and renew driver's licences.

The Krasnodar Krai authorities do not treat Meskhetians as citizens of the Russian Federation. Meskhetians without residence registration do not receive pensions, benefits, or any social allowances. They do not have access to the system of medical insurance and have to pay all medical services at full cost. It should be acknowledged, however, that Meskhetian children can attend primary and secondary schools (but they cannot yet, for lack of residence registration, access higher education).

Violation to the rules of registration is an administrative offence sanctioned as such by the RF Code of Administrative Offences, and is subject to fine. Non-citizens violating the rules of registration may be subject to fines and further to administrative expulsion.

Since 1992, the regional authorities in Krasnodar Krai have repeatedly singled out the Meskhetians through special regulations referring to their ethnic origin as a distinct category and subjecting them to a special regime of personal registration⁵. Temporary registration certificates do not provide for any social rights, they usually protect the people from fines for "violation of passport regime" and unable them to be employed temporarily.

The Governor of Krasnodar Krai, Mr. Alexander Tkachev, addressed in September 2001 the issue of Meskhetians in the following way: "According to various estimates, from 15 to 20 thousand Turks are residing in the Krai, and that is a very serious problem. I say, addressing them: don't forget that you are guests on our land. Sooner or later we'll have to say good-bye to them. Some 'guests' engage in theft, drugs. Most of the Meskhetian Turks do not want to get out of our territory. I think all available mechanisms of pressure and persuasion will be employed to make the number of leaving "guests" rise. Furthermore, we should decrease the number of people coming in as well, not only Turks, but Azeris, Kurds and others also. (...)." ⁶

The regional and local media at large clearly supports the views and policies of the Krasnodar administration regarding migrants, ethnic minorities and the Meskhetian Turks as a specific group. The Meskhetians are described as a population in transit or

⁵ See decision No. 97 of the Minor Council (the presidium of the regional legislature) of Krasnodar Krai from 12 February 1992, Annex # 4; Resolution of the Krasnodar Krai Legislative Assembly No. 291-P of 24 April 1996, Annex # 5); Decree of the Krasnodar Krai Administration No. 877 of 9 December 1999, see Annex # 6; Decree of the Krasnodar Krai Administration No. 173 of 12 March 2001, Annex # 7.

⁶ Prizyv, 8 September 2001.

as "illegal immigrants", a group whose presence is socially harmful for the region. Below are a couple of typical mass-media judgements regarding the Meskhetians.

"The re-settlers are not integrated socially, two thirds of them reside in the Krai without any legal ground and are involved in illegal business. In accordance with the Head Directorate of Internal Affairs, in those places where the Meskhetian Turks live, illegal drugs and arms trade has increased sharply. Theft from the fields has become a real disaster. Even more fearful crimes take place, like murders, rape of children and elder people. The Turkish population contributes almost nothing to the budgets of the Krai and districts (...). The situation is aggravated by the Turk-Meskhetians aggressive claims for electoral rights on equal ground with the local population. The leaders of the Turkish society "Vatan" apply to all international organisations and demand to give them the right to take part in elections and to abolish registration on the territory of Krasnodar Krai to enable the Turks to live in any settlement of the Kuban without restrictions (...)".⁷

"Not for the first time are we addressing the residence of stateless people – Turks-Meskhetians, Armenians, Azeris, etc. Keeping silence this time means to imply that many newspapers support demands of those who live in the Krai illegally and commit disgraceful things. It is just enough to talk to any inhabitant of the Krymsk district to understand that this place is like on a volcano, and the volcano's crater is getting wider day by day and is sucking new victims. Usually the victims are Russian people. The people who not just gave shelter to refugees from the former USSR, but who also share with them the last piece of bread and bedding. Well, the former refugees have got stronger, took roots, and we saw who they are for ourselves. No! They haven't thanked the Russians, they did not have such a desire. They have had one aspiration - to sit on our neck and to become real master of the other people's land. As early as 10 years ago only several hundreds Turk-Meskhetians lived in Kuban. Now their number is 25,000, according to the official data. Nobody knows how numerous they are really. The quantity of Armenians, Azeris, Chechens has grown significantly as well (...). Understanding quite well, that there won't be a better place for them, our "guests" start to urge and rather, more often, to demand; besides, their demands become more pressing every year. Well, when nothing mends matters and the Krai's administration conduct a harsh policies towards those who live in Kuban illegally, then political means are employed like the hunger strike in Kiyevskoye village of the Krymsk district (...). Now what the "Vatan" society leaders want. First of all, to live on the territory of Krasnodar Krai, not in a God-forsaken place, but exactly in the Krymsk district, better - at the Black Sea coast. If we are not allowed this, then we'll notify the whole world that the policies of ethnic cleansing are pursued at the Kuban (remember Kosovo, everything there has got started from the same)".⁸

Since 1989, a number of regional normative acts (at least three decisions of the Krai's Soviet, two regional laws, three resolutions of the regional legislature and eight resolutions of the Head of regional administration) have imposed restrictions on residence and sojourn registration in the region and made registration permission-based. A number of regional laws refer to local residence registration as a precondition for enjoyment of major civil, political and social rights within the region.

⁷ The "Trojan Horse" of the Meskhetian problem, in *Kuban Segodnya*, 1 February 2002.

⁸ Ostrogorski V. "Blackmail by hunger strike, or why stateless people in the Kuban behave so impudently", in *Otechestvo Kubani* No. 28, July 2002.

The 1993 Constitution stipulates that everyone who is legally within the territory of the Russian Federation has the right to freedom of movement and free choice of residence and sojourn (Article 27, part 1). Regulation of questions pertaining to human and civil rights is entirely within the federal competence (Article 71, item "c" of the RF Constitution). The 1993 RF Law "On the Right of Citizens of Russian Federation to Freedom of Movement, Choice of Place of Stay and Residence within the Russian Federation" guarantees free choice of place of residence to Russian nationals. This law stipulates that residence and sojourn registration or its absence cannot be a precondition for or an obstacle to the enjoyment of rights and freedoms. Special regulations that may negatively affect the rights and freedoms of persons belonging to a certain ethnic group violate Article 19 of the RF Constitution, which provides for equality of rights regardless of ethnicity, social origin and other circumstances. Ethnic discrimination constitutes a crime under the Soviet and Russian criminal law (Incitement of National, Racial, or Religious Enmity). Therefore, the Krasnodar normative acts on registration and on the special status of the Meskhetians are in direct violation of the Russian Constitution and of federal legislation.

In some instances the central (federal) government has made attempts to contest violations of the federal legislation. In 1990, the USSR and RSFSR Prosecutors General lodged objections against the 1989 decision of the Krai's Soviet regarding restriction of propiska. The objections were declined by the regional legislature in January 1991. Since March 1997, the public prosecutor of Krasnodar Krai lodged objections against several provisions of the migration-related normative acts of the region. The Krasnodar Krai Legislative Assembly repealed most of these objections, but eventually some positive (though limited) amendments were made.

The Constitutional Court of the Russian Federation by its Definition No. 116-O⁹ of 7 October 1998 recognised unconstitutional Articles 14, 15 and 35¹⁰ of the Krasnodar Krai's Law No.9-KZ, specifying restrictions in residence registration. Later on, the Constitutional Court by its Definition No. 147-O¹¹ of 23 June 2000 found unconstitutional Article 36¹² of the same regional Law and the Resolution of the Krasnodar Krai Legislative Assembly No. 682 of 4 July 1997. In both cases, the Constitutional Court stated that "the subjects of the Russian Federation do not have a competence of their own to impose restrictions on the citizen's constitutional right to choose their place of residence as well as to establish that registration or absence of registration is a reason for limitation or a precondition for realisation of the citizens' rights envisaged by the Constitution of Russian Federation". Unfortunately, these decisions were not enforced by the Krasnodar Krai authorities.

⁹ See Annex # 8

¹⁰ Article 14 and 15 limited the list of categories that were entitled residence registration within Krasnodar Krai; Article 35 imposed a ban for notaries to register sales of real estate with persons without local residence registration.

¹¹ See Annex # 9

¹² Article 36 entitled the Legislative Assembly of Krasnodar Krai to give the Administration of Krasnodar Krai the right to adopt special order of registration to selected towns and districts of the region.

The RF Human Rights Ombudsman has not directly addressed the issue of Meskhetians in Krasnodar except for one individual case of passport issuance for a Meskhetian in 2001.

In conclusion, it can be said that Meskhetians, who for the most part were evacuated by USSR authorities in 1989 and were moving within one single country, can be considered as legally residing on the territory of the then RSFSR, now Russian Federation. They were indeed recognised, in most regions of the Federation, as Russian citizens under the 1991 RF Law on Citizenship. However, they are not considered as Russian citizens by the Krasnodar Krai authorities: they are not considered as legally residing in the territory of the Krai, are subsequently denied access to citizenship procedures and are maintained in a situation of de facto statelessness.

4. The international dimension: The Hague and the Vienna Process

The Program of Action adopted in May 1996 in Geneva at the Regional Conference to Address the Problems of Refugees, Displaced Persons, other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States recommended to UNHCR and other organisations concerned to pay attention to "formerly deported peoples" of the former USSR. The UNHCR is involved with the Meskhetian issue on the basis of its mandate on the prevention and reduction of statelessness. Since 1997, the UNHCR Moscow Office has implemented projects aiming at facilitating tolerance towards, and integration of the Meskhetians in Krasnodar Krai.

In 1998, the OSCE High Commissioner on National Minorities (HCNM) also addressed the problems of Meskhetians' return to Georgia. The OSCE HCNM in co-operation with UNHCR initiated the process of informal international consultations on the issues relating to the Meskhetians in the CIS countries. The initiative was also supported and sponsored by the Forced Migration Projects of the Open Society Institute (FMP-OSI). The first meeting took place in The Hague, the Netherlands on 7-10 September 1998. Participants included representatives of the governments of the Russian Federation, Georgia and Azerbaijan, as well as representatives of Meskhetians from these countries. The main goals of the meeting were to exchange first-hand information on the situation, to identify ways and means to overcome the problems currently facing the Meskhetians, and to establish a follow-up framework of activities¹³.

On 15-17 March 1999, the follow-up informal consultations also hosted by the OSCE HCNM, UNHCR and FMP-OSI took place in Vienna. Participants at the Vienna consultations identified the broad parameters of the problems relating to the Meskhetians (rehabilitation, repatriation, and regularisation of their status in their places of residence), but no concrete suggestions were put forward and agreed upon. The Russian delegation refrained from making any commitments concerning the legal integration of the Meskhetians in Russia and emphasised that the repatriation to Georgia should be the priority number one¹⁴.

¹³ The final document is in Annex # 10

¹⁴ The final document is in Annex # 11

The Kosovo crisis of March-June 1999 suspended the further consultative process. In practice, The Hague and Vienna meetings did not lead to any changes within Russia.

Georgia on its admittance to the Council of Europe in April 1999 acknowledged the obligation to adopt, within two years after its accession, a law permitting repatriation and integration, including the right to Georgian nationality, for the Meskhetian population deported by the Soviet regime, to begin implementation of this law within three years after its accession and complete repatriation of the Meskhetian population within twelve years after its accession. The law on Meskhetian repatriation has not been adopted within two years after Georgia's accession; the drafting is still in progress.

5. The courts' practice on issues related to the situation of Meskhetians in Krasnodar Krai

General considerations:

The exact statistical data on Meskhetian actions before the courts in Krasnodar Krai remains unknown as well how many cases were won or lost by the Meskhetians. The Meskhetians took actions on three main subjects, namely on recognition of their property rights, on residence registration and on recognition of Russian citizenship. The Meskhetians were relatively successful in litigation before 1997. Later on, since Nikolai Kondratenko was elected the governor of Krasnodar Krai in December 1996 onwards, in many cases the courts' decisions have not been in plaintiffs' favour. Because of the somehow political dimension attached to Meskhetians litigation cases, there have been some instances where the courts did not register nor did process claims submitted by Meskhetians. Also, there have been various instances where positive court decisions, especially pertaining to residence registration, were not enforced by the police (Passport and Visas Services). However, there are positive examples of judicial solutions to the existing problems.

Legalisation of property rights:

There were at least several dozens of actions for recognition of property rights for houses and plots of land attached, which had been purchased in 1989-91. According to Article 239 of the RSFSR Civil Code, which was in effect till 1996, the real estate sales in rural areas did not require a notary registration. The Meskhetians purchased their houses according to the accustomed practice, by way of a written agreement, certified by two witnesses. Later on the local authorities of Krasnodar Krai, in disregard of the law refused to register such private contracts. The courts found most of these sales legal and valid in accordance with the Civil Code, provided there was evidence that the contracting parties had fulfilled their obligations. These decisions provided for subsequent acquisition of registration at the place of residence.

Residence registration:

From 1994 onwards, Meskhetians started to litigate against denials of registration at the place of residence and many of them won the cases. The passport and visa services (PVS) were justifying their refusals to register Meskhetians by the lack of approval from the "commissions of migration control" under the district administrations. The "commissions of migration control" were turning down the Meskhetians' applications under the pretext that the Decision No.97 of the Krasnodar

Krai Minor Council from 12 February 1992 did not entitle the commissions to process Meskhetians' registration. In the case of Jafar Mursal-Ogly Tedorov vs the Passport and Visa Division of the Krymsk Department of Internal Affairs (21 June 1995)¹⁵ the Krymsk District Court established that Tedorov and his family had been residing since 1989 in his owned house at the settlement Varenikovskaya, that under Article 13 of the 1991 Law on Citizenship of the Russian Federation he should be recognised as having Russian citizenship and that under Article 1 of the 1993 Law on the Right of the Citizens of the Russian Federation to Freedom of Movement, Choice of Place of Stay and Residence within the Russian Federation, Tedorov had the right to choose his place of residence. The court ruled that the PVS refusal to issue Tedorov registration at the place residence owned by him substantially infringed his rights as an owner. The court obliged the PVS to register D.M.-O. Tedorov and the members of his family in his house, as being their place of residence.

The Krymsk District Court on 19 January 1998 recognised valid the transaction between Farman Pashaev and Valentina Popova on the sale and purchase of housing located at khutor Adagum, Krymsk district. In the case Farman Pashaev vs the Krymsk Passport and Visa Service, the Krymsk district court by its supplementary decision of 23 January 1998 obliged the Krymsk PVS to award F. Pashaev and his family registration at their place of residence¹⁶. The court considered as established that "F. Pashaev and his family arrived to khutor Adagum for permanent residence in March 1990, that is, prior to the [RF] Law on Citizenship, and acquired for private ownership the dwelling where he was currently residing with his family. Therefore, the Passport and Visa Service has no legally valid reasons for denying him *propiska* [sic]". By noting that he had established himself in Russia "prior to the RF Law on Citizenship", the court implicitly considered as established that Mr. Pashaev was a Russian citizen (by virtue of Article 13 of the law) and that, subsequently, the 1993 RF Law "On the Right of Citizens of Russian Federation to Freedom of Movement, Choice of Place of Stay and Residence within the Russian Federation" was applicable to him, whereby, as a Russian citizen, he had the right to chose his place of residence.

However, since 1997, the district courts and the regional court started to refer to the restrictive regional legislation on registration to turn-down claims submitted by Meskhetians, although residence registration can only be regulated by federal law. In many cases, the courts obliged the PVS to register at the place of residence the owners of a dwelling, but refused to do the same for the family members, referring to the "absence of evidence of family relationship". In other instances the Krasnodar Krai's regional court annulled decisions of district courts on residence registration that were favourable to Meskhetians.

Recognition of Russian citizenship:

Within the recent years, some Meskhetians tried to establish, through judicial proceedings, the fact that they were residing in Russia prior to the entry into force of the 1992 RF Law on Citizenship, in order to have the PVS recognise their Russian citizenship. In several instances, the courts avoided to render a decision on such law suits. For instance, in March 2001, the judge of the Krymsk district court refused to accept the law suit launched by the Eminov family in order to have established the

¹⁵ See Annex # 12

¹⁶ See Annex # 13

fact of their residence in Russia prior to 6 February 2002. The court considered that Meskhetians are temporary residents in Krasnodar Krai, so their status must be determined separately. After similar denial by the regional court in June 2001 to render a decision on the substance of the claim, the Eminov, who considered that their access to justice had been denied brought a complaint before the European Court on Human Rights under articles 6(1), 13 and 14 of the European Convention of Human Rights and Fundamental Freedoms and are awaiting a decision.

Still, by August 2002, the Meskhetians had won 26 cases on establishment of the legal fact of permanent residence in Russia on 6 February 1992 for further recognition of their Russian citizenship. For instance, in the case of *Gulboda Khalilova* the Krymsk district court (26 July 2001) established the legal fact of the applicant's continuous residence in the settlement of Varenikovskaya (Krasnodar Krai)¹⁷. The court referred to the declaration of two witnesses as well as to the certificate of house possession issued by the local Bureau of Technical Inventory. In the case of *Lachin Aydinov's* application on establishment of a legal fact (7 September 2001), the Krymsk district court on the basis of declaration of two witnesses established the fact of continuous residence of the applicant in the Krymsk district of Krasnodar Krai since 1989¹⁸. The Krymsk PVS refused to issue a Russian passport to these persons. Lachin Aydinov brought the complaint before the district court, but the court declined it on 6 May 2002. The action against this decision was brought before the Krasnodar Krai's regional court, which confirmed the decision of the district court. Currently, the case is pending on supervisory proceedings.

6. The position of the RF Supreme Court

The RF Supreme Court had the opportunity to pronounce itself on the claim of a Meskhetian (the *Akhmadov case*¹⁹, of 19 March 2000), which, raising questions pertaining to both registration and recognition of citizenship, can be considered as representative of other Meskhetian cases in Krasnodar Krai. Because of the general principles recalled by the Supreme Court on that occasion, the case deserves to be presented in some detail. This jurisprudence was confirmed most recently, in a decision presented at the end of this section.

The facts of the case:

The applicant was a former USSR citizen, who resided in Uzbekistan till June 1989. In August 1989, the applicant came to Checheno-Ingushetia, RSFSR, where he was registered at his place of residence. In 1990, the applicant settled in the Abinsk district of Krasnodar Krai. The same year, the applicant bought a house in Abinsk. In January 1997, this property transaction was registered by the Abinsk district court. In April 1997 the applicant applied to the Local Administration of Abinsk district for registration at his place of residence, i.e. at the house he legally owned. By its decision of 11 April 1997, the Local Administration rejected the application for registration at the place of residence. The applicant appealed this decision to the Abinsk district court but his appeal was rejected by decision of 22 May 1997, under which the district court opposed that the applicant, not being a Russian citizen, had no

¹⁷ See Annex # 14

¹⁸ See Annex # 15

¹⁹ See Annex # 16

legal ground, under the regional law, to be issued registration at his place of residence. The Deputy Prosecutor for Krasnodar Krai appealed the case before the second instance court, and, again, the case was dismissed. Finally, the case reached the RF Supreme Court.

According to legislation applicable (Government Regulation No.290 of 12 March 1997, extending to former USSR citizens the applicability of Government Regulation No.713 of 17 July 1995 on the rules for registration and cancellation of registration of citizens of the RF at places of stay or residence on the territory of the RF) and in view of the documents produced by the applicant, it can be argued that the applicant had a legitimate pretension to registration at his place of residence. However, the Supreme Court went beyond the legislation applicable to matters of registration, and analysed whether the grounds retained by the administration and the courts to deny registration (i.e. non-possession of Russian citizenship), were established²⁰.

The decision of the Supreme Court

First of all, the Supreme Court noted that, in support to his claim for registration, the applicant produced documents before the Abinsk District Administration, namely documents referring to his legal ownership of his house. These documents incidentally demonstrated that the applicant was residing in Abinsk, in his house, since 1990, i.e. that according to the 1991 Law on Citizenship (Article 13.1), he was indeed a Russian citizen by recognition (Article 13.1 establishes an automatic recognition of citizenship for all former USSR citizens residing permanently on the territory of the RF at the date of entry into force of the law, unless they declare their unwillingness to become Russian citizens).

The Supreme Court, by this reasoning, implicitly imposed a **duty of investigation** upon the administration (and the courts), which should have noticed that the documents produced in support of the registration claim incidentally established that the applicant was a Russian citizen (and although the latter maybe did not know it or even claimed for citizenship). The Administration (and the courts) could not ignore the implication of such documents and the legal basis to reject the registration claim (absence of Russian citizenship) was vitiated.

Secondly, the Supreme Court provided a sensible interpretation of the concept of "permanent residence" as a requirement to apply for Russian citizenship under the 1991 citizenship law. The administration and the courts, in their respective decisions, had taken the restrictive approach that if a person was not holding registration at the place of residence at the moment of entering into force of the citizenship law, then the "permanent residence" requirement was not satisfied and the person is not entitled to Russian citizenship (under the recognition proceedings). **The Supreme Court**

²⁰ One can maybe regret that the Supreme Court did not also envisage the pretension to registration on the basis of the applicable legislation on registration, independently from the fact that the applicant is or not Russian citizen. A contrario, if the applicant had not been a Russian citizen according to Article 13 of the citizenship law (e.g. in case he had arrived to Russia after the date of entry into force of the citizenship law), what would have been the legal analysis of the Supreme Court ? Maybe the significance of the Supreme Court's decision would have been broader if it had ruled on the registration claim independently from the question of citizenship (which was used by the administration in this case as a pre-condition, apparently without envisaging alternative grounds).

reminded that "registration at the place of residence" is not the only way to establish "permanent residence". The Supreme Court found that the person actually permanently resided on the territory of the Russian Federation (as established by the validation of the property transaction and by the certificate of the chairman of the residential committee certifying that he and his family were residing in Abinsk), although he was not formally registered at his place of residence, and that he therefore was a Russian citizen.

Confirmation of the Supreme Court's jurisprudence

Recently the RF Supreme Court confirmed this position in another decision concerning an ethnic Armenian refugee from Baku, Azerbaijan, case *Bagiyeva v. UVIR GUV D Moscow* of 31 October 2002²¹. Ms. Bagiyeva fled Azerbaijan SSR in 1989 to Russia and since then resided in the Russian Federation. Ms. Bagiyeva applied to the competent Moscow department of interior for registration (UVIR) for the issuance of a document confirming her Russian citizenship (sticker to the passport). Her request was rejected (by letter of 20 February 2001) on the ground that, not being in possession of residence registration in Moscow as of 6 February 1992, she did not qualify under the citizenship recognition procedure of the 1991 citizenship law. The reply from the UVIR further recommended that the applicant establish through the court of law the fact of her residence in Russia on 6 February 1992. This negative decision was confirmed by the Moscow Tverskoy inter-municipal court on 21 September 2001 and by the Moscow City Court on 26 December 2001.

The Supreme Court reminded its position, that Article 13 of the citizenship law "does not link the recognition of former USSR citizens as RF citizens to the availability of residence registration on the territory of the Russian Federation". In this respect, the Supreme Court retained the facts that the applicant was registered by the USSR Ministry of Labour as a person who was forced to leave Azerbaijan and the mention of her name in the list of persons staying in the "Yuzhnaya" hostel as "evidence of the applicant's permanent residence in Russia since January 1989". Importantly, the Supreme Court stated that "recognition of the Russian citizenship does not require any action from citizens or a decision on this by any State organ". The implication of this statement is that it is not required to establish through special judicial proceeding the fact of permanent residence. The availability and presentation of documents confirming residence in Russia is sufficient. The negative decision of the Moscow interior organs, which did not take into consideration such documents, was found illegal. The Supreme Court requested the competent Moscow interior organs to issue the applicant a document confirming her Russian Federation citizenship.

7. Recent legislative and administrative developments in Krasnodar Krai

The administrative pressure on Meskhetians has increased since the winter of 2001/2002. The Order No.953-p of the Head of Krimsk Town and District of Krasnodar Krai, dated 19 November 2001²², "On measures aimed at the reinforcement of migration control in the Krimsk territory", referring to the situation of Krasnodar

²¹ See Annex # 27

²² See Annex # 17

Krai as a border area, to the absence of federal normative act regulating migration process in Russia and expressly referring to Meskhetian Turks, established a number of concrete measures to be applied to persons not holding registration at the place or residence: no provision of plot of lands (point 1 of the Order), non-issuance of authorisations to cultivate plots of land concomitant to houses (point 2), non-registration of vehicles and non-issuance of driving licences (point 4), non-registration of private deals (point 5), and non-registration of "rights to ownership and other property rights" (point 6).

On 20 February 2002, the Legislative Assembly of Krasnodar Krai adopted a new Resolution No. 1363-II, "On Additional Measures to Decrease Tensions in Interethnic Relations in the Areas of Compact Settlement of Meskhetian Turks Temporarily Residing on the Territory of Krasnodar Krai"²³. Under this resolution, the Regional Administration of Krasnodar Krai is recommended to request the RF Ministry of Foreign Affairs "to resume negotiations with Georgia in order to facilitate the return of Meskhetian Turks to their country of origin". The resolution also provides for the suspension of registration of "stateless persons", envisages more intensive passport and residence checks, as well as strict administrative control over land possession in the places of "compact settlement of ethnic groups".

The Resolution of the Legislative Assembly of Krasnodar Krai No.1381-P, of 27 March 2002, "On measures to strengthen control over migration and administrative expulsion of persons staying illegally on the territory of Krasnodar Krai"²⁴ provides for the Administration of Krasnodar Krai to "assign funds from the regional budget to cover expulsion costs of persons staying illegally on the territory of Krasnodar Krai", and to "make transport arrangements as appropriate for the administrative expulsion of persons staying illegally in Krasnodar Krai", following requests submitted by the competent bodies of interior. The Resolution further requires from the Krasnodar Krai Main Directorate of Interior to "apply administrative pressure [to persons illegally staying in Krasnodar Krai] in accordance with the legislation on sojourn and residence in Krasnodar Krai".

Such resolution was following public statements made in March 2002 by the Governor of Krasnodar Krai, whereby the latter announced that the Administration of the Krai had designed a plan to establish "filtration points" to collect illegal migrants, namely "Meskhetians" and "Armenians", in view of their further deportation to Uzbekistan or repatriation to Armenia, respectively. It was further announced that administrative fines for violating local regulations on registration would be increased to RUR 6,000 (approx. USD 200)²⁵. On 26 March 2002, the UNHCR Regional Office in the Russian Federation issued a press release expressing "concern on the current situation of the Meskhetians in Krasnodar Krai". UNHCR further conveyed that "the recent developments, which are taking place in Krasnodar Krai, may lead to the deterioration of the situation and increase discrimination towards the Meskhetians population settled in that region"²⁶.

²³ See Annex # 18

²⁴ See Annex # 19

²⁵ See "The Governor of Kuban announced a campaign against ethnic migration" in the regional edition of the *Izvestia*, dated 19/03/02. See also "Illegal migrants are deported from Kuban" in the regional edition of the *Izvestia*, dated 28/03/02.

²⁶ See Annex # 20

The new law of Krasnodar Krai "On Sojourn and Residence on the Territory of Krasnodar Krai" No.460 of 27 March 2002²⁷ stipulates a restrictive and permission-based order of residence and sojourn registration. The law limits the terms of temporary stay in the Krai for Russian nationals to six months, renewable, and for foreigners to 90 days. It allows residence registration for Russian citizens without special permission only if a person moves in his/her own dwelling or a dwelling occupied by his/her relatives or a dwelling rented from a legal person or provided by the municipal authorities. The place of residence shall meet the requirements related to the number of square metres per person as established by the housing legislation of the Russian Federation. In other cases a special permission from the regional authorities is required. Residence or stay for more than 90 days of a foreign national or a stateless person also requires a permission of the regional commission of migration control and of the Krasnodar Krai's Head Directorate of Internal Affairs. The law introduces administrative expulsion as a sanction for living in the Krai without residence registration.

In practice, Meskhetians have been denied renting plots of land from the local agricultural enterprises. The Meskhetians are also barred from selling vegetables even from plots of land attached to their houses. The local authorities refuse to give them papers certifying that they possess these plots of land, and the police frequently imposes fines for "illegal" commerce. The Meskhetians are also penalised for "unlawful" occupation of the land and of the houses. They cannot pay the administrative fines, and the local courts have already seized the property (including livestock, food, and cutlery) of several families.

The Krasnodar Krai's public prosecutor lodged objections against the above-mentioned resolutions No.1363 of 20 February 2002 and No.1381 of 27 March 2002 and against the law No 460 of 27 March 2002. As a consequence, the Krasnodar regional legislature abrogated Resolutions No. 1381 and No. 1363, and slightly amended the law No. 460. However, the provisions concerning residence and sojourn registration remained unchanged.

8. Situation of Meskhetians in regard to relevant international and regional human rights instruments

- **International Covenant on Civil and Political Rights**

The general attitude of the authorities to the Meskhetians in Krasnodar Krai contradicts Article 2 of the ICCPR which stipulates that each party to the Covenant undertakes "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, (...), national or social origin (...)" as well as "to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity (...)". Arbitrary detentions, administrative arrests and "passport inspections" are practised in violation of Articles 9 (1), 16 and 17 of the ICCPR. Denial of the right to liberty of movement and freedom to choose his

²⁷ See Annex # 21

residence contradicts Article 12 (1) of the Covenant. Systematic refusals in registration of marriages, impediments in issuance of birth certificates and/or non-recognition of fatherhood as well as systematic barring the Meskhetian families from access to health care, social security and pre-school education for minors contradict Articles 23 (2) and 24. The general treatment of the Meskhetians is in violation of Article 26 (prohibition of discrimination).

- International Covenant on Economic, Social and Cultural Rights

Non-recognition of the Meskhetians' right to work means a violation of Article 6 (1) of the ICESCR. Denial of access to social security contradicts Article 9; the recent policies aimed at barring the Meskhetians from any sources of income violate Article 11, i.e. the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and the fundamental right of everyone to be free from hunger. Refusals in registration of marriages, impediments in issuance of birth certificates and/or non-recognition of fatherhood as well as systematic barring the Meskhetian families from access to health care and social security for mothers and minors contradict Article 10 (1). Obstacles for getting education violate Article 13 of the ICESCR. Such pretext for non-recognition of all these rights as the lack of local residence registration is not compatible with the nature of these rights and thus contradicts Article 4 of the Covenant.

- The European Convention for the Protection of Human Rights and Fundamental Freedoms.

Basic human rights of the Meskhetians in Krasnodar Krai are denied under the pretexts that these people are stateless and do not have residence registration. Article 1 of the ECHR stipulates that the States should preserve the rights and freedoms guaranteed by the Convention to persons under their jurisdiction, i.e. irrespective of their citizenship. These rights and freedoms include the right to liberty and security of the person (Article 5.1) and the right to take proceedings by which the lawfulness of his detention shall be decided speedily (Article 5.4). Systematic denial of access to justice, i.e. arbitrary refusal to commence Meskhetian lawsuits in courts means violation of the right to a fair trial (Article 6.1) since "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". This practice is also in direct violation of Article 13 stipulating the right to an effective remedy before a national authority. Systematic refusals to register marriages, issuance of birth certificates and/or non-recognition of fatherhood contradict Article 8 (the right to respect for private and family life) and Article 12 (the right to marry). The general treatment of the Meskhetians contradicts Article 14 (prohibition of discrimination).

Systematic impediment to enjoyment of possessions, primarily of their property rights to real estate means violation of Article 1 of Protocol No 1 to the ECHR. Non-recognition of property rights under such pretext as the lack of residence registration are not justified by the public interest and are not subject to the conditions provided for by law and by the general principles of international law. Denial of the right to education violates Article 2 of Protocol No 1. Virtual denial the right to liberty of movement and freedom to choose the residence contradicts Article 2 of Protocol No 4 to the ECHR since the Meskhetians stay legally within the Russian Federation. The campaign of

expulsion from Krasnodar of the people without local residence registration is in direct violation of Articles 3.1 and 4 of Protocol No 4.

- Framework Convention for the Protection of National Minorities

Since the Russian Federation on its ratification of the FCNM expressed its non-recognition of any restrictive interpretations of the term "national minorities" not envisaged by the FCNM, the Meskhetians in Russia must be regarded as protected by the Convention. The general discriminatory treatment of the Meskhetians in Krasnodar Krai constitutes a blatant violation of Article 4 (1) of the FCNM, which stipulates that "the Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law" and prohibits any discrimination based on belonging to a national minority. Campaigns for expulsion or resettlement of the Meskhetians inspired, run or sponsored by the state, contradict Article 6(1). Official toleration of or sponsorship to the Cossack units practising violence or harassment against the Meskhetians and other minorities are in a direct violation of Articles 6(2) and 16. Barring the Meskhetians from getting education means violation of Article 12(3) of the FCNM, which envisages that "the Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities".

- European Convention on Nationality

The Russian Federation has signed but not yet ratified the European Convention on Nationality. Since the Meskhetians in Krasnodar Krai with minor exceptions are subject to Article 13, part 1 of the Russian citizenship law of 1991, they must be regarded as de jure Russian nationals. They cannot be treated as stateless persons as a result of the Russian government not recognising them as RF nationals, which is contrary to its internal legislation. Some principles of the Convention are relevant to the situation. Article 4 stipulates that "the rules on nationality of each State Party shall be based on the following principles: (a) everyone has the right to a nationality; (b) statelessness shall be avoided; (c) no one shall be arbitrarily deprived of his or her nationality". Article 5 (1) envisages that "the rules of a State Party on nationality shall not (...) include any practice, which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin". Article 6 (2) provides that children born on the territory of a State Party who do not acquire at birth the nationality of any other State shall be granted its nationality either at birth ex lege or subsequently by application. In accordance with Article 18 (1), "in matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in Articles 4 and 5 of this Convention (...) in particular in order to avoid statelessness".

Part II. Possible durable solutions for Meskhetians in Krasnodar Krai

The term "solution" shall mean in this context solving the problem of citizenship, residence registration, recognition and redress of violated rights (property rights to the dwellings) and safeguarding the safety of Meskhetians in Krasnodar Krai as well as in other places where they are effectively disenfranchised.

1. Recognition of Russian citizenship under the 1991 RF Law on Citizenship

The Meskhetians in Krasnodar Krai were Soviet nationals, they permanently resided on the Russian territory on the date the RF Law "On Citizenship of the Russian Federation" of 1991²⁸ took effect (6 February 1992), and within one year after that date they did not declare unwillingness to be Russian citizens. Coming to Russia, they travelled within one country and their stay in the RSFSR cannot be interpreted as "illegal". Therefore, they comply with the requirements of Article 13, part 1 of the 1991 Law on Citizenship and must be deemed to have acquired Russian citizenship by way of "recognition". In 1992, the Russian legislation at large, the citizenship law and the by-laws to the citizenship law did not contain any definition of the term "permanent residence". Only the RSFSR Civil Code contained the definition of "place of residence" as a place where "a person permanently or predominantly resides". Obviously, almost all Meskhetians who lived in Krasnodar in 1992 did not have any other place of residence and owned dwellings, so their residence was "permanent".

Although the 1991 Citizenship Law lost its force in May 2002, when the new RF citizenship law was adopted, the legal relations established under it remain effective. Those administrative instances of denial of access to the citizenship procedures that are in contradiction with the law cannot prevent that persons who became Russian citizens by operation of the 1991 law remain citizens: Meskhetians legally residing in Russia on 6 February 1992 are Russian citizens, notwithstanding the fact that local authorities may have unduly refused to acknowledge their Russian citizenship and document them accordingly.

In practice, up to 2,500 Meskhetians in Krasnodar Krai have managed to acquire Russian citizenship. They employed the simplified procedure of Article 18 (c) designed for former USSR citizens, and almost none had citizenship recognised under Article 13, part 1 of the law. Some of these people acquired their citizenship in Krasnodar Krai after obtaining residence registration by a court decision; some, who were registered at their place of residence in other regions of the Federation, acquired citizenship there, while de facto living in Krasnodar Krai; some, who possessed "propiska" in Uzbekistan or in Azerbaijan, applied to the Russian consulates in these countries. Since 1998, the Krasnodar Krai Directorate of Internal Affairs repeatedly stated that those Meskhetians who could establish the fact of their residence in Russia on 6 February 1992 by judicial means might be deemed Russian citizens. Positive practice resting on this mechanism is still unknown in Krasnodar Krai. However, in several dozen cases in Moscow some former residents of Azerbaijan (ethnic Armenian refugees from Azerbaijan) who had arrived in the RSFSR before 1992 were recognised Russian citizens by the courts in 2001-2002²⁹.

Court litigation for recognition of citizenship remains an option for Meskhetians in Krasnodar Krai. However, because of protracted judicial procedures, combined with administrative obstacles, this is not an effective remedy for the community at large. A solution envisaging group legalisation, i.e. recognition of property rights, registration at the place of residence and recognition of citizenship, should also be considered. "Group legalisation" in the sense of granting a certain status to a definite category of population automatically (ex lege) or of establishment of a simplified procedure for

²⁸ See Annex # 22

²⁹ See the case of Grigorian et al in the # Annex 23

the granting of such status, have been practices in many countries. One should mention "immigration amnesties" in some EU States or the accelerated and simplified procedure for renouncing Uzbek citizenship and acquiring Ukrainian citizenship for Crimean Tatars in Crimea established by the Uzbek-Ukrainian agreement of August 1998. The Russian legislation and administrative practice is also familiar with collective definition of a status. Article 14 of the RF Law "On Rehabilitation of Victims of Political Reprisals" of 1991 envisages that the inhabitants of the Russian Federation deprived of the RF citizenship notwithstanding their free will regain their citizenship. Correspondingly, Article 20, part 2 of the 1991 citizenship law stipulated that "former RSFSR citizens deprived of citizenship or those who have lost it without their free will, are considered to have their RF citizenship restored".

The Presidential Decree No.2007 "On Some Matters of Implementation of the Law of the Russian Federation 'On Citizenship of the Russian Federation' of 24 October 1994³⁰ established a mechanism for collective recognition of citizenship. Making express reference to part 1 of Article 13 of the 1991 RF Law on Citizenship, the decree specifies that "former citizens of the RSFSR who have returned to reside in Russia before the entry into force of the Law of the Russian Federation on the Citizenship of the Russian Federation, on 6 February 1992" shall be considered as Russian citizens. The decree further clarifies that this is true of "former citizens of the RSFSR who have no confirmation of the acquisition of the citizenship of the Russian Federation (...) and who continue to reside on the territory of Russia on legal grounds".

This decree was meant to cover the situation of citizens of the RSFSR who had cancelled their propiska in the RSFSR in order to establish permanent residence in another republic of the USSR, but who returned to Russia before 1992 without, however, succeeding to obtain propiska in Russia by 6 February 1992. In the decree, the reference to lack of "confirmation of the acquisition of citizenship" can only mean lack of propiska (or residence registration) since, at the time, the stickers affixed by the authorities onto USSR passports to certify citizenship of the Russian Federation were not in use yet. Hence, while the decree envisages the situation of former RSFSR citizens who returned to Russia and continue to reside there "on legal grounds", it implies that there is no exclusive link between the notion of legal residence and propiska. This presidential decree is not applicable to Meskhetians, since they cannot formally be considered as having "returned" to Russia. However, it may be viewed as a model for a solution.

It should be noted that the Russian legislation envisages an administrative procedure to determine, in unclear cases, recognition of RF citizenship under Article 13, part 1. Item 7 of the RF Ministry of Interior's Order No.330, dated 30 June 1994, establishes a procedure for fact-finding and determination of whether a person belongs to Russian citizenship³¹. Hence, the judicial procedure is not the only way to establish facts of legal importance. This act does not contain any restriction in regard to means of providing evidence of permanent residence, hence possession of citizenship of the Russian Federation.

³⁰ See Annex # 24

³¹ See Annex # 25

Ultimately, "A child born on the territory of the Russian Federation of stateless parents shall be a citizen of the Russian Federation" (Article 17.2 of the 1991 RF Law on Citizenship). Therefore, if the denial of recognition of Meskehtians as Russian citizens was to persist, and in the absence of any alternative citizenship, the consequence is that all Meskehtian children born in Russia since 1992 are Russian citizens and, by law, shall be issued with RF internal passports when they will reach the age of 14.

2. The Meskhetians in regard to the (new) 2002 RF Law on Citizenship

In theory, the Meskhetians in Krasnodar Krai may get access to Russian citizenship under the new RF Law "On Citizenship of the Russian Federation" of 31 May 2002³². Article 14, part 1(b) envisages a simplified naturalisation procedure for former Soviet nationals who still reside within the former USSR but who have remained stateless. As opposed to foreigners applying for naturalisation under the general procedure of Article 13 of the law, persons eligible to apply under the simplified procedure are exempted from the five-year residence requirement. However, they must, as other foreigners, be in possession of a *residence permit*, as well as have a legal source of income and produce a document proving good command of the Russian language³³.

A residence permit can be applied for, according to the 2002 RF Law on Foreigners, by foreigners residing in Russia, during the period of validity of their permission for temporary residence (Article 8 of the Law on Foreigners). The issuance of a permission for temporary residence is normally effected in the framework of annual quotas established by the RF Government (Article 6.1 of the Law on Foreigners), which quotas are based on both the needs for foreign labour force in the various subjects (regions) of the Federation as well as the demographic situation of the said subjects. However, under Article 6.3(1) of the Law on Foreigners, a permission for temporary residence can be issued outside the normal quotas in case the applicant "was born on the territory of the RSFSR and was in the past a citizen of the USSR, *or if he was born on the territory of the Russian Federation*". This provision would seem to allow those Meskhetian children who were born in RSFSR (and then Russia) since 1989 (as being the date of their resettlement from Uzbekistan) to first obtain permission for temporary residence, then subsequently residence permit and ultimately apply for Russian citizenship. There does not seem to be any provision, under the 2002 Law on Foreigners, to allow for Meskhetians who were *not* born in the RSFSR or Russia, but who are de facto residing in Russia (without sojourn or residence registration), to obtain a residence permit.

A more viable procedure for Meskhetian children to acquire Russian citizenship may lie under Article 12 (d) of the new 2002 RF Law on Citizenship, whereby a child shall acquire the citizenship of the Russian Federation at birth if on the date of his birth

³² See Annex # 26

³³ These two last requirements (legal source of income and good command of Russian) may hamper Krasnodar Meskhetians from access to citizenship. Many Meskhetians may have lost their diplomas when fleeing Uzbekistan. Many young Meskhetians in Krasnodar Krai on graduation do not obtain school diplomas but are just given certificates of school attendance. Almost all Meskhetians in Krasnodar Krai do not have officially recognised jobs; besides, the taxation agencies refuse to register them as taxpayers.

“his/her both parents residing on the territory of the Russian Federation are foreign nationals or stateless persons, provided that the child was born in the territory of the Russian Federation and the States whose nationals his/her parents are do not grant him/her their nationality”. However, Article 3 of the law, defines the term “residence” as “a person’s lawful residence within or outside the territory of the Russian Federation”. Hence, it may be argued that the first requirement under Article 12(d) quoted above, according to which “his/her both parents [are legally] residing on the territory of the Russian Federation” is not met.

Conclusion

- The overwhelming majority of Meskhetians who were evacuated from Uzbekistan to the RSFSR in 1989 or who fled spontaneously afterwards have since then been recognised as Russian citizens or acquired Russian citizenship, throughout the Russian Federation, except in Krasnodar Krai;
- It is appreciated that the Krasnodar Krai region, due to its geographical location, its tempered climate and its fertile agricultural land, is a place of destination for many internal as well as foreign migrants;
- At the same time, the RF Constitution and the federal legislation shall be uniformly applied throughout the Federation and have predominance over local regulations;
- There are indeed positive examples and practice in Krasnodar Krai of Meskhetians having acquired Russian citizenship and/or having been able to legalise their residence situation or the status of their property, although the majority have been unable to legalise their situation;
- In this respect – and provided political will is not lacking – a legal mechanism does exist under applicable federal legislation to legalise the situation of Meskhetians in Krasnodar Krai, that is, recognition of RF citizenship acquired under (Article 13 of) the 1991 RF Law on Citizenship. Under the new citizenship law, only Meskhetian children born in RSFSR or Russia may have a chance to acquire RF citizenship, either under the cumbersome and uncertain procedure of Article 14 part 1(b) or under the assumption that their parents are de jure stateless – Article 12 (d) – which they are not.
- Alternatively, there are precedents in the Russian Federation for collective legalisation of defined population groups (see part II, section I above);
- Ultimately, the discrimination exercised against Meskhetians as well as the denials of their rights and/or citizenship may lead to violation by Russia of international or regional instruments it is a State Party to: it would be a paradox that Russia, whose Constitution is exemplary in many respects, be found at odds with international human rights’ instruments not by its own fate but because of one of its subjects;
- Finally, while the right of Meskhetians to return to Georgia should be enforced, such a right should not be exclusive, but independent, of the right of Meskhetians to legalise their situation in their place of current residence: positive practice of the Russian Federation in this regard would only re-enforce its moral standing in the region as well as vis-à-vis the international community and call for accrued pressure onto Georgia to respect its own commitments.

