



Application No. 58964/00
IN THE EUROPEAN COURT OF HUMAN RIGHTS
BETWEEN

K.K.C. AND THE NETHERLANDS
SUBMISSION BY THE OFFICE OF THE
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

I. INTRODUCTION

1. By letter of 7 November 2001, the European Court of Human Rights granted leave to the Office of the United Nations High Commissioner for Refugees (“UNHCR”) to submit a written intervention in the case of K.K.C. v. the Netherlands. The Court specifically requested that UNHCR’s submission should address the practical and legal situation of displaced persons from Chechnya in the Russian Federation.

2. UNHCR welcomes the opportunity to make a submission in respect of the present case before the European Court of Human Rights. Established by the General Assembly of the United Nations as a subsidiary organ under Article 22 of the Charter of the United Nations, UNHCR has a unique mandate: to provide international protection to refugees and, together with Governments, to seek permanent solutions to their problems. The Statute of UNHCR specifies that the High Commissioner shall provide for the protection of refugees falling under the competence of his Office by, *inter alia*, “promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto...” This supervisory responsibility of UNHCR is formally recognized in Article 35 of the 1951 Convention relating to the Status of Refugees (“1951 Convention”) and Article II of the 1967 Protocol relating to the Status of Refugees (“1967 Protocol”).

3. The present case raises, *inter alia*, important issues of fact and law pertaining to the notion of “internal flight alternative”. In this statement, UNHCR will first present its understanding of this notion, and briefly set out the basic considerations that should guide its application from the point of view of international refugee law. It will then describe the factual situation of persons displaced by the conflict in Chechnya within the Russian Federation insofar as this is relevant to assessing internal relocation possibilities there.

II. THE “INTERNAL FLIGHT ALTERNATIVE” NOTION

4. The 1951 Convention is the foundation upon which the global system of refugee protection is built. The principles expressed in or underlying the Convention and the spirit in which it was adopted have informed its interpretation and the development of

regional instruments and protection systems. These principles include a number of human rights tenets, the most important for the purposes of this submission being the right to leave one's country, the right to seek asylum and the entitlement to protection against return to a situation of danger.

5. While the right to seek asylum is not explicitly included in the 1951 Convention, it is nevertheless implicit in its very existence. Provisions of the Convention which are particularly relevant to the right to seek asylum include the prohibition on the imposition of penalties for illegal entry (Article 31), the prohibition on expulsion (Article 32) and, of course, the prohibition on *refoulement* (Article 33). The right to seek asylum is articulated in other global and regional instruments and has been repeatedly acknowledged in various international fora, including through conclusions of UNHCR's Executive Committee and resolutions of the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the General Assembly.

6. *Non-refoulement*, the principle prohibiting return to the frontiers of territories where a refugee's life or freedom would be threatened, is perhaps the single most important refugee protection principle enshrined in the 1951 Convention. A similar *non-refoulement* principle appears, as well, in other global and regional instruments. As noted above, the principle of *non-refoulement* in turn works to uphold the right to seek asylum in the sense that it prohibits turning away refugees at borders and returning them to situations of danger. Both the right to seek asylum and the *non-refoulement* principle are predicated upon the ability to leave one's country, or to remain outside it, in order to avoid risk of persecution. Without this fundamental basis as the starting point, the international framework for refugee protection could not work.

7. Increasingly, the determination of certain claims to refugee status involves analysis of whether the fear of persecution extends to the whole of the territory of the country of origin. The possibility of accessing safety elsewhere inside the country of origin has been styled "internal flight alternative" or "internal relocation." In UNHCR's view, this notion is a factor or possibility to be analysed in the course of the substantive examination of refugee claims in some individual cases. Caution has to be exercised where this notion is involved, not least because of its potential incompatibility with the right to seek and enjoy asylum from persecution.

8. Where the risk of being persecuted emanates from the State (including the national government and its agents), "internal relocation" is not normally a relevant consideration as it can be presumed that the State is entitled to act throughout the country of origin. Where the risk of being persecuted emanates from local or regional governments within the State, "internal relocation" may only be relevant in some cases, as it can generally be presumed that local or regional governments derive their authority from the national government. Where the risk of being persecuted emanates from a non-State actor, "internal relocation" may often be a relevant consideration which as though to be determined on the particular circumstances of each individual case.

9. The judgement to be made in cases where internal relocation is an issue is whether the risk of persecution that an individual experiences in one part of the country can be successfully avoided by living in another part of the country. The analysis requires an objective assessment of the situation in the part or parts of the country proposed as alternative or safe locations. The individual whose claim is under consideration must be able, practically and legally, to access the proposed “internal relocation”. This requires consideration of physical and other barriers to access, such as risks that may accrue in the process of travel or entry; and any legal barriers to travel, enter or remain in the proposed “internal relocation alternative”. Evidence must be available to show that the risk giving rise to the asylum-seeker’s fear of persecution does not extend to that part of the country, and that the area is generally habitable.

10. Factors which will be relevant to consider include, among others: the actual existence of a risk-free area, which must be established by evidence; the stability of the area and the likelihood that safety will be a durable feature; the accessibility of the area (both internally and from outside the country); its suitability for habitation, that is, persons living there must not have to endure undue hardship or risk.

11. It also has to be demonstrated that, in all the circumstances, it would be reasonable for the asylum-seeker to seek safety in that location, in order to overcome his or her well-founded fear of persecution. In assessing this question, there are probably as many considerations as there are different circumstances of asylum-seekers and of countries; thus it is not possible to define them all. However, it may be helpful to list some of the issues that may usefully be explored.

12. For example, the claimant’s personal profile will be important. Factors to be considered might include, but are not limited to: age; sex; health; family situation and relationships; ethnic and cultural group; political and social links and compatibility; social or other vulnerabilities; language abilities; educational, professional and work background; and any past persecution suffered, and its psychological effects.

13. The country’s particular political, ethnic, religious and other makeup will also be important. Elements that should be taken into account may include: the existence and legality of government-sponsored population transfer programmes; government policies of segregation or other limitations on freedom of movement and choice of residence; and the ethnicity, religion and related features of others already in the area in question, and the area’s absorption capacity.

14. In summary, “internal relocation” is not an easy answer to refugee claims, and cannot be used as a short-cut to by-pass refugee status determination or to decide cases in an accelerated procedure. The possible relocation analysis may be relevant, in the individual case, to an assessment of the well-foundedness of the fear of persecution and the availability of adequate, effective State protection. However, the analysis must include assessment of the safety and reasonableness of “internal relocation” in all the circumstances of the specific case at issue.

III. PRACTICAL AND LEGAL SITUATION OF DISPLACED PERSONS FROM CHECHNYA IN THE RUSSIAN FEDERATION

Policy of the Russian Federation regarding Internally Displaced Persons - IDPs

15. There is no reference, under Russian legal terminology, to the term “internally displaced person”. However, the 1995 Federal Law on Forced Migrants envisions a similar status for forcibly displaced persons. According to Article 1 of this law: “*A forced migrant shall be a citizen of the Russian Federation, who was forced to leave his/her place of permanent residence due to violence committed against him/her or members of his/her family or persecution in other forms, or due to a real danger of being subject to persecution for reasons of race, nationality, religion, language or membership of some particular social group or political opinion following hostile campaigns with regard to individual persons or groups of persons, mass violations of public order*”.

16. As a result of the 1994-96 conflict in Chechnya, some 162,000 internally displaced persons were granted the status of “forced migrant” in approximately 80 regions (subjects) of the Russian Federation. The status of forced migrant is primarily meant to facilitate the integration of such persons in their new place of residence, through the allocation of special allowances, assistance with housing, job placement, loans and related support.

17. Subsequent to the renewal of hostilities in September 1999, there were some 240,000 persons displaced out of Chechnya at the beginning of 2000. Very few of those displaced have been granted forced migrant status. According to government statistics, between 30 September 1999 and 30 June 2001, some 11,851 persons were granted forced migrant status in some 79 regions of the Russian Federation. Because of protracted procedures, this number also includes those displaced from the 1994-96 conflict who were granted forced migrants status in 1999, 2000 and 2001. While official statistics do not provide a breakdown by ethnicity, most of them, according to information available to UNHCR, are ethnic Russians.

18. According to information available to UNHCR from local non-governmental organizations, most of the forced migrant status applications by Chechens based on allegations of mistreatment, destruction of property and/or violation of public order by Federal forces were rejected by the competent migration authorities. Chechens who were granted forced migrant status were those who claimed fear of persecution or other harm by Islamic fundamentalist or “Wahabi” groups.

19. Under Russian Federation Resolution No.510 of 30 April 1997, the Government established a procedure to compensate for lost property persons who left Chechnya between 12 December 1994 and 23 November 1996. Access to compensation under this Resolution is based upon objective facts (proof of damage to property and proof for residence in Chechnya) and is independent from the granting of forced migrant status. The Federal Government has announced its intention to establish a similar mechanism for the victims of the current conflict who left Chechnya permanently (cash payments), as

well as a compensation system for affected persons within Chechnya itself (provision of shelter materials for self-help reconstruction). However, none of these compensation schemes have been implemented to date.

20. Although Federal legislation officially has abolished the Soviet-era “propiska” system, many regional authorities of the Federation apply restrictive local regulations or administrative practice to citizens’ rights. The Russian Federation Constitutional Court and the Federal Commissioner on Human Rights (Ombudsman) do not always effectively remedy the violations of the Federal legislation relating to freedom of movement perpetrated by regional authorities. In its October 2000 special report “on the constitutional right to liberty of movement and freedom to choose place of sojourn and residence in the Russian Federation”, the Commissioner on Human Rights deplored that “violations of constitutional rights to liberty of movement and freedom to choose one’s place of sojourn and residence by government bodies are due not only to regulations of constituents of the Russian Federation being contrary to Federal legislation regulating this constitutional right, but also to unlawful law-enforcement practices”.

21. As a result of the imperfect transition from the *propiska* regime to a registration system, local authorities throughout the Russian Federation retain the possibility to determine modalities of implementation of freedom of movement and choice of place of sojourn or residence. This is particularly the case in regions attempting to protect local labour markets, to control internal migration movements, or to prevent the settlement of what the authorities refer to as economically or politically “undesirable” migrants. The impact of this on displaced Chechens is that they have been, and continue to be, restricted in their possibility to reside legally outside Chechnya and beyond Ingushetia.

22. International organisations, including UNHCR, have consistently insisted on respect for the principle of voluntariness in any return of internally displaced Chechens to Chechnya. Since the events which occurred in late 1999 and early 2000, when hundreds of internally displaced Chechens in Ingushetia were forcibly returned to Chechnya aboard the train wagons they were accommodated in, there has been no instance of outright forced return to Chechnya.

23. At the same time, the Russian Federation has consistently maintained the official position that internally displaced Chechens should return to Chechnya arguing that Federal forces control most of the Chechnya territory, that Chechens should take part in the reconstruction and administration of the Republic and that internally displaced Chechens constitute a destabilizing factor for the regions that are hosting them. As a consequence, and notwithstanding the official position at the Federal level to respect the principle of voluntariness in any return, local authorities have actively pursued a policy inducing the internally displaced Chechens to return to Chechnya. This has been particularly the case in the Republic of Ingushetia, where the majority of the internally displaced Chechens are located.

Displaced Chechens in Ingushetia

24. Ingushetia and Chechnya are contiguous, and Ingushetia has generously hosted the bulk of fleeing Chechens. However, with an influx of over 240,000 internally displaced Chechens in 1999-2000, the infrastructure of the Republic of Ingushetia – with a total population of 360,000 inhabitants - has been overstretched. It is estimated that there are currently 150,000 internally displaced Chechens in Ingushetia, two thirds of whom are staying with host families and one third accommodated in tented camps and spontaneous settlements (collective farms, abandoned factories and other structures being used as shelter). Local social infrastructure has been overwhelmed by the influx, placing serious limitations on access to medical facilities and schools. Tuberculosis in camps and settlements is widely spread. In view of the overcrowded situation in Ingushetia, the (former) Federal Migration Services (FMS) made some attempts in 1999 and 2000 to relocate some of the internally displaced Chechens to other regions of the Federation.

25. Recently, the proportion of internally displaced Chechens in tented camps in Ingushetia has increased as a result of evictions from host families' residences (often this occurs after host families had exhausted their financial resources) or from private spontaneous settlements. Following protracted negotiations throughout 2000, the Federal Government allowed UNHCR to build an additional tented camp in Ingushetia in order to accommodate newly arriving displaced Chechens as well as those accommodated in remote, unsafe spontaneous settlements. Generally, however, the Federal Government remains reluctant to allow provision of additional tent capacity in Ingushetia, insisting that any needed camps should instead be built in Chechnya. In the circumstances, it is feared that those evicted from host families and spontaneous settlements in Ingushetia may have no realistic alternative other than to return to Chechnya, to remain illegally in another region of the Federation, or to seek asylum elsewhere.

26. There have been various attempts made by the Federal authorities to induce the return of displaced Chechens from Ingushetia to Chechnya. On 17 December 1999, the Federal Migration Service instructed, under Order No.110, the Regional Migration Services of Dagestan, Stavropol, Ingushetia and North Ossetia-Alania to suspend registration of all new arrivals and to facilitate their return to Chechnya. Subsequently, on 20 January 2000, the Ministry for Civil Defence and Emergencies of the Republic of Ingushetia issued an instruction according to which displaced Chechens coming from regions under the control of Federal authorities should be "*deprived from all kind of allowances they were entitled to on the territory of their present accommodation*". There has been a succession of similar Federal orders and instructions. Without registration by the migration authorities, displaced Chechens do not have access to Government assistance, including accommodation in Government managed camps and food. It is estimated by UNHCR that there are currently 10,000 to 15,000 unregistered Chechens in Ingushetia alone and, in the absence of any Government support, they live on food assistance from UN agencies and non-governmental organizations.

27. UNHCR has been informed that the Federal Ministry of Interior issued an instruction in November 1999 not to grant or renew identity documents to internally displaced

Chechens, allegedly to prevent possible Chechen militants or infiltrators to get official documents under a fake identity. This measure limited freedom of movement for undocumented displaced Chechens outside Chechnya, given the registration regime applicable in the Russian Federation which requires all Russian citizens to register with the local bodies of the Ministry of Interior if they sojourn outside their place of permanent residence. Undocumented displaced Chechens were also not in a position to return to, or visit Chechnya, for fear of being detained at military check-points.

28. In June 2000, a mobile team from the Federal Ministry of Interior started issuing temporary identity documents and sojourn registration for displaced Chechens in Ingushetia under Government Regulation No. 821 of 8 July 1998 “on approval of the statute of the passport of the citizen of the Russian Federation”. This document is referred to as “Temporary Certificate of Citizen of the Russian Federation” (so-called Form No.2-Ī). Form No.2-Ī is issued in case when the passport is lost and serves as a provisional identity document. It is valid for a period of one month, during which period the person would expect to be issued with a new passport at his or her place of permanent residence. In September 2000, the mobile team of the Federal Ministry of Interior ended its mission in Ingushetia and handed over its task to the Ingush Ministry of Interior.

29. Over the last months, there has been a tendency of the Federal authorities intervene more directly in Ingushetia for “security” reasons. The Federal forces have conducted a number of security related operations in settlements and camps housing displaced Chechens, and arrested a number of persons suspected of membership in Chechen “rebel” groups.

Displaced Chechens in other parts of the northern Caucasus

30. For the purposes of examining the availability of internal relocation elsewhere in the northern Caucasus, a differentiation should be made between those regions of the Federation where the majority of the population is non-Slavic or of Muslim confession (Dagestan, Kabardino-Balkaria and Karachai-Tcherkessia) and those regions where the majority is Slavic or of Christian faith (North Ossetia-Alania, Stavropol Krai and Krasnodar Krai).

31. The Republics of Dagestan, Kabardino-Balkaria and Karachai-Cherkessia are multi-ethnic societies, and are regularly confronted with tensions among the various communities. The current conflict in Chechnya led to Chechen fighters entering Dagestan and a subsequent military confrontation with Dagestani and Federal armed forces. Dagestan is currently host to 5,000 displaced Chechens. Because its mountainous areas have been reportedly used by Chechen fighters as camp bases since the beginning of the conflict, Dagestan has been reluctant to receive any additional displaced Chechens.

32. The situation in the Republics of Kabardino-Balkaria and Karachai-Cherkessia is characterized by ethnic tensions and political rivalry between their two constituent nationalities. These two republics are mainly concerned with maintaining the equilibrium between the respective constituencies. This equilibrium is particularly fragile in

Karachai-Cherkessia, where a terrorist bombing occurred on 24 March 2001 in Agidehahl village. The Federal authorities accused Chechen fighters of instigating the incident. In Kabardino-Balkaria, a 1994 resolution adopted by the Parliament (amended in 1997) banned the sojourn or residence there of Russian citizens from other regions of the Federation who do not have close family ties with the Republic's residents.

33. In Stavropol and Krasnodar, the problem for displaced Chechens who wish to settle or even sojourn there is not limited to restrictive local regulations. There are very strong Russian nationalistic feelings among the population of these two regions, where Cossack groups and the Russian Nationalist Union (RNU – far right party) are well established and organised. Those displaced from Chechnya by the 1994-96 conflict and present in these regions (where they were granted forced migrant status) are generally ethnic Russians and some of them are actively engaged in anti-Chechen campaigns.

34. The situation is somehow different in the Republic of North Ossetia-Alania, a Caucasian Republic composed essentially of Ossets (Caucasian people of mainly Christian religion) and ethnic Russians, with a significant Ingush (Muslim) minority. Most of the 35,000 Ingush were driven out of North Ossetia-Alania during the 1992 inter-ethnic riots in Prigorodny district. Nearly half of them have returned since, but returnees are encountering various obstacles with their re-registration at their place of former residence in Prigorodny. At the same time, North Ossetia-Alania is hosting some 38,000 southern Osset refugees from Georgia, who came to seek refuge in that Republic as a result of the 1991- 92 armed conflict in South Ossetia, Georgia. North Ossetia-Alania is struggling to integrate locally these refugees in a very bleak economic context. Tensions are high between some southern Osset Georgian refugees and ethnic Ingush returnees. In this volatile context, Chechens, who are ethnic kin to the Ingush, are perceived as a possible destabilizing factor and therefore not welcome in North Ossetia.

Displaced Chechens in other parts of the Russian Federation

35. Chechens displaced by the current conflict in Chechnya and who have come to Moscow have encountered serious problems regarding their legal status and residence, including frequent security checks, evictions from their apartments and harassment by segments of the local population. Resolution No. 875 10 issued on 21 September 1999 by the Moscow City Government instituted a re-registration procedure for all non-Muscovites staying in Moscow. As a result of this regulation, thousands of persons previously registered in Moscow could not re-register with the authorities. In practice, it became almost impossible for newly-arriving displaced Chechens to register in Moscow.

36. Another decree issued by the Mayor of Moscow on 28 September 1999 stipulates that, in order to apply for forced migrant status, the concerned applicants must be in possession of a registration document issued by the competent body of the Federal Ministry of Interior valid for a term of not less than six months. In practice, however, it has been almost impossible for displaced Chechens to obtain sojourn registration in Moscow. The Chechens find themselves in a “vicious circle”, where they need sojourn registration to apply for forced migrant status but sojourn registration is denied in

practice. Local nongovernmental organizations have reported numerous instances where displaced Chechens applying for forced migrant status were told by local migration officers to return to “safe areas” in Chechnya.

37. In the absence of temporary registration, displaced Chechens in Moscow have not been able to exercise basic social and civil rights, such as access to legal employment, medical care and education. Instances of confiscation of passports by the police, detention, and extortion of money have also been reported.

38. According to information available from local human rights groups, the situation in the Russian Federation’s second largest city, St Petersburg, is similar concerning restrictive practices in issuing sojourn registration to displaced Chechens. In the absence of sojourn registration, they have no legal access to social welfare. However, the Chechen community in St Petersburg is much smaller than in Moscow and it is acknowledged by human rights groups that police harassment, fines and administrative detention of improperly registered persons is not as acute as in Moscow.

39. The situation of displaced Chechens in the remaining parts of the Russian Federation is not as substantially documented as in the other regions of the Federation mentioned above. However, based upon information available to UNHCR, three general observations can be made.

40. First, there is very little or no presence of displaced Chechens in areas beyond the northern Caucasus Republics probably because of absence of an established Chechen community with whom they could stay and find some support. Second, and most importantly, very strong anti-Chechen public opinion has developed. Although such sentiment was already present during the previous Chechnya conflict in 1994-96, it has gained more vigour after the terrorist bombings of August 1999 in Moscow. The negative public attitude has been further exacerbated by some national and local media, and by the relatively high level of casualties among the Federal troops. Third, the 11 September 2001 tragic events in the United States have led some Government officials and the media to draw parallels between those events and the “anti-terrorist operation” in Chechnya. This is likely to contribute to increased suspicion towards Chechens in generally.

UNHCR Geneva
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