Background information on the situation in the Russian Federation in the context of the return of asylum-seekers (*)

Abstract

UNHCR advises, in principle, not to apply the "safe third country" notion to asylum-seekers and refugees who have stayed in, or transited through Russia. If nevertheless states opt to consider return to Russia, UNHCR recommends bilateral negotiations to be undertaken, in order to obtain from the Russian authorities formal assurances that the concerned asylum-seekers will be re-admitted to the territory, be allowed to access the refugee status determination procedure and be protected against *refoulement* during the procedure. Unconditional assurance to treat the persons in question in accordance with basic human standards, in particular to avoid unjustified and unduly prolonged periods of detention in transit zones or elsewhere, is to be sought and obtained from the Russian authorities. Returning states should also inform the asylum-seeker of his/her right to apply for refugee status in the Russian Federation and of the practical steps he/she should take to exercise such right immediately upon return to the Russian Federation. In this context, UNHCR also recommends that the asylum-seeker or refugee be informed of the possibilities to contact UNHCR Regional Office in Moscow. In the absence of the above-mentioned assurances from the competent Russian authorities, UNHCR would, at present, advise against return of asylum-seekers to the Russian Federation on the basis of their transit or stay in that country, due to serious risk of *refoulement* and considering the current difficulty for returned asylum-seekers to have access to the refugee status determination procedure.

1. 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 found 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 (re-admission 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/she found or could have sought protection should not take place unless certain essential 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

(*) The following information represents the situation as at January 2000 and will be updated periodically to include any significant changes.

[1] UNHCR notes that bilateral re-admission agreements have become the main legal instruments for co-operation among European states to secure the re-admission 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.

refugees, consider their claims in a fair manner and provide effective and adequate protection, including treatment in accordance with basic human rights standards.

2. International Legal Framework

3. Under article 15 of the Russian Constitution, general principles and norms of international law as well as international treaties ratified by Russia are part of the national legislation. International treaties to which Russia is a party take precedence over contradicting national legislation. The Russian Federation acceded to the 1951 Geneva Convention and 1967 Protocol relating to the Status of Refugees on 2 February 1993. The Russian Federation is also a state party to the International Covenant on Civil and Political Rights and to its first Optional Protocol, enabling the UN Human Rights Committee to receive communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. Furthermore, the Russian Federation is a state party to the Convention on the Elimination of all Forms of Discrimination Against Women (23 January 1981); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (3 March 1987); and the Convention on the Rights of the Child (16 August 1990).

4. On 28 February 1996, Russia joined the Council of Europe and thereby agreed to abide by the provisions of some of the most important European instruments. Following that commitment, Russia signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which entered into force on 15 May 1998. Russia has declared that it recognises the right to individual petitions under its article 25. By the federal law of 28 March 1996, Russia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Russia also signed ECHR Protocol No. 6 Concerning the Abolition of the Death Penalty on 16 April 1997, but its ratification by the Parliament is still under question. Russia ratified all other protocols to the ECHR on 5 May 1998.

5. At present Russia is neither a party to the 1954 Convention relating to the Status of Stateless Persons nor to the 1961 Convention on the Reduction of Statelessness. Commitments are included in the CIS Conference Programme of Action, and the Presidential Commission on Citizenship has expressly informed that Russia is intending to accede to these instruments.[2] Russia signed the European Convention on Nationality on 6 November 1997 but has not ratified it yet.

6. As for international instruments regulating relationship between the CIS countries, it is important to mention the Convention of the CIS States on Human Rights and Fundamental Freedoms of 26 May 1995. The Convention entered into force in Russia on 11 August 1998.[3] This Convention further foresees the creation of the Commission of Human Rights of the CIS.[4]

7. Russia has not signed any re-admission agreements. A re-admission agreement with Belarus is currently under negotiation. The Treaty on the Creation of a Union State, between Russia and Belarus, of 8 December 1999 (entered into force on 26 January 2000 for Russia), does not, as such, makes provision for re-admission. In practice, re-admission to Russia of former citizens of the former Soviet Union can be secured only if they are in possession of a valid

[2] Meanwhile, UNHCR and the Council of Europe are actively working with the Presidential Commission on Citizenship, on the drafting of the new federal law on citizenship.
[3] The Convention was not signed by Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan and Ukraine.
[4] For more information on the CIS regional treaties please refer to the section on extradition of the present background paper.

international passport (i.e. the Soviet Union passport issued for travel abroad) or a passport issued by one of the CIS countries. Persons holding a passport issued by one of the Baltic states must, in addition, hold a Russian visa. The Russian authorities systematically refuse to readmit citizens from non-CIS countries, including asylum-seekers, notwithstanding their previous transit, sojourn or residence in Russia, if they are not in possession of a valid Russian visa (cf. also section 3.5 on the procedure at the airports).

3. Domestic Refugee Legislation and Practice

3.1 The refugee legislation and its limitations

8. On 19 February 1993, Russia adopted its first law on refugees. By the federal law of 28 June 1997 the existing law on refugees was considerably amended. The refugee definition in the 1997 Russian law follows that of the 1951 Geneva Convention relating to the Status of Refugees (1951 Convention). The law provides for a preliminary examination of the refugee claim (article 4) which, as such, is not in contradiction with the principles enshrined in the 1951 Convention and other international instruments. However, there are serious legal, structural and practical limitations to access to a fair and effective refugee determination procedure.

9. Article 5 of the law enumerates the grounds for refusal of a substantive determination of the refugee application. Besides recalling the exclusion clauses specified under article 1 F of the 1951 Convention, the Russian law provides that an asylum-seeker may be denied substantive determination of his/her application "if criminal proceedings have been instituted against [him/her] for the commission of a crime in the territory of the Russian Federation" (article 5.1(1). (Article 9 of the law introduces a similar notion, for the *withdrawal* of refugee status).

10. Also excluded from the benefit of the law are persons "who arrived from a foreign State in whose territory he/she had an opportunity to be recognised as a refugee" (article 5.1(5). The very broad interpretation of this clause by the Russian refugee authorities is of concern to UNHCR. There have been instances where the refugee authorities excluded from the procedure asylum-seekers who had transited through Tajikistan, on the basis that the latter state was a party to the 1951 Convention, and without attempting to determine whether the concerned state was ready to readmit the asylum-seekers and effectively guaranteeing in practice a fair access to refugee status determination.

11. Finally, article 5.1(7) of the law specifies that an asylum-seeker who crossed illegally the state border will be denied substantive examination of his/her claim if he/she failed to apply for refugee status within 24 hours. This represents a serious limitation to access to the refugee status determination procedure, since in practice an asylum-seeker may not find out within such a short time-period about the legal possibility to apply for refugee status. Furthermore, this provision does not take into consideration the fact that the competent Russian refugee organs are not represented everywhere in a country of the size of a continent, nor the fact that NGOs or counselling services - of the type that exist e.g. in Western Europe - susceptible to provide guidance to foreigners and asylum-seekers are only scarcely available in Russia. The law provides for a possible extension of this deadline under article 4.1(3), when "circumstances beyond [the applicant's] power" prevented his/her timely application. The extension of the deadline may "not exceed the duration of the emerging circumstances". UNHCR is aware of an instance when the Russian refugee authorities granted the benefit of this provision to three asylum-seekers, in the Chita region.

3.2 The refugee status determination procedure and its limitations

12. According to article 7 of the 1997 law on refugees, the first instance status determination procedure is carried out by the competent territorial branch of the Federal Migration Service (FMS). In case the refugee application is being submitted at the border (including international airports), article 4 of the law provides that the FMS Points of Immigration Control (PICs) are responsible to assess the admissibility of the refugee claim, in accordance with article 5 of the law (cf. Section 3.1 above). There are throughout Russia 85 territorial branches of the FMS and 114 Points of Immigration Control. The FMS was established under Presidential Decree of 14 June 1992 and its competence and scope of activities was further defined under Governmental Decree of 22 September 1992. Besides refugee matters, the FMS is also responsible for migration issues in general, including foreign labour and the overall implementation of the 1995 law on forced migrants. The refugee status determination procedure started to be implemented in 1994. (In Moscow, the procedure started only in 1997).

13. Although the text of the law on refugees is in line with article 3 of the 1951 Convention, its provisions have in the past been applied in a discriminatory manner. The Russian authorities have applied the law only to asylum-seekers from the CIS and the Baltic states (referred to by the Russian authorities as “near-abroad refugees”). Other asylum-seekers (referred to as “far-abroad refugees”) had virtually no access to a refugee status determination procedure until 1994 (33 non-CIS asylum-seekers were granted refugee status by the FMS in 1994; the number of applications is unknown, but UNHCR in 1994 registered some 20,000 non-CIS asylum-seekers). In 1994, the first processing and accommodation centre was opened by the FMS in the Perm Region, and two similar centres have since been opened in the Rostov and Krasnodar regions.

14. As at 31 December 1999, there were some 80,060 recognised refugees in the Russian Federation. Whereas the majority originate from the CIS or the Baltic countries less than one per cent come from other countries, primarily Afghanistan, but also China, the former Yugoslavia and African countries.

15. The number of recognised refugees needs also to be measured against the number of rejected and pending applications. For the first half of 1999, some 1,225 refugee status applications were submitted to the various territorial branches of the FMS (201 from CIS origin asylum-seekers and 1,024 from non-CIS origin asylum-seekers). During the same period, 97 cases/197 persons were granted refugee status (42 cases/80 persons from CIS and Baltic states, and 55 cases/117 persons from non-CIS countries) and 1,321 refugee applications are currently pending (cumulative figure, including applications submitted in previous years). The main problems encountered by non-CIS asylum-seekers are 1) access to the refugee status determination procedure and 2) the question of their legal status during the procedure.

16. When considering the refugee status determination procedure, an important distinction is to be made between CIS and non-CIS asylum-seekers. Firstly, as CIS asylum-seekers were granted refugee status on a prima facie basis, there is no backlog of refugee applications to be processed by the various bodies of the FMS, and the procedural time-frame, as laid down by the law, is more or less respected. The situation is different for non-CIS asylum-seekers: due to the very limited staff resources of the FMS until 1997, there is a considerable backlog of applications to be processed. While the shortcomings in meeting the procedural time-lines, as detailed below, primarily refers to non-CIS asylum-seekers, the absence of proper documentation throughout the refugee status determination procedure is the fate of both non-CIS and CIS asylum-seekers.

17. Secondly, another reason why refugee applications by CIS asylum-seekers get processed more quickly is because they are being screened by the FMS: CIS applicants are now strongly encouraged by FMS officers to rather opt for Russian citizenship (as being former USSR citizens) and subsequently apply for the forced migrant status.

18. The law provides that a preliminary review of the case should be undertaken by a territorial branch of the FMS within five days following the submission of the application (article 4.5) to determine whether the refugee claim is admissible. In practice, however, in a number of regions, including Moscow where the majority of the refugee applications are being submitted, the refugee authorities have established a "pre-registration" procedure whereby the applicants are put on a waiting list and requested to present themselves at a given date - generally one year later - to formally submit their application. Such pre-registration procedures (or practices) were introduced due to the backlog of applications from non-CIS asylum-seekers. During this waiting period, asylum-seekers remain without any official document attesting their status.

19. Once the application has been submitted and the preliminary review has been effected, and in case the refugee claim has been found admissible, article 4.7 of the law specifies that an asylum-seeker *certificate* should be issued within 24 hours. In practice, however, such certificate is not being issued. Instead, a *letter* of attestation is being delivered to the concerned asylum-seekers which, being an ad hoc document, is not being recognised by the law enforcement agencies as having a legal basis allowing for the issuance of the registration (i.e. residence permit).

20. Article 7 of the law specifies that the competent territorial body of the FMS should reach a decision on the merits of the application within three months following the admission of the application. This period can be extended by another three months. Generally, the decision on the merits is being issued within the six months provided for under the law.

21. Hence, while the refugee status determination procedure under the refugee law should last between three to six months (in case of extension by three months of the determination on the merits), in practice the procedure lasts between one to two years. The problem in the case of Russia is that, throughout the one to two-year long procedure, asylum-seekers remain without any proper legal document that entitles them to stay legally in the country. As a consequence, a considerable number of asylum-seekers are de facto considered as illegal aliens in Russia. They do not enjoy any of the rights of asylum-seekers, and are deprived of basic civic and social rights such as residence permits, medical care and education for children. They are subject to fines and detention by the police and are not protected against deportation. UNHCR is aware of instances of *refoulement* of asylum-seekers in connection with extradition requests submitted to the Russian authorities by other CIS countries, concerning individuals prosecuted officially for an ordinary criminal offence, hiding in fact a politically motivated prosecution. UNHCR is also aware of deportation of asylum-seekers from the main male Moscow's detention centre for illegal aliens (Severny). *Refoulement* has also taken place from Moscow's main international airport (cf. section 3.3).

22. To remedy this situation, UNHCR has established in Moscow a Refugee Reception Centre (RRC) for non-CIS asylum-seekers. After a preliminary interview to determine whether the concerned persons are bona fide asylum-seekers, they are registered with UNHCR and are provided with legal advise throughout the refugee status determination procedure with the FMS, including the appeal process. The registration letters issued by the UNHCR RRC are not legal

documents, but are de facto subsidiary to the legal, yet not issued, FMS asylum certificates. In practice, they provide some level of protection against police harassment, especially during the "pre-registration" period (approx. 12 months), during which the asylum-seekers are not even in possession of the letter of attestation of the migration service. Social assistance is being provided under the form of medical care and education for children through a local UNHCR implementing partner ("Solidarity"). The most vulnerable are being accommodated in a hostel in the outskirts of Moscow, where they receive food, lodging and social assistance/counselling. CIS asylum-seekers (and forced migrants, who fall under the 1995 law on forced migrants), as well as non-CIS asylum-seekers outside Moscow, are being assisted by UNHCR through an arrangement, with the local NGO "Civic Assistance".

23. In addition to direct assistance to asylum-seekers, UNHCR is engaged in a long-term programme of advocacy for, and support to, the establishment by the authorities of a fair and effective refugee determination procedure. Target beneficiary administrations are the FMS (both at federal and regional levels), law enforcement agencies, judicial courts and other relevant governmental bodies. This programme consists of training, provision of country of origin information, payment of interpreters' fees (for the FMS eligibility instances), provision of equipment, etc.

24. In addition to shortcomings within the procedure, it is important to underline instances where access itself to the refugee status determination procedure is hampered by local restrictive regulations on the granting of residence permits (previously known as "propiska"), in contradiction with article 47 of the Russian Constitution which affirms the right to freedom of movement and choice of place of residence. In some of the regions of the Russian Federation, regulations have been adopted which establish strict criteria for the granting of a residence permit (i.e. registration, previously known as "propiska"). As a result of the implementation of these regulations, asylum-seekers who do not fulfil the requirements for the issuance of residence permits in the city/region where they wish to apply for refugee status, are denied access to the refugee status determination procedure by the competent territorial body of the FMS. For instance, the Krasnodar region law No. 9-KZ of 7 June 1995 restricts the residency registration to recognised refugees with close relatives who have been residing permanently in the region for at least ten years. It must be acknowledged, however, that, while similar restrictions used to exist in nearly one third of the 89 subjects of the Russian Federation, most of the regions have in the last two years amended their legislation to be in compliance with the Constitution and the Constitutional Court's resolutions.[5]

25. Article 7 of the law stipulates that recognised refugees should be issued with a refugee certificate, valid for a period of three years, with a possibility of extension on a yearly basis. The same article stipulates that both the format of the certificate and the procedure for its issuance, should be further established by the Government of Russia. While the FMS has been working on a draft instruction to that effect, a proper refugee certificate has not yet been established. For the time being, the FMS is issuing recognised refugees with a refugee document, whose legal value is not very solid, but which is more or less recognised by the law enforcement agencies, with some differences among the regions. The registration (i.e. temporary or permanent residence) of refugees by the police is being recorded on these documents. Recognised refugees are further entitled to all the rights provided to Russian citizens except for political rights.

3.3 Humanitarian status

[5] Cf. para. 50 below, concerning illustrations of instances where restrictive regulations still exist in some of the regions most affected by the influx of asylum-seekers and forced migrants.

26. Article 12 of the law on refugees allows for the granting of humanitarian status or, as phrased by the Russian law, "temporary asylum". Article 12.2 states that temporary asylum may be granted to persons who "have grounds to be recognised as refugee but submit only a written application requesting an opportunity to temporarily stay in the territory of the Russian Federation", or who "have no grounds to be recognised as refugees... but cannot be expelled (deported) from the territory of the Russian Federation for humanitarian reasons."

27. Article 12 on temporary asylum, however, is a declaration of a status that is not yet available to asylum-seekers and states that the procedure is to be further established by a governmental decree. Accordingly, a Working Group composed of the FMS, the Ministry of Interior as well as other relevant ministries was created to prepare the regulations on temporary asylum. UNHCR provided its expert opinion on the initial draft regulation prepared by the Working Group. The draft regulation was submitted to the office of the Prime Minister in August 1997, but the Government returned the draft to the FMS for additional reviewing. The procedure was repeated once more and as a result the draft has been reviewed a third time and was submitted to the Prime Minister's office at the beginning of 2000. The FMS expects this procedure to be endorsed soon.

28. UNHCR is of the opinion that once this procedure is established, the FMS will be able to process the cases of many asylum-seekers who have been in Russia for several years but who have been denied refugee status. The FMS has stated that it expects to grant temporary asylum to many of the Afghan asylum-seekers that are presently in Russia.

29. Lastly, according to article 12.3, a person granted temporary asylum should forfeit his/her passport to the authorities and receive a certificate on temporary asylum. The law, however, does not indicate that such a certificate will be a valid identification document.

"Political Asylum"

30. In order to give effect to article 63 (on political asylum and *non-refoulement*) and article 89 (on the President's prerogative to grant political asylum) of the Russian Constitution, (then) President Yeltsin promulgated a Decree "On the Approval of the Regulations on the Procedure for Granting Political Asylum in the Russian Federation" on 26 July 1995. At the end of 1996, the Federal Migration Service adopted instructions for the implementation of this Decree. The spirit of the constitutional prerogative is to allow the President to exercise the kingly rights attached to his function, e.g. to give protection to an exiled Head of State who may seek asylum in Russia. In the context of this paper, it cannot be said that "political asylum" represents a viable option for asylum-seekers in the Russian Federation.

3.4 Appeal procedure

31. According to article 10 of the refugee law, an appeal against a negative first instance decision by the territorial body of the FMS can be lodged with a higher authority of the FMS or with a court of law. The FMS created an Appeal Board by Order No. 141 of 3 October 1995. The appeal should be launched within one month following notification of the first instance negative decision. While de jure the appeal has suspensive effect, in practice it is often not the case. The reason is that, not being in possession of asylum-seekers certificate, the asylum-seekers are in the eyes of law enforcement bodies not legally staying on the

territory of the Russian Federation, and may be subject to *refoulement* before being able to exhaust all procedural remedies.

32. The appeal procedure before the Appeal Board may last up to one year and a half, while usually the Courts render a decision within six months following the appeal. In most cases, the Appeal Board confirmed first instance negative decisions. If the applicant has not opted to appeal directly before the Court against the first instance decision (which article 10 allows), he/she can appeal against the Appeal Board's negative decision before the Court. (Should the FMS Appeal Board not render its decision within one month, this silence can also be considered a negative decision, appealable before the court.) During the last four months alone, UNHCR is aware of five Court decisions on refugee claims, out of which four were decided in favour of the applicant. A UNHCR hired lawyer is being made available to applicants, when it is considered by UNHCR that they are bona fide asylum-seekers.

33. Courts procedural rules require the presence of the FMS during Court hearings. In several instances, the hearings were postponed after notification was made by the FMS that they were not available for hearings on that date. This led to delays in the Courts procedure, which is unfortunate in view of the lack of possession by asylum-seekers of proper documentation (cf. paragraph 21 above). In several instances where the Court found the refugee claim well-founded and subsequently cancelled the FMS decision, the FMS appealed against the court's decision before the higher court.

3.5 Procedure at the airports

3.5.1 Institutions involved in the procedure

34. The following four institutions are present at Moscow's main international airport, Sheremetyevo-2, and deal in one way or another with asylum-seekers arriving in Russia.

35. The Federal Border Guards: The Border Guards ensure that individuals wishing to enter the Russian Federation are properly documented. Undocumented or improperly documented passengers are not allowed entry to Russia and are commonly returned to the carrier that brought them. In case the carrier cannot be identified (e.g. when the plane ticket is lost or destroyed), or in case the passenger travelled on Aeroflot, the Federal Border Guards place the concerned persons under the custody of the Fraud Prevention Division of Aeroflot. The responsibility for deportation of aliens is then incumbent to Aeroflot, and the latter may undertake to deport them regardless of whether they are asylum-seekers or not. The border guards also control UNHCR access to the transit zone.

36. The Federal Migration Service (FMS): The FMS established a PIC at Sheremetyevo-2 in August 1996. According to the Presidential Decree No. 2145, dated 16 December 1993, on the introduction of immigration control, PIC officials are responsible for processing requests for refugee status submitted at Russian border points, including airports. Originally, the PIC's location was outside the transit zone, and asylum-seekers were unable to reach it in order to lodge a claim for asylum. In December 1998, the PIC officially opened an office in the airport's transit zone and now has the ability to receive asylum-seekers and to interview them in the transit zone.

37. In March 1999, the PIC, after examination of the claim's admissibility, registered for the first time one person for refugee status determination and allowed him to leave the airport in order

to have his case considered on the merits by the Moscow Migration Service. He was eventually denied refugee status and appealed the decision. In September 1999, after an intervention by UNHCR, the PIC agreed to register four asylum-seekers and to release them from the airport for refugee status determination to take place in Moscow.

38. In brief, during the three and a half years of the PIC's existence, the migration service at Sheremetyevo-2 has considered refugee applications of solely five persons. All other asylum-seekers have been denied substantive determination of their application after the preliminary review of their claims. Despite the presence of the PIC office in the transit zone, the situation of asylum-seekers remains precarious.

39. UNHCR: UNHCR is usually notified of the presence of an asylum-seeker in the transit zone by the PIC, Aeroflot, or friends or relatives of the asylum-seeker (provided he/she has been allowed to call from the airport). This notification system, through the PIC or Aeroflot, has been established over the years through confidence building-relationship, but is not systematic. In practice, Aeroflot may notify UNHCR only when they assess that the asylum-seeker cannot be deported in the near future (e.g. when the asylum-seeker's identity or citizenship is not established). Because of the absence of co-ordination between the PIC admissibility and the Aeroflot deportation procedures, UNHCR systematically attempts to conduct a refugee status eligibility interview of asylum-seekers. In case they are found to have a well-founded refugee claim, UNHCR undertakes an emergency resettlement procedure with the embassies of countries susceptible to accept such cases. Hence, in a few cases, UNHCR has successfully delayed and even prevented deportations by offering emergency resettlement to a third country. UNHCR has not been able to monitor the situation at Moscow's two other international airports, but has intervened occasionally at St. Petersburg's international airport.

40. Aeroflot's Fraud Prevention Division in the Transit Zone: Almost all asylum-seekers arriving in Sheremetyevo-2 travel to Moscow with Aeroflot. The International Civil Aviation Organisation ruled that carriers transporting undocumented or improperly documented passengers are responsible for returning such passengers to their points of departure. The airline is also responsible for providing food and, if necessary, medical care during the time they remain stranded in the airport's transit zone. The airline is not, however, responsible for feeding undocumented persons who arrive on other airlines or on unidentified carriers. Because of the ensuing financial obligations, Aeroflot's interest is to deport undocumented persons as soon as possible.

41. When asylum-seekers present themselves to Aeroflot, the airline usually provides them with the PIC's and/or UNHCR's telephone numbers. Deportation procedures initiated by the airline will generally not be suspended for individuals requesting asylum. Aeroflot conducts almost all deportations from Moscow Sheremetyevo-2 airport. Due to the lack of co-ordination between the Aeroflot deportation procedure and the PIC's admissibility procedure, asylum-seekers are not effectively protected against *refoulement*.

42. Briefly, the Aeroflot's deportation procedure is as follows:

(1) First category: Inadequately or improperly documented passengers.

The airline deports passengers who arrive in Russia (in most cases directly from Africa or Asia) with inadequate or improper documents. Most of these passengers intend to transit through Moscow and to continue onward to Europe, North America or the Caribbean. They are, however,

caught by the airport Federal Border Guards as they attempt to enter or transit through Russia with, in most cases, fake, forged, altered or otherwise invalid documents. They are subsequently returned, asylum-seekers included, on the next Aeroflot flight available to the country they flew from, usually their country of origin.

(2) Second category: Passengers deported to Russia from third countries.
These persons have successfully transited through Moscow but are eventually denied entrance to the country of final destination (usually in Europe, North America or the Caribbean) and are consequently returned to Moscow. According to UNHCR's observations, in most of these cases, the persons were returned before an evaluation of their asylum claim had been made by the competent authorities in the Central European country involved. Once someone is deported to Moscow, Aeroflot continues the process until the person is returned to the country of origin, the country of original departure, or, when these options are not possible, a place near the country of origin.

(3) Third category: Passengers with no travel or identity documents.
A third category of passengers consists of those who arrive on an Aeroflot carrier without any form of identification. These passengers often end up stranded for a very long time. Aeroflot uses the help of embassies to establish a passenger's identity. Once contacted, an embassy's representative will come to the airport to determine identity, and the embassy may also produce single-use travel documents to facilitate the deportation/repatriation. UNHCR is aware of cases where this practice was applied to nationals, including asylum-seekers, from Algeria, Sierra Leone, Sudan and Iraq.

43. All asylum-seekers arriving at Sheremetyevo-2, except for the above-mentioned five registered and the few resettled to third countries, have been deported or are awaiting deportation from Russia. During this process, they are kept in the nearby transit hotel or in the transit zone.

3.5.2 Situation of asylum-seekers in the transit hotel

44. In January 1997, Aeroflot started to place undocumented passengers pending deportation in the "transit hotel," a building located a few minutes' walk from the airport. UNHCR's access to asylum-seekers detained in the transit hotel is not guaranteed. Access is being granted on a case by case basis and must be requested from Aeroflot several days in advance. In the majority of cases, UNHCR was not allowed access to the asylum-seekers until a few hours before the deportation flight. This does not give UNHCR or the PIC enough time to properly assess a case before the deportation, often forcing UNHCR to contact the UNHCR branch office in the *receiving* country of deportation for follow-up. When the detainee cannot be deported, his/her stay in the transit hotel can in principle be indefinite.

45. When UNHCR is being allowed access by Aeroflot to the asylum-seekers, the interview is usually taking place in the transit zone, where the asylum-seekers are escorted to for that purpose. Only in a few instances was UNHCR able to visit the asylum-seekers in the transit hotel. UNHCR attempts to raise the awareness of the airline to the special needs of asylum-seekers, as opposed to aliens in general.

46. The hotel's detention area is located in a well-enclosed and locked corner on the hotel's eighth floor. A steel door in the middle of the corridor separates the "free" area from the detention area. Behind the locked door, Aeroflot accommodates up to 28 persons in nine rooms. There are

bars on the windows; and at the far end of the corridor, the fire escape door is locked and reinforced with a chained steel-bar gate. There are no fire extinguishers in the detention area, though now there is one in the security office adjacent to the detention area. The make-up of the detained population changes regularly, as the average stay tends to be two weeks, or as soon as a flight is available to return the individual. Aeroflot does not usually separate males from females.

3.5.3 Situation of asylum-seekers in the transit zone

47. When the Aeroflot transit hotel's 28 beds are at full capacity, illegal aliens are usually kept in the transit zone, where they are free to circulate. For those arriving with Aeroflot, the airline usually provides, though not always, food vouchers that can be exchanged for meals at the transit zone restaurant. But those whose carrier is unknown must purchase their own food at one of the transit zone's restaurants or shops. Asylum-seekers who cannot afford to buy food at the airport are either helped by fellow detainees or are forced to beg.

48. Asylum-seekers sleep on flattened cardboard boxes spread out against the walls. They are unable to shower or to bath and are regularly exposed to physical and verbal abuse perpetrated by the airport police and other airport staff, including Aeroflot employees. Reports of abuse against asylum-seekers and other stranded or transiting persons are not uncommon, and UNHCR informs the PIC when it discovers such abuse.

3.6 Structural limitations

49. The FMS does not occupy the same hierarchical position as a ministry in the federal government. The Head of the FMS reports directly to the Prime Minister of the Russian Federation. The FMS has not been spared by the effects of the frequent changes of Prime Ministers in the Russian Federation. It recently went through a restructuring at the Federal level, which is also affecting some of the FMS territorial branches. Hence, some of the Moscow Migration Service eligibility staff, whom UNHCR had worked with and trained for many years (including facilitating familiarisation visits in Western and Central European refugee administrations), have been recently replaced with staff who are unfamiliar with international refugee law. At the time of writing (December 1999), newly arrived asylum-seekers have not yet been able to register with the new Moscow refugee authorities. The current vacuum will translate into a backlog of applications in a procedure, which is already lengthy. Another consequence of the recent restructuring of the FMS is that the jurisdictional competence over refugee applications launched from the Sheremetyevo-2 international airport is currently being disputed between the Moscow City Migration Service and the Moscow Regional Migration Service.

50. Article 1 of the Russian Constitution rules that Russia is a federal state and article 65 of the Constitution further enumerates the 89 subjects of the Federation. Although the Federation consists of republics, territories, regions, federal cities, an autonomous region and autonomous areas, all are equal subjects of the Russian Federation. The Constitution and the federal laws shall have supremacy throughout the entire territory of the Federation. In practice, however, conflicts between federal laws and the laws and regulations of the subjects of the Federation can have far reaching consequences for the functioning of the rule of law, including the application and respect of principles embodied in international instruments ratified by Russia, for two main reasons. Firstly, because those subjects which are in a position of political and/or economical strength vis-à-vis the central Government, do not always feel obliged to comply with the federal law, even in instances when the Constitutional Court expressly declared regional laws and rules

unconstitutional. Secondly, the functioning of the principle of dual subordination of local governments' civil servants, which requires that the latter be under the hierarchical authority of both their Federal ministry and the local executive, tends to give predominance to the local bodies. It results that civil servants from local law enforcement agencies will in practice apply local normative acts, even if those are in violation of federal laws.

51. One well-known illustration of this situation can be found with the restrictions to freedom of movement and choice of place of residence, imposed on Russian citizens, aliens (and asylum-seekers) by a number of subjects of the Russian Federation, including Moscow City and Moscow Region. Although limitations to the normal exercise of individual rights and freedoms can be legally framed, the Constitutional Court, in a number of resolutions, found the concerned local regulations to be abusive interpretations of the federal law and declared them unconstitutional.[6] Despite that, the Mayor of Moscow publicly declared that he would not comply with such resolutions, as they were deemed not compatible with the interests of the City. This conflict of interests has to be seen in the wider context of the migration movements of CIS citizens, in the post-USSR period, to the major urban and/or developed centres, as well as the waves of internally displaced persons resulting from Russia's military campaigns in Chechnya (1994-96 as well as the current campaign). Asylum-seekers (and refugees) are the most affected by such local illegal restrictions: As was mentioned in paragraph 21 above, they do not hold proper documents from the FMS as to their asylum-seeker status, due to the failure of the FMS to provide those. As a consequence, they may be subject to harassment and detention by the local police.

3.7 Detention of asylum-seekers

3.7.1 General considerations

52. Article 22 of the Russian Constitution provides that "no person may be detained for more than 48 hours without an order of a court of law". In practice, there have been numerous instances where asylum-seekers have been detained for several months, as illegal aliens, while in fact they had applied for refugee status but were not provided with proper documentation by the FMS. Either the court of law or the local Prosecutor's Office is effecting judicial review. However, in the absence of prospect for the concerned persons to be legally documented, the judicial organs generally authorise the detention or its extension. UNHCR has established a monitoring system of detention cases, including regular visits to detention centres in Moscow and Saint Petersburg, referral through NGOs and human rights associations, and maintenance of a hot-line (working until 10:00 p.m.). Some cases of flagrant violations of detention rules have been taken up to courts, through UNHCR-hired lawyers. These routine interventions have successfully resulted 1) in the release of some asylum-seekers unlawfully detained and 2) in a gradual confidence-building process between UNHCR and law enforcement agencies. However, despite these intensive preventive and corrective activities, the scope of the problem remains large: UNHCR is not in a position to intervene in all instances (neither is UNHCR aware of every case), and the situation is aggravated with the persistent assimilation of asylum-seekers with illegal aliens, including among

[6] Cf. RF Constitutional Court Resolution No.9-P of 4 April 1996, "concerning the verification of the constitutionality of a number of normative acts of Moscow City and Moscow Region, Stavropol Territory, Voronezh Region, and Voronezh City, regulating the procedure for registering citizens arriving for permanent residence in the said regions"; cf. also Constitutional Court decision of 2 February 1998 No. 4-Ï, declaring unconstitutional paras. 10, 12 and 21 of the Government Rules on registration of citizens of the Russian Federation at the place of stay, and Constitutional Court decision of 7 October 1998, declaring unconstitutional the Law of Krasnodar region of 1995 on the registration at the place of sojourn and stay in the Krasnodar region.

the public. Here again, the issuance of proper asylum-seekers' certificates by the competent authorities would reduce the size of the problem considerably.

53. There are no specific rules providing for the detention of asylum-seekers in the Russian Federation. Asylum-seekers are detained on the basis of two general sets of law on foreigners. First, *within the territory of Russia*, aliens who are found to be in violation of legislation on the stay can be detained prior to deportation. As many asylum-seekers have not yet been documented by the FMS territorial branch, such detention affects individuals who wish to submit or have submitted an application for refugee status to the FMS territorial branch but have not yet received a reply on the submission of their application. Second, *at the border of the Russian Federation*, aliens, including asylum-seekers, seeking entrance or exit from Russia may be detained by the border guards because of irregularities in their documentation. In this context, a specific situation exists at Russia's largest international airport, Sheremetyevo-2, which receives a large number of undocumented passengers from Africa and Asia (cf. section 3.3 above).

3.7.2 Detention within Russia

54. Detention of aliens within the Russian territory is based on regulations pertaining to the stay of foreign nationals in Russia. The 1981 law of the USSR on the legal status of foreign citizens in the USSR, still for the most part in force, foresaw a possibility of deportation of an alien for violation of the rules of stay and, in particular, for failure to register with the Ministry of Interior (MOI) bodies at the place of residence. Living without registration ("propiska") was considered to be an administrative offence and could be punished by deportation. The procedure for deportation was initiated by the MOI, and required the approval of the Prosecutor's Office. Article 31.3 of the law allowed detention of an alien against whom a decision on deportation had been taken, for the whole period necessary for deportation. Persons are detained in special centres established in most regions of Russia and administered by the Passport and Visa Service of the MOI.

55. In February 1998, the Russian Constitutional Court declared provisions of article 31.3 of the law on foreigners unconstitutional. In particular, the Court stated that detention for a period of more than 48 hours without judicial review was in violation of article 22 of the Russian constitution. While the Constitutional Court confirmed that detention beyond a 48 hours period must be subject to judicial control, this decision is not being respected in practice by law enforcement agencies.

3.7.3 Detention at the border

56. Detention at the borders of Russia is regulated by (1) the Penal Code of the Russian Federation and (2) the legislation on the state border.

(1) The Russian Penal Code in article 322 provides penalties for crossing the border without proper documents or without permission, except for the case when an alien has crossed the border illegally in order to apply for asylum in Russia. If a criminal proceeding is instigated against the person on charges of illegal border crossing, the person can be detained at the special detention facilities of the Federal Border Service, or at the Ministry of Interior (MOI) pre-trial detention centres. On 17 September 1998, in the first case of this kind in Russia, the Supreme Court of the Russian Federation acquitted five persons who had crossed the Chinese-Russian border illegally in the Chita region. They had been detained by the Federal Border Service and

charged with illegal border crossing, but applied for asylum while in detention. UNHCR is aware of at least two cases (which preceded the September 1998 Supreme Court decision) of asylum-seekers who served prison sentences in the southern region of Dagestan for illegal border crossing. After release, they applied for asylum to the FMS. There are no indications to believe that the persons in question ever attempted to apply for asylum while in detention.

(2) The legislation on state border foresees a possibility of detention at the border of persons who are violating the rules of crossing the border or of the border regime. The Federal Border Service (FBS), as the state agency responsible for protection of the border, is authorised to detain persons found or suspected to be in violation of the border crossing rules. According to the law on state border, detention is allowed for a period of up to three hours for filling in the protocol of a violation and for up to ten days upon agreement of the local prosecutor's office for verification of identity, if the detainee lacks identification documents. If a decision has been taken by the local prosecutor's office on deporting the alien to the country of origin or to the bordering country, the FBS is allowed to detain the person for the period required to organise and carry out the deportation. The Russian Code on Administrative Violations in article 183.3 provides that a violation of the border regime by an alien can be punished by administrative deportation.

3.7.4 Procedural safeguards and the right to challenge a decision to detain

57. According to article 22 of the Constitution of the Russian Federation persons cannot be detained or put under arrest for over 48 hours without a written judicial decision. According to article 11 of the Criminal Procedural Code of the Russian Federation, no one can be detained without a written order issued by a judge or a public prosecutor. Copy of the written order shall be handed over immediately to the detainee. A similar provision, article 236.1 of the Administrative Code, governs detention following an administrative offence. It should be noted, however, that many asylum-seekers have been detained on the basis of Presidential Decree No. 1025/1996, issued to combat criminality in Moscow, and which provided for the possibility of detention without a judicial review for a period of up to 30 days. Although the decree was abolished on 14 June 1997 by a subsequent Presidential Decree (No. 593), in practice it is still applied.

58. According to the law No. 4866-1 of 27 April 1993, a person has the right to appeal every decision by a state agency if he/she feels that such decision violates his/her rights or freedom. A decision has to be challenged within one month from the moment of notification either at the higher administrative authority (within the FBS or the Ministry of Interior correspondingly) or before the competent court of general jurisdiction. However, lack of knowledge of Russian language, lack of information about the right to appeal and, above all, lack of access to a lawyer, make it virtually impossible for asylum-seekers to appeal a decision on their detention. UNHCR is aware of only one case in which two Somali asylum-seekers detained in a MOI detention facility in Moscow were released upon intervention of a lawyer hired by UNHCR.

3.8 Extradition

59. The Russian national legislation does not govern cases of extradition. This is a domain of bilateral agreements and other sources of international law. There is only Instruction on the Procedure of Considering Requests on Extradition, adopted on 23 June 1998 by the General Prosecutor's Office. Decisions on extradition are of the exclusive competence of the General Prosecutor of the Russian Federation. On 25 October 1999, Russia ratified the European Convention on Extradition, the Additional Protocol and the Second Additional Protocol to the

Convention on Extradition. The federal law on extradition, which will further regulate the matter, is at the drafting stage in the Russian Parliament (Duma).

60. Extradition of CIS citizens is regulated by the 1993 CIS Convention on "Legal Assistance and Relations Governed by Law in Civil, Criminal and Family-related matters".[7] In addition, Russia signed separate bilateral agreements with Azerbaijan and Moldova, specifically pertaining to legal assistance. Under these agreements, persons who have been granted asylum cannot be subject to extradition. Furthermore, article 63, paragraph 2 of the Russian Constitution prohibits extradition of foreigners when the extradition request is based on their political opinions or if the extradition is requested for actions which are not considered to be crimes according to Russian internal legislation. However, in practice, UNHCR is aware of several instances where the Russian authorities have taken positive decisions regarding the extradition of well-known political opponents and former political leaders from the CIS who had sought asylum in Russia.[8] The obtaining by a CIS foreigner of the Russian citizenship may not always be a guarantee against deportation to the CIS country of origin. Such instances of extradition of CIS citizens who had acquired Russian citizenship occurred, following requests from Azerbaijan, Uzbekistan and Georgia. In some cases, in order to prevent the extradition of bona fide asylum-seekers or refugees, UNHCR had to find a resettlement solution for the concerned individuals.

61. In the context of Russia as a safe third country of asylum, it is appropriate to underline that the 1993 Minsk Convention on Legal Assistance does not contain any specific provision protecting asylum-seekers and refugees from extradition. However, article 19 of the 1993 Minsk Convention provides that "[t]he request for legal assistance *may be rejected* if such request... contradicts the legislation of the requested State" (emphasis added). In this respect, it may be argued that the extradition of a refugee or asylum-seeker might contradict articles 15 and 63 of the Russian Constitution, article 8 of the Russian law on refugees (on the rights and obligations of recognised refugees), as well as article 33 of the 1951 Convention, to which Russia is a party.

4. Conclusion

62. Since 1992, the Russian government, whilst witnessing an unprecedented population displacement on the territory of the Russian Federation, has taken significant steps in developing legislation, institutions and structures to protect refugees in Russia. UNHCR is committed to maintain and increase its support to this institution-building process. However, the scope and complexity of forced population movements are such that the implementation of effective mechanisms to protect refugees in full compliance with international standards is a long and complex task, which cannot be achieved in a short-term period.

63. In this respect, the process accomplished during the last eight years is considerable: the ratification of the 1951 Convention, the adoption of the law on refugees, the establishment of a specialised administration for dealing with asylum-seekers and refugees, and the establishment of a

[7] The Minsk Convention was adopted on 22 January 1993. The following states are parties to the Convention: Armenia, Belarus, Georgia, Kazakstan, Kirghizstan, Moldova, Russia, Tadjikistan, Turkmenistan, Uzbekistan and Ukraine. Later on, all of these states except Turkmenistan signed the Protocol of 28 March 1998 amending the Convention.

[8] In order to prevent the occurrence of such situations, the State Duma adopted a Declaration on 17 April 1997 on the "Responsibility for Extradition to Foreign Countries of Persons Persecuted for their Political Opinions". In this document, the State Duma refers to the extradition of the former Minister of Defence of Azerbaijan as a violation of article 63 of the Constitution.

refugee status determination procedure, can be considered as substantial achievements. The genuine will of the Russian refugee authorities to improve the procedure also needs to be encouraged. However, considering the still existing obstacles for accessing the refugee status determination procedure, the absence of a proper legal status of asylum-seekers throughout the procedure, the lack of systematic protection of asylum-seekers against *refoulement*, the strict interpretation by the authorities of the notion of "fear of persecution" and subsequent low recognition rate at the first-instance level, and the difficulties in the functioning of the appeal process, the existing procedure cannot yet be considered to be fair and effective.

64. With respect to the return of asylum-seekers to Russia, on the basis of their transit or stay there, and in view of the above, UNHCR advises, in principle, not to apply the "safe third country" notion to asylum-seekers and refugees who have stayed in, or transited through Russia. If nevertheless states opt to consider return to Russia, UNHCR recommends bilateral negotiations to be undertaken, in order to obtain from the Russian authorities formal assurances that the concerned asylum-seekers will be re-admitted to the territory, be allowed to access the refugee status determination procedure and be protected against *refoulement* during the procedure. Unconditional assurance to treat the persons in question in accordance with basic human standards, in particular to avoid unjustified and unduly prolonged periods of detention in transit zones or elsewhere, is to be sought and obtained from the Russian authorities.

65. In addition, returning states should also inform the asylum-seeker of his/her right to apply for refugee status in the Russian Federation and of the practical steps he/she should take to exercise such right immediately upon return to the Russian Federation. In this context, UNHCR also recommends that the asylum-seeker or refugee be informed of the possibilities to contact UNHCR Regional Office in Moscow.

66. In the absence of assurances from the competent Russian authorities, as mentioned in paragraph 64 above, UNHCR would, at present, advise against return of asylum-seekers to the Russian Federation on the basis of their transit or stay in that country, due to serious risk of *refoulement* and considering the current difficulty for returned asylum-seekers to have access to the refugee status determination procedure.

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