

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:**

UKRAINE

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Ukraine acceded to both the *1951 Convention relating to the Status of Refugees and the 1967 Protocol* (hereinafter the Refugee Convention) in 2002. However, the establishment of a national asylum framework had already begun in 1993 with the passing of the National Law on Refugee Status. The asylum framework was established through the 2001 Law on Refugees and with the new Law on Refugees and Persons in Need of Complementary or Temporary Protection adopted in 2011. The national legislation is extensive, but requires further amendments to be in line with international standards. Other laws and rules also need to be amended to enable refugees and asylum-seekers to enjoy the rights and services they are entitled to.

During 2011, Ukraine has undertaken many legislative and administrative initiatives related to asylum and migration. On 22 November 2010, in the context of the 14th European Union-Ukraine summit, the European Union shared its Action Plan on Visa Liberalization with Ukraine. This plan has mobilized the political will of the Ukrainian Government to change its migration policy. The Action Plan requires improvements of various aspects of the asylum system in Ukraine as a condition for the introduction of visa-free travel zone between Ukraine and the countries of the European Union. The asylum-related legislation in Ukraine as well as its implementation should be brought in line with international and European standards.

The latest administrative reform of the asylum system was launched in December 2010 with the creation of a new State Migration Service, which is responsible for migration management, including refugee and asylum issues. A record of frequent administrative reforms - this was the ninth in ten years - has inhibited the steady and incremental progress that would normally be expected of a State party to the Refugee Convention. The impact of these frequent reforms has been negative in Ukraine: trained staff has been removed; some migration service offices have closed, making it difficult for applicants to file asylum applications; temporary moratoria at decision-making level have led to backlogs of cases to consider and to unnecessary delays.

Altogether, the recent reforms may improve the quality of the asylum system in Ukraine (with the introduction of complementary protection for instance), but so far, no concrete implementation has been noticed. As Ukraine lies behind international and European protection standards, asylum-seekers often move on to other countries trying to find effective

protection. As a result, they may end up in smuggling and trafficking networks, which put them at risk of exploitation and detention.

II. ACHIEVEMENTS AND GOOD PRACTICES

1. Presidential Decree on the Concept of the State Migration Policy

The Ukrainian authorities continue to work towards the implementation of the Presidential Decree on the Concept of the State Migration Strategy, adopted on 30 May 2011. The Decree includes many positive developments, indicating an inclusive, rights-oriented approach towards migration management.

The Government has adopted a strategy to combat “racism, xenophobia and religious intolerance” and intends to cooperate with civil society in its Migration Policy. The Government has reiterated its intention to ensure the “implementation of universally recognized international principles and rules of international law relating to the protection of refugees and persons in need of complementary or temporary protection, or asylum in Ukraine, bearing in mind the principle of *non-refoulement*”. The Policy underlines the importance of the integration of migrants. In October 2011, the Cabinet of Ministers adopted a work plan for the Policy’s implementation.

2. Revised Law on Refugees and Persons in Need of Complementary and Temporary Protection

On 28 July 2011, President Yanukovich signed the Law on Refugees and Persons in Need of Complementary or Temporary Protection in Ukraine (Law No. 3671-VI). The new law makes some strides towards meeting international and EU standards for asylum. These **positive developments** include:

- The introduction of **complementary protection** for persons who cannot return to their country of origin because of a fear of death, torture, or inhuman or degrading treatment.
- The introduction of a **unified asylum-seeker certificate**, replacing the previous system of four different asylum-seeker certificates representing different stages of the asylum procedure, which will help ensure that asylum-seekers remain documented throughout the period during which their asylum claim is under consideration.
- The law stipulates that minor **children** are recognized as refugees **simultaneously with their parents**. This will enhance the protection of family unity.

However, please note that UNHCR has identified some gaps in this new legislative instrument, as described below in Section III, under Issue 3.

III. CHALLENGES AND CONSTRAINTS

Issue 1: Effective protection against *refoulement*

Ukraine faces two challenges with respect to *refoulement*. Firstly, while persons in administrative detention may have access to the asylum procedure, their applications are frequently rejected as manifestly unfounded, and in some cases, they are deported before they get a chance to appeal against this negative decision. Secondly, persons under extradition

arrest face a similar situation: the central asylum authority nearly always rejects such applications as manifestly unfounded. Their fears of persecution are not given the “independent and rigorous scrutiny” required by the jurisprudence of the European Court of Human Rights. The Minsk Convention of 22 January 1993, which regulates extradition among CIS countries, has insufficient human rights guarantees. UNHCR continues to record its protest against cases of *refoulement*, mainly affecting persons in administrative detention or under extradition arrest.

Issue 2: Fair and efficient asylum procedures

Ukraine still needs to establish fair and efficient asylum procedures in accordance with international standards. At present, there are a number of challenges.

- First, UNHCR is particularly concerned that the Department of Refugee Affairs does not have sufficient autonomy. EU standards note that the ‘determining authority’ (i.e., the administrative body responsible for taking decisions on the granting of international protection) should be a civil body, with power of signature and budget, and autonomy to decide who is a refugee and who is not. Personnel entrusted with making decisions about international protection must be properly trained and qualified. Under the current arrangements, the Department of Refugee Affairs lacks budgetary control and the power of signature; a decision on refugee status/complementary protection must be counter-signed by multiple officials who are outside the supervision of the Department of Refugee Affairs and have not been trained in refugee status determination. Under these conditions, decisions related to refugee status and refugee protection are likely to be influenced by migration concerns, including the control of irregular migration, for which the State Migration Service is also responsible.
- Secondly, due to administrative reforms and regulatory gaps, the State Migration Service does not provide full guarantees for access to the asylum procedure, and thus to documentation, for any person wishing to apply for asylum. Offices occasionally close for extended periods; asylum-seekers are sometimes denied access to the procedure unless they bring their own interpreters, as the Government does not provide for interpretation services; asylum-seeker certificates are withdrawn upon rejection, and there are cumbersome procedures to re-issue a new one after the individual appeals to the court. As a result, persons are left without valid documents, are subject to fines and detention, and are at risk of *refoulement*.
- Thirdly, the State Migration Service must allocate sufficient financial resources to meet procedural standards set by the law. The State Migration Service has been unable to provide UNHCR with a full picture of the resources allocated to refugee protection in 2012, as their budget structure does not include any details on the funding for asylum issues. However, the State Migration Service reports having received absolutely no funds for interpretation or for research of country-of-origin information. Without adequate resources, Ukraine cannot provide for a fair asylum procedure.
- Fourthly, UNHCR notes the particular challenges faced by unaccompanied minors in accessing the asylum procedure. The competent authorities frequently fail to appoint legal representatives for unaccompanied children, and without a legal representative, the children cannot access the asylum procedure. Left without documents, they face

the risk of administrative detention on charges of illegal residence in Ukraine. UNHCR is also concerned that age assessment procedures are not regulated, and appear to rely entirely on medical testing, usually including x-rays.

Issue 3: Shortcomings in the Revised Law on Refugees and Persons in Need of Complementary and Temporary Protection

UNHCR has noted a number of points in which the new law falls short of international and European Union standards. These include:

- **A narrow definition of complementary protection.** The new law extends complementary protection to persons who cannot be returned to their country of origin in respect of international human rights treaties, particularly Art. 3 of the ECHR and Art. 3 of the Convention against Torture. However, it does not provide complementary protection for persons who have left their country because of serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. As a result of the draft law's narrow definition, some people in need of international protection - particularly persons fleeing from armed conflict situations - may not be eligible for such protection in Ukraine.
- **A wide scope to reject asylum applications at preliminary stage of consideration.** The new law continues to create a wide scope for the authorities to reject asylum applications at the preliminary stage of consideration. An application can be rejected before a thorough personal interview, if the person is deemed not to meet the refugee definition/definition of complementary protection. The system contains an inescapably circular logic: asylum-seekers have to prove their case in order to have an opportunity to present their case. As a result of this restriction, many persons are not admitted into the asylum procedure in Ukraine. In 2010-2011, some 40% of applicants were rejected at this preliminary stage and thus denied access to a full status determination procedure. As a result, asylum-seekers cannot access the asylum procedure in Ukraine and have to seek protection elsewhere.
- **Unrealistically short time limits for appeal.** Asylum applicants who receive a negative decision have only five working days to appeal. This period is too short. According to European standards, in practical terms, the applicant must have sufficient time and facilities in order to undertake all the steps required to exercise the right of appeal.

Issue 4: Reception and integration of refugees

Ukraine has insufficient capacity to receive asylum-seekers. While the country receives an average of 1,500 asylum applications per year, only 320 spaces are available in temporary accommodation centres (TACs). The capital Kyiv, where a large proportion of asylum applications are lodged, does not have any TAC. Most asylum-seekers are left to fend for themselves. The authorities do not provide language courses, social assistance, or employment assistance to facilitate integration.

Resource allocation is a significant problem: In 2012, the SMS informed UNHCR that it had only partial funding for the food of the TACs, and no funding available for major repairs or local integration assistance. A newly recognized refugee receives a one-time grant amounting to just over \$2. Under these conditions, and surrounded by an often uncomprehending public

having little experience with minority groups, refugees face insurmountable challenges in finding employment, accessing social services, and integrating into the local society. Various line ministries with responsibilities relevant to local integrations, such as the Ministry of Education and Science, Youth and Sport of Ukraine and the Ministry of Social Policy of Ukraine have not yet demonstrated practical engagement regarding this issue.

Issue 5: Accession to the UN Statelessness Conventions

Ukraine is not a State party to the *1954 Convention on the Status of Stateless Persons*, or to the *1961 Convention on the Reduction of Statelessness*. Nevertheless, Ukrainian legislation largely meets the standards set out in the two international statelessness instruments. In early 2012, Ukraine's State Migration Service informed UNHCR that it is preparing draft legislation to initiate accession to the two conventions.

Accession to the *1954 Convention relating to the Status of Stateless Persons* would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

IV. RECOMMENDATIONS

In view of the above, we would like to suggest to the Office of the High Commissioner for Human Rights to consider referring in its compilation report to the following recommendations aimed at enhancing the protection of persons of concern to UNHCR in Ukraine:

- 1.** Encourage timely and attentive implementation of a work plan related to the State Migration Policy, especially the planned actions related to free primary legal aid and interpretation services for migrants.
- 2.** Adopt amendments to the refugee law to bring it fully into compliance with international standards in the area of asylum.
- 3.** Ensure protection against *refoulement* for persons in administrative detention and under extradition arrest by admitting them through the full procedure for refugee status determination and conducting scrupulous assessments of their need for international protection.
- 4.** Ensure that procedures for refugee status determination meet international standards for due process by providing the Department of Refugee Affairs with sufficient autonomy and resources to make high-quality decisions on the basis of thorough interviews (including translation) and assessments by well-trained staff, as well as appropriate procedural guarantees - including age assessment procedures based on international best practices with

due consideration to the benefit of the doubt - for the protection of unaccompanied asylum-seeking children.

5. Expand the capacity of TACs, particularly in Kyiv, and allocate resources for local integration, particularly for language courses and employment assistance.

6. Accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.

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