

**COUNTRY REPORTS 2007:**  
BELARUS, MOLDOVA,  
RUSSIAN FEDERATION  
**AND UKRAINE**  
SITUATION FOR  
REFUGEES, ASYLUM  
SEEKERS AND  
INTERNALLY DISPLACED  
PERSONS (IDPS)



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## **Introduction**

This report on the situation for refugees, asylum seekers and internally displaced persons in Belarus, Moldova, Russia and Ukraine in 2007 has been written by national refugee-assisting NGOs in each country. The reports have been edited but no substantial changes have been made to their content as reported by the agencies involved.

The report has been produced as part of the European Council on Refugees and Exiles' Programme "The Protection of Refugees, Asylum Seekers and Forced Migrants", which is generously funded by the European Union Aeneas programme.

In each country section, NGOs cover relevant legislative changes, the refugee status determination procedure, case law, provide information on returns, vulnerable groups and integration.

From the information provided by NGOs it is evident that 2007 saw some positive developments in each of the four countries: the Russian Federation adopted legislation to facilitate foreigners registration in the country; there were positive judicial precedents in individual asylum cases in Ukraine; good cooperation between the state authorities, UNHCR and NGOs (agreement of cooperation) in Belarus; and the establishment of a working group with the aim of drafting the new national refugee law in Moldova which is elaborated in accordance with the EU asylum acquis.

Nevertheless, there are still many challenges facing those seeking asylum in Eastern Europe. There has been an increasing trend of racist and xenophobic attacks especially in Russia and Ukraine; continuing problems of lack of access to interpreters and free legal advice; lack of access of NGOs to detainees at borders and low recognition rates of asylum applications in all the four countries. The new circumstances after initial steps towards adoption of readmission agreements remain challenging and it is necessary for European governments to ensure the human rights of asylum seekers and refugees are not infringed when they take action to strengthen their borders against illegal migration. Genuine solidarity is required from EU states to cooperate actively with programmes such as resettlement of the most vulnerable refugees to third countries, including the EU, and to provide support to the governments of all the four countries in improving the national asylum systems.

Each country section ends with recommendations for the national authorities and the international community.

ECRE would like to thank all the organisations involved for their input and assistance in producing this report.

## The Republic of Belarus

### Statistics<sup>1</sup>

#### Asylum Seekers and Refugees

Country of Origin	Number of asylum seekers whose applications for refugee status were registered						Number of asylum seekers who were granted refugee status						Recognitio n rate
	2003	2004	2005	2006	2007	TOTAL	2003	2004	2005	2006	2007	Total	Total
TOTAL	113	144	116	86	54	513	63	23	41	13	2	142	28%
Breakdown by nationality													
Afghanistan	41	69	59	38	31	238	21	17	17	6		61	26%
Georgia	45	31	23	7	7	113	30	6	18	7	2	63	56%
Iraq	2	5		9	2	18							0%
Armenia	5	6		4		15	1					1	7%
Azerbaijan	1	8	1	1	1	12	6		2			8	67%
Tajikistan		7	4		1	12			4			4	33%
Ukraine			5	6	1	12							0%
Ethiopia		1	8			9							0%
Iran	5		1	1	1	8							0%
Palestine	4	1	1			6	4					4	67%
Kyrgyzstan			4	1	1	6							0%
Syria		5			1	6							0%
Latvia	2			3		5							0%
Sudan			4	1		5							0%
Moldova	1	2		1		4							0%
Israel				4		4							0%
Pakistan	4					4							0%
Uzbekistan		3			1	4							0%
Nigeria	1	1		1		3							0%
Poland				3		3							0%
Somalia			3			3							0%
Turkmenistan		3				3							0%
Other states	2	2	3	6	7	20	1					1	5%

According to the Citizenship and Migration Department of the Republic of Belarus, in 2007 **54** persons applied for refugee status, and **two** persons were recognised as refugees. 800 people in total have been recognized as refugees since the national refugee status determination procedure was established in 1998.

According to the Citizenship and Migration Department of the Republic of Belarus, in 2007 **9** persons (**6** nationals of Afghanistan, **2** nationals of Georgia and **1** national of Azerbaijan) were granted temporary residence permits in the Republic of Belarus

<sup>1</sup> Statistics were provided by Cross Border Cooperation/Soderkoping Process  
<http://soderkoping.org.ua/page12520.html>

on the grounds of Article 37 of the Law “On Refugees”.<sup>2</sup> A temporary residence permit is valid for 6 months (with a possibility of further prolongation).

With regards to resettlement, according to the UNHCR Office in the Republic of Belarus, 24 persons were resettled to third countries in 2007 with the assistance of UNHCR.

### **Legal and procedural changes**

*1. The Decree by the President of the Republic of Belarus # 413 of 07.09.2007 ”On Improving the System, of Registration of Citizens at Places of Their Residence and Stay”.*

a) This Decree completely eliminated the “propiska” regime; and after its adoption only two forms of registration remained in force: registration at place of permanent residence (the so called “permanent registration” and registration at place of temporary residence (the so-called “temporary registration”).

b) This Decree does not extend to recognized refugees and aliens who temporary reside and temporary stay in Belarus (including asylum seekers).

c) The Decree introduces new minimal quotas for registration of citizens at their permanent and temporary residence. For Minsk this is 20 square meters per person, for other regions of Belarus – 15 square meters.

Recognized refugees and asylum seekers should be registered in accordance with other legal acts (as indicated above, they were excluded from this Decree).

Recognized refugees maintain quotas of minimum 6 square meters per family member for permanent registration (before this Decree has come into force).

Asylum seekers whose applications for refugee status are pending review can reside in Belarus under the following conditions:

- On the basis of a rent agreement concluded with the landlord (upon consent of all adult family members of the landlord). In this case any minimal quotas for living space per person are not taken into consideration;
- By decision of the citizenship and migration authority, in the living premises which have been allocated by local executive and management authorities for residence of aliens who apply for a refugee status, or in living premises belonging to organizations with which the interior ministry authorities concluded

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<sup>2</sup>**Art. 37 of the Law of the republic of Belarus “On Refugees”:**

*Alien applying for refugee status or recognized as a refugee, can not be subjected to refoulement or returned against his will to the territory of a state where his life or freedom can be threatened on the grounds of his race, religious belief, nationality, ethnic origin, belonging to a certain social group or political views.*

agreements on the residence of aliens who applied for status, or in temporary residence centres.<sup>3</sup>

At the same time, the Decree introduces benefits for citizens of Belarus and aliens living permanently in terms of registration at the place of permanent residence without taking into account the Decree's requirements for minimal quotas for living space per person.

In Minsk it is possible to have permanent registration without complying with the quota for living space of 20 square meters per person for:

- 1) A spouse at a place of residence of her/his spouse;
- 2) Minors – at the place of residence of their legal representatives with the exception of managers of boarding houses for minors and specialized state institutions for minors in need of social assistance and rehabilitation;
- 3) Adult children at the place of residence of their parents;
- 4) Adult fostered children at the place of residence of their foster parents;
- 5) Parents at the place of residence of their children;
- 6) Foster parents at the place of residence of their fostered children;
- 7) Adults who are subject to guardianship or care at the place of residence of their guardians or carers;
- 8) Minor siblings without parents and disabled adult siblings without families and parents at the place of residence of their siblings.

In other regions of Belarus it is possible to have permanent registration without complying with the quota for living space of 15 square meters per person for:

- 1) A citizen in premises in his ownership or inherited by him but not appropriated into his ownership according to the legal procedure;
- 2) A spouse at the place of residence or stay of his/her spouse;
- 3) Minors – at the place of residence of their legal representatives with the exception of managers of boarding houses for minors and specialized state institutions for minors in need of social assistance and rehabilitation;
- 4) Adult children at the place of residence of their parents;
- 5) Adult fostered children at the place of residence of their foster parents;
- 6) Parents at the place of residence of their children;
- 7) Foster parents at the place of residence of their fostered children;
- 8) Adults who are subject to guardianship or care at the place of residence of their guardians or care-persons;
- 9) Siblings at the place of residence of other siblings;
- 10) Grandparents at the place of residence of their grandchildren;
- 11) Grandchildren at the place of residence of their grandparents.<sup>4</sup>

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<sup>3</sup>Para 20, Resolution by the Council of Ministers of the Republic of Belarus № 728 of 30.05.2005 (amendments will come into force in January 2008) "About adoption of the rules of stay for refugees in the Republic of Belarus"

<sup>4</sup>Para 9, "Guidelines on registration of citizens at their place of residence and place of stay" brought into force by the Presidential Decree № 413

The new Decree requires persons to be permanently registered at a certain place. The rules of temporary registration became more liberal: if a person leaves the place of residence for more than one month, he or she has a right to get temporary registration without checking out from the permanent place of residence; the procedure of granting temporary registration has also been simplified. Temporary registration may be granted for up to 1 year with a possibility of further prolongation for the same term.

Although this decree does not extend to recognized refugees and asylum seekers (and other foreign citizens residing temporarily in Belarus) it does simplify the temporary registration procedure. However, it is not yet clear to what extent its more liberal provisions are applicable and will be applied to refugees who have permanent registration at one place but want to live temporarily in another area of Belarus.

*2. New Administrative Code (entered into force on 01.03.2007)*

- a) Article 23.55 of the new Code introduced deportation as an additional kind of penalty for illegal residence on the territory of Belarus (before that the illegal residents were penalised by a reprimand/or a fine)
- b) Deportation now is regarded as a separate kind of penalty for administrative offence (art. 6.2).
- c) Deportation as a penalty is now applied not by the court but by the executive body. There is a possibility to appeal such decisions to a higher executive body or a court.
- d) The new Code (art. 23.29) exempts from punishment people who crossed or attempted to cross Belarusian state borders with the intention of applying for asylum. The same provision extends to “persons who applied for refugee status in accordance with the legislation of the Republic of Belarus”.

*3. Administrative and Procedural Code entered into force on 01.03.2007)*

- a) Deportation will be suspended if a person subject to a decision on deportation has applied for refugee status (art. 13.4, 20.4)

*4. Council of Ministers Resolution № 333 of 15.03.2007 on adoption of “Guidelines on Deportation of Foreign Citizens or Stateless Persons”*

- a) This Resolution systematizes the existing legislation on deportation procedures (as well as substitutes some previous acts).
- b) The Resolution recognizes a refugee status application as grounds for suspending deportation procedure. The deportation procedure will be reactivated if an asylum seeker has been refused refugee status and has exhausted all possible means of appealing the refusal.
- c) The Resolution also allows a person subject to a deportation procedure to apply for voluntary return to his/her homeland. In that case the person might be allowed to return voluntarily or be deported in a forced manner.

*5. Council of Ministers Resolution № 728 on the adoption of “Rules of Refugees’ Stay in the Republic of Belarus”.*

This Resolution replaces the previous Rules of Stay for Refugees in the Republic of Belarus (without any substantial conceptual changes).



*6. Joint Resolution by the Interior Ministry and State Border Guard Committee of the Republic of Belarus № 10/2 of 30.01.2007 on Automated Registration System “Refugees” for Aliens and Stateless Persons Applying for a Refugee Status, and Recognized Refugees in the Republic of Belarus.*

This Resolution introduces an automated system of registration of asylum seekers and recognized refugees. Only authorized officers of the Ministry of Interior and State Border Guard Committee are allowed to download or change information in the system.

*7. New version of the Law On Refugees and Complimentary Protection*

In 2007 work continued on the new law On Refugees and Complimentary Protection, which is to substitute the current Law On Refugees. In the course of the year agreements were reached on principal provisions of the legal act and the text of the Law was adopted by the Parliament after the first hearing. The final adoption is planned for Spring 2008.

### **Refugee Status Determination Procedure**

- **Access to the Refugee Status Determination Procedure (RSDP)**

Currently the access to the RSDP is free. The law prohibits refusing the right to apply for refugee status. In practice, the refugee status applications are always accepted.

Applications may be submitted either to citizenship and migration authorities or to the State Border Committee of the Republic of Belarus, or to the authorities and territorial bodies of the Ministry of Interior (which do not belong to the system of Citizenship and Migration Department).

There is only one exception to the free access to the Procedure rule. This is when a citizen of the Russian Federation submits an application for refugee status. Belarusian legislation provides Russian citizens with the most favoured regime (with the same rights as citizens of Belarus): they can acquire a residence permit and citizenship in Belarus through a simplified procedure.

In 2007 some citizens of the Russian Federation applied to the Refugee Counselling Service (RCS) of the Belarusian Movement of Medical Workers and declared that they wanted to ask for refugee status in Belarus.

RCS does not know any facts to prove that in 2007 Russian citizens, who applied to Belarus migration authorities for a refugee status, were refused access to the RSDP or that with respect to them negative decisions were taken on their applications for refugee status.

Besides the RSDP there is also the so-called Presidential Asylum (the Constitution of the Republic of Belarus grants the President of Belarus the right to grant asylum at his own discretion).



It is very unlikely to be granted Presidential Asylum but applications for this asylum is often used for delaying the legal stay in Belarus.

- **Changes in the decision making authorities**

In 2007 there were no changes in the structure of state authorities, which process the applications of asylum seekers (this structure started functioning in 2004).

As before, the structure of authorities engaged in the RSDP is as follows:

1. Citizenship and Migration Department of the Ministry of Interior (MOI) of the Republic of Belarus (CMD) – the highest body;
2. 7 citizenship and migration authorities subordinated to the CMD (Citizenship and Migration Directorate of the Chief Interior Directorate of Minsk City Executive Committee and 6 Citizenship and Migration Directorates for Brest, Vitebsk, Gomel, Grodno, Minsk and Mogilev Oblasts).

Final decisions on applications are taken by territorial citizenship and migration authorities, territorial bodies of internal affairs, and border committee units. Territorial citizenship and migration authorities are also involved in the primary processing of applications (later, the cases with conclusions from the territorial citizenship and migration authority are passed to the CMD for final decision).

- **Appeal procedure**

After an asylum seeker has received a negative decision by the CMD, he/she has the right to file an appeal against the CMD decision within 30 days (this time limit is calculated from the moment of actual delivery of the negative decision to an asylum seeker).

It is possible to appeal the CMD decision to the court of first instance and then, in case of negative court ruling, to the cassation court. There is also a possibility of appeal through the supervision procedure (in case of negative decision by the cassation court; supervisory complaints should be submitted against decisions which have entered into legal force: the time limit for submission of complaints is three years since the cassation court decision came into force<sup>5</sup>).

The appeal of negative CMD decisions to the courts of the first and cassation instances provides grounds for legal stay in the country, but a supervisory appeal does not provide such a right.

An appeal to the court of the first instance should be submitted to the lowest level court at the place of CMD location.

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<sup>5</sup>The examination of an appeal by the supervisory instance is not automatic: in every case a court takes a decision about the supervisory examination of the appeal.

If the first instance court takes a negative decision the applicant has the right to submit a cassation appeal against that decision. Cassation appeal should be submitted within 10 days after the decision by the court of first instance (if the applicant demands to get acquainted with the description of the first instance court verdict motivation, the 10 day term for submission cassation appeal starts from the time applicant receives the description of the first instance court verdict and motivation).

In addition, the current legislation allows other actions by state authorities (officials) not related to the RSD procedure to be appealed. The appeal procedure complies with major procedural principles of Belarusian legislation.

- **Main reasons for refusal at the first and further instances**

Experience shows that when CMD refuses to grant refugee status it is mainly on the following grounds:

*1. The asylum seeker does not meet the refugee criteria established by legislation of the Republic of Belarus*

Para 2, Art. 3 of the Law On Refugees states that a refugee is a person, who is not a citizen of the Republic of Belarus and is present on its territory due to a well-founded fear that he/she may be subjected to persecution in the country of his/her citizenship on the grounds of race, religious belief, nationality, ethnic origin, belonging to a certain social group or political views and who cannot or, as a result of such fears, does not want to avail him/herself of the protection of that state.<sup>6</sup> If a person does not meet this refugee definition it becomes a reason for refusal.

In the CMD decision there might be additional indication that the applicant has not presented convincing reasoning for his/her fears of being subjected to persecution in the country of origin.

*2. The asylum seeker's application is manifestly unfounded and is a misuse of the asylum procedure*

If a citizenship and migration authority concludes that an application is unfounded the procedure turns into a simplified one and takes one month (the regular procedure takes a maximum of six months). In addition, if the application is unfounded, it automatically leads to a negative decision (this norm is established in the Law On Refugees).

This form of refusal is mainly applied to those who lived in Belarus legally or illegally for a long time before applying for asylum and who decided to make use of the RSD procedure only after he/she has been detained for illegal stay in the country.

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<sup>6</sup>*This refugee definition fully meets the 1951 Convention On Refugee Status definition and the Law On Refugee Status was adopted by the Republic of Belarus in order to comply with the 1951 Convention.*

*3. An asylum seeker has arrived from a safe third country.*

According to the Law On Refugees a safe third country is a state in which the foreign citizen stayed before arrival into the Republic of Belarus, with the exception of transit through the territory of that country, and in which he/she had an opportunity to apply for a refugee status or asylum.

Legislators define the following criteria of a safe third country: the country complies with international human rights standards in the area of asylum established by international acts of universal and regional nature including: norms on prohibition of torture, inhuman or degrading treatment or prosecution; compliance with international refugee protection principles of 1951 Convention and 1967 Protocol, first and foremost – the non-refoulement principle; its national legislation regulates relations in the area of asylum and refugees and there are national authorities responsible for granting refugee status or asylum.

This reasoning is applied by the CMD when it has in its disposal reliable information that the person has arrived in Belarus and applied for a refugee status from the neighbouring country which is regarded as safe (the typical example – applicants who transited through the territory of Russia). The length of time a person resided on the territory of the safe third country before arriving in Belarus and whether or not he/she applied for a refugee status in that country is also taken into consideration. In 2007 the Refugee Counselling Service did not encounter any applicants who were refused refugee status in a safe third country.

These reasons for refusal to grant refugee status may be used separately (one reason for refusal) or be combined.

It is worthwhile noting that Art. 30 of the Law On Refugees defines unfounded applications, misuse of application procedure and safe third country criteria as **separate** grounds for refusal of refugee status (besides non-fulfilment of the refugee status criteria).

### **Acquiring citizenship of the Republic of Belarus**

The Law of the Republic of Belarus, “On Citizenship” provides three grounds for acquiring citizenship: by birth; as a result of being granted citizenship of the Republic of Belarus; through the registration procedure (Art. 12 of the Law).

Recognized refugees acquire citizenship on the grounds of the second criterion – being *granted citizenship of the Republic of Belarus*.

Art 14 defines the following conditions for those who apply for citizenship:

- 1) a person must be 18 years or over
- 2) a person must respect and fulfil the provisions of the Constitution of the Republic of Belarus and other Legal Acts of the Republic of Belarus
- 3) a person must be able to communicate in one of the state languages of the Republic of Belarus

- 4) a person must reside on the territory of Belarus (after having received a permanent residence permit) for seven years without interruption (*for recognized refugees the seven-year term is calculated from the moment of them being granted refugee status; this rule is specified in the same Article 14 of the Law*)
- 5) a person has a legal source of income
- 6) a person is not a citizen of another state or loses another state citizenship by virtue of acquiring Belarus citizenship, or applies to the competent authorities of another state for renouncing his/her current citizenship (*in this paragraph the Belarus legislator introduces the following reservation: with the exception of cases when renouncing foreign citizenship is impossible for the reasons which are beyond a person's control*).

It is also worth noting that the uninterrupted term of residence in Belarus (which is necessary for calculation of seven years of residence) means that a foreign citizen resides in Belarus and leaves the territory of the country for no longer than three months per each year.

Regretfully, in 2007, 4 persons applied to the Refugee Counselling Service who were recognized refugees in the Republic of Belarus and were refused citizenship. In spite of a request for an explanation of the reasons for refusal being filed through the Citizenship and Migration Directorate of Minsk City Executive Committee no clear answer was received from the Commission under the President of the Republic of Belarus (which is responsible for making the final decision on granting/refusing Belarus citizenship).

There is another unresolved problem – renouncing previous citizenship. Some recognized refugees are still afraid of applying to the competent bodies of their countries of origin with a request to renounce their citizenship because of the possible negative consequences of such an application. The fact that there is no proof of renouncing citizenship automatically deprives a person the possibility to acquire Belarus citizenship.<sup>7</sup>

Also, some states (like Iran) provide grounds for renouncing citizenship but make the process impossible by stipulating impossible conditions.

In 2007, there were occasions when recognized refugees' applications for citizenship were rejected due to the fact that "it is not in the interests of the Republic of Belarus". The Decree of the President # 755 states that during the examination of citizenship applications the interests of the Republic of Belarus are also considered.

RCS also received information that some people had their citizenship applications rejected due to the fact that "they have not yet integrated into Belarusian society" (this

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<sup>7</sup>This does not comply with universally accepted international practice, which means that asylum states are guided by the best interests of applicants in the area of granting citizenship. The very status of a refugee should bring about exceptions from the obligatory requirement of an asylum state legislation (for recognized refugees) to renounce previous citizenship prior to acquiring the asylum state citizenship.

reason was expressed by state migration service officials in informal conversations with the applicants). Those who received rejection on these grounds included: recognized refugees who live alone, who are not officially married, do not have children and do not work for state enterprises.

According to the Citizenship and Migration Department, in 2007, 22 recognized refugees lost their status as a consequence of acquiring Belarus citizenship.

### **Changes in border control mechanisms**

In 2007 a border-monitoring project “Strengthening Protection Capacity in Belarus”, jointly funded by EU, UNHCR and the International Organization for Migration (IOM) was launched. The project runs from 2007-2008. Project partners are the State Border Committee (SBC) – national implementing partner of the project, UNHCR, IOM, the Refugee Counselling Service (RCS)/the Belarusian Movement of Medical Workers (BMMW) and the Belarusian Red Cross (BRC). The Department of Citizenship and Migration (DCM) of the Ministry of the Interior also participates in the project.

In 2007, five familiarization visits to border troop’s detachments were made. Also, seven ad hoc border monitoring visits (due to detention of illegal migrants at the State Border) were performed during the year. In total, 32 beneficiaries were assisted.

In the course of 2007 RCS opened its representation in the border regions (Grodno, Brest and Gomel). Now a CS legal consultant acts within the framework of the border monitoring project in the regions.

RCS regional representatives have regular contacts (at least once a week) with local SBC detachments; they maintain cooperation as well as check whether any persons were detained at the border. If necessary, RCS legal consultant meets with the detainees and provides them with appropriate counselling.

RCS Minsk is planning to start daily checking of persons detained at the State Border by SBC in 2008. A RCS Minsk legal consultant will call SBC Central Department daily and receive information whether anyone was detained in the last 24 hours. This information will then be transmitted to the RCS regional representation as well as UNHCR and the Belarusian Red Cross (if detainees are in need of humanitarian assistance).

When the RCS legal consultant conducts an ad hoc border monitoring visit, Red Cross regional representations are also informed. There have been joint visits to local SBC detachments. During these visits RCS has provided legal assistance and the BRC humanitarian aid.

When necessary, RCS has assisted in the provision of interpreters (either RCS staff interpreters or hired interpretation services); RCS pays for the external interpretation services.

In order to improve the implementation of the border monitoring project, RCS established a “hot-line”: a mobile phone service, which is available for any information relating to border monitoring issues (primarily on the migrants detained at the border). All parties to the project were officially informed of this service.

In 2007 there was also a familiarization visit to Ukraine and Slovakia; seminars related to border monitoring programme were held (including workshops dedicated to sizing up of the quality of implementation of border monitoring project). Regular meetings of the Coordination Board also took place.

### **Specific groups of concern**

The main specific group of asylum seekers are citizens of the Russian Federation. Almost all applications for refugee status from Russian citizens are rejected during the registration of their applications. The main reason is that in accordance with the Belarusian legislation the legal position of Russian nationals is almost equivalent to the legal position of Belarusian citizens; they possess (with some exclusions) the same rights and privileges. For example, the procedure for obtaining a residence permit and citizenship is much simpler for them compared to the requirements for other foreign citizens.

The state migration authorities also claim that Russian nationals are almost Belarusian citizens as the two countries are aiming to create a union state. This is the other basis for rejecting the registration of applications of Russian nationals for refugee status.

### **Detention**

There were no illegal detentions of asylum seekers in 2007. Of course, people detained at the State Border were put into the SBC detention facilities. But this was due to the fact that detainees violated the border regime and/or tried to illegally cross the Belarus State Border.

Persons detained by a SBC detachment are usually put into the detention facility of that SBC detachment. If the SBC detachment does not possess a detention facility then a person is transmitted to the local Ministry of Interior detention facility. If a person applies for refugee status, then he/she is transmitted to a temporary accommodation centre (currently there are temporary accommodation centres in Brest, Vitebsk and airport “Minsk-2”; in 2008 an accommodation centre in Gomel will also be opened).

If it is a first offence of violating the border regime after submitting an application for asylum he/she is released and moved to a temporary accommodation centre (if he/she cannot find a place to live on his/her own). If a person repeatedly crossed the border illegally (twice or more), then a criminal case is launched. After the decision of the court upon the criminal case the person can either be freed (if found not guilty) or imprisoned for perpetration. After a person has served the corresponding term of imprisonment, he/she is released and the state migration authorities examine his



application for refugee status. During examination of the application for refugee status, a person is free to live by him/herself (to rent an accommodation) or spend the period of the RSD procedure in a temporary accommodation centre for asylum seekers free of charge (as is the case, for example, with temporary accommodation centre which is situated in Vitebsk).

As for the terms of detention (if a person is captured at the border), SBC can hold a person for up to three days after detention, after which, in accordance with a sanction of state prosecutor the term of detention can be extended. This means that a detainee will spend this term of detention in SBC detention facility. During the first three days SBC has to make a decision upon the case, such as deportation or release. If additional time for deliberation of the decision is required, then SBC detachment requests state prosecutor's permission to extend the period of detention. This happens, for example, when a detainee does not have an identity document and SBC performs the personality identification procedure. The period of detention upon decision of the state prosecutor can be extended several times if necessary.

If a person applies for refugee status, he/she is exempted from responsibility for violation of the border regime (however only if he/she violated it for the first time) and is released (after submitting an application for asylum).

If a person is brought to criminal account for violation of the border regime, then he/she usually awaits court decision upon the criminal case in detention facility. If acquitted, a person is released and seeks asylum; if not, he/she is imprisoned for the crime and seeks asylum only after he/she has served his sentence.

### **Social integration**

- **Housing**

Housing, and the absence of it, is one of the fundamental problems faced by refugee families (including those with registration). Those who prefer to live in Minsk have the most acute problems with housing.

The majority of refugees and asylum seekers who reside on the territory of the Republic of Belarus live in large cities. The issue of housing in such regions remains very difficult. Registration at the place of residence is required in order to be included in the waiting list of people who are in need of better living conditions (from 1st January 2008 the "propiska" will be abolished). Registration at the place of residence is expensive, especially as, as a rule, Afghan families have many children.

Currently there is no national policy on integration or investment in this area, there are no comprehensive instruments which direct refugees to certain places for housing. There is no state financed housing for refugees (apart from temporary accommodation centres for asylum seekers in Vitebsk and Gomel), and there are also no resources for relief even though the most acute problems are with housing.



Living conditions vary but many refugees continue to live in difficult and unsatisfactory conditions. The majority of refugees have no other alternative, except to rent an apartment (the average rent is 150-250 USD, which for many families is the biggest item of expenditure in the family budget).

The majority of refugees are not satisfied with their housing but are not able to afford to rent anything better. The most prevalent difficulty is the shortage of free places available for families with many children (and the impossibility to receive registration legally). Few refugees can afford to buy their own accommodation and for this reason they turn to the rental housing market which experiences a shortage of housing as it is.

For most refugees only unfixed rental agreements are available (this is a common practice from which local inhabitants equally suffer as the landlords of the accommodation do not always want to declare their income). Refugees who are employed receive relatively sufficient wages, but taking into account that they rent apartments and often have large families, they can hardly make ends met.

In 2007, in the framework of the Soderkoping process, international experts carried out a regional study on the local integration of refugees in Belarus. As part of the research a questionnaire was disseminated among 57 refugees on integration issues.

According to the data from the questionnaire it was revealed that seven refugee families (registered according to the high number of children) in 2007 for the first time received social (free) housing in Minsk and the suburb of Minsk. Another 10 families are on the waiting list to receive housing. There are refugee families who have their own accommodation.

It must be noted that for those who are in need of better living conditions it is essential to provide extensive documentation (registration at the place of residence, family certificates, proof of income, identification documents, marriage certificates, etc.), also including the refugees' prospects for employment. Therefore refugees who are legally involved in labour or other activities, in accordance with the corresponding documents of the Republic of Belarus, and are capable of confirming their solvency can participate in housing construction cooperatives, to receive social housing and to purchase apartments.

The main problem for refugees in need of better housing is the preparation of all the necessary documents.

Concerning the above account it is essential for the government authorities in cooperation with NGOs:

- To inform the new arrivals of places where there is accessible housing; to encourage the move to these areas, assisting possibilities for employment and studies, allocating subsidies for these purposes, to offer accessible housing for those who agree to move from the capital, i.e. to develop the concept of integration for new asylum seekers.

- To provide administrative assistance to refugees if they need to provide documents they do not possess (marital, birth certificates, etc.), sparing them the necessity to approach the government structures of their countries of origin.
- For the most vulnerable refugees (who from the statistical point of view are always likely to remain dependent on the state housing – the elderly, sick, disabled and others) to give housing, particularly in the capital (to reserve or to build a certain number of social halls of residence especially for this purpose).

- **Employment**

Receiving regular and sufficient income (together with the search for housing) is the single biggest barrier to the settlement of refugees in society.

The level of unemployment in the Republic of Belarus is relatively low and in some regions there are vacancies (all around the country). The level of wages is not high and does not stimulate refugees to access permanent employment. Competition for the higher paid jobs is significant and is often restricted to big cities or the capital. It is difficult for refugees to compete with local inhabitants or Russian-speaking migrants, and they prefer to work unofficially.

The law on the legal status of foreigners and stateless persons guarantees the right for employment only for those foreigners who permanently reside in Belarus, i.e. have registration (therefore those who live on a temporary basis have to receive special permits to work).

The active internal migration from the rural areas to the regional centres (and especially to the capital) drive towards taking measures which are called upon to control migration and reduce the pressure on the housing market. For example, the majority of refugees prefer to live in Minsk or within proximity of Minsk, however many are faced with the problem of receiving registration.

In line with the statistical data provided by the Ministry of Labour and the local authorities, a relatively small number of refugees are registered as looking for work. Though not all the relevant authorities maintain concrete statistics.

Refugees who are employed illegally are not paid their social allowances or their payments for the pension funds and do not accumulate the length of service. If the person cannot show that he/she was involved in permanent paid employment for a certain minimum period of time, he/she cannot be registered as unemployed and does not have the right to the corresponding benefits. Most of the important services linked with employment such as further training, subsidies for entrepreneurs who are starting their businesses and job-placement are only available for registered persons.

There is an insufficiently used government programme “creation of agricultural towns”, set up to attract people to move to the rural areas. Agricultural areas

experience a great shortage of labour force and there remain more than 2000 unoccupied vacancies (from a tractor driver to a doctor) in the country. Some employers even provide housing (and subsequently registration at the place of residence), however refugees who are given such an opportunity usually are not interested because of their mentality and the way of life (for example refugees from Afghanistan mostly work in commerce).

This year, the Belarusian Red Cross has been involved in working with the employment centre of the population with the aim of sensitising the specialists of these organizations to the problems of refugees.

Regarding these issues, government authorities in cooperation with NGOs should:

- Issue clear instructions for the employment services on how to work with refugees, to train the specialists of the employment services about work with clients who have different cultural traditions.
- Inform employers of the necessity of employment for refugees with the aim of their rapid integration.
- Establish accessible integration programmes – language and professional training.

The majority of refugees have a good spoken Russian, some can read, but it is often the case that their knowledge is still insufficient. Only a few understand Belarusian (especially those who have had the possibility in recent years to go to school), however, the knowledge of one of the two official languages is sufficient.

The minority of the present refugees understand Russian poorly (for example, women who do not work and do not actively participate in the life of the local community or persons who have recently arrived). Only a few refugees have profited from official programmes and language courses and the courses, which have been held, have not always been effective enough (for different reasons, including, low attendance, lack of time and resources, as refugees often have to prioritise earning a living).

Recently arrived refugees usually do not understand Russian and if they also have a poor grasp of another common language (for example, English) then social interaction becomes problematic.

In many cases communication in official procedures creates particular difficulties both for the refugees and for the state organ concerned.

Children know Russian and Belarusian a lot better than their parents because both languages are taught at school. Many children continue to speak in their native language but it is difficult for them to read and write. Refugee communities try to organise Sunday school lessons in their own native languages (and on their cultural traditions), and some apply for support for this purpose. These activities are partially funded by UNHCR and partially by the communities.

At present, Russian language courses organised at the philological faculty of the Belarusian State University are financed by UNHCR and run by the Belarusian Red Cross. Attendance at these courses is voluntary and is not compulsory for the newcomers.

Concerning these issues the government organs must:

- Provide the possibility of financial resources from the state budget for compulsory courses of Russian/Belarusian for all newly arrived refugees and asylum seekers with the aim of facilitating rapid adaptation and integration.
- Support new projects and initiatives started by NGOs for improving integration of these groups.

Above all, as a result of the work of NGOs in close cooperation with the state authorities all sides have reached an understanding of the necessity of uniting the forces of all sectors involved in this issue area.

Recently, the Belarusian Red Cross (BRC) has directed its work toward closer cooperation with the state authorities on issues of refugees' integration. As a starting point the largest region, Minsk, was chosen, where the biggest number of refugee and asylum seeker families live.

BRC and the regional centres of social protection of the population are planning to conclude a joint agreement in the field of psychosocial assistance to refugees with the aim of encouraging refugees to use the possibilities of the relevant government structures in the interests of refugees and asylum seekers. BRC is also planning to continue this work with the Minsk city employment centres in 2008.

As part of the project a range of events (round tables, a job fair) are planned for 2008 with the aim of attracting the NGOs and the state authorities (Department for citizenship and migration, employment services, centres of social protection of the population) as well as employers.

### **Recommendations**

1. Government authorities in cooperation with NGOs should inform asylum seekers and refugees of accessible housing and support them in moving to areas where there is accessible housing.
2. State housing should be provided for the most vulnerable refugees, such as the elderly, sick, disabled and others, particularly in the capital.
3. A national policy on refugee integration should be developed including ways to promote access to employment and education and to provide subsidies for these purposes.

4. Accessible integration programmes should be established for language courses and professional training.
5. New projects and initiatives started by NGOs for integration of refugees and asylum seekers should be given financial support.
6. Government authorities in cooperation with NGOs should issue clear instructions on how to work with refugees and inform employers of the importance of employing refugees to improve their integration.
7. The requirement for proof of cancellation of the refugee's previous citizenship should be abolished from the list of documents necessary for the application for Belarusian citizenship.

**ECRE would like to thank the following NGOs for providing information for this report:**

**The Belarusian Movement of Medical Workers and The Belarus Red Cross**

## The Republic of Moldova

### Statistics<sup>8</sup>

#### Asylum seekers and refugees

Country of Origin	Number of asylum seekers who submitted applications for refugee status						Number of asylum seekers who were granted refugee status						Recognition rate
	2003	2004	2005	2006	2007	Total	2003	2004	2005	2006	2007	Total	Total
<b>Total</b>	<b>92</b>	<b>112</b>	<b>105</b>	<b>71</b>	<b>75</b>	<b>455</b>	<b>8</b>	<b>7</b>	<b>56</b>	<b>87</b>	<b>21</b>	<b>179</b>	<b>39%</b>
<b>Including by nationality</b>													
Russia	12	33	17	5	13	80	5	1	12	4		22	28%
Armenia	1	10	13	16	18	58		3	1	19	5	28	48%
Palestine	14	14	3	1	2	34			10	6	1	17	50%
Turkey	4	5	10	11	4	34			1	2	1	4	12%
Syria	9	7	11	2	4	33			8	10		18	55%
Jordan	2	13	4	6	4	29			6	1	1	10	34%
Sudan	14	2	5	4	3	28		1	1	5	5	12	43%
Georgia	3	4	7	2	1	17			2	3		5	29%
Lebanon	1	4	3	7		15				1		1	7%
Iraq	5	4	2		2	13	1	1	6	2		10	77%
Afghanistan	2		4	2	2	10			3	5	3	11	110%
Tajikistan	9	1				10				4		4	40%
Uzbekistan	1	1	2	2	4	10				1	1	2	20%
Azerbaijan			3	1	4	8				3	1	4	50%
Pakistan	3	1		1	2	7					1		0%
Egypt	1	3	2		1	7			1	2		3	43%
Ethiopia			3	2	2	7				5		5	71%
Kyrgystan		4		2		6			4			4	67%
Sierra Leone	2	1	1		1	5				1		1	20%
Congo			5			5							0%
Serbia	1		4			5				4		4	80%
Iran	4					4		1		4		5	125%
Nigeria			2	1		3							0%
Burkina Faso	2				2								0%
Somalia					0	1						1	
Eritrea					0	1						2	
Other	2	5	4	6	8	25				5		5	20%

<sup>8</sup> Statistics were provided by Cross Border Cooperation/Soderkoping Process  
<http://soderkoping.org.ua/page12505.html>

### **Legal and procedural changes**

In December 2001, Moldova acceded to the 1951 Convention relating to the status of refugees, and its 1967 Protocol, which entered into force on 1 May 2002 and 31 January 2003 respectively. The Law on the Status of Refugees was adopted in July 2002 and entered into force on 1 January 2003.

In May 2005 the parliament adopted amendments aimed at introducing a form of complementary protection and adjustment of the provisions on additional exclusion and cancellation clauses extending beyond the 1951 Convention, which entered into force on 7 July 2005.

On 28 June 2005, the Government of Moldova adopted legislation regarding documentation of refugees in compliance with the Moldovan Law on refugee status and the 1951 Convention. The adopted by-law approved models of identity cards and travel documents for refugees, as well as amendments to the existing law regulating the issue of identity documents. The Government decision stipulated that identity cards would be issued to refugees and their children for a period of 5 years and travel documents for one year. For the beneficiaries of humanitarian protection identity documents would be issued for one year (renewable for the period of humanitarian protection guaranteed). As of the end of 2005 the Main Directorate for Refugees (MDR) started issuing the first identity cards to recognised refugees. Protection from *refoulement* was ensured for asylum seekers through the MDR, which issues time-limited “temporary identity documents” as a legal basis for stay. Documentation will increase refugees’ prospects for integration and self-sufficiency by facilitating their access to the labour market, social services, etc.

The central governmental asylum authority is the (Main) Directorate for Refugees, which was established in 2001 with the responsibility of coordinating all Government activities in the field of asylum and currently operates under the Ministry of Interior. The Director of the DR reports to the General Director of the Bureau for Migration and Asylum and to the Ministry of Interior. Another development in the establishment of a comprehensive asylum system was the construction of the first reception centre for asylum seekers with a contribution to UNHCR from the EU TACIS programme, which was finalised in June 2005 with the capacity of housing about 200 persons. The Directorate for Refugees has assumed the administration of the centre.

In the republic of Moldova, foreign citizens and stateless persons are granted legal assistance by the state, in cases and proceedings, which come under the competence of the public administration authorities. These provisions were set out in the Law On Legal Assistance Assured by the State.

In the course of 2007, some changes occurred within the mechanism of the expulsion of foreign citizens and stateless persons. Thus, to ensure the financial resources for readmission, expulsion or return of foreign citizens, modifications were made in the system of normative acts regulating these issues. As a result, these financial resources will be included in the public budget of the Republic of Moldova for 2008. Moreover,



The agreement on the readmission of persons residing without authorisation was signed in October 2007 between Moldova and the European Union.

Furthermore, the Government's limited financial resources are hampering progress in building the capacity of government structures (including difficulties of retaining trained employees) and have a negative impact on the implementation of the legislation. Further efforts to bring national legislation in line with international standards are still a priority. The draft for the ratification of the Additional (optional) Protocol of the International Pact regarding civil and political rights (adopted on 16 December 1966 in New York) that was approved by the Government Decision Nr. 648 on 11<sup>th</sup> June 2007 is progress in the right direction. It is hoped that this mechanism will create additional possibilities for the protection of the rights of refugees and other forced migrants.

Other modifications are contained in the Law concerning migration nr.1518-XV from 6 December 2002. It creates clarity in the activity and cooperation of the organs that deal with the issues of refugees and asylum seekers and instructs the bodies of local administration to ensure the realization of the appropriate international standards for refugees and asylum seekers.

In 2007 the Directorate for Refugees (DR) established a working group with the aim of drafting the new national refugee law. It is expected that the law will be drafted at the end of June 2008. It will replace the Law on the Status of Refugees from July 2002 that is currently in force. The new law is elaborated in strict compliance with the EU's asylum acquis.

There are no major changes referring to the procedures of recognition of refugee status. Nevertheless, several amendments with a procedural content were introduced to the Law on refugees.

New provisions concerning the termination of refugee status have been established in the following situations:

- Death of the Beneficiary of the status, evidently the status will end upon the death of its bearer.
- Voluntary recovery by the beneficiary of the status of his earlier citizenship, or the obtaining of a new citizenship, thus enjoying the protection of the country whose citizenship the person has obtained. This situation occurs when the refugees use the protection of their home country, use the national documents, and contact the embassies, consulates for help. In these situations the Bureau of Migration may start an action in the Court for the withdrawal of the Refugee status. Also a Refugee that obtains the citizenship of another country, including Moldovan citizenship, loses his status.
- The renunciation by the beneficiary, of the status granted to him by the law. The procedure of renunciation is not yet clear because it is not specifically regulated by law. The refugee is required to send a request to the Refugee Directorate.

However, the procedure still has to be clarified in terms of the time period and all the procedures required for the renunciation of the refugee status and should be regulated by a normative act.

### **Refugee Status Determination Procedure**

As of January 2003, all active cases were transferred from UNHCR to the DR. Since January 2003, first instance status determination procedures have been conducted by the (Main) Directorate for Refugees; appeals have been heard by the courts.

In 2007 there were some significant changes in the legislation on refugee status. A new article, art. 30/1, was included that stipulates the possibility for addressing a new request in the case of the old one being denied and where the situation in the country of origin of the asylum seeker or other important circumstances have changed. This is a useful modification and will contribute to the solution of some actual problems.

The main reasons for refusing to grant refugee status are:

- Situation of the applicant does not correspond to the conditions of the law “On the Status of Refugees”, where the applicant is not a refugee in accordance with the definition given in the Convention and the law.
- The applicant has crossed a third safe country and had a real possibility to apply for refugee status on the territory of that country, but had not done so.
- The Helsinki Committee for Human Rights in Moldova (HCHRM) has noticed several cases of rejection of the status on the arguments of use of the national documents by the asylum seekers.

The appeals procedure includes a two-tier system: the appeal and the second appeal instance. After a person has received a negative response from the Bureau of Migration and Asylum, he/she must leave the country within 15 days. If he/she contests the refusal in the Court, the deportation is suspended. A refugee has the right to address an appeal within 30 days to the first instance, the Court of Appeal. Within a period of three days the judge decides on the admissibility of the request. The examination under the condition of the Law Concerning the Administrative Court is faster than in a similar civil procedure. After the Final decision of the Court of Appeal handed down the asylum seeker has the right to address, within a period of 15 days, to Cassation court “The High Court of Justice” that is the final instrument to solve this problem in Moldova. There are also other ways of argument stipulated in the Code of Civil procedure, but the refugees de facto do not use them because they do not have a suspensive effect on deportation procedures.

In 2007, there were no changes to the institutional framework responsible for the RSD procedure. The Directorate for Refugees (DR) is the government central authority that is part of the Migration and Asylum Bureau within the Ministry of Interior. As since January 2003 the DR has assumed the whole responsibility for dealing with asylum

claims, all asylum seekers are registered by the DR, even if the asylum claim is lodged at the state border.

As of December 31, 2007, there are 89 refugees and 62 beneficiaries of humanitarian protection on the territory of Moldova. In 2007, DR registered 75 asylum seekers, rejected 41 persons and recognised 21 persons. Arrivals continue from several states with the majority coming from Armenia, Russian Federation, Jordan, Turkey and Sudan.

The procedure of appeals against the decisions of the DR is the same as in the previous year. The appeals are examined by the Court of Appeal and the High Court of Justice, which still have insufficient capacity and training on refugee law. Legal representation was provided only to certain cases after initial evaluation. Thus, NGOs, such as the Law Centre of Advocates (LCA) and the Helsinki Committee for Human Rights in the Republic of Moldova, have been providing legal assistance to asylum seekers. The main reason for rejection of asylum seekers appeals remains the same – that the case does not meet the criteria provided by the national refugee law and the 1951 Convention.

The legal provisions on cancellation clauses set out in Art.203 and Art.35 in the Law on the Status of Refugees have been fully enforced by the Directorate for Refugees. Thus, in 2007 the DR cancelled the humanitarian protection in four cases and withdrew this protection in seven cases.

23 asylum seekers were provided interpretation services throughout the procedure carried out by the DR and the courts.

There is no mechanism for monitoring of asylum claims from submission to decision. As a result NGOs are not aware of any cases of asylum seekers seeking asylum at the airport or at the state border. The LCA supposes that the rejected asylum seekers are not properly informed about their rights to be assisted within the RSD procedure, to appeal the DR's decision and to benefit from free legal assistance. Thus, of the 41 rejected asylum seekers only 19 asked for legal assistance from LCA's lawyers. From the 11 persons whose humanitarian protection was cancelled or withdrawn, only 4 appealed the DR's decision. Only one refugee whose legal status was going to be withdrawn by the DR asked for legal assistance. In a number of cases there is no information about further fate of the rejected asylum seekers or persons where the DR withdrew or cancelled the refugee status or humanitarian protection. All this results from the lack of an efficient monitoring process of asylum claims.

The beneficiaries of humanitarian protection face legal problems concerning their status, documentation, right to work, etc. Another problem remains the lack of an effective programme and beneficiaries of humanitarian protection into Moldovan society. The issue of naturalization still remains a deep problem.

Recommendations:

- To enhance the capacity of the judges who deal with asylum cases by organizing training events;
- To adjust the national asylum legislation to the European Asylum Acquis;
- To raise awareness of asylum seekers, refugees and beneficiaries of humanitarian protection on their civil and politic rights and freedoms, especially in the field of naturalization;
- To establish an efficient mechanism of monitoring asylum claims from submission to decision.

Despite progress, the asylum system is still far from satisfactory. The most important problems are related to the need for further amendments to the Refugee Law, and very slow process in the implementation of the Refugee Law (despite the 6-month deadline to bring related laws into harmony with the new Refugee Law), with related consequences for the socio-economic rights of refugees and their prospects for local integration. Furthermore, limited state financial resources are hampering progress in building the capacity of government structures (this also includes difficulties in retaining employees who have received specialised training) and have a negative impact on the actual implementation of refugee rights foreseen by the legislation.

**Important case law at national level**

The case of the Centre for temporary accommodation: the Centre for temporary accommodation is a place for asylum seekers or refugees in situations when they do not have the necessary means to find housing. In August 2007, the HCHRM received information from a group of refugees who had been forcibly evicted from the Centre. A group of 7 families, including children had been evicted. The official motive for the eviction was the fact that these families were composed of refugees and Moldovan citizens, and for this reason the refugees were claimed to have attained a good level of social adaptation. The Helsinki Committee received petitions from four families. Consequently, they held a press conference on this issue and contested the legality of the decision of the Bureau of Migration in the Court. The Court stated that the decision on eviction was illegal. Finally four refugee families were readmitted to the Centre, the rest of the families did not wish to return.

**Returns of refugees from Moldova to countries of origin or other countries**

Refugees regard the Republic of Moldova as a transit territory on their way to the European Union, as limited possibilities for local integration due to the weak economic situation leads many asylum seekers and refugees to move westwards. For this reason, there is a permanent tendency of migration of refugees from Moldova to other countries. Approximately 3-5 refugee families leave Moldova every year for the countries of the EU, but the general tendency in these cases is shifting and we expect an increase in the number of the people leaving Moldova in the next few years.

There were a few modifications towards improved implementation of repatriation procedures in 2007. Firstly the Republic of Moldova contributed financial resources for the expenses for procedures of readmission, expulsion and repatriation. HCHRM sees this as clear progress in relation to the previous years. There was a problem in Moldova concerning repatriation; the state could not help refugees to return to their countries of origin because of the lack of resources. It is hoped that this problem will be solved in the future, and the first steps will be taken towards this goal.

According to official information provided to HCHRM, this year 158 foreign citizens were deported and repatriated from Moldova. HCHRM dealt with two cases of deportation of the asylum seekers and other two cases where deportation was stopped.

The readmission agreement between the EU and Moldova was signed on 10 October 2007. The agreement sets out clear obligations and procedures for the authorities of both Moldova and of EU Member States as to when and how to take back people who are illegally residing on the territories covered by the agreement. In this respect, the agreement covers not only illegally staying nationals of both parties but also third country nationals and stateless persons being in an irregular situation provided they have a clear link with the requested Party, such as visa or resident permit.

It is stated that “Full respect of Human Rights as provided by the European Convention of Human Rights is guaranteed during the application of the Readmission agreement”.<sup>9</sup> However, The EU-Moldova Readmission agreement does not foresee safeguards for refugees and asylum seekers although it refers to international human rights legislation (i.e. acknowledges the necessity of observing human rights). Furthermore, it does not contain the Committee Against Torture provisional safeguards (when a person risks being tortured or subjected to the inhuman and degrading treatment).

Recommendations:

- Clear safeguards for asylum seekers and persons in need of the international protection should be included (for example: persons cannot be returned to the countries which do not have effective asylum systems that guarantee non-return to the country of origin);
- Training in the field of asylum for the border guards and the other state officials involved should be provided;
- The EU should provide substantial financial support to non-member states on its borders;
- There is a need for monitoring of readmissions and returns to Moldova to guarantee the rights of refugees and asylum seekers are respected at borders.

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<sup>9</sup> European Union, Joint Press Release, 10 October 2007  
([http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/er/96380.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/96380.pdf))

### **Developments in relation to border control mechanisms**

There are no relevant changes concerning border control in 2007, except the institution of an electronic system concerning interaction among all the relevant State authorities, inclusively the Border Guards and the Bureau of Migration and Asylum. For the implementation of this organizational meetings and working groups were held at the state level. The introduction of such a system is a good innovation for Moldova.

Also HCHRM has, through indirect monitoring, established that there are practically no applications for refugee status at the border. Almost all applications for refugee status are made at the Bureau of Migration and Asylum. This is due to the fear of refugees not to be allowed entry to the territory of the Republic of Moldova. This trend raises questions as to whether the rights of all persons, including those of asylum seekers, to enter the country are respected at the borders.

### **Detention**

Since the Bureau of Migration and Asylum became part of the Ministry of Interior the cases of detention have increased.

There are cases of detention of asylum seekers and refugees by the police, holding them in the places of detention under the formal pretext of identification, even though these persons are registered in the Bureau of Migration and Asylum. In the majority of cases the Bureau has reacted to the situation and solved the problem, but these problems continue, they appear especially due to the fact that the police do not have adequate information concerning refugees, asylum seekers and persons with the humanitarian status. Information and advocacy campaigns must be undertaken in order to stop the practice of detention in the future.

A significant problem is the linguistic barrier. In some cases the state cannot assure a competent interpreter for the accused person. This fact contributes to serious infringements of human rights.

### **Social Rights**

The Republic of Moldova is a major transit country for irregular migrants and asylum-seekers to Western Europe.

For economic reasons, even though in 2004 there were some improvements in the economical field, the situation in Moldova remains critical and the country was again classified by the World Bank as the poorest in Europe. For this reason, the number of Moldovan citizens applying for asylum or looking for work in Europe has remained high, exceeding 5,000 in 2004.

A large percentage of the population, in particular in the rural areas, lives below subsistence levels (as high as one third according to some estimates). The reliance on international support remains strong. In view of high unemployment and under-employment, many Moldovan citizens were forced to seek employment (mostly



illegally) in other countries, and their remittances are estimated to amount to 27% of GDP. Consequently, prospects for integration and self-sufficiency for refugees are limited in Moldova.

In 2007, the monthly allowances for refugees were increased. In comparison with the previous year allowances increased from 170 lei in 2006, to 200 lei in 2007, and they are set to increase to 263 lei in 2008, though the growth is mostly due to the inflation of the Moldovan currency and increase in the prices in the local market.

- **Accommodation**

In the Republic of Moldova the majority of refugees and asylum seekers live in the reception centre located outside the city centre in Chisinau. The others are either in Chisinau or dispersed throughout the country. In addition there is a temporary shelter in the premises of the Charity Centre for Refugees (NGO) for urgency cases.

However, the period of 3 months, which the refugees are allowed to stay in the centre, is insufficient for their integration. In reality some groups of refugees who have serious financial problems are permitted to stay in the centre for a longer period of time. These are families with small children, the sick, refugees with very low material resources. This state initiative is beneficial as in this way the state seeks to improve the position of some refugees and asylum seekers by offering them free housing for a longer period of time. Nevertheless, it is timely to create additional places for the new arriving asylum seekers and at the same time extending the period of time, which the refugees are allowed to stay at the centre. HCHRM also proposes that a system of living with Moldovan host families to improve social integration of refugees could be implemented.

IOM Moldova in collaboration with the Ministry of Interior are currently implementing a project funded by the European Commission and the Government of Finland. The project aims to create a Centre for temporary accommodation for foreigners. This centre will have a capacity to house 100 people and will host foreigners who have crossed the border illegally and who either are going to be expelled on court order or because they are not legally allowed to stay in the Republic of Moldova. However, the construction of this centre does not contribute to the housing situation of asylum seekers and refugees who have the right to stay in Moldova. Also there is a risk that asylum seekers who have the right accorded to them by law to seek international protection regardless of whether they have crossed the border into Moldova illegally or not, could be sent to the centre for deportation without having access to the refugee status determination procedure and could be in danger of being deported to countries where they are at risk.

- **Work**

According to national legislation, recognised refugees in Moldova have full access to the same social and economic rights enjoyed by Moldovan citizens. However, due to the general economic environment and high level of unemployment in Moldova, asylum seekers and refugees have many problems finding work, both in the formal



and in the informal sectors of the economy. UNHCR (in cooperation with its Implementing Partners in Moldova) therefore, continues to cover the basic needs of asylum seekers and refugees and there are no prospects that this situation will change in the near future.

Access to the labour market remains a crucial problem for refugees and asylum seekers in Moldova. The language barrier and a lack of job opportunities are the main reasons for difficulties in finding work. Also, those with the humanitarian status and asylum seekers do not have the necessary documents to allow them to be legally employed.

Another problem is that the process of receiving identification documents can take up to 6 months due to prolonged procedures and for this period refugees receive a temporary document which is not accepted by most employers. The job offers available may also not satisfy the refugees' needs. Moreover, most of the professional qualifications and diplomas the refugees hold from their countries of origin are not recognised in the Republic of Moldova. Young refugees, on the other hand, need to find financial resources to enter university and to gain higher education in Moldova.

Another significant barrier in advancing refugees' integration are the obstacles they are confronted with when setting up their own businesses. NGOs recorded that the state authorities often take actions against the registration of legal entities by refugees. This is not helpful for refugees to find durable solutions to their situations, to be able to rebuild their lives and to be able to effectively integrate into the Moldovan society and become active citizens contributing to the development of the Moldovan economy.

Solutions have to be found in order to improve refugees' ability to find durable solutions in Moldova and to give them more rights and job opportunities.

The limited possibilities for local integration due to the weak economic situation lead many asylum seekers and refugees to move westwards.

- **Integration programmes**

Most integration programmes are initiated by the NGOs active in Moldova, while the participation of the state organs in contributing to the integration of refugees and asylum seekers remains limited. Comprehensive governmental programmes for labour integration of refugees are yet to be developed and would require strong financial support from the international community. Also, access to the labour market needs to be improved in order to encourage further integration.

The state implements some activities in the integration of refugees in the labour market, such as the vocational courses, which are run at the Accommodation Centre for asylum seekers. However, only recognised refugees can attend these courses. The trainings are focused especially on the technical professions, lessons for acquiring a driving license, hairdressing courses and sewing courses for women. Furthermore, the Bureau for Migration and Asylum provides some social assistance in employment in

terms of providing help to refugees by indicating them the places where they can get vocation courses or providing them with a concrete address where they can find employment. However, these actions are not sufficient in solving the existing problems regarding access to the labour market and social integration and most integration programmes are implemented by NGOs.

There are no state programmes for language training. UNHCR is financing a project of Romanian language training, which is implemented by the Charity Centre for Refugees. This initiative is a positive development but on its own it is insufficient in relation to the number of refugees that reside in Moldova each year. In addition, the Law Centre of Advocates has implemented a special course for refugees on the study of the Constitution for a period of several months.

There is a real need for a centralised well-planned policy coordinated by the state authorities for the realisation of an effective governmental integration programme, including language training, a variety of vocational training opportunities and concrete efforts to improve access to the labour market for refugees and asylum seekers and thus encouraging their further integration.

- **Education**

All children in Moldova, including refugees, asylum seekers and those with the humanitarian status, study the national curriculum for schools. The Moldovan NGO Save the Children covers all expenses relating to writing materials, books and school expenses for these groups of children, and also offers them a second breakfast. Dinner is covered for around 30 percent of the pupils due to the limited financial resources available to the NGO. The general school curriculum also provides these children an effective way of linguistic integration. According to NGO reports, a significant problem for refugee children is that once the children have completed the 12th grade they can no longer be assisted, as there are no organizations that provide such assistance.

In addition, Save the Children covers the kindergarten expenses of refugee and asylum seeker children. They also offer additional services for children by organising summer camps. In 2007 these camps were also attended by children that suffered from the war in Transnistria or been handicapped in that period, children of the internally displaced people from Transnistria. Approximately 100 children spend their summer in these camps.

- **Medical Care**

There are serious concerns for refugees and asylum seekers regarding access to medical care. Refugees do not receive the necessary medical assistance; just the bare minimum or they are treated in very serious cases. Recognised refugees receive the national medical insurance, which offers the minimum assistance, but asylum seekers receive none. The medical insurance includes some expenses for hospitalization and the basic and cheapest medicines. It does not cover an effective treatment in case of a dangerous or life threatening disease. Save the Children Moldova is the only NGO in

Moldova that has employed a doctor who provides medical assistance to refugees and asylum seekers. The general negligence of medical problems has contributed to a high rate of infectious diseases among asylum seekers. As a result, Save the Children has witnessed 96 cases of scabies and 67 other dangerous infectious diseases in recent years. The asylum seekers also receive medical assistance in some cases from the “Memoria” centre, which assists victims of torture. There is also a doctor who works at the Accommodation Centre and provides medical assistance to refugees and asylum seekers. Due to the fact that asylum seekers do not benefit from the medical insurance like refugees do, in most cases they do not have the necessary financial resources to pay for their medical care. Save the Children Moldova seeks to help these persons by paying their medical expenses. However, Save the Children Moldova does not have the adequate resources to help all people in need of assistance and therefore it intervenes in the most severe cases.

Recently the Ministry of Interior has been planning to equip a number of rooms for the hospital and medical care services for refugees and asylum seekers, according to the information by HCHRM. The medical centre is expected to start its activity by 2010.

- **Legalization and citizenship**

One of the major issues is that refugees do not receive identification documents for a long period of time. It takes approximately 6 months for refugees to receive these. Although refugees receive temporary documents, a sheet of paper with identification information and a stamp, they are restrained in their basic rights, i.e. they do not have the right to get married, create a legal entity or to undertake other important actions in the legal sphere.

Another problem concerning documentation is the situation with travel documents. Even though the law concerning the refugee status stipulates that such a document must be given to every refugee, it was reported by HCHRM that they did not meet anyone who had received a travel document. The issue also complicates refugees’ business activities in that they are unable to travel abroad to search for markets where they can buy goods and find partners for their businesses abroad.

Recognised refugees and stateless persons have the right to obtain the citizenship of the Republic of Moldova after 8 years of legal and unbroken residence on the territory of Moldova. The main problem is that few have “legally” (not only factually) resided in Moldova for the minimum eight years required. For most of them it is difficult to prove that they resided legally and habitually (unbroken residence). This is the main reason for rejecting refugees’ applications. The naturalization process is a long process and many refugees consider it non-transparent and discriminatory. Another issue is that the process includes an obligation to have a good knowledge of the state language, Moldovan, (the name of the Romanian language in Moldova) and the Constitution of the Republic of Moldova. The fulfilment of these conditions is required even though the state does not provide programmes or courses for the study of the Constitution and the Romanian language. Thus very few refugees have the resources and the time to undertake an independent study of the Constitutional law

and the Romanian language. This serves as a barrier for many refugees wishing to gain Moldovan citizenship.

Recommendation:

- Appropriate counselling should be provided to refugees during the naturalization procedure;

- **The role of NGOs**

Due to weak Government policy in implementing the necessary rules and procedures to ensure the protection of refugees and their rights, refugees rely on the moral, social, cultural and legal assistance provided by NGOs. The Charity Centre for Refugees (CCR), Save the Children Moldova (SC), Law Centre of Advocates (LCA) all carry out activities as part of the UNHCR programme in Moldova. The Society for Refugees of the Republic of Moldova provides an informational service on refugee issues producing a journal on legal issues and a quarterly magazine.

The Helsinki Committee for Human Rights in Moldova (HCHRM) is an advocacy organisation for human rights and refugee rights, providing legal aid and information for refugees and undertaking various advocacy activities to improve the rights of refugees, IDPs and other forced migrants in Moldova. HCHRM provides legal assistance for cases in the European Court of Human Rights and the national instances. The Law Centre of Advocates (LCA) provides free legal aid to refugees and other social categories protected by UNHCR in the domestic procedures. LCA has also held trainings for judges, and other relevant bodies in this field, on the rights of refugees and asylum seekers and implemented a programme on the study of the Moldovan Constitution.

- **Cultural adaptation and integration**

The NGO – Charity Centre for Refugees (CCR) aims to provide cultural, social and moral assistance to refugees and asylum seekers living in the Republic of Moldova and to offer them a place where they can meet, discuss their common interests, share their opinions, and find solutions to common problems. The average number of visitors/beneficiaries of the CCR during the year 2007 was approximately 20-25 persons daily. CCR's work is focused mainly on the facilitation of the pre-integration of vulnerable categories into the society, i.e. organising cultural orientation and extra-curricular activities. In cooperation with other NGOs, CCR implemented various cultural and social activities for refugees and asylum seekers with a view to help them better integrate into Moldovan society, to encourage their community building and self-sufficiency.

Save the Children provides services of assistance and social integration for refugees, asylum seekers, beneficiaries of the humanitarian status and particularly for the children from these families. They offer integration programmes for children such as courses of civic studies, cultural excursions, festivals and summer camps for children.

They also provide medical aid and humanitarian/material assistance to refugees, asylum seekers and those with the humanitarian status.

**Recommendations to the government of Moldova and the international community:**

1. Further efforts need to be made to bring national legislation on refugees and asylum issues in line with Moldova's international commitments and international standards.
2. Training on refugee law is required for judges and state officials involved in refugee status determination procedures.
3. Solutions have to be found in order to improve access to the labour market for refugees and asylum seekers and encourage integration.
4. State language courses in Romanian are particularly needed as well as programmes for labour integration. The existing programmes are for the most part implemented by NGOs and thus a stronger state involvement in these activities is necessary.
5. Problems with the refugee documents must be solved. Travel documents must be offered to refugees within the time period prescribed by law. Also, the national ID document must be offered to refugees within one month.
6. The medical assistance for refugees and asylum seekers should be improved.
7. The state bodies must offer a minimal level of financial assistance to these categories of people.
8. Awareness raising is needed among asylum seekers, refugees and beneficiaries of humanitarian protection on their civil and political rights and freedoms, especially in the field of naturalization.
9. Establish an efficient mechanism of monitoring asylum claims from submission to decision by the Directorate for Refugees' decisions.
10. Cooperation of the state authorities with NGOs in Moldova should be strengthened to ensure that the rights of refugees, asylum seekers and internally displaced people are respected and the maximum level of assistance is provided to them.

**ECRE would like to thank the following NGOs for contributing to this report:**

**The Charity Centre for Refugees, the Legal Centre for Advocates, The Helsinki Committee for Human Rights in Moldova and Save the Children Moldova**

## The Russian Federation

Over the last three years there has been a noticeable increase in the interest the Russian authorities pay to the problems of migrants and their value for the state. New legislation in this area and programmes of voluntary resettlement were initiated in order to attract new human resources to Russia. These positive tendencies, however, were cancelled out by multiple violations of human rights in relation to migrants.

The difficulty for migrants is not only due to imperfections in existing legislation, but also to a large degree to legal practice – low levels of legal knowledge and lack of punishment for officials and law enforcement officials who break the law. Therefore the new laws regulating the legal status of foreign citizens were not able to radically change the situation despite making a positive contribution.

### Statistics

The official statistics from the Federal Migration Service (FMS) of the Russian Federation in 2007 indicated that the number of recognized refugees, registered by FMS in the Russian Federation totaled 10 669.<sup>10</sup> The biggest number of refugees came to the Russian Federation in 2007 from Georgia (68), Afghanistan (57) as well as Azerbaijan (3) and Pakistan (3).<sup>11</sup> The majority of refugees reside in Moscow (76) and Moscow region (54).<sup>12</sup>

Year	2003	2004	2005	2006	2007	Total
Asylum Applications #	737	910	960	1170	2173	5950
Refugee status granted, #	50	122	21	41	140	374
Refugees, registered by FMS	8725	614	458	397	475	10 669
Recognition rate, %	6.8	13.4	2.2	3.5	6.4	

In 2007 1196 persons applied for temporary asylum in the Russian Federation<sup>13</sup>. 402 persons were granted temporary asylum. The majority of them came from Georgia,

<sup>10</sup> [http://www.fms.gov.ru/about/ofstat/bezhenci\\_stat/index.php?phrase\\_id=701630](http://www.fms.gov.ru/about/ofstat/bezhenci_stat/index.php?phrase_id=701630)

<sup>11</sup> [http://www.fms.gov.ru/about/ofstat/bezhenci\\_stat/ack\\_countries.php](http://www.fms.gov.ru/about/ofstat/bezhenci_stat/ack_countries.php)

<sup>12</sup> [http://www.fms.gov.ru/about/ofstat/bezhenci\\_stat/ack\\_fed\\_dist.php](http://www.fms.gov.ru/about/ofstat/bezhenci_stat/ack_fed_dist.php)

<sup>13</sup> [http://www.fms.gov.ru/about/ofstat/vu\\_stat/vu\\_fed\\_dist.php](http://www.fms.gov.ru/about/ofstat/vu_stat/vu_fed_dist.php)

Afghanistan, Angola and Iraq.<sup>14</sup> In total 2282 holders of temporary asylum resided in Russia in 2007.<sup>15</sup>

### **Legal and procedural changes**

On 15 January 2007 two new laws came into force: The law “On Migration registration for foreign citizens and stateless persons in the Russian Federation” and the law “On the introduction of amendments and changes to the Federal Law On the legal position of foreign citizens in the Russian Federation”.

#### **Migration registration.**

The first law introduced order into the registration procedures for foreign citizens, without the authorities having the right to refuse registration. A foreigner, arriving legally to the territory of the Russian Federation should inform the migration services within three days of arrival of his/her place of residence or send an official form by post with this information. Registration can be made based on place of accommodation or the place of work of a foreigner living in Russia.

This registration, replacing the propiska, has practically rendered the propiska regime null and void, and as such can only be welcomed. The simplified registration procedures have allowed over 2 million foreign citizens to register, twice the number of the year before.

#### **Receiving permission for temporary residency.**

The second law should have changed the situation for the better, primarily for citizens of the CIS who had the right to visa free travel to the Russian Federation – (i.e. all those except citizens of Georgia and Turkmenistan). For those who do not require visas, the system of receiving permission for temporary residence is greatly simplified (Article 6.1). They are required to present fewer documents when asking permission for temporary residence. They now need only to submit four documents: an application for temporary residence, an identity document, a migration card, and proof of payment (400 roubles – approximately \$15.5 USD) for legal expenses.

A month after submitting the documents a foreign citizen is obliged to submit a certificate saying he/she does not have drug related illnesses or infectious diseases. One year after arrival to the Russian Federation he/she is obliged to submit a document certifying that he/she is a taxpayer. This is very important as until now all certificates and proof of being able to support oneself and ones family were required to be submitted along with an application for temporary residence. It was difficult (and illegal) to find work that paid well without permission for temporary residence, and without work it was impossible to prove that one had the necessary capital of hundreds of thousands of roubles.

In addition, every three months a CIS citizen, arriving without a visa, was obliged to leave the Russian territory and re-enter in order to receive a new migration card, while

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<sup>14</sup> [http://www.fms.gov.ru/about/ofstat/vu\\_stat/vu\\_got\\_countries.php](http://www.fms.gov.ru/about/ofstat/vu_stat/vu_got_countries.php)

<sup>15</sup> [http://www.fms.gov.ru/about/ofstat/vu\\_stat/vu\\_reg\\_count.php](http://www.fms.gov.ru/about/ofstat/vu_stat/vu_reg_count.php)



the decision on temporary residence permits took over 6 months to process. Now submission of an application for temporary residence allows the period of stay in Russia to be extended on the basis of old migration cards.

Quotas for permission for temporary residence and the right to work were also supposed to be changed but this did not happen. According to Article 6.1 of the law “On the legal situation of foreign citizens” of 18 July 2006 a foreign citizen, arriving in the Russian Federation without requiring a visa, should be given permission for temporary residence without any consideration of quotas. All the normative acts were prepared with this principle as a basis.

When information on the necessity of regional quotas for temporary residence for foreign citizens was provided by Russia’s regions to central government in 2007, it was thought that that quotas were applicable only to those who arrived in Russia with visas. On 27 November 2006 the Russian Parliament issued order number 1637 on quotas for temporary residence in regions, based on this provision. A general quota for temporary residence for the Russian Federation was set at 52,723 people.

When, at the beginning of January 2007, quotas were reintroduced for all foreign citizens, it was revealed that the quota was completely inadequate, less than half of that for 2006. As a result, many of the regional quotas were used up by January. To some degree, the law cancelled out the achievements of the previous law and even weakened the law “On the legal situation of foreign citizens” of 2002.

Article 13.4 of the old law stated: “A foreign citizen can be employed only if he\she has an employment permit. This provision does not apply to those:

- 1) Permanently residing in the Russian Federation
- 2) Temporarily residing in the Russian Federation” (those, with a temporary residence permit).

At present paragraph 2 is amended by a new paragraph 2 that applies not to all the persons holding a temporary residence permit, but to those “participating in the State Programme of facilitating the voluntary return to the Russian Federation of compatriots, residing abroad as well as their family members accompanying them to the Russian Federation.”

Thus, there is an odd situation when a foreign citizen has a right to reside in the Russian Federation for 3 years, but is not allowed to work.

### **Employment.**

The amendments to the Law “On the legal status of the foreign citizens” have made it significantly easier to obtain a work permit.

As of 2007 the quota for work permits for the whole Russian Federation was 6 million for those without visas and 390 000 for the rest of the foreign employees, including those who are already residing in the Russian Federation.

The employment permit is issued by the Federal Migration Service (FMS) of the Russian Federation or Regional Department of the Federal Migration Service after the applicant provides the following papers:

- 1) Application to be issued with a work permit;
- 2) Identity document;
- 3) Migration card with the Border Guards' stamp, certifying entry to the Russian Federation or the FMS stamp, certifying the issuance of the migration card to this person;
- 4) State duty receipt, certifying that this person has paid 1000 roubles for the work permit.

A response should be provided within 10 working days and rejections can be appealed, which is a great improvement on the previous system. The number of foreign citizens, granted work permits increased several times in comparison with 2006.

However, the Russian government had also adopted a decree, which had negative consequences for a significant number of foreign citizens. The decree, of 15<sup>th</sup> November 2006 N 683 was entitled «On establishing quotas in 2007 for foreign employees, working in retail trade in the Russian Federation». It stipulated that from 1st April 2007 foreign citizens were prohibited from working in retail at markets, stalls and outside shops.

This decree had the effect of counter acting the important positive changes in the legislation related to the status of foreign citizens, as the majority of them worked in retail and carried out up to 90 % of work at the markets.

Many of the traders are foreign citizens and stateless persons, who have nowhere else to go. They are former Afghan citizens, who supported the Nadjibullah regime, and their children, who were not legalized in Russia; ethnic Russians from the former Soviet republics that have not been granted Russian citizenship; Georgians from Abkhazia, who have not been granted refugee status; and political emigrants from Uzbekistan awaiting resettlement to a safe third country. Their only means of supporting their families was to work in the markets. For them, the governmental experiments with quotas and percentages became a real tragedy.

It has to be noted that this decree does not affect all foreign employees, but only those temporarily residing in the Russian Federation. According to the website of the Ministry of Health and Social Development, people with residence permits, temporary permits or refugee status holders are not banned from retail trade. However, in the region neither the state officials nor the migrants know about this explanation. As a result Afghan asylum seekers in different regions were refused permission to continue their trade activities. This policy can therefore be described as irresponsible.

### **Refugee status determination procedure**

The rights of refugees continue to be violated by officials of the migration services and law enforcement bodies. Access to the status determination procedure remains difficult for refugees – officials often refuse to hand out application forms, saying they do not have them. Refusals to accept documents are usually given verbally and therefore are difficult to prove and cannot be appealed.

There are cases of asylum seekers being detained in the offices of the migration services. In 2007 there were two such incidents in St Petersburg. On 27 August 2007 a citizen of Eritrea, Kasay Yusuf Tesfaei, applied to the St Petersburg Federal Migration Service for asylum, as he was not able to return to Eritrea, having left in the beginning of the war between Ethiopia and Eritrea.

Instead of following the legal procedures for acceptance and review of an asylum application, he was passed to the head of the department for deportation and administrative deportation A.V Prugunov. Kasay was given a certificate stating that his case for residing in Russia was under review; the certificate was valid until 10 September 2007. Verbally, he was told that his case was being reviewed for deportation and that he had to leave Russia by 10 September 2007 or be arrested and deported from Russia in handcuffs. Only after the intervention of a lawyer from the NGO Memorial, was Kasay allowed to submit an application for temporary asylum. Officials of the migration services stick strictly to a policy of refusing to recognise refugee status. For example, a citizen of Iraq will be refused temporary asylum status despite the UNHCR memorandum stating that premature return to Iraq is unacceptable and underlining the necessity of providing asylum. The courts and appeals courts support this position of the migration authorities.

### **Returns of refugees from the Russian Federation to country of origin or other countries and repatriation**

There is great concern recently over the increasing practice of illegal deportation of asylum seekers.

- **Deportations to Uzbekistan**

From Autumn 2006 the number of cases of Uzbeks being handed over to the Uzbek authorities after the Russian General Procurator has denied their extradition requests has significantly risen. These people are handed over through administrative deportation procedures, and by illegal practices such as kidnapping. In almost all cases victims of this kind of “cooperation” between the Uzbek and Russian Special Forces are people of Muslim faith, persecuted in Uzbekistan on religious grounds.

Uzbek citizen A Boymatov was arrested on 25 April 2007 in Sverdlovsk. He was called to see the head of the criminal police of Nizhneserginsky Department of Internal Affairs, V.G. Chempalov and another officer of the Federal Migration Service of Sverdlovsk region. They took away his documents and sent him to Ekaterinburg in order to “help him obtain residency in the Russian Federation”. After

this A. Boymatov disappeared. In the morning of 26 April 2007 he rang his wife and told her he was being sent back to Uzbekistan. After a few days, reliable sources reported he was being held in detention in Tashkent, the capital of Uzbekistan.

Some months before this, on 12 December 2006 the General Procurator had refused the extradition request for Boymatov by the Uzbek authorities

It was possible to prevent the deportation of Uzbek refugee Yashin Dzhuraev who was arrested in Moscow on 26 January 2007 and detained pending extradition to Uzbekistan. In February 2007 Dzhuraev sent an application to UNHCR Russia to be recognised as in need of international protection. On 30 August 2007 the procurator of Meshansk in Moscow ruled that Dzhuraev should be freed from detention as the General Procurator had refused a request for his extradition. However, instead of being freed he was taken to Meshansk regional court, which ruled that he should be deported for administrative violations and removed from the Russian Federation. On 4 September 2007 the European Court of Human Rights ruled that the premature deportation of Dzhuraev had to be stopped.

Abdugani Kamaliev “disappeared” in Tumen oblast on 23 November 2007. On that day he left home in the village of Andreevsky and did not return. On 29 November it became apparent that he was detained in Tumen in a detention facility for those awaiting administrative deportation. Abdugani Tursinov came to Russia in 1997, fleeing religious persecution in his home country. In 2000 he received a Russian passport in Tumen, and in December of that year registered his marriage with Russian citizen Maimuna Kamalieva.

In February 2006 Kamaliev was detained in Tumen at the request of the Uzbek security forces, but by December 2006 he was freed from detention because the General Procurator of the Russian Federation had refused to extradite him.

On 3 December 2007 the European Court of Human Rights ruled that the deportation of Abdugani Kamaliev from Russia to Uzbekistan was inadmissible. However, on 5 December at 02.25am Tumen time (00.25 Moscow time) he was deported on a plane from Tumen to Tashkent, Uzbekistan. It is important to note that the “administrative deportation” of Kamaliev was in fact his secret extradition, carried out one year after the General Procurator refused the request to hand him over to Uzbekistan.

- **Deportations to China**

Another group of refugees subjected to forced deportation is Chinese refugees, followers of the Falun Gong movement. In St Petersburg in 2007 two Chinese refugees were deported: Gao Chunman and Ma Huei.

In the morning of 28 March 2007 officials of the St Petersburg Migration Service arrested Chinese citizen Ma Huei and her 8-year-old daughter. That evening they were deported to China. 44-year-old Ma Huei had lived in Russia for 15 years; she is a follower of the Falun Gong movement. UNHCR had recognised her as a person in

need of international protection under the 1951 Refugee Convention because she faced significant risks to her safety in China.

Ma Huei applied to the FMS of St Petersburg for refugee status, and then temporary asylum, but was refused. She tried to appeal the refusals to the St Petersburg Court but forgot to pay a court fee and therefore missed the deadline for appeal. The court hearing on renewing the period of appeal was set for 30 March 2007, therefore Ma Huei was in the status determination procedure until this date, and as such was legally present in the Russian Federation.

Ma Huei was sure that she was in the refugee status determination procedure, as she had not received a rejection the judicial decision on detention and deportation had not been handed on to her.

The deportation decision was taken in blatant violation of international law – Russia ratified the Convention on the Status of Refugees, and undertook to abide by Article 33, namely to refrain from sending a person back to a territory where they face danger. Due to the secret and hurried nature of her deportation Ma Huei was deprived of the right to receive legal advice and to contact the UNHCR. Her husband could not meet them and take back the child. It is unclear how the deportation of a child without the permission of her father who remained in Russia could have taken place. Ma Huei's lawyer has still not been able to receive information on the case materials nor see a copy of the deportation decision.

The case of North Korean Jong Kum Chon illustrates the level of illegal practices carried out by officers of the Special Forces in the illegal deportation of refugees. Jong Kum Chon was a UNHCR mandate refugee whose case was under review by the Russian Federal Migration services in November 2007.

Jong Kum-Chon arrived in Russia from North Korea ten years ago with a group of construction workers. For the past six years he has been living with Anna Anatolievna Nikanorovska and their son Anton is three years old. On 2 November at 12 noon Jong Kum Chon went to an appointment at the Moscow region migration offices at 2, Puatnitskaya st. He rang his wife from the reception there and said that they had asked him to wait for half an hour. From this moment onwards his wife received no further news of him. On 3 November his wife, greatly concerned, contacted UNHCR and the NGO "Citizens Assistance Committee" for help.

On 6 November Jong managed to escape from his kidnappers and rang his wife. It transpired that he was detained at the entrance to the FMS building by police officers, taken to the nearest department of the Ministry of Internal Affairs and handed over to North Korean special security forces, who travelled with him to Vladivostok under a false name. He managed to escape on 14 November in Vladivostok. Svetlana Gannushkina writes about this case in detail in articles, which explore the practices of kidnapping and removal of citizens of totalitarian regimes (Uzbekistan, North Korea)

back to their countries of origin.<sup>16</sup> Russian security services hand people to their Uzbek or North Korean colleagues without any regard for legal procedure. The illegal detainee has documents processed in a false name, and under this name he travels back to his country of origin.

The European Court of Human Rights sent a complaint in the case of Jong Kum-Chon on 6 November, under procedural rule 40, Strasbourg informed the Russian Federation of the complaint and its substance. Representatives of the Ministry of Interior, the FMS and the Ministry of Foreign Affairs expressed their dissatisfaction about this complaint to human rights defenders.

### **Vulnerable Groups**

- **The situation for asylum seekers from Afghanistan**

As mentioned above, many groups of refugees have been living in the Russian Federation for years in an irregular legal situation. The largest of these groups is that of refugees from Afghanistan, who left their country under the rule of Nadjibullah. There are some 100,000 such people. According to FMS statistics of 1 August 2007, 280 of them have been recognised as refugees and 1027 of them have temporary asylum. The status of the rest of the people in this group has not yet been determined.

Temporary asylum status needs to be renewed every year. For the last two years Afghans have been refused this renewal of status because “of the change in circumstances which served as grounds for granting temporary asylum”. In 2007 the only people who were able to extend their temporary asylum status were those with children and those who had arrived in the USSR as orphans to be housed in boarding schools.

In individual cases, Russian courts have ruled as illegal refusals of temporary asylum to refugees, in registered marriages to Russian citizens and with children from these marriages. In doing so courts refer to the fact that it is impossible to deport the person because of violating their right to family and private life, and grant them temporary asylum on humanitarian grounds. In St Petersburg this decision was taken in six court cases. However, in other regions this court practice has not been observed. For example, in Moscow Courts refuse to accord temporary asylum to Afghans who are officially married to and have children with a Russian citizen.

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<sup>16</sup> See:

[http://refugee.memo.ru/For\\_All/rupor.nsf/450526ab8b3e4d91c325702e0065b29f/f304a8e0b2aa8514c325738d007e209f!OpenDocument](http://refugee.memo.ru/For_All/rupor.nsf/450526ab8b3e4d91c325702e0065b29f/f304a8e0b2aa8514c325738d007e209f!OpenDocument);

[http://refugee.memo.ru/For\\_All/rupor.nsf/ff1553f7545beb8ec3256a4c0038aceb/35e140bc3680f5bac32573980072ee6e!OpenDocument](http://refugee.memo.ru/For_All/rupor.nsf/ff1553f7545beb8ec3256a4c0038aceb/35e140bc3680f5bac32573980072ee6e!OpenDocument)

Report «Deportation of refugees as a means of combating terrorism” <http://www.refugee.ru/presrelis/vysylka.htm>  
And "Unidentified"

[http://refugee.memo.ru/For\\_ALL/RUPOR.NSF/839ac874eb0b559cc3256a4a003bb69f/b14e12c7617720ddc325731600407e58!OpenDocument](http://refugee.memo.ru/For_ALL/RUPOR.NSF/839ac874eb0b559cc3256a4a003bb69f/b14e12c7617720ddc325731600407e58!OpenDocument)



The rule forbidding foreigners to work in retail trading greatly affected Afghan refugee families. In Krasnodar Abdul Gafar Akhmad Zaki (de facto refugee), was accused of illegal trading activities at the market. Oktrybrsky regional court in Krasnodar sentenced him to deportation from the territory of the Russian Federation, despite his wife having temporary asylum status in the Russian Federation. Abdul Gafar Akhmad Zaki appealed the decision to Krasnodar regional court. However the judge not only left the original sentence in force but gave him a fine as well. Only once the case was re-examined in an overall review was the deportation order lifted.

In Krasnodar the tax inspectorate has started to refuse Afghan asylum seekers registration as individual entrepreneurs, saying that they can only qualify to work as employees. As a result of these negative developments there have been requests to UNHCR from Afghans living in Krasnodar, Volgograd and Rostov-on-Don to be resettled to the USA.

- **The situation for Georgians from Abkhazia**

Another group of refugees without legal status is the Georgians from Abkhazia, who fled the conflict zone in 1993. There are several thousand such people who arrived in Russia after the collapse of the Soviet Union and as such do not qualify for Russian citizenship.

With rare exceptions, these people are not given refugee status. Until the introduction of the visa regime between Georgia and Russia, Georgians from Abkhazia lived and were registered in Russia in the same way as other Russian citizens. However, after the introduction of the visa requirements in 2000 the situation for this group of people significantly deteriorated. Some of them were put on a list, which, according to an agreed protocol between Russia and Georgia, means that they are given annual visas. The others were not able to be included in this list for various reasons and found themselves living illegally in Russia.

The NGO “Civic Assistance” is trying to find ways to legalise the presence of the Georgians from Abkhazia who have lived in Russia for many years. Those who did not accept Georgian citizenship and have a USSR passport are usually able to regularise their situations, provided they have a residence registration. If they do not have registration the only way for them to legalise their stay is by proving the legal fact of their permanent residence in Russia in court.

- **The situation for Baku Armenians in Moscow region**

Another group of refugees in a difficult situation is the Armenians, who fled Baku after the pogroms of 1989-90 and who arrived in the Moscow region. There are some 2,000,000 people who remain without accommodation, not more than 500 of them living in hostels and hotels in places given to them in 1990 by the Moscow city council. The majority of these people have Russian citizenship. Over the last 15 years neither the Federal nor the Moscow authorities have been able to solve their housing problem.



Gradually all the hotels where refugees were originally housed have been privatised. Until 2001 landlords received allowances for refugees from the Moscow government but this subsequently ceased. The landlords then began using all means to evict their tenants. Some of the Baku refugees managed to buy flats, some left Russia. In 2007 Baku refugees were refused registration at their place of residence. Until this time the registration issue had been solved by an annual Decree issued by the Major of Moscow, Yury Luzhkov. In essence, this gave Baku refugees the right to receive pensions, medical assistance, the right to work and study in Moscow. In 2007 the Moscow government did not issue such a decree.

Refugees living in hostels receive temporary registration for three months or for half a year, but this depends on each hostel, and not all landlords cooperate with such requests. In all other cases the rights of Baku Armenians are defended by NGO lawyers on an individual basis. Issues of pensions and medical assistance are sometimes resolved following interventions by the Civic Assistance Committee to the relevant authorities. On 20 June Decree No 1243- RP of the Moscow Government was issued: "On the creation of a working group for solving problems linked with the presence in Moscow of forced migrants from the Azerbaijan republic of the Soviet Union in 1989-1900".

Until this time there is no information available about the work or conclusions of this working group. In June 2007 some of the Baku Armenians were called to the FMS offices in Moscow. They were offered resettlement to the towns of Khanti-Mansiisk, Ussyriisk, in Magadan oblast. But they were only offered hostels there. NGOs wrote to the Moscow government asking them to provide housing for this group of people from the Moscow budget, but no response to this letter has yet been received.

- **The situation for forced migrants**

Forced migrants, registered with the FMS and in need of improved accommodation are losing hope of ever being rehoused. According to the FMS statistics in the table below, over the last five years the number of forced migrants on the lists for housing has reduced as has the number of families who received funding to purchase housing.

	Removed from lists		Number of forced migrants at the end of the year		Funding	Housed
	Families	People	families	people	Millions of roubles	families
2002	63775	150447	204092	491898	991,6	3560
2003	59962	142539	145161	352071	775,6	2355
2004	48945	116003	98957	237998	605,8	1745
2005	31248	70513	67863	168253	495,3	1272
2006	21548	55470	47868	117711	206,4	307

The responsibility for housing has, for the second year running, been taken away from the FMS and given to Rostroy (a Russian Building Company). As a result of this people who had been dealing professionally with this problem for several years are now no longer involved. Now the problems of housing for forced migrants are dealt with in the framework of a Russia-wide programme called "Housing". This programme puts together forced migrants and citizens from the far North, victims of Chernobyl catastrophe, and soldiers. Few certificates are given to forced migrants. For example, in Udmurtino in 2007 the programme issued 135 housing grants, of which 75 were for people of the Chernobyl region, 58 for military personnel, one for someone from the Far North and one for a forced migrant.

A large group of forced migrants is Ossetian refugees who left Georgia during the conflict of 1989-92 who are now in North Ossetia. At first there were some 110,000 such people. Ossetians from Georgia were the only group of refugees in Russia who officially received refugee status and then Russian citizenship and forced migrant status. Now, according to official statistics, there are 4,500 people with forced migrant status who are on the lists for improved housing. Official estimates say that there are another 5,000 such people in similar situations who are not on the lists.

In 2007, as in the past, only one housing grant was given out in North Ossetia. The government of North Ossetia is interested in solving these problems but is unable to do this without support from the federal budget.

The few families who received housing certificates are not able to buy accommodation with the funds they have been given. The grants calculate the costs of one square meter of housing as at least half that of the actual cost. For example, in Penza region the grants are based on a cost of housing of 12,800 roubles but it is actually between 24 and 29 thousand roubles. Therefore the financial resources provided by the Russian government only allow a small number of forced migrants who have their own savings and sources of income to solve their housing problems.

A solution for the remaining people could be (free) government credit based on realistic pricing and housing grants.

At the present time the programme "Housing" has not only failed to solve the housing problems of forced migrants but has made their situation much worse. It is not hard to calculate that if, as in 2006, 300 families per year are given housing grants it will take 100 years to accommodate 30 000 families.

- **The situation for Internally Displaced People (IDPs) from the Republic of Chechnya**

Chechens who left the Chechen Republic during conflicts have great difficulty in living in Russia, as they encounter discrimination from law enforcement officials and the authorities. In many regions, Tverskaya, Bryansk, Tambov region, Stavropol Kray and Karbardino Balkaria, the local population does not hide its hostility towards Chechens.

At first, 666 IDPs from Chechnya were housed in temporary accommodation centres in the Russian Federation. Now their number has diminished because all IDPs without forced migrant status have been evicted from the accommodation centres.

For example, the temporary accommodation centre “Serebryaniki” in Tverskaya oblast housed 286 people at the beginning of 2005, 68 in 2006 and only 13 at the beginning of 2007. Inhabitants were given the choice of either receiving compensation under Decree 510 for the sum of 125,000 Roubles or else leaving the temporary accommodation centre “Serebryaniki”. These conditions were also confirmed by court decisions.

The majority of Chechen families who were evicted from the centres went abroad, refusing to receive compensation, because in Tverskoy oblast 125,000 roubles is insufficient to purchase accommodation. In addition, Chechens find it difficult to live in Tverskoy oblast with a hostile local population who sees them as enemies and terrorists. These attitudes are also found towards Russian IDPs from Chechnya.

At the present time the administration of the temporary accommodation centre has ceased evicting people – probably because the number of staff in the centre now exceeds the number of inhabitants there.

In Tambov oblast there are two temporary accommodation centres. In Tambovsky centre there are 148 IDPs from Chechnya and in Gavrilovsky – 39.

All inhabitants who do not have forced migrant status have been evicted from the centre. The administration refuses to extend registration even for people who have this status if they have applied for compensation for loss of housing or property in Chechnya.

In the temporary accommodation centre in the town of Krasnoarmeisk in Saratov oblast there is a serious problem with registration of inhabitants. 120 people live in the centre, 80 of them are IDPs from Chechnya. They are given registration documents at their place of arrival, which are valid for 1-3 months. As the registration documents are valid for such a short time, inhabitants of the centre are refused child benefits, pensions and are not able to find work.

Registration continues to be the main problem for Chechens living in Russia. A secret directive limiting registration for Chechens exists in all regions. As there are no legal reasons for refusing registration, officials in passport offices use different reasons to justify their refusals to register Chechens.

In Saratov oblast when applying for IDP status people arriving from Chechnya are asked for character references from a place of work or residence. When questioned about the reason for this the officials of the migration service reply “so we know who we are dealing with”.

Chechens living in Kazan, are required to reregister every year, be fingerprinted and visit four offices to sign statements about why they are living in Tatarstan. The rights

of Chechen students living in student hostels are also affected. Their relatives and classmates are not allowed to visit them in their rooms. In Spring 2007 the police fired at Chechen students in the hostel for law students at Kazan University. Luckily no one was hurt.

The brothers Mukhadiev, living in Elektrogorsk in Moscow region were required to overcome the obstacles of the law enforcement authorities in order to extend their registration every six months for three years. In August of this year they were sent to the head of the Department for wanted criminals. This visit ended in them being illegally detained in the office of the head and administrative arrest for 5 days.

The lack of registration creates a whole number of problems for IDPs from Chechnya and deprives them of basic rights – the right to free healthcare, to receive allowances and pensions. Without registration it is hard to find a job and get children accepted into kindergarten. When changing their passports IDPs from Chechnya are obliged (by the migration services of Saratov oblast) to present certificates from their place of work, study, kindergartens, confirming that they lived for a certain time in Chechnya. They are interested in certificates about what people did at certain periods in Chechnya. Migration service officials say that they need to know this because “ we need to know if these people were fighters or if their family members were”.

Compensation payments for lost housing or property during conflicts have almost been completed under directive 510. The FMS reported that as of 1 June 2007 463 applications for compensation had been received, but have not yet been considered. For the whole period from 1997 until the present day, 37,857 families received compensation totalling 4,02 billions of roubles.

The payment of compensation under Directive 404 is more complicated. This has been halted more than once in connection with multiple violations. According to FMS statistics, since 2003 more than 46,939 families received compensation under directive 404 totalling 16,4 billion roubles.

- **The situation of CIS citizens and stateless persons living in the Russian Federation**

The largest group of citizens without regularised legal status are citizens of CIS countries and stateless persons who arrived in Russia before the adoption of the Federal Laws “On citizenship of the Russian Federation” and “On the legal status of foreign citizens”, and who live permanently on the territory of the Russian Federation. Some two million people are estimated to be in this category.

Unfortunately, the problem of legalisation of this group of people was not addressed in the new law on the migration register for foreign citizens as among the required documents for permission for temporary residency is a migration card, which these people do not have. As a result, citizens who arrived from former Soviet republics who have lived in Russia a long time are not able to legalise their status or receive Russian citizenship.

For example, in Dagestan in Kizlyarsky region, statistics from initial research show that approximately 100 families do not have Russian citizenship. These are mainly forced migrants from Georgia, ethnic Dagestanis. Amongst them are people who lived in Dagestan for 10-15 years with old Soviet passports. They are not able to receive pensions, state allowances or medical insurance policies. Their children are unable to receive passports or have access to higher education.

In Dagestan court practice on legalisation of forced migrants is weak. The majority of stateless persons living in Dagestan are not well educated and they require free legal assistance to prepare applications for citizenship. They claim that because of the lack of legal advice, they are unable to protect their rights and obtain citizenship. In 2007 Memorial Human Rights Centre's "Migrants Rights" network organised free legal advice in Dagestan for stateless persons.

Foreign citizens and stateless persons need to comply with regional quotas in order to obtain permission for temporary residence. As described above, due to introductions in the new legislation, quotas for 2007 were very small, half those of 2006 and were already used up by January.

At the same time, migrants claim that officials of the passport-visa service offices offer to include them in the quotas on payment of a bribe.

Obtaining Russian citizenship remains a difficult problem for the majority of migrants. People arriving from the former Soviet Union and without Soviet citizenship can obtain Russian citizenship until 1 January 2008 through a simplified procedure provided they have permission for temporary residence. There are some 2 million such people. However, according to FMS statistics, the number of people who received Russian citizenship is 300-400 000 per year (see table). Therefore, it will take 5-6 years for all the people in this category to receive citizenship.

	2005	2006	2007 - 9 months
Total who received citizenship	484 152	371 782	260 053
By simplified procedure	369 916	287 155	184 073
According to international agreements	113 611	84 627	75 546
Based on the national law	625	101	434

Many citizens received answers from the Commission for Citizenship saying that the decision on citizenship needed to be taken before arrival in the Russian Federation. After the move they are required to have either a temporary residence permit or residence permit. Memorial Human Rights Centre considers this requirement unlawful.

There is also a problem with refusals given to Russian citizens who obtained citizenship on the territories of former Soviet republics in Russian embassies and consulates. They have external passports as Russian citizens, issued by Russian passport offices, however they are not issued with internal passports. The passport-visa services carry out extensive checks on such people, and the embassies are questioned about such cases. Many of the Russian embassies give negative answers when consulted on issuing Russian citizenship. An example from Saratov oblast:

Migrant I.M. Dadobaev arrived in Russia in 1997 to live permanently. He took Russian citizenship in the Russian embassy in Tadjikistan in April 1997. The migration services asked the embassy about his case, and received a negative reply. Officials of the migration services refused to issue Dadobaev with a replacement passport and suggested that he apply for temporary residence as a stateless person, and then apply for Russian citizenship.

There remains a category of people who have no documental proof of belonging to any state – stateless persons, without identity documents. These people can neither leave nor return to Russia, as they have no documents. In some cases branches of the migration services do not accept their documents for temporary right to reside even after a court decision confirming the fact of their residence in the Russian Federation.

Children of stateless persons often have difficulty proving their citizenship, as they do not belong to any particular state.

In general it is difficult to apply for and confirm the citizenship of children. In some regions officials of temporary accommodation centres incorrectly tell migrants who arrive in Russia with children to first obtain citizenship themselves and then apply for their children's citizenship. Children are offered to apply for temporary right to remain.

The main problems with citizenship occur for those who arrived in Russia as children and lived with their grandparents, or remote relatives and do not have identity documents. Once adults, these children find themselves in a hopeless situation. There have been cases of refusal of applications for citizenship from children in connection with the lack of documentation for one of the parents' Russian passport.

The problem of children's citizenship is very serious, and widespread. Lawyers in Volgograd, St Petersburg, Saratov, Samara, Pyatigorsk, Kirov, Kazan and Moscow reported such cases

One serious issue related to the work of the migration authorities is the confiscation of passports of Russian citizens, which were issued in violation of present legislation. This includes cases when passports were issued by non-competent or corrupt officials of the passport and visa services; in connection with incorrect applications for citizenship; and those involving the omission to refer citizenship applications for review by senior officers. In cases where the citizen is not at fault, the passport is confiscated and he/she is advised to apply for Russian citizenship "for a second time".



Therefore a person who tries to comply with the law by providing all documentation, is punished for the incompetence of the officials and ends up deprived of citizenship.

One such situation occurred in Moscow involving citizens of Georgia and Armenia who received Russian passports from 2001 to 2003. When they received their passports they had registration at their place of residence in Russia. A decree by the FMS of 2006 recommended that the grounds for issuing this group of people with Russian citizenship be re-examined. Their passports were then invalidated on the grounds they were given out without proper grounds.

Similar cases are reported in Kaluga region: former residents of Turkmenistan – Karyna Artashestovna Grigoryan and her husband and children obtained Russian citizenship in 1994. The son, Albert Grigoryan is currently doing military service. After the passport exchange in 2007 the Borovsky department of the FMS informed Karyna Grigoryan that neither she nor her children are Russian citizens as they are not included in the database of the naturalised persons. Why is Albert Grigoryan serving in the army if he is not a Russian citizen?

Karyna Grigoryan applied to the FMS in Russia and Kaluga department of the FMS. She received a reply from the Executive Head of the FMS Department A.I. Doroshin. He writes that there is a confirmation of the parents getting Russian citizenship, but there is no information that their children acquired Russian citizenship. But who can Grigoryan's children be? Their parents are former USSR citizens, who did not acquire Turkmen citizenship and had USSR passports. In 1994 the Grigoryan parents acquired Russian citizenship. At that time the children; Yana and Albert were 9 and 6 years old respectively. In accordance with the legislation in force in 1994 citizenship of children under 14 years old follows from the parents' citizenship (para.1 Art. 25). However, it is now proposed that Yana Grigoryan gives up her Russian passport.

### **Resettlement programme for compatriots**

At the same time as they put up barriers for the millions of compatriots, living irregularly in Russia, by not accepting them as citizens, the Russian authorities undertook an ambitious programme of resettlement of compatriots from abroad.

This programme has not yet begun in any of the pilot regions. It is particularly unclear how the main problem of accommodation for those resettled will be solved. The deputy head of the FMS Nataliya Molchanova commented recently at a round table in the Duma “ We can give no guarantees for compatriots on the provision of housing or apartments – this will depend on the regions. But at a federal level we cannot give guarantees to these people”. Therefore the program does not work in any of the pilot regions.

At present the federal authorities guarantee only to process citizenship applications within half a year, and to pay for the cost of travel to Russia and cover small fee for accommodation. Sums of compensation vary depending on each region's need for migrants.



In border regions where the population has been in decline for a long time, compatriots under the programme will be given 60 thousand roubles, and another 20 thousand for each family member. In regions where the economy is more stable, where large-scale investment projects are underway, smaller sums are promised to those who resettle – 20 thousand roubles for the head of the family and 15,000 for each family member. There will be no other allowances or assistance.

According to FMS statistics 30 000 people applied for resettlement. Most applications – 46% came from Kazakstan, 20% from Uzbekistan and 9% from Ukraine. Usually these are people working in trade, economy, the service industry, education, transport and medical sectors. According to information from the regions very little has been done so far for the implementation of these programmes.

In Kaliningrad oblast the authorities came to the conclusion after studying the situation of resettlers that the programme was impossible to implement without the provision of accommodation. The regional minister for territorial development and cooperation with local administrations M. Plyukin said on television that an additional accommodation centre of 1200 places is planned for those who arrive under the resettlement programme. However the centre for migrants in the village of Severny is still uninhabited. In this regard it is planned to direct the regional representatives in the Newly Independent States (NIS) and the Baltic states to organise resettlement programmes. The authorities also decided to decrease the number of resettlement quotas (at first it was planned to resettle 300 000 people).

In the suburbs of Tambov cottages are being built. Some of these, according to the information of the Investment department of the regional administration will be provided for resettlers. It is planned to provide 50 cottages for this purpose.

The Administration of Smolensk region submitted to the Russian government a draft programme to attract compatriots, residing abroad to the region. This programme intends to attract 9 000 people to the Smolensk region, capable of working (30 000 together with the family members). In April 2007 the government returned it for amendments and completion. After being amended it was sent to the government again, but it has not been approved or been implemented yet.

The Dagestan Migration Service offers to resettle to Russia Dagestanis, from the Kvarel district of Georgia. The FMS department on forced migrants and refugees in the Russian Federation submitted a draft project to resettle ethnic Dagestanis, residing in the villages of Chantliskury, Tyvy and Saryso of Kvarel district of Georgia to the Russian Federation.

In the Kursk region people will be resettled to the following districts – Kurchatovsk, Schygrovsk, Zheleznogorsk, Kursk and Lgovsk. Evgeniy Sygarev, the head of the FMS in the Kursk region, announced that the region is planning to host almost 30 000 people, but the exact number is still unknown.

In the Altay region the programme is planning to host 2000 people despite Altay having one of the highest unemployment rates in the country. It is a mystery why a

resettlement programme that will only exacerbate this problem was adopted for this region.

There is a general view that the resettlement programme for compatriots will not achieve its objectives. Ludmila Knyazeva's case can serve as an example. She arrived in the Kaluga region from Kazakhstan.

It should be explained that in order to participate in this programme, it is necessary to apply at the Russian consulate in the country of origin. The applicant has to indicate a planned place of residence. The application will then be submitted to the relevant authority in the indicated region, i.e. the Labour Ministry. If the application is approved, the FMS representation in the NIS country will provide the applicant with a certificate of participation in the resettlement programme. However, in reality everything is much more complicated.

Ludmila Knyazeva approached the Russian Consulate in Astana, Kazakstan many times, but at neither first there were neither FMS representatives nor reception premises. Knyazeva submitted her application, but it was not considered for a long time. After repeated phone calls to the Consulate, Ludmila was told that there are a lot of similar applications and no one knows who and when will be taking care of them. No one read these applications, entered them into the database nor, more importantly, send them to Russia. The Consulate advised Knyazeva to go to Russia herself and visit the enterprises, listed in the resettlement programme. She needed to bring back from Russia a tripartite agreement from the prospective employer, the relevant authority in Kaluga and herself. Only then would she be given the document, certifying her participation in the programme.

This shows that the programme does not work as intended. The responsible migration officials in the Russian consulates shift the burden of their work to the migrants: if they are able to conclude an agreement –they are in luck. It can be assumed that this situation is not unique to Kazakhstan, but that it also occurs in other Russian consulates in the NIS.

### **Social integration**

- **Education**

In accordance with the agreement between UNHCR and the Department for Education in Moscow, all refugee children have access to school education. Refugee children go to the public schools at the places of their residence in the same way as children who are citizens of the Russian Federation.

In recent years (2003-2005) many children aged 13-16, including refugees, faced difficulties with their studies, linked with the age disparities of the class, interrupted education or lack of basic education. For this category of children specially adapted courses with shortened programmes of studies were created. These programmes were introduced in a few state schools in Moscow. Also on the premises of these schools courses of Russian language for adults were created.

In 2007 there has been a significant decrease in the number of refugee children who have problems with their studies connected with a lack of knowledge of Russian, age disparities and other problems. In the course of 2007, the number of refugee pupils decreased significantly (for example, in 2003, 650 people studied at schools and, in 2007, 343 persons were attending schools). This decrease is linked to the change of migration policy in relation to refugees: resettlement to third countries, granting of Russian citizenship, and decline in the influx of refugees from countries of origin.

If the problem of school education for refugee children has, on the whole, been resolved at the moment, the question of pre-school education remains acute. Fundamental problems of allocating a child to a pre-school institution are related to the shortage of nurseries in Moscow and high fees for childcare, not having a permanent registration. Many parents cannot send their child to a nursery for financial reasons, which can in the future negatively impact on the child's socialisation/integration into society, and on school studies.

Financial problems are the main difficulties which refugees face regarding their children's education. Education in state schools requires certain material expenditure: purchase of school books, uniforms, transport costs, expensive sports equipment. Due to the material difficulties in the family, refugee children are often not able to participate in cultural events (excursions, visits to the theatre), organised for the classes.

In 2007, the education programmes in the cultural-education centres of the NGO Equilibre-Solidarity are, on the whole, focused on Russian language courses for adults, courses of mother-tongue for children (Dari, Pashto), the history and geography of Afghanistan. For the study of the Afghan languages the children attend the "Sunday school". The lessons are held at the weekend (Saturdays and Sundays).

The number of beneficiaries of our programmes decreased in the course of 2007. Many families with children have already been resettled from Russia and the new asylum seekers on the whole are young single people. Refugee adults of 18-25 study in the evening school classes. For the most part they study Russian language and the primary basic subjects in accordance with the Russian school curriculum.

- **Employment**

Changes in the legislation governing hiring foreign workers, have become a serious constraint for employment prospects for asylum seekers and refugees in the Russian Federation. The majority ended up deprived of the possibility of earning a living. Employers, including ethnic Afghan Russian citizens with legal businesses in Moscow, categorically refused to hire their "undocumented" compatriots, fearing considerable fines in accordance with the new law.

Towards the middle of the year when the first shock had passed, intermediary companies granting permissions to work for foreigners started to appear. These companies were created mainly in places of the crowds of the Afghan work force, at

Cherkizovsky market, in Luzhnik, the hotel Sevastopol with the support or direct participation of the owners of the work places.

Unfortunately, the documents were given unlawfully (are semi illegal) and are valid only immediately on the territory of the market but invalid beyond its boundaries. Correspondingly, expenses of asylum seekers in Moscow in receiving work more than doubled and there was a risk of being detained and deported as a result of the increase in the FMS checks. All that was previously difficult got even worse and the complicated social situation for refugees deteriorated further as their monthly income reduced.

- **Housing**

The increased checks on passport checks at the place of residence, attempts by the state authorities to control the rental market, requirements that landlords legally register an official lease and pay income tax on rent, led to a doubling of rental costs in 2007. Fewer people are now willing to rent out apartments in Moscow to refugees and other forced migrants. Many refugees have been forced to move to the areas surrounding Moscow (which increased the travel costs to work and fines of the police on the way to work) or to share an apartment between a few families (which does not conform to any sanitary standards).

### **Conclusions – trends in the migration situation**

- The introduction of new laws has played an important role in improving the migration situation and permitted thousands of migrants to legalise their status. However this did not prevent many problems arising from the existing legislation nor improve the situation of migrants. The legislative development in this field should continue in order to facilitate legalisation procedures. There should not be any changes in the policy to support migration. Legislation stipulating extradition, deportation and expulsion procedures should be amended to a unified system in consistence with the international law.

- The migration services still adopt a repressive approach to solving the problems of migrants in their practical work. Many FMS staff are under qualified to solve issues within their remits. It is necessary to increase training for migration service staff in the regions in order to promote a clear understanding of federal legislation and their responsibilities not only to protect migrants' rights, but also to actively help them to realise these rights;

- The current practices of cooperation of the Special Forces in the Russian Federation, with those of the Newly Independent States and North Korea are not acceptable. Violations of both national and international law are violated due to political and personal interests. The dignity and human rights of asylum seekers from countries with totalitarian regimes are severely violated. Russia needs to comply with international norms and ECtHR decisions, and abstain from the practice of unlawful refoulement of refugees;

- It is necessary to ensure that those forced migrants, who have the right to accommodation, are provided with it within the next 5 years. At the present time those awaiting housing will be able to receive it in 25-40 years;
- The problem of the former USSR citizens, who arrived in the Russian Federation after 6th February 1992 and did not manage to receive the Russian citizenship, remains unsolved. These people need to be given temporary accommodation, which will provide them with an opportunity to acquire Russian citizenship within the short term. They should also be included in the voluntary repatriation programme of compatriots to the Russian Federation.

### **Recommendations**

#### **The Russian Federation should:**

- Ensure that all those seeking international protection in Russia have access to a comprehensive and fair refugee status determination procedure. This must particularly refer to Georgians from Abkhazia, who have lived in Russia illegally for many years and do not have the possibility to return to their home country;
- Ensure all asylum seekers are issued with documents, which recognise their status and guarantee them the right to legally stay in Russia until their applications for refugee status have been considered, and they have had opportunity to exhaust all appeal stages;
- Issue written refusals if an application for asylum is not accepted to allow the asylum seeker to appeal the ruling;
- Uphold its international obligations to provide effective protection against refoulement and not to return people to countries where their life could be at risk or where they could be at risk of torture, inhumane or degrading treatment. At the present time, the European Court of Human Rights recognises Uzbekistan and Turkmenistan as such countries;
- Ensure that asylum seekers and refugees have full and unimpeded access to the labour market and that any discriminatory legislation or restriction are removed;
- Improve pre school access for asylum seeker children to facilitate language learning and easy integration;
- Respect the concept of internally displaced persons as defined in the 1998 United Nations Guiding Principles on Internal Displacement and as recommended by the Council of Europe,<sup>17</sup> and ensure that all IDPs have access to rights as set out in those Guiding Principles;

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<sup>17</sup> Parliamentary Assembly of the Council of Europe, Situation of refugees and displaced persons in the Russian Federation and some other CIS countries, Recommendation 1667 (2004).  
<http://assembly.coe.int/Documents/AdoptedText/ta04/EREC1667.htm>

- Take active measures to halt the gross violations of human rights currently taking place in the North Caucasus republics, Krasnodar Krai and other territories of the Russian Federation;
- Take all possible measures to address the issue of discrimination, racism and xenophobia in the Russian Federation;
- Ensure that State migration policy addresses improvements in the legalisation procedure for migrants and the migration situation as priorities;
- The provision of housing and accommodation for internally displaced persons who are entitled to it should be a priority and completed within a five year time frame;
- Former citizens who arrived in Russia after the 6 February 1992, who have not been able to obtain Russian citizenship must be given permission for temporary residence, which will give them the right to obtain Russian citizenship through a shorter procedure and become full citizens. It is necessary to include voluntary compatriots who have resettled to Russia in any such programme.

**The international community should:**

- Not return any Chechens or Ingush seeking international protection to the Russian Federation or promote voluntary repatriation to the Russian Federation as a durable solution at the present time;
- Increase quotas to resettle those in need of international protection out of the Russian Federation to third countries;
- Continue to provide support for training for the staff of the Federal Migration services in order to ensure that the rights of migrants are observed and respected.

**ECRE would like to thank the Memorial Human Rights Centre Migration Rights Network and Equilibre Solidarnost who contributed the information in this report.**

## Ukraine

### Statistics

Official statistics from the State Committee for Nationalities and Religions in 2007 indicate that the number of recognized refugees residing in Ukraine totalled 2,272.<sup>18</sup> The majority of refugees came to the country in 1997-2001, and since 2002 the refugee recognition rate has dropped drastically, from approximately 47% to only 3-4% during the last five years. In 2007 it was 1.45%. The biggest number of asylum seekers came to Ukraine in 2007 from Pakistan (23%), India (20%), Afghanistan (10%) and Iraq (9%).

Year	2003	2004	2005	2006	2007	Total
Asylum application, #	1367	1364	1765	2101	2272	8869
Refugee status granted, #	56	80	49	76	33	294
Recognition rate, %	4	5.8	2.7	3.6	1.45	

In 2007 127 refugees acquired Ukrainian citizenship while the total number of naturalized refugees in Ukraine is 978 persons.

Ukrainian legislation on refugee status consists of the 1951 Convention On Refugees Status, the Law of Ukraine On Refugees, and other legal and normative acts. The Constitution of Ukraine provides for the institute of asylum. National legislation does not provide any form of supplementary protection. In 2007 the number of persons who applied for a refugee status increased.

With regards granting refugee status, there is decrease in the number of positive decisions taken.

### Legal and procedural changes

Since 2007 the central executive migration authority has been reformed by the Cabinet Resolution # 1575 of 08.11. 2006, The State Committee for Nationalities and Migration and the State Committee for Religions were reorganized into the State Committee for Nationalities and Religions (SCNR). Cabinet Resolution № 201 of 14.02.2007 г. approved the Terms of Reference for the State Committee for Nationalities and Religions which define the status of that body as the central executive authority whose operations are guided and coordinated by the Cabinet of

<sup>18</sup> The information is provided by the Cross-Border Cooperation/ Soderkoping Process <http://soderkoping.org.ua/page12484.html>



Ministers of Ukraine through the Vice-Prime Minister. This resolution also defines the tasks and rights of this body and its subordinate local branches.

Unlike the State Committee for Nationalities and Migration, SCNR was not defined as a specially authorized central executive body for migration issues. For this reason, it does not have certain powers, which are defined in Art. 6 of the Law of Ukraine On Refugees, in particular, making decisions on granting, loss or withdrawal of refugee status. The above mentioned Terms of Reference include only examination of complaints against migration service authorities' decisions but the SCNR refuses to fulfil this function referring to lack of its authority to do so.

The situation changed only at the end of the year, when at last the Cabinet in its Resolution №1347 of 21.11.2007 granted the SCNR powers of the central executive authority for migration.

Therefore, for the whole of 2007 final decisions regarding asylum seekers' applications were not taken. Many asylum seekers, fearing there was no prospect of getting refugee status in Ukraine tried to leave the country illegally for the EU.

Over recent years, the multiple reforms of the migration service caused loss of personnel and experienced people at local level, and lead to a situation when migration service units did not operate properly in all oblasts of Ukraine. The issues of migration and refugees are tackled by a number of ministries and agencies whose activities are not coordinated and under-funded. The first to suffer are asylum seekers who face ungrounded refusals to their applications. The public servants expecting to be made redundant at any moment do not want to take responsibility and as a rule take a formalistic approach to their jobs.

The Readmission Agreement between EU and Ukraine was signed on 18 June 2007. It sets out the procedure of readmission of own and third country nationals and stateless persons. On 13 November 2007 a number of EU-Ukraine agreements, including the Agreement on Readmission were approved by the European Parliament. The Agreement foresees a two-year transition period before the new readmission regime between the EU and Ukraine fully enters into force.<sup>19</sup> Once it has entered into force the number of foreign citizens returned to Ukraine will increase dramatically. At present, there are no special safeguards for the return of asylum seekers, and unless changes are introduced into the Agreement there is a real possibility that lives of those people will be endangered.

In Ukraine there is no clear-cut migration policy supported by relevant legislation. This was recognized by the National Security and Defence Council of Ukraine in its decision of June 15, 2007 On Directions of National Migration Policy in Ukraine and Priority Measures Aimed at Enhancing its Efficiency approved by the Presidential Decree № 657\2007 of 20 July 2007. But though this decision recognizes a need to adapt national migration legislation to respect obligations taken during accession to

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<sup>19</sup> *Official Journal L 332, 18/12/2007 P. 0048 – 0065*  
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218(01):EN:HTML)

the Council of Europe, the decision is mainly focused on combating “illegal migration”.

In compliance with the decree by the President of Ukraine, the draft Concept of National Migration Policy was developed in 2007 but the draft takes into account neither the principle of non-refoulement, nor the right for asylum, nor the need for complimentary forms of protection for refugees. Nor does the Concept reflect the need to provide interpreters, legal consultants and representatives to migrants and refugees.

### **Refugee Status Determination Procedure**

Major reasons for refusal of recognition of refugee status in 2007r were grounded in Art. 12 of the Law On Refugees. This was because the SCNR did not examine asylum seekers applications nor and take decisions on them for the whole year.

A system of administrative courts started to operate in Ukraine. At the moment the courts are overwhelmed by work, which leads to unjustifiable delays in examination of asylum seekers’ appeals on migration service decisions. Another problem, which aggravates the problem of timely court examination of the case, is the lack of interpreters. According to the Code of Administrative Judiciary (AJC) the court process is conducted in the state language. The problem of finding an interpreter is now exacerbated by the need to find someone who speaks both the foreign language in question and Ukrainian.

The practice of ungrounded refusals on the basis of Art. 12 was widely used and asylum seekers were obliged to prove the truth of their claims. The Migration service personnel generally took a formalistic approach to studying information on the countries of origin, which can lead to situations where important information on the situation in the countries of origin is overlooked.

Local administrative courts overwhelmingly agreed with the Migration service decisions. In 2007 the situation has been changing because the High Administrative Court in its resolution has clearly explained norms of material law and standards of proof in the process of examining refugees’ applications (Case №543519 of 14.03.2007, registration K-4217/06, court code 7001, President Judge Butenko).

The problems of the refugee status determination procedure still remain the most topical. First of all, the procedure remains inefficient. In 2007, changes were introduced for the decision-making authorities. In February 2007, the Terms of Reference of the State Committee for Nationalities and Religions (earlier, the State Committee for Nationalities and Migration) were adopted. Because these Terms of Reference incorrectly indicated the status of the State Committee, for a year no decision was taken on refugee cases. Changes to the Terms of Reference were introduced only on 21.11. 2007.

Concerning access to the procedure in 2007 it is worthwhile to note that regional governmental authorities fulfil the requirements of Laws in terms of access to the

procedure. This is true for the Border Service and the Migration Service. However, NGOs were not aware whether all persons who had applied for a refugee status were allowed access to the territory of Ukraine by Border Service officers in all the regions of Ukraine. But those persons who already were on the territory of Ukraine were allowed access to the procedure without any obstacles.

In 2007, there was a huge number of court cases. Refusals by the Migration Service to process documents (Art. 12 of the Law On the Refugees) and the State Committee to grant refugee status (Art. 10 of the Law) were appealed to local courts at places of residence of the applicants. For the reasons mentioned above, refusals by the State Committee were concentrated at the end of 2007 which aggravated the asylum seekers situation and complicated the work of NGOs, migration services and courts. One NGO alone filed some 100 administrative claims in 2007. At the primary stages of court procedures the first instance courts examined refugees' cases more thoroughly and fairly. In 2007, 8 positive decisions were taken (Odessa oblast). Of those 8 decisions 3 were fulfilled (the persons received refugee ID cards). Court practice has not substantially changed compared to 2006. The only exception is that Administrative District Courts were introduced in Ukraine. It is fair to say that some judges started to specialize in refugee cases. But the Administrative District Courts have not influenced the quality and quantity indicators of decisions made on refugee cases. On the contrary, those indicators got worse.

Regarding filing applications for a refugee status, in Odessa Oblast there were no refusals on the grounds of Art. 9 of the Law. The requirement to apply "without delay" is implemented by the migration service formally and all applications are received.

### **Important legal precedents on national and international levels**

In Donetsk, the first instance court took a positive decision on the complaint of Iraqi asylum seeker against the SCNM decision to refuse him a refugee status on the grounds of Art. 10 (no proof of evidence and stay in a safe third country). The appeal court took positive decisions in two appeals cases by Iraqi asylum seekers against the refusal by the Donetsk migration service to grant them status on the grounds of Art. 12. In all cases the reason for positive court decisions was the fact that migration authorities had not studied information on the country of origin.

In May 2007, Lutsk inter-Rayon Court of Volyn Oblast examined an appeal case of a citizen of the Russian Federation (Chechnya) against a migration service decision to refuse processing of documents on granting refugee status in Ukraine.

The migration service justified its refusal because the claimant had not provided information which would give grounds for qualifying him as a person covered by Art. 1 of the Law On Refugees and that the case contained no well-founded fears of threat to life of the claimant or that he may fall a victim of physical violence or persecution. It also declared that there was no documented evidence of violent actions against claimant and his family.

But after having examined the materials of the case the court concluded that the asylum seeker's claim was well founded.

First of all, the court resolved that according to part 6, Art. 12 of the Law of Ukraine On Refugees it is necessary to clearly define conditions under which an application can be recognized as manifestly unfounded. The court indicated that lack of provision of evidence on persecution in the country of origin is not grounds for rejection of an application for refugee status.

The court also established that some relatives of the claimant in the Russian Federation were arrested and subjected to persecution, some were missing and the claimant's brother was granted refugee status in Austria on similar grounds. The court noted that the case materials do not demonstrate that the migration service had taken any actions to verify the claimant's application and that it took into consideration recommendations presented in the 2004 UNHCR Position with regards asylum seekers from the Chechen Republic of the Russian Federation and the 2004 Amnesty International position with regard to the internal flight alternative (internal relocation, possibility to get asylum elsewhere in the Russian Federation).

The court decided that the migration service's refusal to process the application for asylum of the Russian citizen (Chechnya) was not founded and ruled against the migration service.

In its decision the court also referred to the fact that the migration service decision contradicted international treaties signed by Ukraine, in particular, Art. 14 of the Universal Declaration of Human Rights according to which everyone has a right to seek asylum from persecution in other countries, and Art. 3 of the 1950 European Convention on Human Rights and Fundamental Freedoms according to which nobody may be subjected to torture or inhuman, or degrading treatment or punishment. This court decision is model and exemplary.

At the national level an important judicial document is the Ruling by the High Administrative Court of 14 March 2007. In that decision all major standard procedures, criteria and rules for examination of refugee cases by courts were listed.

The High Administrative Court drew the attention of 1<sup>st</sup> and 2<sup>nd</sup> instances judges to the following:

- Because of certain circumstances related to asylum seekers obtaining documents, presentation of them to a court can in some cases be impossible. The failure to present such documentation does not constitute grounds for ruling that a case is unfounded according to Art. 1 of the Law of Ukraine On Refugees;
- When examining issues of "well-founded fear of persecution" it is necessary to take into account both objective and subjective points. Facts proving that the fear is well-founded can be obtained both from the refugee and from other sources;

- The situation in a person's country of origin is a proof of fear of persecution and a court should make its own judgment on the situation in the country of origin;
- The presence of proof of evidence enhances the truthfulness of an applicant's statements but it is not an obligatory element to prove the case;
- Truthfulness is established when an applicant submits consistent and truthful declarations which do not contradict general facts and invoke confidence;
- UNHCR indicates that persecution is often conducted by persons, who are not controlled by state authorities and from which the state is unable to protect the applicant. Refusal to provide protection because the applicant is persecuted by "wrong" people or bodies is illegal;
- "Well-founded fear of persecution" is only a supposition, which is impossible to verify without risking one's life or freedom. That is why, on the basis of the principle of humanism, this definition should be interpreted in broad sense and in favour of those who apply for a refugee status.
- The case was sent for re-examination.

### **Changes in Border Control Mechanisms**

In July 2007 the changes were introduced into the Rules of entry of aliens and stateless persons into Ukraine, their exit and transit through its territory (approved and entered into force by the Cabinet Resolution # 1074 of 29 December 1995). According to point 19 of those Rules, aliens and stateless persons from countries with visa-free entry regime may stay on the territory of Ukraine no longer than 90 days for each period of 180 days. Previous version of the document did not impose the limit of 180 days.

Before these changes a person from countries with visa-free regimes did not have to apply for prolongation of his registration after the expiration of the 90-day term and could simply leave Ukraine, enter the country, and be registered again for 90 days. At present, a person from a country with a visa-free entry regime who has stayed in Ukraine for 90 days can only re-enter Ukraine 90 days later. The same Resolution contains a provision requiring an alien or a stateless person funds which are equivalent to at least 20 times the minimal wage (currently, the required subsistence level for foreigners entering in Ukraine is 532 UAH – equivalent to approximately 80 Euros). The Cabinet has not yet approved the list of countries to which these rules extend, therefore the new legislative norm has not yet been implemented.

These changes will create additional difficulties for asylum seekers access to Ukraine. The changes will have a negative effect on the Abkhazia war refugees who live on the

territory of Ukraine with their national passports. There were no other changes in this sphere in 2007.

### **Return of refugees from Ukraine to countries of origin or other countries**

One major problem for refugees in Ukraine occurs when a person receives a refusal either to be accepted into the refugee status determination procedure or, following the preliminary interview, receives a refusal to have their documents processed through a substantive review of the case. When this happens all of the refugee's documentation is confiscated and s/he is given a paper entitled "Information on a refusal to accept an asylum application" or "Information on a refusal to process documents for review of refugee status". This paper does not have a photograph, or a place for a residence registration stamp and is the only identity document the asylum seeker is left with. This leaves asylum seekers vulnerable to being made to pay fines for lack of registration, to illegal detention and even deportation. Hundreds of asylum seekers can find themselves in this legal vacuum between the time they receive notification of the negative decision from the migration services and documentary confirmation from the court that they have appealed against this decision.

This leads to breach of Ukraine's obligations under international human rights legislation as well as its own Refugee Law, in respect of the prohibition of forced return of people to countries where they are at risk of persecution, torture or other cruel treatment. It is widely known that in March 2006 Ukraine forcefully returned to Uzbekistan 11 persons who asked for asylum in Ukraine. Many Ukrainian and international human rights organizations, in particular, Amnesty International, have condemned these actions and appealed to the President of Ukraine Victor Yushchenko asking to provide governmental guarantees of Ukraine's adherence to its international obligations and domestic legislation concerning respect for refugee's and asylum seekers' rights, in particular, the prohibition of forced return. But in 2007 no guarantees were provided.

In its Position of October 2007,<sup>20</sup> UNHCR advised other states not to return asylum seekers to Ukraine because they do not have access to fair and effective refugee status determination procedure, court litigations which correspond to international norms of refugees protection and because there is a danger of their deportation to countries where they are at risk of serious human rights violations.

In 2007 the UN Committee Against Torture expressed its concern over Ukraine returning people to countries where they face a threat of torture.

In 2007, Ethnic Chechen, and citizen of Russian Federation, Lema Susarov was subjected to serious risk of forced return when he was detained in Kyiv Detention Facility # 13 despite the fact that he was offered resettlement by Finland.

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<sup>20</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=472f43162>



In 2006, Lema Susarov was recognized as a refugee by UNHCR in Baku, Azerbaijan. He arrived in Ukraine in late 2006. On June 16, 2007 he was detained by the officers of the Ukrainian Security Service. The Russian Federation demanded his extradition and on 27 July 2007 the Prosecutor General of Ukraine ruled to extradite him. But human rights NGOs and UNHCR protested this decision and on 8 August 2007 Lema Susarov asked the State Committee for Nationalities and Religion (SCNR) to grant him refugee status. However, due to reorganization of the SCNR no decision was taken on the case until November 2007. The Kyiv UNHCR office independently evaluated Lema Susarov's case and on 22 August 2007 recognized him as a mandate refugee. On 11 October 2007 Finland agreed to resettle him and to recognize him as a refugee. On January 15 2008, Lema Susarov's application for refugee status was rejected by the SCNR. The Kyiv Administrative Court is currently examining the appeal against extradition. But if it is rejected and Lema Susarov is returned to the Russian Federation Ukraine will breach its international obligations not only in view of the UN Refugees Convention but also in view of the UN Convention Against Torture and European Convention on Fundamental Human Rights and Freedoms. It is known that many Chechens are subjected to torture and inhuman treatment by the Russian Security Services with the aim of getting "confessions" from them and that there are cases where court proceedings against Chechens are brought on the grounds of fabricated evidence.

### **Vulnerable Groups**

- **Unaccompanied minors**

From 1 January to 31 December 2007 in the framework of Legal Protection Services programme by the HIAS NGO, implementing partner of UNHCR, 77 unaccompanied minors were registered. 45 of them (60%) were from Somalia, 18 from Afghanistan, 5 from Pakistan, 3 from Iraq and one from Bangladesh, Eritrea, Russia, Sri-Lanka, Nigeria and Ethiopia each. Only two minors from Afghanistan were able to submit applications for refugee status to the Kyiv migration service, one from Ethiopia to the Odessa migration service and 15 people from Somalia to the Vinnytsia migration service. Information on all unaccompanied minors was submitted to local Guardianship Councils at places of the minors temporary residence. Unfortunately, the Service for Children's Affairs did not in most cases appoint legal representatives for the minors, claiming they first had to check the children's age; or that they did not have permanent residence; or that they had not been given the proper addresses. The minors did not want to indicate their addresses because of fear of losing housing which is rented illegally.

In 2007 no unaccompanied minor was resettled to another country.

In May 2007, a Somalian minor applied to the charitable foundation "Rokada". The girl was pregnant, had left her country because of civil war during which she was victim of sexual violence by militiamen. In June 2007, this asylum seeker together with other minors from her country was placed into a temporary reception centre in Odessa. In July that year, she left the centre because food was unacceptable and because she did not want her countrymen to know that she was pregnant. At the end



of the month, she tried to illegally cross the border, and was detained for about two weeks. On being released from detention she moved to Vinnytsia but did not apply to the migration service. In November 2007, with the support of UNHCR and the NGO “Vinnytsia Human Rights Group” an application was filed on her behalf to the Vinnytsia migration service. After five days the migration service answered that the application had been examined but in accordance with Article 11 of the Law On Refugees “a refugee status application by a child separated from the family should be submitted by one of the child’s legal representatives”. The migration service prepared a request on appointment of legal representative/guardian to the Department for Minors of Vinnytsia City Council and appealed to the Deputy Mayor. Until now the issue of appointment of a legal representative/guardian to the minor asylum seeker has not been resolved. The girl remains in Ukraine illegally, and cannot even register her newly born baby despite the Convention of the Rights of the Child.<sup>21</sup>

Unaccompanied minors are in a vulnerable position; they get neither social nor legal help from the State. Regardless of the provisions of the Law On Refugees which oblige migration authorities, together with bodies responsible for child care, to provide such minors with temporary residence in appointed foster families or orphanages, housing remains the major problem for minor asylum seekers.

- **Chechen Refugees**

This year Ukraine signed a readmission agreement with the EU. On 26 December 2006 a readmission agreement was signed with the Russian Federation.

These Readmission agreements should enter into force in 2010. Neither of them contains special provisions for the protection of refugees and asylum seekers. This leads most NGOs to believe that a threat of “chain” deportations of Chechen refugees will become imminent.

- **Abkhazia “war refugees”**

Judging from the results of research and individual applications it is possible conclude that the main problem for refugees from the Abkhazian war is how to get permanent status in Ukraine. They also face difficulties in getting employment, obtaining registration, getting national Georgian passports and temporary certificates for their children.

There are multiple cases when Abkhazian “war refugees” live without registration (problems with landlords, problems with police) and cases when they receive registration for only 6 months like any foreigner. This is because they do not know about their rights to be registered on the grounds of their temporary certificate.

In Ukraine there is no uniform practice of prolongation of registration for this group of people (in some places they issue copies of certificates every time, in others people use old ones issued before 25.08.2004). The approach depends on the boldness of

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<sup>21</sup> Ukraine ratified the Convention on the Rights of the Child on February 27, 1991.

each local migration service. The more powers the migration service officers take on rendering assistance to those people, the fewer problems people have.

There are many different models. Donetsk migration service, established in September 2007, has completely distanced itself from this problem. In some places there are agreements between the Citizenship and Registration Departments and the regional Migration Services and people are registered on the basis of migration service letters. The registration that should be prolonged until 01.05.2009 is prolonged only for a year. According to the regional migration services it is done in order not to lose control over the situation and to know how many such people remain in the regions in a year's time.

The Ukrainian Ministry of Justice drafted amendments to the Ukrainian Immigration Act, which stipulate that holders of the temporary residence certificates and their children will automatically obtain permanent residence permits if they apply for them. The draft law on the amendments still has to be approved by Verkhovna Rada. The NGOs hope that Verkhovna Rada will vote for the amendments which will make it easier for Abkhaz war refugees to obtain residence permits and legalise their stay in Ukraine.

### **Detention**

One of the main problems is lack of knowledge on the Law "On Refugees" amongst officials of the border guard services and law enforcement agencies, who often treat asylum seekers who have been denied access to the procedure as "illegal immigrants" – this can lead to detention, administrative punishment and even deportation. The procedure for the transferral of applications from asylum seekers detained by the police has not yet been regulated (as it has been done when asylum seekers are detained by the border guards) and this can lead to a serious risk of deportation. According to the law and to service instructions the law enforcement authorities and border guards should pass asylum applications to the migration services. However, at present the interior affairs authorities do not have clear instructions on the procedures for accepting asylum claims. Border guards and law enforcement officials often do not explain the refugee status determination procedure to detainees, do not provide pencils or pens, do not pass on completed applications to the migration services in time, and do not respect the confidential nature of the asylum applications. It is clearly forbidden by both national and international legislation to pass on any information whatsoever on asylum seekers, even if they are verbally expressing their wish to seek asylum, to any diplomatic presence or other authorities of the country of origin of the applicant. However, both the police and the border guards do this systematically. In many cases they also refuse to let people who have already applied for asylum out of detention.

Potential refugees are detained along with other foreign citizens who do not have documents. Sometimes they spend months in border guard or police detention facilities. In many of the detention facilities the food, sanitary conditions and medical treatment are inadequate.

It is also worth mentioning that people in detention are primarily those who were detained whilst illegally crossing state borders and who have no documentation with them. This creates another obstacle to accessing the asylum procedure, as such people cannot be released from detention without identity documents. Due to the lack of familiarity with the law “On Refugees” amongst law enforcement officials and border guards, it is often not understood that a lack of identity documents is a reason to refer an asylum applicant to the migration services, as they are empowered to establish identity and issue the person with legal identity documents for the territory of Ukraine.

Many lawyers from refugee-assisting NGOs face obstacles in gaining access to detained foreign citizens, including asylum seekers. In many cases they cannot meet them, provide legal assistance, help them write an application to court, prevent extradition, or appeal detention. Border Service officers provide information on detainees and access to them only for those NGOs with which they have special agreements. Thus, they deprive detainees of their right for legal assistance and choice of lawyer.

### **Social Dimension**

- **Housing**

Housing is one of the major social and economic problems for refugees and asylum seekers.

In Ukraine in 2007 there was only one Temporary accommodation centre for refugees (TAC) in Odessa which did not have the capacity to accommodate all those in need.

In January 2007, the Ukrainian Law On a Special Housing Fund entered into force. This Law defines the main legal, organizational and social principles of state policy aimed at the realization of the Constitutional right of the vulnerable population of Ukraine to housing. Refugees and asylum seekers in most cases are socially vulnerable but regrettably the law does not apply to this category of Ukraine’s population. In view of the fact that construction of housing for socially vulnerable nationals of Ukraine has been started, the State Committee for Nationalities and Religion which has a right to initiate drafting laws should raise the issue of introducing changes into the Law On a Special Housing Fund which would extend this law to refugees (because they have equal rights with Ukrainian nationals – Art. 20, Law On Refugees). If changes are made this does not mean that recognized refugees will be able to get such accommodation but at least they will be put on to a waiting list.

- **Accommodation for unaccompanied minors**

UNHCR and the non-governmental organisation “ROKADA” pay special attention to unaccompanied minors, who receive social counselling, urgent financial assistance at the maximum available rate, food packages for newcomers and living essentials.

ROKADA also provides unaccompanied minors with qualified psychological assistance.

In 2007 there were several attempts to involve the state structures into the process of finding solutions for unaccompanied minors. A number of meetings were organized with representatives from the Department on Unaccompanied Minors, which is part of the Kiev City Administration. To date, the state bodies have not taken any responsibility for appointing the legal guardians, required to represent the interests of unaccompanied minors before the Migration Services. At present the state bodies take a passive role regarding unaccompanied minors, and their rights of access to the refugee status determination procedure are violated as well as their right to education. These children do not have adequate living conditions, very often they do not have sufficient food and suffer from hunger, they do not go to school, and they suffer from psychological trauma. There is still an urgent need for establishing a shelter for unaccompanied minors.

- **Citizenship**

Recognised refugees have the right to receive citizenship after three years of unbroken residence on the territory of Ukraine. Refugees have to pay a fee when they submit an application for citizenship, but do not have to provide documentary evidence of means of subsistence, as other foreign citizens do, nor do they have to have a temporary residence permit. The main obstacle to obtaining Ukrainian citizenship is the language problem. Refugees who wish to apply for Ukrainian citizenship need to have a conversational knowledge of Ukrainian. There are no precise criteria to test the level of language proficiency at present but for the past two years the SDCIR<sup>22</sup> has been preparing assessment criteria for citizenship cases, meaning that many refugees will have no chance of receiving citizenship.

Recently the odds of acquiring Ukrainian citizenship by recognized refugees residing in Russian speaking areas were reduced as the requirement of the level of proficiency in Ukrainian was raised.

A State programme of teaching Ukrainian to refugees is urgently required.

- **Employment**

At present, refugees from Abkhazia do not have access to employment and labour rights. This is because they are not covered by the Law On Refugees, and also because the Cabinet Resolution of June 26 1996 “On Assistance to persons who were forced to leave their places of permanent residence in the Republic of Abkhazia, Georgia, and arrived in Ukraine” covers only the prolongation of registration certificates. They have no access because refugees from Abkhazia have the same rights as other foreign citizens who come to Ukraine for economic reasons. Another problem is that according to the procedure of issuing foreign citizens and stateless persons a work permit, this is granted to foreign citizens who came to Ukraine to get

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<sup>22</sup> State Department of Citizenship, Immigration and Registration

employment. Abkhazian refugees arrived in Ukraine in order to get international protection and employment for them is a way to get an income.

Asylum seekers are also limited in their labour rights because in Ukraine the employment procedure is described only in Art. 18 and 22 of the Law On Refugees. Employers often refuse to employ asylum seekers because, on the one hand, asylum seekers do not always meet the qualification requirements of employers, and on the other hand employers do not know about the relevant legislation and try to avoid problems with supervisory authorities. Another important factor is that the migration service issues a certificate to an asylum seeker only for one month, after which it needs to be extended. This means that an asylum-seeker has to be absent from his/her workplace at least one day every month.

Refugees have difficulties with employment because the state does not pursue a policy promoting refugee employment. Nobody cares whether a refugee has a higher educational background, there is no help available to prove it through the Diploma defence procedure, restoration of a lost Diploma or streamlined courses. According to the Law On Refugees the migration authorities should assist refugees with employment but because of their heavy workload and the absence of experts in this field this obligation is not fulfilled. In order to resolve those problems it is necessary to pursue a clear-cut migration policy and adapt current legal acts which regulate labour relations to reflect the present situation.

- **Accessible integration programs – language/vocational trainings**

The situation with accessible integration programmes during 2007 has not changed. Refugees and asylum seekers still do not get state support for learning either the language, which is the basis for existence in society, or other integration programmes which would help them to get education, in many cases even a primary one (in spite of the age), and vocational training or to prove their higher education.

- **New projects and initiatives on integration launched by NGOs and the Government in 2007**

In 2007 ROKADA conducted a survey of access to employment for refugees in Ukraine. 200 refugees and 100 employers were surveyed. After the study was completed lectures were delivered to directors of employment services in which they explained refugees' problems and possible solutions.

- **Financial assistance from the State**

A one-off targeted financial payment of 17 UAH (approximately \$3.4 USD) is given to buy living essentials (for those under 16 years old it is 10 UAH 20 kopecks – approximately \$2 USD). This sum is only payable to recognized refugees. It is obvious that the amount of money is inadequate.

In the period from 1998 to 2007 there were no drastic changes to the Procedure of providing refugees with financial assistance and pensions as approved by the Cabinet of Ministers of Ukraine (Resolution No. 1016, dated 6th July 1998).

In spite of the insufficient size of the payments, the state provides these only to recognized refugees and does not consider asylum seekers to be in need of any financial aid.

- **Pensions**

When submitting documents to apply for a state pension, refugees face problems because the special Law of Ukraine “On obligatory national insurance” does not specify refugees as a category of persons who have the right to a pension. This means that inspectors very often deny refugees’ access to pensions because of a lack of understanding.

- **Social assistance**

**Social guarantees**

A recognized refugee in Ukraine has the right:

- a) To receive financial assistance;
- b) To receive a pension;
- c) To receive other types of social assistance in accordance with the procedures established by Ukrainian legislation;
- d) To use the accommodation provided to him/her.

- **Education**

On the whole asylum seekers and refugees in Ukraine have access to primary and secondary education.

Problems occur in the following areas:

- There is a lack of knowledge about legislation and refugees’ right to education – both amongst refugees and amongst those who work in the education system;
- Inconsistencies in the implementation of legislation;
- Refugees do not have access to higher education in the same way as Ukrainian nationals;
- Refugees have access to paid higher education as all foreign citizens do – but the fees are high, and therefore refugees are not able to cover them;
- The language barrier.

- **Racism and xenophobia**

In 2007 foreign citizens, refugees and asylum seekers residing in Ukraine frequently fell victim to racist attacks by neo-Nazis as well as racist offences by law enforcement officers during frequent document checks. In 2007 those murdered in these attacks were two citizens of Bangladesh, a Georgian, a Korean, a Chinese, and an Iraqi – some of this group were asylum seekers. Nevertheless, official statistics of racist crimes are not kept and the majority of such attacks are identified as simple hooliganism. In the course of 2007, representatives of the Interior Ministry, Justice Ministry and SBU (Ukrainian Special Forces) repeatedly refused to acknowledge existence of racism in Ukraine, although a clear pattern of attacks on refugees and asylum seekers was observed during the year.

### **Recommendations**

1. The Ukrainian government should urgently review the situation of temporary accommodation for refugees and asylum seekers and to seek the means to provide more accommodation for the most vulnerable families.
2. Training should continue to be provided on the refugee status determination procedure for decision makers, border guards and judges.
3. The Ukrainian Government and the international community should provide more funds for the translation of country of origin information and case law of the European Court of Human Rights into Ukrainian.
4. A solution needs to be found to the lack of interpreters for refugees who do not speak Ukrainian or Russian, both in order to better identify those in need of international protection who may wish to apply for asylum, and during the refugee status determination procedure itself.
5. The authorities should ensure that Ukraine respects its international obligations under Article 33 of the 1951 Geneva Convention, by carefully regulating deportation procedures, and ensuring that asylum seekers are not subject to deportation until their applications have been examined and they have had a chance to appeal a negative decision.
6. Subsidiary protection should be made available for those who cannot be granted refugee status according to Article 1 (A) of the 1951 Refugee Convention but who are in need of international protection and cannot be returned to their country of citizenship or habitual residence.
7. The Ukrainian authorities should ensure that unaccompanied minors, both refugees and asylum seekers, receive the full range of assistance, care, and services they need and that they have unhindered access to the refugee status determination procedure in Ukraine.



8. There is an urgent need for the Ukrainian authorities to ensure that funds are made available for an integration programme that includes Ukrainian language courses for asylum seekers and refugees.
9. Refugees and their children should have the same rights to higher education as citizens of Ukraine.
10. Barriers to employment for refugees and asylum seekers should be removed by harmonizing the necessary legislation with the Law on Refugees.
11. Until there is an effective durable solution for refugees in Ukraine, the international community should work with UNHCR and NGOs to identify those vulnerable persons in need of international protection, who would benefit from resettlement to a third country and should increase their quota for resettling refugees from Ukraine.
12. Work should begin on the development of a database on countries of origin of refugees according to powers of the central migration authority defined in Art. 6, Law On Refugees.
13. The creation of a single migration service with functions of regional migration services and department for citizenship and registration is urgently needed. One agency should bear responsibility for unlawful actions so that those who take decision on granting a refugee status and those who are responsible for deportation of rejected asylum seekers do not pass the blame.
14. A clear migration policy is needed as well as a special body to deal with the spectrum of migration problems including country of origin analysis, strategy and policy development in the field of refugee integration etc.
15. The fight against racism and xenophobia as well as effective investigation of racist crimes should be a priority for the Ministry of Interior of Ukraine.

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**HIAS**

**Human Rights Have No Borders**

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