

## CENTRAL AND EAST EUROPEAN MIGRATION

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# On The Fringes of Europe: Refugees in Ukraine

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Migrants and refugees transiting Central and Eastern Europe, the Balkan, South East Europe and Northern Africa (often illegally, on their way to EU territory have become a major policy concern). Simultaneously, the conditions of migrants stranded in transit countries, or losing their lives in desperate attempts to depart these countries raise serious human rights concerns. A project was set up by COMPAS to investigate migration on the fringes of Europe. The project focuses on mixed flows of migrants and refugees, civil society organizations and government agencies, and EU initiatives. It aims to explore the interrelation between all actors and how this shape migration flows. This briefing is devoted to the first case study, Ukraine, and the first set findings.

### Refugees in Ukraine

Ukraine is a country of emigration, immigration, asylum migration and transit migration. Two to seven million Ukrainians live and work abroad, at least temporarily and 245,000 immigrants are officially registered in Ukraine. However, it is estimated that these figures only show half the picture because there are many more who enter or stay without registration. Between 1996 and 2005, approximately 15,000 individuals applied for asylum in Ukraine, 1,890 in 2005 (1,364 in 2004). In 2006, the total 'population of concern' registered by UNHCR was 73,450. So far, 5,300 asylum seekers have been granted refugee status, 2,350 have settled in Ukraine and 740 of those have acquired citizenship due to liberal citizenship law. However, more than half of all recognised refugees have left the country, presumably to Western Europe; accordingly, NGOs report losing half of their caseload due to on-migration. In 2005, approximately 50 individuals were resettled to a third safe country, half as many as the year before. The only countries that accepted resettlement refugees from Ukraine are Finland, Sweden, Norway, Canada and the US.

The majority of refugees are from Afghanistan (1,290), the second major group (700) is from Commonwealth of Independent States (CIS) countries (Russia, Armenia, Georgia, Azerbaijan, Tajikistan), others are also from Africa (320), e.g. Congo, Sudan, Ethiopia and Angola and the Middle East (120). At present asylum seekers are from Afghanistan, Pakistan, Russia, Bangladesh, India, Palestine, Iraq; smaller numbers are from Vietnam, China, Iran, Uzbekistan, Sri Lanka, Syria, Somalia, Nigeria, Sierra Leone, Liberia, Ghana, Zaire, Brazzaville, Sudan and other countries. Refugees originate from 45 to 50 countries. Around 25 per cent are female and one third of all refugees are below age 17.

In 2006, 26,000 individuals were apprehended for illegally crossing borders (59,000 during 2003-6). About one third of these people were apprehended on entering a new EU country (Poland, Slovakia, Hungary, Romania). But the number of those who crossed without being identified is assumed to be between two and eight times higher. Migrants who illegally crossed the border from Ukraine to an EU country and wished to file an asylum application have often been returned, especially from Slovakia. Even after the intervention of UNHCR, refugees are still returned to Ukraine. Though conditions have

improved and more asylum seekers are now able to file a claim in Slovakia. On average, 5,000 individuals are deported from Ukraine each year; this is in addition to those refused entry (27,000 in 2005) and those who participated in International Organisation for Migration (IOM) assisted voluntary return programme (49 in 2004/5).

### **Statutory Services and Asylum Procedures**

In 1993, the first Ukrainian refugee law was introduced, but it was implemented in 1996. In 2001, a new law 'On refugees' came into force, this law was amended in 2005. It was in 2002, when Ukraine acceded to the Geneva Convention. The present law does not yet include any provisions for temporary or subsidiary protection. This is considered a serious legal shortcoming. The State Committee for Nationality and Religions (SCNR), formerly the State Committee for Nationalities and Migration, in particular its Refugee Directorate, is responsible for Refugee Status Determination (RSD). It also deals with refugee integration, other migration issues, international relations and some policy aspects. Its regional branches, the Migration Services (MS) receive, accept or refuse applications, conduct the first hearing and pass on files to the State Committee for final decision making. The SCNR and MS have 150 staff, 20 in Kiev and 130 in the regions. It is grossly understaffed and suffers from constant staff turnover. Staff neither speak or read English and there is no interpretation service. The SCNR also have no country of origin information system and they do not consult alternative sources, e.g. UNHCR publications. Whilst the MS, in particular in Transcarpathia (Zakarpattya), has a backlog, the SCNR normally issues a decision, usually a refusal, within eight months. Appeals can be filed with local courts although these do not have specialised chambers and appeals may take several years. Altogether, 2,300 asylum seekers were awaiting decisions in 2007. Constant reform has also meant that the SCNR occasionally stops functioning, as happened in 2001-2 and partially again in 2006-7.

Until 2005, refugees had to lodge a claim within three working days after arrival and up to 70 per cent of all claims were rejected by Migration Services on formal grounds. This restriction has since been relaxed, but still a claim should be lodged within fifteen days. As a result, the rejection rate has decreased to 10 per cent. Still, sometimes, refugees do not even have access to Refugee Status Determination procedures (RSD) and a UNHCR source (Polikarpova 2007) states that this affected 350 refugees in 2007. For instance, unaccompanied minors require a State guardian to file their application but such guardians because of administrative complications are by and large unavailable. As a consequence, minors have practically no access to RSD procedures.

During the early 1990s, many asylum seekers were granted asylum (notably Afghans and Angolans), whereas in recent years, SCNR recognition rates have dropped and now vary from 0.4 to 6 percent. NGOs instead believe that 85 to 90 per cent of all asylum claims are in fact well-founded. Indeed, in 2006, the Hebrew Immigration Aid Society's (HIAS) success rate at Kiev local appeals court stood at 70 per cent, illustrating a relatively independent judicial system. Nevertheless, no Chechen has been reported receiving refugee status since 2004, other sources say 2001. Instead, frequently cases of refoulement have been reported, particularly of Chechens and Uzbeks. The allegation made by some NGOs is that Russia influences recognition practices with respect to Chechens and further to this it is suspected that the Russian Security Service (SBU), which is the successor of the notorious KGB, collaborates with other security services in the neighbouring countries and thereby undermines asylum procedures.

Almost half of all asylum applications are filed in Transcarpathia, the region bordering Slovakia, Hungary and Romania. Because most are filed upon apprehension for illegal border crossing it is likely that these refugees (and migrants) are on their way west. They file an asylum claim either in order to prevent being served with a return order (if they are citizens from a CIS country), or to be released from detention (if they are from any other country).

## **Reception and Integration**

There is only one reception centre for refugees, in Odessa; it is EU and UNHCR funded, with a capacity for 250 individuals. There is one holding centre for women and children in Mukachevo, Transcarpathia. Another temporary accommodation centre for 80 individuals has been constructed in Transcarpathia (Latoritsa), but has not yet become operational due to administrative problems between various state agencies. For unaccompanied minors there is no separate facility and they are sometimes sent to an asylum for orphans and street kids in Kiev which is completely inappropriate for their needs. No services are provided by statutory agencies to asylum seekers and refugees in terms of accommodation or benefits. Access to health care is free according to legislation. However, in practice patients have to pay a fee, which normally asylum seekers cannot afford. By law, refugee children can go to school free of charge, as it is the case in Kiev, in other cities and for people of some other nationalities access is impossible, as reported by Somalis in Vinnitsia.

There are various legal and practical obstacles that prevent asylum seekers and refugees' accessing housing and employment. Most asylum seekers lack ID documents, either because they do not have any or because they had to submit their IDs to SCNR. UNHCR issues a replacement ID-like letter valid for six months but this is not officially recognised as ID. Furthermore, landlords refuse to issue tenancy agreements; therefore their tenants cannot register their residence with local authorities.

By law, asylum seekers and refugees are entitled to work, although it is almost impossible to find employment. One reason is that in order to employ a foreigner worker, employers have to pay a considerable fee, which is a major disincentive. Another obstacle is that many people are unable to obtain a tax number, because of lack of ID. Therefore they undertake irregular employment, such as working on markets,. However, for those not living in one of the larger cities and for women (specifically single-mothers) and for certain nationalities even this is not an option.

## **Non-statutory services**

A few international organisations and NGOs provide services to asylum seekers, notably the UNHCR and Caritas Austria. Red Cross Norway is considering setting up a detention monitoring project but this has not yet been decided. The UNHCR (budget \$ 3 million) has two implementing partners in Kiev and more in the regions. Since 2002, the Hebrew Immigration Aid Society (HIAS) has provided legal assistance to asylum seekers in the Kiev region; they had 2,100 clients in 2006. HIAS and some other regional NGOs also implement the UNHCR's assessment scheme for identifying people in need of protection by UNHCR and HIAS. This is not to be confused with the RSD process. Another agency is Rokada which was set up in 2000. It provides some social services to refugees and asylum seekers in the Kiev region. In 2006, they served 1,300 individual clients. To a selection of the most destitute asylum seekers they hand out \$ 80 (\$ 60 for a spouse, \$ 40 children) per month. Rokada also runs a refugee integration centre providing some language classes, counselling and a crèche. In Western Ukraine (Transcarpathia) a project funded by Caritas Austria provides legal aid, in particular to detainees in the two long-term detention centres and one short-term holding facility in the region (see below) and to asylum seekers. NEEKA is a church-based NGO in Mukachevo, which is jointly funded by UNHCR and EU and supported by the local Red Cross. It provides some legal aid, but mostly social services including health services. In all cases, funding is on a project basis, so these initiatives have an uncertain future. Thirteen other local NGOs in Chernihiv, Kharkiv, Donetsk, Odessa, Lviv, Luhansk and Vinnitsia also provide diverse services. In the Kiev region, Berkat, a non-funded aid society that relies on one donor from the US, hands out second-hand clothes, walking sticks and stationery for school children. Despite these initiatives there are no services available in other cities and refugees often have to travel long distances to receive any support at all.

## **Arrest, Detention and Deportation**

In legal terms 'illegal immigrants' are held for up to ten days at the point of arrest, or up to 30 days if apprehended in the interior (HRW 2005: 35). Once their status is established, CIS citizens arrested in the country are released but are ordered to voluntarily leave the country. CIS citizens who are arrested on entry, e.g. on the Russian border, are returned to the country they have entered from. All people of other nationalities are detained for a maximum of six months in order to establish their identity, nationality and to prepare their return. Repeated arrest result in repeated detention. Those people who are arrested on entry on the Eastern border who cannot be returned to Russia are transferred to Kiev in order to establish their status. Immigrants who apply for asylum are normally released. However, reports show that not all refugees arrested by the border guards have a chance to make a claim. Instead, they are returned directly to Russia. Arbitrary arrest and detention by militia on the streets is also widespread often on grounds of insufficient papers and people will often only be released after some form of bribe is paid.

Additionally, there are only two detention centres, both in western Ukraine. These are run by the border guards (Mukachevo for women and children and with a capacity of 40 and Pavchino, for men, with a capacity of up to 400). Both are often overcrowded. Two more EU-funded centres are to be opened soon, Volyn, which will mostly serve the EU-Ukraine readmission agreement and which will be partially managed by IOM, and Chernihiv, which will facilitate implementation of the new readmission agreement with Russia. Other than this 'illegal immigrants' are held at border guard stations, at border guard regional barracks (notably in Chop or Sumy) or at holding centres of the militia if they were apprehended on the territory of Ukraine.

Conditions in detention centres are particular bad, they are overcrowded and often in a state of decay, food is scarce, and staff are not trained as prison guards, thus detainees are occasionally treated like recruits. Released inmates are often visited at home several times a week by militia, border guards and security service. They are threatened not to communicate their experiences to foreigners. In 2006, EU and HRW reports revealed serious human rights violations. Since then, conditions have improved though not substantially.

## **Social Conditions and Racism**

Asylum seekers are not entitled to State benefits and because they lack tenancy agreements they cannot register with local authorities and cannot claim access to local social services. Refugees receive a one-off payment of UAH 17 by the State, this is equivalent of two cups of tea. Only 450 asylum seekers received UNHCR financial benefits through Rokada. In 2006, this was \$ 40/month, well below the legal minimum income as the poverty line is defined as \$ 5 per day. Rent for one room in Kiev is not less than \$ 250 for a room or \$350 for a small apartment Rent in other cities and towns is not much lower. Thus, benefits are not even sufficient to provide shelter and some people live in weekend homes ('dachas'). Rokada supplies emergency food packages and both Berkat and Rokada provide second hand clothes, bedding and other personal items. Occasionally, destitute asylum seekers are referred to a homeless shelter for a few nights accommodation and some food. But not everybody in need has access to this support. Asylum seekers either require support from family members residing home or in third countries. Most reported becoming engaged in irregular work or business activities. Health problems are another concern as ill people are not receiving treatment their conditions become chronic. Infectious diseases, notably tuberculosis are increasing and several respondents also appeared to be suffering from psycho-somatic illnesses. Groups that are particularly vulnerable are single mothers, as for instance Chechens whose husbands have been killed or disappeared, disabled refugees and (unaccompanied) minors.

This report shows that asylum seekers and refugees are excluded from many rights and services and from regular employment and housing that are available to citizens or other legally residing foreigners. This is in part due to the various forms of racial discrimination (ECRI 2007). Before 2004, Ukraine was considered a relatively safe country in terms of racial violence. But over the past three years, racist violence has increased and is now being reported on a weekly basis (also see UNHCR 2007) mostly from Kiev, but also from Kharkiv and Donetsk. This has even involved racist murders by Russian-style skinheads; it is assumed that on average every three months a Black or Asian person is killed (interview pastor Sunday, Kiev). Racism and racial violence is also reported by embassy staff, businessmen, students and asylum seekers alike. So far, officials, and in particular the police, prefer not to recognise and not to respond to this problem.

### **Corruption and Police Harassment**

Finally, the salaries of public service staff are low and bribes are often requested before officials become active in processing a claim or issuing documents. Additionally, interpreters normally request a fee and even some NGOs are accused of corruption. For instance, asylum seekers in Uzhgorod, Western Ukraine, report that they have to bribe officials in order to be released from detention earlier than the legal maximum of six months; the charges vary between \$ 400 and \$ 900 according to ethnicity. They also have to pay for the interview at the MS as well as for the interpreters. Upon submitting their application, asylum seekers have to surrender their passport to SCNR but because they are not provided with an alternative ID they are de facto undocumented (Uehling 2004). UNHCR issues a replacement ID-like letter valid for six months, but this is not recognised by the police. Furthermore, landlords frequently refuse to issue tenancy agreements or even receipts to foreigners, to evade taxation. Therefore migrants and refugees cannot register their residence with local authorities and do not hold a *propiska*, the vital registration document. Thus, a 'vicious circle' emerges (Andrysek and Rantala 2007: 7) where refugees are treated like any other irregular immigrant. Police seems well aware of this dilemma, and they are profiling asylum seekers constantly stopping them to check their documents. If they are incomplete, which normally is the case, Police have been found to request bribes or threaten people with report and arrest. Asylum seekers also report that they have had to pay local police on a regular basis to avoid trouble.

### **Conclusion**

There are a number of reasons, why Ukraine lacks adequate legislation and State institutions. State building process has never been sufficiently concluded since independence in 1991. Ukraine is politically divided into a Russian-styled authoritarian 'blue' faction and a West-looking democratic 'orange' faction. Present political deadlock and competition between the Ministry of Justice and Ministry for Interior prevent necessary reforms. It does not help that the EU sends mixed and vague signals with respect to EU membership which makes it hard to bring its institutions in line with EU standards. To summarise, unfinished transition, political crisis, undecided policy makers, low priority given to migration issues and the belief that Ukraine is only a transit country, as well as economic uncertainty and an insufficient budget, all combine to set the conditions for asylum policies in Ukraine. Constant, though incomplete reforms have not helped to increase Ukraine's capacity to protect refugees. Because of insufficient legislation, implementation, procedures, resources, staffing and training Ukraine lacks 'a humane and reasonable system' of working with asylum (HIAS, interview). It is unable even to provide the 'most basic protection' (HRW 2006) and does not live up to its international obligations. Migrants in need of protection are denied asylum or even deported back into the hands of their persecutors. Gaps and inconsistencies in Ukraine's application of the refugee protection system drive refugees into irregularity (Uehling 2004).

Thus, Ukraine could be considered a safe country for refugees from some countries, notably some CIS countries (Armenia, Georgia and Moldova) but for refugees from other countries Ukraine can hardly be considered a safe country (UNHCR and IOM interviews, HRW 2006). This seems to be true for refugees from Uzbekistan and Chechnya and generally for Black and Asian refugees and migrants, particularly Nigerians, Liberians and Somalis. Also certain groups such as unaccompanied minors, single mothers and the handicapped are not appropriately catered for. Regrettably due to increasingly efficient border controls on the western borders refugees can neither move to another safe country, notably to Western Europe. Often, return to their country of origin where they might face war or persecution is out of question too. Thus, refugees are basically trapped between Scylla and Charybdis.

## References

This report is based on a literature survey and on five field trips to Ukraine in 2006 and 2007 during which more than 80 interviews were conducted.

### *Literature (a selection)*

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### *Interviews*

State Committee for Nationality and Religion, State Border Guard Service, Kiev City Council, Kiev City Police, EU Council/Kiev office, diverse member state embassies, UNHCR, IOM, Soderköping Process, Unicef, ECRE/Kiev, Hebrew Immigration Aid Society (HIAS), Rokada, NEEKA, Caritas, La Strada, diverse refugee community representatives and individual refugees from Afghanistan, Chechnya, Georgia, Palestine, Iraq, Angola, Nigeria, Somalia, Sierra Leone, Ivory Coast and Congo.