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**“Emerging issues of access to justice for
vulnerable groups, in particular:
- migrants and asylum seekers;
- children, including children perpetrators of crime”**

**Report presented by the Minister of
Justice of the Russian Federation**

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Issues of access to justice for certain groups, in particular migrants and asylum seekers, as well as children, including children perpetrators of crime, are drawing strong attention lately, since they are hot-button issues of current importance for our society, and very much discussed ones at that, which is quite natural.

The Russian Federation is party to a number of international legal instruments designed to protect the rights and fundamental freedoms of man and citizen, in particular: the International Covenant on Civil and Political Rights of 16 December 1966; the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985; the 1989 Convention on the Rights of the Child, and other documents.

It should be noted that under the Constitution of the Russian Federation, the generally recognised principles and norms of international law and international treaties form a constituent part of the Russian legal system.

Certain provisions of fundamental documents of international law in the field of protection of the rights and freedoms of man and citizen are implemented in the Constitution of the Russian Federation, which declares the right of any person to apply for protection of his or her violated rights and freedoms in court.

Under the Constitution of the Russian Federation, the law also protects the rights of all victims of crime and abuse of power, irrespective of their age and citizenship; the right to apply before the judicial authorities for protection of violated rights and freedoms is granted for any person and the courts are committed to consider such claims on the merits.

These constitutional principles were further implemented in the laws of the Russian Federation. Thus, the legal status of foreign citizens, including migrants, is regulated by the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" that grants the right of foreign citizens to apply before the court for the restoration of their violated rights.

At the same time it should be noted that the migration processes in present-day Russia are of a spontaneous, and in many respects uncontrolled, character, which influences negatively the economic, social, demographical, ethno-cultural and other processes in the Russian Federation on the whole as well as in some of its regions. In this connection, there arises a need to form a new field of legal regulation in the Russian Federation - the field of migration relations.

The general concept of "migrant" is absent from the Russian laws, which on the whole does not impede the legal regulation of the status of certain separate classes of migrants, because the law uses the definitions of such classes of migrants as "refugee", "person forced to displace", "asylum seeker", "expatriate employee", "foreign citizen registered as a self-employed entrepreneur", and others.

Nevertheless, we believe that the definition of the concepts of "migration" and "migrant" at the legislative level is needed, since this would clearly determine the subject of legal regulation of migration laws as well as the scope of subjects of migration relations.

One of the guidelines in the development of Russian laws in the field of population migration is the improvement of the migrants' legal status.

On the whole, the Russian laws in the field of migration correspond to the international principles and norms formalised in the 1951 UN Convention "On the Status of Refugees", its 1967 Protocol relating to the status of refugees, and some other international legal acts and norms.

Nevertheless, certain provisions of the Federal Law "On Refugees" need to be improved in connection with the growing threat to the country's national security, which is related to the problem of illegal migration.

Unfortunately, the situation often occurs these days that an asylum seeker in fact avoids getting refugee status in the territory of the Russian Federation, with the purpose of acquiring this status in another country, which is in his/her opinion a more attractive one.

This is confirmed by a certain decrease in the number of applications of foreign citizens for asylum which were submitted directly on entry into the territory of the Russian Federation; moreover, some illegal migrants who had initially entered our country legally, only declare their intention of getting asylum in Russia after the law enforcement bodies have discovered the facts of violations by them of the rules of stay in the territory of Russia.

To detect such persons, Russia must take the path of tightening its immigration laws and enhancement of controls over the stay of foreign citizens in its territory. Otherwise, the tightening of the Western countries' migration regulations will lead to the territory of the Russian state becoming a staging post for illegal migrants, including asylum seekers who declare no intention to be recognised as refugees.

Currently, the issue of creating special juvenile courts in the Russian Federation for considering cases involving minors remains controversial; the creation of such courts is provided in the 1989 Convention on the Rights of the Child, in Article 40, where it is stated that "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law".

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", 1985) contain similar provisions with the recommendation to States "that efforts shall be made to establish a set of laws, rules and provisions specifically applicable to juvenile offenders, institutions, and bodies entrusted with the functions of the administration of juvenile justice".

There are no special courts dealing with criminal cases involving juveniles in the Russian Federation, as in some other foreign countries. However, such cases are tried, as a rule, by judges specialising in dealing with these cases.

In our country there is a mixed court-administrative model of justice for juvenile cases. This model includes courts of general jurisdiction and administrative commissions for juvenile cases and the protection of their rights. Under this model, the courts of general jurisdiction try cases in respect of juveniles who have attained the age of criminal liability (14 years of age), but these courts apply special procedures and impose more lenient sentences.

The cases in respect of juvenile offenders who have not attained the age of criminal responsibility are tried by commissions for juvenile cases and the protection of their rights, which are established by local authorities.

Laws on criminal procedure of the Russian Federation provide for special court procedure for persons who have not attained the age of 18 at the time of commission of the crime.

Russia's criminal legislation provides for special measures of penal treatment in respect of juveniles, which differ from those applicable to adult offenders. For example, a minor who has committed a petty crime or a crime of medium gravity may be absolved from criminal liability if it is established that his/her improvement may be achieved by using compulsory measures of educational impact (caution, transfer to the parents' supervision or persons who act for the parents, imposition of a duty to make amends for the damage done, restriction of leisure, etc.).

Moreover, the Russian Federation has special bodies and authorities for enforcing sentences imposed on minors. In particular, minors serve the sentence in the form of deprivation of liberty in special correctional institutions separately from adults. In addition, less strict conditions for serving their sentences may be set for them (living in dormitories outside the correctional institution without guard under the supervision of the institution's administration; wearing civil clothes; short meetings with their relatives without limitation on the number of such meetings, etc.). Convicted minors have the possibility to receive education or vocational training while serving their sentences.

Russia's entry into the European community, the Council of Europe's recommendations on the observance of harmonised European penitentiary rules and standards for the treatment of prisoners and convicted persons, including minors, have made a significant contribution to changing Russian legislation and bringing the organisation of enforcement of sentences closer to international standards. However, convicted minors have more problems while being in the penitentiary system than other convicts, and the serving of sentences in places of deprivation of liberty by convicts who have committed crimes at the age of 14 to 18 affects them especially negatively.

The right to access to justice is closely connected with the right to professional legal assistance which is one of the fundamental human rights set forth both in international legal acts and in the Constitution of the Russian Federation.

The Russian criminal procedure legislation sets forth the grounds for the obligatory participation of a defender in the preliminary investigation and court proceedings if the suspect (accused person) is a minor.

The absence of a defender at any stage of the proceedings before imposing a sentence, if any of these grounds are present, entails an absolute overturning of the sentence.

However, the obligatory participation of a defender in juvenile cases ends from the moment of the conviction of the minor. At the same time, the minor may disagree with the sentence. As practice shows, most convicts' questions arise regarding appeals against the sentence, and the minor needs the aid of a lawyer. In this connection it is necessary to further improve the Russian criminal enforcement legislation.

One of the top priorities of the Russian Federation is to find a solution to the problem of openness and transparency of the judiciary thereby ensuring the rights of citizens to an accessible, open and fair trial.

Lately an improvement of the legislation in the field of the judiciary has been achieved and a number of normative acts which regulate the procedure and the measures ensuring the protection of personal rights and accessibility to justice have been adopted, in particular for vulnerable groups, aiming at improving the effectiveness and quality of court proceedings and increasing the credibility of justice.

In conclusion, it should be noted that finding solutions to the existing problems of access to justice will contribute to the protection of human rights and basic freedoms and the reduction of the crime level in general.

