

Background information on the Situation in the Republic of Uzbekistan in the context of the Return of Asylum Seekers

Introduction

1. In the interest of avoiding refoulement and orbit situations and promoting international co-operation for the protection of refugees, the return of applicants who have or could have found protection in another country should take place in accordance with arrangements agreed among the States concerned, to determine which State is responsible for considering an application for asylum and for granting the protection required. Agreements providing for the return by States of persons who have entered their territory from another contracting State in an unlawful manner (readmission agreements) should not be used for this purpose unless they explicitly provide for the protection of refugees.¹ If nevertheless applied to asylum seekers, the application of such agreements should have due regard for their special situation.

2. UNHCR further considers that, in the absence of any formal agreement between States to this effect, the return of a refugee or an asylum seeker to a country where he or she found or could have sought protection, should not take place unless certain conditions relating to the person's safety and treatment in that country are met. UNHCR has identified some factors that should be carefully considered, in each individual case, when determining whether the return of a refugee or an asylum seeker to a particular country should take place. These factors, which include both formal aspects and the practice of the State to which return is contemplated, are: observance of basic recognised human rights standards for the treatment of asylum seekers and refugees, in particular the principle of non-refoulement; readiness to readmit returned asylum-seekers and refugees, consider their claims in a fair manner and provide effective and adequate protection, including treatment in accordance with basic human rights standards.

International Legal Framework

3. The Republic of Uzbekistan is not a State Party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. However, in November of 1999, the President of Uzbekistan signed the Charter for European Security, which in its paragraph 22 contains a commitment by signatory States to respect the right to seek asylum and to ensure the international protection of refugees, as set out in the 1951 Convention and its 1967 Protocol. The commitment is of purely political nature and does not constitute a legally binding instrument.

¹ UNHCR notes that bilateral readmission agreements have become the main legal instruments for co-operation among European States to secure the readmission to a Contracting State of its nationals or permanent residents who have entered the territory of another Contracting State in an unlawful manner. However, these agreements do not specifically concern themselves with the special situation and circumstances of asylum seekers and, as such, do not impose on the Contracting Parties an obligation to ensure that a request for asylum is received and examined by one of them.

4. Uzbekistan acceded to the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights on 31 August 1995; the Convention Against Torture on 31 August 1998; the Convention on Elimination of All Forms of Discrimination Against Women on 6 May, 1995; the Convention on Elimination of All Forms of Racial Discrimination on 31 August, 1995; the Geneva Conventions relative to the Protection of Civilians in Time of Armed Conflicts, and additional Protocols on 3 September, 1993; the Convention on the Rights of the Child on 9 December, 1992.

5. Under the Preamble of the Constitution of Uzbekistan, the universally recognised standards of international law take precedence over national legislation in case of conflict. However, the Constitution does not mention that norms of international law are directly applicable and in practise, in case of a conflict between international law and national legislation, national Courts always base their decisions on the norms national legislation.

6. Uzbekistan has not signed any readmission agreement. Within the CIS, Uzbekistan is a member to the “Agreement on the Movement of CIS citizens within the CIS Territory without Visa” (Minsk agreement) of October, 1992. This agreement foresees in its Article 2 that citizens of the CIS countries, which have signed the Agreement, have the right to enter, leave and move within the territory of these States without visa. This visa-free stay is, however, limited to 45 days. Furthermore, for reasons of national security, Uzbekistan has limited the scope of the agreement (like most of the countries in the region) and established a visa regime with Turkmenistan, Kyrgyzstan and Tajikistan.

National Legal Framework

7. There is no Law on Refugees in Uzbekistan and the legislation of Uzbekistan does not contain any procedure for obtaining refugee status or asylum. The only references to the institution of asylum are contained in the Criminal Code of the Republic of Uzbekistan of 1994 and in the Constitution of Uzbekistan, which was adopted in 1992. Art. 223 of the Criminal Code foresees that “foreign citizens and stateless persons, who have arrived illegally in Uzbekistan may be exempted from the visa and registration obligations, if they have applied for political asylum to the President, as foreseen under the Constitution of the Republic”. However, since the Constitution does merely state that “the President of the Republic shall rule on granting political asylum”², without stipulating norms for an application procedure, Article 223 of the Criminal Code remains factually idle. In other words, Article 223 of the Criminal Code cannot be invoked, as the Constitution does neither foresee a right to apply for asylum nor a procedure to file an application.³

² Article 93, No 19.

³ Such norms and the necessity to introduce a procedure are, for instance, stipulated in the Constitution with regard to the acquisition of the Uzbek citizenship. The same Article 93, No 19 empowers the President also with regard to citizenship matters, but in addition Article 6, Para 3 stipulates that “the grounds and procedures for acquiring and forfeiting citizenship shall be defined by law.”

8. A Law on Migration, which shall contain a specific chapter on refugees, is at the drafting stage. The first draft of the law was completed in August 1999 and submitted to the Cabinet of Ministers. It was included in the working plan of the Parliament for the next five years. In view of the fact that refugee issues are extremely low on the political agenda, the Law on Migration is not expected to be adopted before the year 2005.

9. The refugee definition contained in the draft Law on Migration is in line with the definition in Article 1 A (2) of the 1951 Convention relating to the Status of Refugees. However, several provisions of the current draft law are either unclear or not in line with international norms and standards relating to refugee protection. In particular, persons who enjoy the rights of citizens in the country of origin are excluded from the scope of the draft law⁴; migration quota appear to be applicable to refugees as well; refugee status is valid for a period of three years only (it can be renewed for an additional period of one year); international agreements, such as extradition treaties, supersede the Law on Migration, if they contain contradictory provisions; a time frame of 5 days to apply for refugee status has been established; the principle of non-refoulement is not clearly stated; and the provision exempting from criminal liability, in case of illegal border crossing or stay, is too restrictive.

10. UNHCR is aware that the adoption of the Law, including the changes proposed by UNHCR, would constitute a major achievement for the establishment of a refugee protection regime in Uzbekistan. Hence, UNHCR is providing legal expertise and assistance in the legal process and is endeavouring to keep the issue on the agenda and the process active, so that the law may be adopted within a reasonable period of time.

11. A Decree on the Procedure of Entry, Departure and Transit of Foreign Citizens and Stateless Persons was signed in November 1996. According to this Decree, entry into the territory of Uzbekistan may be denied to foreign citizens and stateless persons even if they have valid travel documents and visas, if it is in the interest of national security or public order; if it is necessary to protect the rights and legal interests of Uzbek citizens; if a person has been convicted for violation of the Uzbek law; if a foreigner is involved in terrorist, extremist and other forms of criminal activities; if a person during the previous stay in Uzbekistan violated regulations on entry and exit of foreigners in and from Uzbekistan; or if a person has a disease which represents a danger for the health of the society.

12. According to Article 223 of the Criminal Code of Uzbekistan, illegal entry of foreign citizens and stateless persons is punished by fifty to one hundred minimum wages or by imprisonment from three to five years. In accordance with Article 224 of the Criminal Code, illegal stay in Uzbekistan is punished by a penalty from fifty to one hundred minimum wages or imprisonment from one to three years. After the occurrence of the first violation of the rules of entry and stay in Uzbekistan, the passports of foreigners and stateless persons are marked with a

⁴ “The refugee status cannot be granted to persons who: ...(3) have rights and obligations related to citizenship before the authorised bodies of the country of exit.” (Art. 30).

deportation order called “black stamp.” If caught a second time, the bearers of these stamps are subject to immediate deportation.

13. The Law on Citizenship of Uzbekistan was adopted in 1992. It does not contain any specific provision applicable to refugees. The national legislation prohibits dual citizenship. The main criterion for acquisition of Uzbek citizenship is to satisfy the requirement of a minimum five-year permanent residence in Uzbekistan. In practice, permanent residence permits are granted to guests of honour of Uzbekistan only (including some very high-ranking Afghan officials who belonged to the Najibullah’s regime.) Other foreign citizens, including spouses of Uzbek citizens, receive at best and on a discretionary basis, a temporary residence permit only. Therefore, they are not eligible for Uzbek citizenship.

Asylum Policy and practice

14. In view of the complex geo-political situation in Uzbekistan, in particular the presence of a common border with Afghanistan, the Uzbek authorities place their concern for national security highest on the political agenda. This legitimate concern often overshadows issues related to human rights. The process of reconciling the concern for national security with the establishment of a protection regime for refugees has so far not been achieved in Uzbekistan. The Uzbek authorities view the debate on refugees within a broader framework of border control and fight against illegal migration and do not acknowledge that refugees have specific protection needs.

15. In this context, asylum seekers and refugees in Uzbekistan are considered as and treated like any other migrants. The provisions of the 1996 Decree “on the Procedure of Entry, Departure and Transit of Foreign Citizens and Stateless Persons” and of Articles 223/224 of the Criminal Code are consequently fully applicable to refugees and asylum seekers, who have entered the country illegally or who are illegally staying on the territory of Uzbekistan. Asylum seekers and refugees, including refugees recognised under the Mandate of UNHCR, are therefore subject to arrest, detention, deportation and refoulement, on the basis of their illegal entry or stay. This year, a mandate refugee was deported to Afghanistan along with his wife and 4 minor children, for the same reason. The act, however, particularly with regard to the children, also appears to violate provisions of the UN Child Rights Convention, which Uzbekistan has signed.

16. Asylum seekers and refugees in detention do not have access to legal counselling or to the services of an interpreter. The conditions for their detention do not differ from those of other detainees. In general, UNHCR has found it very difficult to access detained refugees recognised under its Mandate.

17. In the absence of any national legislation and any domestic administrative structure and procedure appropriate to deal with asylum seekers and refugees, UNHCR Tashkent has conducted refugee status determination under its Mandate since 1994. A special team working at

the Office of UNHCR Tashkent carries out the registration of the applications for refugee status and the status determination process. So far⁵ 1,940 persons (623 cases) have been granted mandate refugee status (mostly Afghans).

18. Refugees recognised under the Mandate of UNHCR are issued with mandate refugee certificates. These documents aim at providing protection from arrest, detention, deportation and refoulement, in view of illegal entry or presence on the territory of Uzbekistan. UNHCR Tashkent tries to identify a durable solution for each individual case. Due to the political environment and the lack of legislation related to refugees durable solutions are almost exclusively limited to either resettlement or, in some individual cases, to voluntary repatriation. Naturalisation or other levels of local integration remain an option only for a very small number of refugees (e.g. the ones married to Uzbek citizens), and only under the limited conditions mentioned above in paragraph 13. As resort to resettlement is made only for the most vulnerable cases or in instances where refugees are held in detention and/or under threat of deportation, the majority of mandate refugees finds itself in a limbo situation.

19. Before August 1999, the level of protection offered by the refugee certificate was very low, as the Uzbek authorities, including the law enforcement bodies, disregarded the validity of the certificate. In August 1999, a verbal agreement was reached between UNHCR and the Ministry of Foreign Affairs, whereby refugees recognised under the Mandate of UNHCR would not be subjected to detention, arrest or refoulement, provided that UNHCR would share with the Uzbek authorities the names and addresses of the mandate refugees. This agreement does not include the asylum seekers registered with UNHCR, pending determination of their status. Their protection situation remains, therefore, highly precarious. After the agreement was reached, the situation of the mandate refugees improved significantly, in particular detention and deportation practices decreased significantly.

20. However, working on the basis of a verbal agreement has proven to be quite difficult and labour intensive. UNHCR has to intervene in all individual cases, where asylum seekers and refugees are threatened with detention and deportation, in order to ensure that the Ministry of Foreign Affairs takes the matter up with the law enforcement authorities; since the verbal agreement does not provide for a strong enough legal basis for the latter to abide by it. Furthermore, the fact that asylum-seekers are not included in this verbal agreement puts this particular group under constant risk of detention and deportation. Therefore, UNHCR is now exploring with the authorities of Uzbekistan avenues to formalise the verbal agreement with the Ministry of Foreign Affairs and to obtain a written document, which would include asylum seekers registered with UNHCR as well. A constructive dialogue has been established with law enforcement bodies.

⁵ By the end of October 2002.

Living conditions of asylum seekers and refugees

21. UNHCR Tashkent considers the living conditions for refugees and asylum seekers as highly difficult and problematic. The absence of legalising documents hampers their access to social rights and to the labour market as well as their freedom of movement. It prevents local integration, and creates a situation of economic and social marginalisation. Moreover, refugees and asylum seekers have to pay for the medical services and education, which are normally free for the local residents. However, following discussions between UNHCR and the Government of Uzbekistan, the Ministry of Education decided in November 2000 to grant – in accordance with the Convention on the Rights of the Child - free access to primary as well as secondary public schools to all child refugees registered with UNHCR, regardless as to whether they are staying legally in the country or not. Access to universities by student refugees is, however, still not only payable, but additionally conditioned by the presence of a legal stay in the country.

22. Due to limited funds UNHCR can only provide medical assistance and financial support to the most vulnerable persons, such as women heads of households, elderly persons, and disabled refugees. Many refugees are, therefore, experiencing extreme economic hardship and are often accommodated in overcrowded apartments. The matter is further compounded by the fact that due to lack of a recognised status here, most of them are not able to find work legally, and many are forced into riskier arrangements like working in the bazaars and other businesses which do not provide a steady source of income.

Conclusion

23. UNHCR is fully aware of the many other pressing issues faced by the Government of Uzbekistan. The legitimate concern for State security is particularly acknowledged. Within the general context of the highly unstable political environment surrounding Uzbekistan, in particular the threat of terrorist attacks and Islamic fundamentalism, effective management of the refugee situation is a difficult challenge. The situation is further complicated by the fact that, at present, no legal framework has been established to respond to refugee related issues. UNHCR also shares the preoccupation of Uzbekistan over the phenomenon of irregular migration and drug trafficking, but at the same time is concerned that measures intended to curb illegal migration are applied indiscriminately, with the consequence that asylum seekers and refugees, including refugees recognised under the Mandate of UNHCR, are denied the rights and protection they should enjoy under international law. This applies, in particular, to the basic protection principles as acknowledged in International Customary Law, binding for all States.

24. Uzbekistan is in the process of taking some legislative initiative to develop a protection regime for refugees. UNHCR particularly welcomes the drafting process of a Law on Migration, which would include a specific chapter on refugees and, therefore, UNHCR endeavours to strengthen its advisory role. The existing gentlemen's agreement between the Ministry and Foreign Affairs and UNHCR concerning refugees recognised under the Mandate of UNHCR,



constitutes a concrete step forward towards the establishment of a fruitful co-operation between the authorities of Uzbekistan and UNHCR. This agreement, however, needs to be consolidated and formalised.

25. With respect to the return of asylum seekers to Uzbekistan, and in view of the above considerations, UNHCR strongly advises States, contemplating to carry out such returns, to refrain from doing so, as at present, no assurance can be given that the persons in questions would be readmitted; would have access to a refugee status determination procedure; would be protected against refoulement; and would be treated in accordance with international refugee standards.

UNHCR Tashkent
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