



Whose responsibility?

Protection of Chechen internally displaced persons, asylum seekers and refugees

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**NORWEGIAN
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Introduction to the report

The purpose of this report is to identify and analyze the obstacles to the protection of ethnic Chechen internally displaced persons (IDPs), refugees and asylum seekers.

During the last decade there has been two periods of armed conflict in the Chechen Republic (Chechnya), often referred to as the first conflict (1994-96) and the second conflict (1999-). This report will focus on displacement caused by the second conflict.

Since 1999, hundreds of thousands people have been forced to flee their homes in Chechnya. In 2003 and 2004, asylum seekers from the Russian Federation, most of whom are presumed to be of Chechen origin, have been the largest groups of asylum seekers in Europe.

A substantial amount of material has been published on the situation of IDPs from, and in, Chechnya. Less information has been made available on the conditions facing asylum seekers and refugees from Chechnya. The protection concerns facing those seeking internal protection and those seeking international protection have rarely been covered in one analysis. By doing this in our report, we seek to emphasize the link between internal displacement and refugee flows. With regard to Chechnya, poor management of the IDP has led to people seeking international protection. Many Chechens are, however, denied international protection with reference to the fact that they can resettle as IDPs in other regions in the Russian Federation. As a consequence many Chechens risk being left without effective protection.

This report is part of a project initiated by the European Council on Refugees and Exiles (ECRE). ECRE is a network of 80 non-governmental organizations (NGOs) in 30 European countries. In 2002 ECRE included work with IDPs in its mandate. In 2004 the Norwegian Refugee Council undertook to collect information from, and coordinate advocacy efforts by, ECRE members with regard to the situation for Chechen IDPs and asylum seekers and refugees in European countries. The main observations from this work are presented in this report, which is intended to serve as tool for ECRE members, other non-governmental and governmental organizations, as well as governments, when formulating their policies towards Chechen IDPs, asylum seekers, and refugees.¹

The report is divided into two parts. The first part addresses the situation for IDPs from Chechnya. The analysis is based on information from the Russian human rights organization, and ECRE member, Memorial² (winner of UNHCR's Nansen Award in 2004), but also from international human rights organizations and inter-governmental organizations, including UNHCR and the Parliamentary Assembly of the Council of Europe. Most of this information is already published in various reports. The focus of our analysis is on the protection of IDPs from Chechnya, that is, IDPs that are residing outside Chechnya. There is a high number of internally displaced persons within Chechnya itself, often referred to as "inner internally displaced persons". The protection concerns particular for this group will not be addressed in this report. In addition to the need to limit the scope of our report for practical reasons, our

choice of focus was guided by a concern to emphasize the right of IDPs to seek protection in a safe area and to highlight the protection problems facing Chechen asylum seekers that are denied international protection and referred the possibility of returning to the Russian Federation to live as IDPs outside Chechnya. This being said, the situation for IDPs in Chechnya is critical, and deserves the utmost international attention and resources.

The second part of the report addresses protection concerns for Chechen asylum seekers and refugees in the EU and in countries neighbouring Russia. The analysis does not cover the situation in all countries hosting refugees and asylum seekers from Chechnya, but the countries that receive most of these groups are included. The analysis is mainly based on a survey among ECRE member organizations in 2004, as well as statistical and other information provided by UNHCR.

The legal framework of the report is all relevant international public law. This includes not only international refugee law, but also international human rights and humanitarian conventional law, customary law and "soft law".

While the rights of refugees are defined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter the 1951 Refugee Convention), there is no international treaty defining the rights of IDPs. But international standards for protection of IDPs do exist. In 1998 Francis Deng, the first UN Special Representative on Internally Displaced Persons developed the UN Guiding Principles on Internal Displacement. Although not a binding instrument, they reflect and are consistent with international law, and have become the main tool for addressing the protection needs facing IDPs.

The 1951 Refugee Convention is the cornerstone for protection of refugees. All the countries covered in the report have ratified the Refugee Convention. Two principles of refuge and human rights law are of particular concern when analyzing the current protection of Chechen asylum seekers and refugees: This is the right to seek asylum as defined in the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights and Freedoms, and the principle of *non-refoulement* as defined in the 1951 Refugee Convention, but also in universal and regional human rights instruments and customary international law. ■

¹ ECRE's Guidelines on the Treatment of Chechen Internally Displaced Persons, Asylum Seekers and Refugees in Europe is to be published at www.ecre.org in May 2005.

² Memorials reporting about the situation of IDPs from and in Chechnya is based on information from 54 legal aid offices in 53 cities in Russia.

³ For more information about IDPs in Chechnya, see Memorial (Svetlana Gannushkina), "On the Situation of residents of Chechnya in the Russian Federation June 2003-May 2003", pp. 14-25.



Executive summary and recommendations

The human rights situation in Chechnya

Chechnya constitutes the most serious human rights crisis in Europe today. Since the re-eruption of armed conflict in Chechnya in 1999 the civilian population has been a victim of grave and massive human rights violations, including extrajudicial killings, disappearances and torture, including rape. Despite claims by the Russian authorities that the situation in Chechnya has “normalized”, a number of incidents demonstrate the worsening of the security and human rights situation in, and around, Chechnya. Since 2003 the conflict has increasingly spilled over to neighbouring republics, most clearly illustrated by the armed attacks by Chechen groups in Ingushetia in June 2004, and the school hostage crisis in North-Ossetia in September 2004. Human rights violations in Chechnya are committed by both federal forces, troops under the command of the pro-Russian Chechen administration and Chechen rebel groups. In 2004, when the number of disappearances rose sharply, human rights organizations reported that troops under the Chechen administration had replaced federal troops as the main perpetrators of human rights abuses. By the end of 2004, grave concern was expressed about increasing numbers of incidents of hostage-taking of relatives of suspected rebels, and an increase in disappearances of women. According to the UN’s best case scenario for 2005, there will be little change in the security situation.⁴ The assassination of Chechen separatist leader, Aslan Maskhadov, in March 2005 has raised fears about an upsurge of violence in the region and decreased the possibilities of finding a political solution to the conflict. Given the current security situation in Chechnya, the return of IDPs should not be promoted.

Lack of effective protection of IDPs from Chechnya

The armed conflict in Chechnya and the human rights violations associated with it have forced hundreds of thousands of people to flee their homes in the Republic. IDPs from Chechnya are not, however, granted effective protection in safe areas of the Russian Federation.

In Ingushetia, where a majority of IDPs from Chechnya have been residing, direct pressure has been exercised on IDPs to return to Chechnya in contradiction to the principle of voluntary return established by the UN Guiding Principles on Internal Displacement (the UN Guiding

Principles). The voluntary nature of return implies more than a lack of physical coercion or overt intimidation. By definition, voluntary return involves individuals freely choosing to return or resettle internally without pressure from the state and with their genuine consent.

Despite a worsening of the security situation in Ingushetia, IDPs from Chechnya often face insurmountable obstacles when attempting to seek safety in other regions of the Russian Federation. Anti-Chechen feeling is strong, and discrimination and harassment, both by private and state actors, are widespread in the Russian Federation at large. Arbitrary detentions, the fabrication of criminal charges, unlawful identity checks and attacks by private groups are commonplace. Racist crimes are rarely investigated and punished. Legal safeguards in national legislation are not systematically enforced throughout the Russian Federation. Regional and local authorities commonly adopt their own regulations, which are in contradiction to national laws and do not meet with international standards.

The combination of unconstitutional laws and practices and discrimination against ethnic Chechens are preventing Chechens from residing legally in many regions of the Russian Federation. Even though the soviet system of “propiska”, whereby citizens had to apply for an authorization to register at a new place of temporary or permanent residence, has been formally outlawed, it is still applied in administrative regulations and practice. Such practice may affect all Russian citizens, but it has a disproportional effect on ethnic Chechens. “Undesirable” Chechens are often denied residence registration. As a consequence they are denied liberty of movement and freedom to choose a place of residence, in violation of the UN Guiding Principles and the Russian Constitution. According to Russian federal legislation, rights cannot be restricted or granted based on registration or the absence thereof, but in practice, without registration, Chechen IDPs have limited access to basic social right such as employment, social security and education etc.

IDPs from Chechnya also have limited access to the necessary identity documents. They often have problems renewing “internal passports” at the place where they are actually residing, and are in many cases told to return to Chechnya to renew such documents. This is a clear violation of the UN

Guiding Principles, which state that all IDPs should be issued with necessary documents without imposing unreasonable conditions such as return to original place of residence.

IDPs from Chechnya are not granted a legal status that defines their rights as IDPs. The concept of an internally displaced person as defined in the UN Guiding Principles is not reflected in Russian legislation, but a similar status for “forced migrants” exists. This status serves as a guarantee for certain rights, including the right to apply for special allowances and the right not to be forcibly returned. The status is not, however, applied to all those covered by the international definition of an IDP, and is often used in a restrictive and discriminatory manner. During the first conflict in Chechnya (1994-1996), when most IDPs were ethnic Russians, IDPs were generally granted this status. The refusal to grant forced migrant status to Chechen IDPs amounts to a violation of the UN Guiding Principles, which state that there should be no discrimination in according IDPs their rights. The refusal to grant forced migrant status to Chechen IDPs seriously weakens the protection of Chechen IDPs. It can be seen as a demonstration of a lack of willingness to recognize IDPs in general, and Chechen IDPs specifically, as a particularly vulnerable group with special needs.

The combination of the factors described above leads to the conclusion that persons who have fled from Chechnya cannot expect to be granted effective protection in the Russian Federation, and are in need of international protection.

Increased flow of Chechen asylum seekers to Europe

As pressure on IDPs in the Russian Federation has intensified, an increasing number of Chechen asylum seekers have sought international protection. Since 2003 asylum seekers from Russia, most of whom are considered to be Chechens, have been the biggest group of asylum seekers in Europe. Chechens seeking international protection are facing a number of obstacles. They risk being denied access to the territory of some states, and are thereby denied the possibility of exercising their right to

apply for asylum. Chechens are denied access to national asylum systems in Azerbaijan, Kazakhstan and Belarus, and have only limited access to the asylum system in Ukraine. The two latter countries are mainly considered as transit countries by most Chechens, whose final destination is countries in Western Europe. Relatively large Chechen refugee populations are residing in Azerbaijan and Kazakhstan without any legal status and living in poor conditions. Georgia is the only country to have recognized Chechens as refugees *prima facie* – as a group. There are, however, recent reports that Chechens have been prevented from seeking asylum also in Georgia. Concerns have been raised about the security and humanitarian situation for the Chechen refugees in Georgia, who are residing in Pankisi, a territory bordering Chechnya.

Asylum lottery

The EU does not have a common approach to asylum seekers from Chechnya. Refugee recognition rates for asylum seekers from Russia vary considerably from country to country. In 2003, two of the main receiving countries, Austria and the Slovak Republic had recognition rates of 76.9 percent and 0 percent respectively. Thus, despite the ongoing process of harmonizing European asylum policy, the outcome of a claim depends to a great extent on the country in which it is processed. In many countries, the majority of Chechen asylum seekers seem to be considered victims of war who do not qualify for refugee status, and generally only persons who can establish that they have been persecuted for their political opinion are granted asylum. Fewer countries seem to regard Chechens at risk of persecution simply because of their ethnicity. Several European countries are providing other forms of protection to asylum seekers from Chechnya. The protection provided does, however, vary from country to country and does not normally provide the same rights as those provided to persons recognized as refugees.

No genuine internal protection alternative

In many European countries Chechens are denied protection with reference to a so-called “internal protection alternative” i.e. that they can settle in regions other than Chechnya in the Russian Federation. An internal protection alternative rarely exist when the state is the persecutor. The fact that Russian Federal forces and security agencies under the control of the local Chechen administration are reported to have committed widespread human rights abuses in Chechnya; the atmosphere of impunity and lack of

prosecution of these abuses; the lack of a federal response to local and regional authorities introducing legislation that contradicts both national and international law in the very places most Chechens settle; the tide of an “anti-Chechen” feeling and an increase in racially motivated attacks; discriminatory treatment towards Chechens by law-enforcement agencies, arbitrary arrests and detention; the discriminatory and authorizing nature of registration at place of residence and sojourn, the violation of rights during checks on identity documents and the fact that documents have been taken away illegally; lead us to conclude that an internal protection alternative for Chechens should not be considered at the present time. If States do not focus on the key question of whether a refugee claimant is

genuinely free from the risk of serious harm in the country of origin, they are directly contributing to the worsening of a problem of internal displacement.

The mandatory return of rejected Chechen asylum seekers from EU countries to the Russian Federation is not reported to take place on a large scale. Non-governmental organizations do report, however, that mandatory returns are taking place in some countries. Due to the conditions described above, we consider that returns cannot take place in safety and dignity, and recommend against the mandatory return of Chechen asylum seekers to the Russian Federation at the current time.

Recommendations*

Regarding internally displaced persons from Chechnya

1. The Russian Federation should use all available peaceful political means to resolve the conflict in Chechnya and stop it spreading further into the Russian Federation.
2. The Russian Federation should take all possible measures to address the issue of discrimination towards Chechens within the Russian Federation and, in particular, take active measures to halt the gross violations of human rights currently taking place in Chechnya.
3. The Russian Federation should respect the concept of internally displaced persons as defined in the 1998 United Nations Guiding Principles on Internal Displacement. The scope of this definition appropriately includes the consequences of indiscriminate military actions carried out by police and/or armed forces.
4. The Russian Federation should ensure all IDPs on its territory have equal access to their rights as set out in the 1998 UN Guiding Principles on Internal Displacement.
5. The rights of IDPs should be explicitly formulated in Russian legislation.
6. The Russian Federation should take all necessary steps to ensure that the practice of authorizing registration or *propiska* is totally abolished.
7. An IDP's place of residence registration should not affect their ability to access his/her rights, including all socio-economic state benefits or allowances and their right to claim for compensation for lost housing.
8. IDPs from Chechnya should be able to replace their passports at their factual place of residence without the need to return to Chechnya or other regions where they fear for their safety.

9. The Russian authorities must ensure that all return happens voluntarily, in safety and dignity. In particular, the Russian authorities must ensure that Chechen IDPs are not evicted from temporary residence centers in Ingushetia without being offered alternative shelter; that IDPs are provided with humanitarian assistance both inside and outside Chechnya; and that the granting of compensation is not conditional upon return to Chechnya.
10. Conditions must be in place to ensure that it is safe to return to Chechnya – physically, legally and materially. It is the duty of the Russian government with the support of the international community to ensure that these conditions are in place.
11. Guarantees should ensure a minimum standard of living in Chechnya for IDPs in line with that enjoyed by other citizens in other regions of the Russian Federation and should include minimal guarantees such as the possibility to work, the availability of a necessary level of subsistence and a monetary payment that can ensure a healthy and dignified life.
12. The Russian authorities should develop a comprehensive plan for integration of Chechen IDPs who choose to resettle outside Chechnya.

Regarding Chechen refugees and asylum seekers:

13. European states should ensure that Chechen asylum seekers can avail themselves of protection on their territory, through adequate access to territory and fair asylum procedures.
14. European states should consider all Chechens who have fled as a result of war and violence in Chechnya in need of international protection.
15. European states should acknowledge that Chechens who have been living permanently outside the Chechen Republic may also be in need of international protection due to the risk of discriminatory treatment and human rights violations due to their ethnicity in the Russian Federation at large.

Concerns about the consequences of EU-enlargement

The enlargement of the EU in May 2004 had a strong impact on the situation of Chechen asylum seekers. The majority of Chechens first arrives in the EU in one of the new EU member states, usually Poland. Before May 2004 Chechens could register as asylum seekers in these countries before moving on to countries further west. After these countries became member of the EU and parties to the Dublin Regulation, applicants arriving in these countries generally need to have their cases processed there even if they manage to reach the territory of other states. Currently, many Chechen asylum seekers are waiting to be returned from “old” Dublin countries to new EU-countries, main-

ly to Poland, but also to the Slovak Republic and the Czech Republic. There is concern that the systems for receiving, processing and integrating asylum seekers in these countries are weak or over-burdened, and unable to provide satisfactory protection to Chechen asylum seekers and persons recognized as in need of international protection. In addition to concerns about low recognition rates and weak protection regimes, wide-spread detention of asylum seekers in Poland and claims about incidents of the chain-refoulement of Chechens from the Slovak Republic to Russia via Ukraine are of major concern. ■

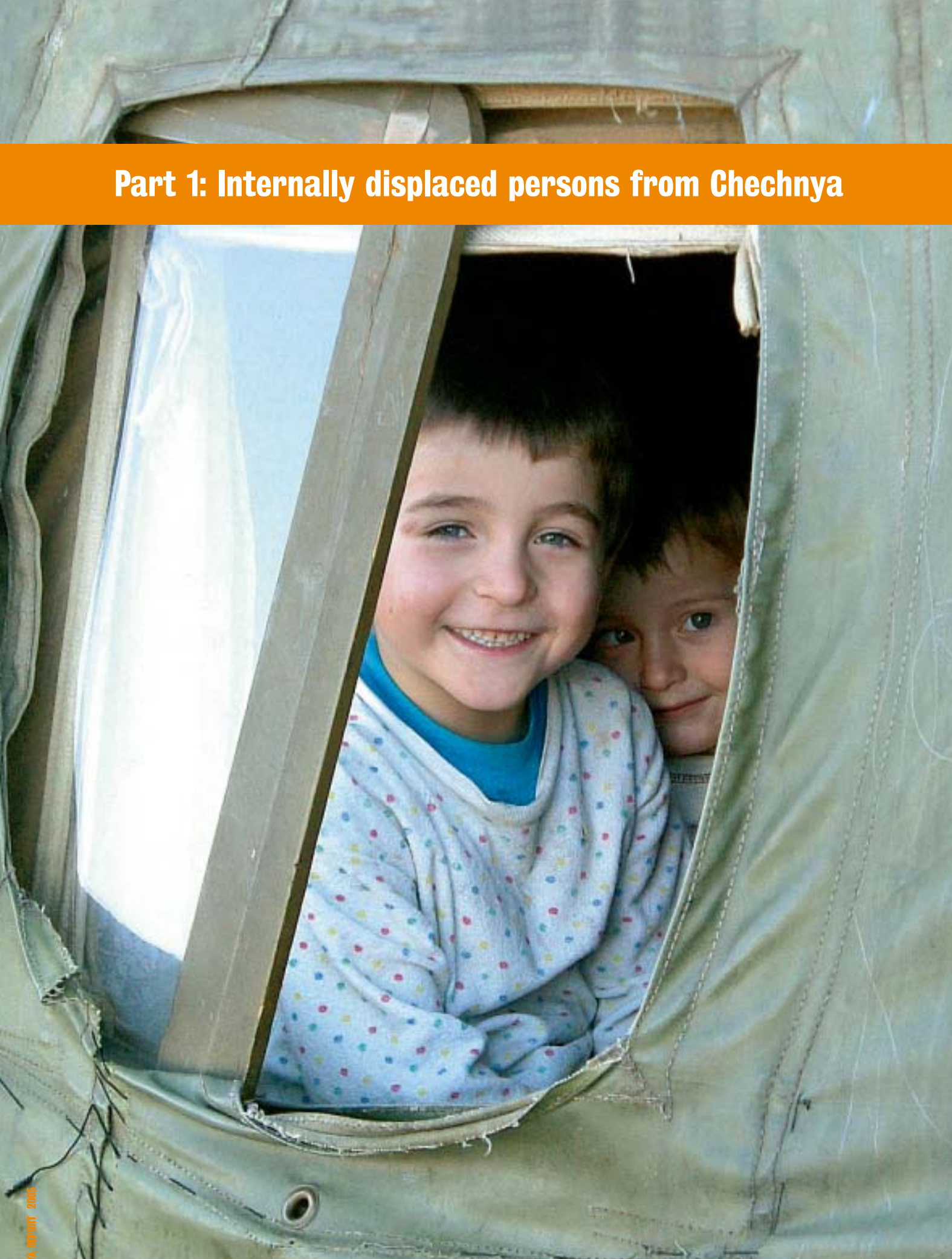
* According to the Chechnya Consolidated Appeals Process (CAP) for 2005.

16. European States should adopt a full and inclusive interpretation of the 1951 Geneva Convention Relating to Refugees with regard to asylum seekers from Chechnya.
17. Flight from armed conflict should not be an automatic reason to deny Chechens refugee protection as many who flee conflict, do so in fact for Convention reasons.
18. Complementary forms of protection should only be accorded to those Chechens whose reason for flight are beyond a full and inclusive interpretation of the Convention, but who nevertheless require international protection.
19. European states should ensure that all those accorded complementary protection enjoy the same rights as Convention refugees, in particular with regard to family unity and socio-economic rights.
20. For Chechens in need of international protection, states should not consider there to be an internal protection alternative in the Russian Federation, including those Chechens who hold residence registration (*propiska*) outside of Chechnya.
21. The fact that a refugee may have lived as an IDP before seeking protection should not be used in negative credibility findings to prove that the claim for asylum abroad is not genuine.
22. The forced or mandatory return to the Russian Federation of any Chechen seeking international protection should not take place, and voluntary repatriation to the Russian Federation as a durable solution should not be promoted at the present time as the conditions of “safety and dignity” cannot be upheld.
23. In a spirit of responsibility sharing and solidarity EU Member states should resettle Chechen refugees from Azerbaijan, Kazakhstan and Georgia.
24. ‘Old’ EU Member States should support ‘new’ Member States receiving more refugees from Chechnya.
25. Such support should be manifested through utilizing

- Article 3 (2) of the Dublin II Regulation to adopt responsibility for examining all asylum claims from Chechen asylum seekers lodged on the territory of the Member State, without returning the Chechen asylum seeker to the first country of arrival in the European Union; by utilizing Article 15 of the Regulation (the Humanitarian Clause) to ensure that family unity is preserved and that applications from family members and other dependent relatives can be processed in the same country if the asylum seeker so requests.
26. Support should also be manifested by the implementation of a system of financial support to be given to governments and non-governmental organizations (NGOs) in those countries receiving the highest numbers of refugees from Chechnya.
 27. EU Member States should not return Chechens to other Member States unless they can ensure that the applicant will be granted access to a fair and efficient asylum procedure.
 28. The risk of *refoulement* from some EU Member States means that extreme care must be taken in such cases in order not to expose refugees to this danger and to uphold obligations under Article 33 (2) of the 1951 Geneva Convention Relating to the Status of Refugees and Article 3 of the ECHR and the Convention against Torture.
 29. EU Member States should as a minimum not return Chechen asylum seekers or Chechens who have had their applications for asylum rejected to third countries such as Azerbaijan, Belarus, Georgia, Moldova or Ukraine, where relatively new asylum systems are under added pressure due to the presence of other large groups of refugees and/or IDPs and the proximity of the Russian Federation.
 30. European states should not extend refugee protection to any person with respect to whom it has been found – after an individual refugee status determination – that there are serious grounds to consider that he or she is individually responsible for acts falling within the scope of Article 1F of the refugee convention. Such a person may still be protected by other human rights instruments.

* These recommendations have been drawn up with reference to the ECRE Guidelines on Chechen IDPs, Asylum Seekers and Refugees, approved by the ECRE membership, which can be found at www.ecre.org.

Part 1: Internally displaced persons from Chechnya



Chechen IDPs in Satitsa tent camp in Ingushetia, February 2004.
Photo: Anne Marit Austbø, NRC.

Introduction

This part of the report is divided into 3 chapters. The first chapter gives a brief background to the conflict in Chechnya and addresses developments in the human rights situation in the republic. The second chapter focuses on standards for the protection of IDPs, provides an overview of the displacement caused by the conflict in Chechnya, and describes the development of anti-Chechen feel-

ing and racist crimes against Chechens in the Russian Federation. The third chapter addresses specific protection issues of particular relevance to the current situation of IDPs from Chechnya; the issue of forced migrant status; the issue of residence registration; the issue of access to identification documents; and finally the issue of forced return to Chechnya. ■

Chapter 1: The situation in Chechnya

Background: Ten years of conflict and instability
Chechnya has been in state of armed conflict almost continuously for the last ten years. In December 1994, Russian troops engaged in a full-scale military intervention in Chechnya. The aim of the intervention was declared to be to restore constitutional order after the Chechen parliament in 1991 declared Chechnya independent from Russia. A guerilla war followed before a cease-fire was signed in August 1996. Russian forces withdrew although no final status agreement had been made. During the next three years the situation in the Republic remained violent and unstable. In 1997, Aslan Maskhadov won presidential elections monitored by the OSCE. President Maskhadov was seen as the moderate candidate, but was in a situation of near total unemployment and lacking resources to rebuild a war-torn economy, unable to control radical Chechen factions. In August 1999, Chechen militants carried out raids into neighbouring Dagestan. When a month later a series of apartment bombings in Moscow were attributed to Chechen separatist, Russian authorities launched a new military intervention into Chechnya.

The Russian authorities have insisted that their current military activities in Chechnya are part of an “anti-terror operation”, not an internal armed conflict.⁵ Large-scale military fighting lasted a relatively short time, and since 2001, the Russian authorities have claimed that the situation has “stabilized”. In 2003 a referendum and presidential elections were organized in Chechnya, but considered “flawed” by the international community. Increasingly, a “Chechenization” of the conflict has been carried out, where much of the responsibility

for implementing “anti-terror operations” has been transferred to local Chechen security agencies.

In 2004, an escalation of the conflict was demonstrated by a number of dramatic events. The winner of the 2003 Presidential elections, Ahmed Khadyrov was assassinated, and the conflict increasingly spread to republics neighbouring Chechnya. In June, radical militants attacked several cities in Ingushetia. Within days of new presidential elections in Chechnya three months later, terrorist attacks were carried out against two Russian airplanes, and the infamous Beslan school hostage crisis in North-Ossetia took place. A wave of terrorist attacks and the assassination of the former elected President of the Republic, Mr. Akhmed Maskhadov in March 2005, have raised concern about the decreased possibilities of finding a political solution to the conflict and a further escalation of violence in the region

The human rights situation

The UN Human Rights Committee has expressed deep concern about substantiated reports of human rights violations in the Chechen Republic, including extra-judicial killings, disappearances and torture including rape⁶ and has criticized Russia’s federal anti-terrorism legislation “On the Fight Against Terrorism”⁷ for exempting law enforcement and military personnel from liability from harm caused during counter-terrorist operations.⁸ Human Rights Watch has concluded that the widespread and systematic pattern of “disappearances” in Chechnya now amounts to a “crime against humanity” as defined in the Rome Statute of the International Criminal Court.⁹

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«The Norwegian Helsinki Committee concluded in a report from 2002 that “there is no security for the civilian population and where especially adult males are in danger of being detained by federal forces, often with fatal consequences.»

On 24th February 2005 the European Court of Human Rights delivered judgments on the first six Chechen cases from residents of Chechnya whose relatives died at the hands of Russian troops or who suffered as a result of Russian military action in 1999 and 2000. In each of the cases, the Court has found Russia in violation of several key articles of the European Convention on Human Rights and Fundamental Freedoms, including Article 2 (the right to life) and article 3 (prohibition of torture). The Court, in particular, stressed in its judgments that the Russian authorities had failed to carry out adequate investigations into the circumstances of the deaths of the applicants’ relatives’ cases.¹⁰

Throughout 2004, NGOs continued to document the worsening security situation in Chechnya. In April 2004, Amnesty International, Human Rights Watch and Memorial jointly stated that enforced “disappearances,” rape, torture and extrajudicial executions by federal troops and Chechen fighters are everyday occurrences in Chechnya.¹¹ In October 2004 UNHCR spoke of the grounds for “serious concern, due to targeted persecution including arbitrary detentions, widespread violence, insecurity and violations of human rights, as well as ongoing hostilities significantly affecting the civilian population and leading to continued forced displacement”¹².

The number of “disappearances” in Chechnya rose sharply in 2004. According to Vladimir Lukin, Russia’s human rights ombudsman, some 1700 people in Chechnya were abducted during the year.¹³ Memorial documented at least 396 disappearances in 2004. 175 of them are considered to have disappeared without trace. 293 locals were found killed in the same period.¹⁴ Memorial systematically monitors the situation in only approximately one third of Chechnya’s territory, and concludes that a conservative estimate of the number of civilians killed in Chechnya since the outbreak of

the armed conflict in 1999 is between 10, 000 and 20, 000. In addition an estimated 5 000 persons have “disappeared”.¹⁵

Human rights violations in Chechnya are committed by federal troops, Chechen fighters, and, increasingly, by militia connected to the Chechen administration. In early 2005, Human Rights Watch researched 50 abduction cases from the second half of 2004. Out of the abductions studied, Kadyrov’s militia¹⁶ had carried out two-thirds of the abductions, while federal troops carried out the other third.¹⁷ The high number of abductions committed by Kadyrov’s militia is regarded a consequence of the “Chechenization” of the conflict. Chechen rebels, on their side are reported to kill local authority heads and workers who do not share their political views. In early 2005 a secondary school teacher was reportedly killed “only for his teaching the Russian language”¹⁸ Due to the reign of impunity in place in Chechnya, the identity of the criminals can often not be established with certainty. The procuracy has opened hundreds of criminal investigations into abuses by Russian and pro-Russian Chechen troops, but in most cases officials fails to conduct even the most basic investigate steps, and most investigations remain unresolved.¹⁹

Human rights organizations have pointed out that people who have been, or who could be deemed to have been, involved in rebel activities and human rights defenders are at particular risk of arbitrary detentions and the human rights violations associated with them.²⁰ However, human rights organizations increasingly describe a situation whereby the whole civilian population risks being a victim of such violations. The Norwegian Helsinki Committee concluded in a report from 2002 that “there is no security for the civilian population and where especially adult males are in danger of being detained by federal forces, often with fatal consequences.”²¹ According to the same

source, “torture seems to be employed not only in order to extract information from persons suspected of criminal acts, but also on ordinary citizens in order to make them sign phony confessions or sometimes simply in order to degrade them”.²² Human Rights Watch has stated that “simply being a male of fighting age appears sufficient for grounds for detention, and those detained are invariably beaten and abused”.²³ According to the Norwegian Helsinki Federation the persecution of young males seems to be an informal policy of the federal anti-terror campaign, and that in practice the federal anti-terror operation takes little distinction between persons who could be termed “terrorist” and ordinary Chechens.²⁴

The pattern of abductions is reported to have changed over the past couples of years, from large groups in clean-up operations to selected individuals. The kidnapers’ motivations differ. “Often they demand a ransom, while in other cases they torture people and demand they name rebels among their acquaintances. When the torture goes too far, victims usually disappear without trace.”²⁵ While the victims of forced disappearances and other violations of human rights were formerly almost exclusively men of fighting age, in 2003 and 2004, there was a growing number of such crimes against woman, teenagers and elders. According to Memorial, human rights violations against women acquired a “mass character” in 2004, when mothers, wives and sisters of Chechen rebels constituted the groups most frequently abducted or taken hostage in Chechnya.²⁶ Reprisals against the relatives of insurgents, including hostage-taking became significantly more frequent and systematic in 2004, a



A Chechen IDP shows a photograph of a relative who has disappeared. Ingushetia, 2003. Photo: Fredrik Naumann.

practice that Prosecutor General Vladimir Ustinov of the Russian Federation proposed should be legalized after the Beslan hostage-taking raid last September.²⁷ According to statements by representatives of Human Rights Watch in February 2005, increasingly indiscriminate abductions have instilled among Chechen civilians a sense of terror more intense and overwhelming than they suffered during the military phase of federal operations.²⁸ ■

Currently, the highest numbers of IDPs are in Chechnya itself. Outside Chechnya, most Chechen IDPs reside in neighboring Ingushetia, but also in other republics in Northern Caucasus.



⁵ In this context it is interesting to note that in a decision from November 2003 a British court concluded that the events in Chechnya in 1995 and 1996 amounted in law to an internal armed conflict. See ‘The Bow Street Magistrates’ Court, The Government of the Russian Federation v Akhmed Zakaev, 13 November 2003.

⁶ U.N. Human Rights Committee, Concluding observations of the Human Rights Committee, Russian Federation § 13, 06/11/2003, U.N.Doc.CCPR/CO/79/RUS.

⁷ Article 21 of this statute “Exculpation from responsibility for causing damage”, states: “During the conduct of a counterterrorist operation on the basis and within the limits laid down by law necessary damage may be caused to terrorists’ lives, health and property, and also to other legally protected interests. Servicemen, specialists, and other person-participating in the fight against terrorism are exempted from responsibility for damage caused in the conduct of a counterterrorist operation in accordance with Russian Federation legislation”. Federal’nyi zakon of 25 July 1998, N130-FZ, Sobr. Zakonod. RF 1998 N 31 (as amended in 2002). Available in English at <http://www.legislation-line.org/view.php?document=55618>.

⁸ U.N. Human Rights Committee, Concluding observations of the Human Rights Committee, Russian Federation § 13, 06/11/2003, U.N.Doc.CCPR/CO/79/RUS.

⁹ Human Rights Watch, “Chechnya: ‘Disappearances’ – a Crime Against Humanity”, 21 March 2005.

¹⁰ <http://www.ecre.coe.int/Eng/Press/2004/Oct/HearingKhashiyev&AkayevavRusia141004.htm>.

¹¹ Amnesty International, Human Rights Watch, the Medical Foundation for the Care of victims of Torture, and Memorial, “The Situation in Chechnya and Ingushetia Deteriorates: New Evidence of Enforced

Disappearances, Rape, Torture and Extrajudicial Executions”. Joint statement 8 April, 2004.

¹² UNHCR Position regarding Asylum-Seekers and Refugees from the Chechen Republic, Russian Federation. UNHCR Geneva, 22 October 2004.

¹³ Human Rights Watch, “Russian Federation/Chechnya: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights”, 10 March 2003.

¹⁴ Prague Watchdog Newsletter, 6 January 2005.

¹⁵ Memorial, Briefing note, December 2004

¹⁶ Security Service of the Chechen President under command of Ramzan Kadyrov, son of late President Akhmat Kadyrov.

¹⁷ Moscow Times, 17 February, 2005 (Issue 3108).

¹⁸ Itar-Tass, 10 February 2005

¹⁹ Supra note 13

²⁰ Amnesty International, Russian Federation: Amnesty International Statement on the Situation of Chechen Asylum-Seekers, EUR 46/010/2004.

²¹ The Norwegian Helsinki Committee, “The Ethnic War: Persecution of Chechens in the Russian Federation” (2002)

²² Ibid, p. 17.

²³ Human Rights Watch, Into Harms Way: Forced Return of Displaced People to Chechnya, January 2003, p. 4.

²⁴ Supra note 21, p. 18.

²⁵ Supra note 17.

²⁶ Memorial, “From the Conflict Zone”, March 2005.

²⁷ Ibid.

²⁸ Supra note 17.

Chapter 2: Protection of IDPs from Chechnya



From Satitsa tent camp in Ingushetia. February 2004.
Photo: Anne Marit Austbø, NRC.

Standards for Protecting IDPs: The UN Guiding Principles on Internal Displacement

Internally displaced persons are persons who have been forced or obliged to flee from their homes, but who have remained within the borders of their country of origin. Because they have not crossed an international border, they are entitled to protection from the state of which they are citizens, just like any other citizen. But IDPs face common types of vulnerabilities due to their displacement, and this distinguishes them from other citizens. Because of their special “protection needs”, IDPs require special focus. Experience from different countries shows that the specific needs of IDPs often are inadequately taken into account or simply disregarded.²⁹ The recognition of IDPs as a particularly vulnerable group has led to the development of standards for protecting them.

The UN Guiding Principles on Internal Displacement that were developed in 1998 consolidate into one document the legal standards relevant to internally displaced persons drawn from human rights law, humanitarian law and refugee law by analogy. In addition to restating existing norms, the UN

Guiding Principles also address grey areas and gaps in existing law. The UN Guiding Principles in itself are not binding law, but they reflect and are consistent with international law. Insofar as they do not already restate customary international law, they may gain that status in the future.³⁰

The UN Commission and the General Assembly in unanimously adopted resolutions have taken note of the Principles, welcomed their use as an important tool and standard, and encouraged UN agencies, regional organizations, and NGOs to disseminate and apply them. Individual governments have begun to incorporate them in national policies and laws, international organizations and regional bodies have welcomed and endorsed them, and some national courts have begun to refer to them as relevant restatements of existing international law.

The UN Guiding Principles define internally displaced persons as: “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations

of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.³¹

The UN Guiding Principles establish the rights of IDPs during all phases of displacement, providing protection against arbitrary displacement, protection and assistance during displacement and during the return or resettlement and reintegration phases. IDPs should enjoy, in full equality the same rights and freedoms under international and domestic laws as other persons in the country. IDPs should not be discriminated against because they are IDPs, and the rights defined should be applied without discrimination of any kind. As citizens of their country, they are entitled to a broad range of economic, social, cultural, civil and political rights. Particular rights that have been pointed out are their right to basic material assistance, physical and legal protection; they are entitled to liberty of movement and freedom to choose a residence and the right to be protected against return to an unsafe area; and are to be provided with all the necessary documentation.³² National authorities must grant rapid and unimpeded access to humanitarian organizations.

The UN Guiding Principles make clear that national governments have the primary duty to provide protection and assistance to IDPs in their country. The Guiding Principles are based on the concept that national sovereignty means responsibility. Effective sovereignty implies a system of law and order that is responsive to the needs of the population. If a nation cannot ensure effective protection and assistance, the nation has the responsibility to accept international assistance. Rather than undermining sovereignty, the Guiding Principles is meant to reinforce the duty and responsibility of national authorities to protect and assist their population.³³

The Russian Federation is a member of several international bodies that have welcomed the UN Guiding Principles, including the UN General Assembly, the UN Human Rights Commission and the OSCE. The Russian Federation has on two occasions invited the UN Special Representative on IDPs to visit the Russian Federation. During a visit to Russia in 2003 of the UN Special Representative on Internally Displaced Persons, Francis Deng, Russian Deputy Foreign Minister Fedov stated that the Russian government saw the UN Guiding Principles on Internal Displacement as helpful in the legal protection of IDPs.³⁴ He also stressed that it was impor-

tant to have a national legal framework to address the IDP issue, and that it should be based on existing human rights and humanitarian instruments.³⁵

One important indication of whether governments are fulfilling their national responsibilities towards IDPs is the existence and implementation of appropriate national policies and laws.³⁶ Russian legislation contains no specific reference to the UN Guiding Principles or the term “internally displaced”. However, many rights relevant for protection of IDPs are explicitly provided for by the Russian Federal Constitution, such as the principle of non-discrimination, freedom of movement, the right to housing and many more.³⁷ The Constitution also states that international law and international treaties supersede domestic law in the Russian Federation. Russia is party to six major international human rights treaties that form the normative framework underlying the Guiding Principles.³⁸

Despite constitutional guarantees for the basic rights of Russian citizens and the fact that the government has expressed support for the UN Guiding Principles, the actual treatment of IDPs in the Russian Federation far from comply with the standards established by UN Guiding Principles. According to Russian lawyer from the Memorial Human Rights Centre Migration Rights Network, Margerita Petrosyan, IDPs constitute one of the least protected groups of the Russian Federation.³⁹

The obligation of the state towards IDPs is not fixed explicitly and not supported by specific regulations that defines the rights and safeguards which would protect IDPs. The need for legislation identifying the rights and obligations specific for IDPs is vital not only because IDPs have special needs compared to the rest of the population, but also because federal and national legislation protecting the rights of citizens in general are not systematically enforced throughout the Russian Federation. Often the regional or local authorities adopt their own regulations, which are in contradiction to national laws and do not meet with international standards.⁴⁰ IDPs are often minority groups that become disproportionately affected by unconstitutional laws and practice. This is definitely the case for Chechen IDPs.

Displacement caused by armed conflict in Chechnya

At the outbreak of the first conflict (1994-1996), both ethnic Chechens and people of other ethnic origin

«One important indication of whether governments are fulfilling their national responsibilities towards IDPs is the existence and implementation of appropriate national policies and laws.»

«Russian authorities have consistently maintained the official position that IDPs should return to Chechnya, and not provided protection against forced return to a region still characterized by massive and grave human rights violations.»

fled the Chechnya.⁴¹ While most ethnic Chechens returned to Chechnya in 1996, the majority of the non-ethnic Chechen population resettled in other regions of the Russian Federation.

Estimates of the number of people who have been displaced since 1999 vary from 350 000⁴² to 600 000⁴³. In comparison, the total number of the Chechen population has been estimated at 800 000 - 1 million.⁴⁴ Most of the persons displaced by the second armed conflict are of ethnic Chechen origin.

Exact numbers of displaced persons are difficult to establish. Not all IDPs have been displaced at the same time, and many have been displaced several times. When the conflict re-erupted in 1999, most IDPs from Chechnya sought refuge in neighbouring Ingushetia, which shares similarities with Chechnya in some traditions and customs. At the height of the armed conflict in 1999/2000 an estimated 240 000 IDPs from Chechnya resided in Ingushetia.⁴⁵ A substantial number also settled temporarily in Dagestan, other neighbouring republics or big Western Russian cities. Many remained internally displaced within Chechnya.

A substantial number of IDPs have returned to Chechnya during 2003-2004. The majority of these have been unable to return to their homes, and have become displaced within Chechnya. In January 2004 the number of IDPs registered for humanitarian assistance in Ingushetia was 66 996.⁴⁶ In March 2005, the number was down to 32 446.⁴⁷ Armed hostilities and human rights violations associated with them are still causing groups of persons to flee Chechnya.

Estimates of numbers of IDPs within Chechnya in 2004 vary from 140 000⁴⁸ to 200 000⁴⁹. In June 2004, UNHCR estimated the number of IDPs from Chechnya in Dagestan at 8 000. An estimated 40 000 IDPs are thought to have moved to other North-Caucasian republics and elsewhere in the Russian Federation.⁵⁰ UNHCR confirmed in a report from 2003 that ethnic Chechens traditionally do not live in areas outside the republics of the northern Caucasus and larger Western Russian cities, being reluctant to travel to areas where there is no resident Chechen community with whom they could stay.⁵¹

Anti-Chechen feeling and racist crimes against Chechens

IDPs from Chechnya are restricted, or prevented, in their attempts to seek safety in other regions of the Russian Federation (than Chechnya) by a number of obstacles. The fact that Chechens generally are denied status as forced migrants, the problems Chechens have obtaining residence registration and identification documents, as well as the fact that Russian authorities have consistently maintained the official position that IDPs should return to Chechnya⁵², and have not provided protection against forced return to a region still characterized by massive and grave human rights violations will

be discussed in separate sections in the next chapter. These protection issues must, however, be seen against the background of increasing xenophobia and anti-Chechen feeling in Russian society.

NGOs and international governmental organizations have documented growing racism and xenophobia in the Russian Federation, in particular against those from the Caucasus.⁵³ According to the Moscow Helsinki Committee, the status of Chechens in the internal regions of Russia worsened compared to that of other Caucasians during the first conflict (1994-96); "the war turned into an additional source of hatred towards Chechens living in Russia".⁵⁴ A tide of "anti-Chechen feeling" has developed in many parts of the Russian Federation and this worsened after the October 2002 hostage crisis in Moscow, the bombings on the Moscow underground in 2004 and the hostage crisis in Beslan in September 2004.

Chechens are reported to be victims of violent attacks by extremist groups. In a recent example from September 2004, after the Beslan school siege, it was reported that a gang of up to 50 young people on the Moscow subway assaulted four people of Caucasian origin, pummeling them and slashing with knives as they screamed: "This is what you get for terrorist attacks!"⁵⁵ According to the head of Memorial's Migration Rights Network, Svetlana Gannushkina⁵⁶, in most cases, violent attacks on Chechens should not be regarded as random acts of violence, but as acts aimed at inciting ethnic or religious hatred and enmity.⁵⁷

While the Russian Constitution and federal laws guarantee equality, rights and freedoms, actual legal remedies against discrimination and racist propaganda are weak and inefficient.⁵⁸ The Moscow Helsinki Committee has reported that the authorities "prefer to turn a blind eye to these kinds of activities".⁵⁹ According to Amnesty International "racist crimes are rarely documented and the perpetrators are hardly ever punished – creating a climate of impunity whereby [-] perpetrators feel they can get away with committing racially-motivated violations".⁶⁰ In fact, racial discrimination is reported to have evolved into state-sponsored, large-scale coordinated campaigns.⁶² Since 1999 Chechens in many parts of the country have been the targets of extraordinary police measures that have included large scale police check-ups of registration papers accompanied by arbitrary detentions, beatings of detainees, unlawful entry into living quarters, and the seizure of personal documents.⁶³ Major police campaigns "initiated from the top" whereby criminal charges against Chechens have been falsified have also been reported.⁶⁴ Such incidents have included planting drugs, ammunition and sometimes weapons. Operations like these have intensified after bomb attacks or violent incidents, such as the Moscow theatre siege in October 2002.

In May 2004, Memorial reported that Chechen IDPs are still under constant pressure from different internal affair bodies, and that police measures had been significantly strengthened in Russia's southern regions during 2003-2004. According to Memorial, police officers in Krasnodar said in August 2003 that they had had orders that all the Chechens they could find, without exceptions should go behind bars, and that they had instructions to add whatever charges they wanted and make sure no lawyers were provided.⁶⁵ Memorial concluded that "given the rampant arbitrary action on the part of law enforcement authorities there is simply no point in turning to them with requests and complaints".⁶⁷

Since mid 2003, the falsification of criminal evidence is reported not to have taken place in the form of large-scale, organized police campaigns, but local legal aid offices are still confronted with a great number of such cases. "When suspicions of the person's connection to a terrorist act are not confirmed, evidence of smaller crimes is invented. Often weapons and narcotics are planted".⁶⁸

In 2004 the Civic Assistance Committee wrote concerning the situation in Moscow that the frequency of the harshest manifestations of discrimination by the police had gradually decreased, but that less obvious forms of discrimination against Chechens, such as discrimination in employment, have become an everyday, commonplace occurrence.⁶⁹ According to Memorial, in Moscow all Chechens are suspected terrorists because of their ethnicity, and are treated accordingly: "Any of them might be sought out at any moment at home or at work, stopped in the street and taken to the police station to be forced to explain why he or she was in Moscow and what they were doing at the moment when this or that terrorist act was committed."⁷⁰ The organization concluded that "discrimination against Chechens has taken on a stable shape, has coalesced into a certain system, the foundational principles of which are constant control on the part of the police, alienation from sources of subsistence, and limited access to the basic rights available to the Russian population".⁷¹ According to Memorial, the rural areas are no more hospitable to Chechen residents than large cities.⁷² ■

«According to Memorial, in Moscow, all Chechens are suspected terrorists because of their ethnicity, and are treated accordingly.»

²⁹ Commission on Human Rights. E/CN.4/2005/84. Report of the Representative of the Secretary General on the human rights of internally displaced persons. Walter Kalin, submitted pursuant to the Commission on Human Rights resolution 2004/55. 31 December 2004, p. 11.

³⁰ Walter Kalin, "Guiding Principles on Internal Displacement. Annotations", The American Society of International Law, The Brookings Institution Project on Internal Displacement (2000), Preface, p. vi

³¹ The UN 1998 Guiding Principles on Internal Displacement, Introduction.

³² The Brookings Institution Project on Internal Displacement.

³³ "International Conference on Internal Displacement in the Russian Federation", Moscow, Russia, April 25-26, 2002, p. 12. Internet: <http://www.brook.edu/7fp/projects/IDP7/conferences/20020425.pdf>

³⁴ The Brookings Institution Project on Internal Displacement, "Handbook for Applying the Guiding Principles", 1999, p. 12.

³⁵ Commission on Human Rights (2004), E/CN.4/2004/77/Add.2. "Specific Groups and Individuals; Mass Exoduses and Displaced Persons; Report of the Special Representative on Internally Displaced Persons, Mr Francis Deng, Addendum, profiles in displacement; the Russian Federation, 24 February, to Russia, September 2003.

³⁶ Ibid.

³⁷ Report of the Special Representative on Internally Displaced Persons, Walter Kalin, supra note 29, p. 6.

³⁸ Margarita Petrosyan, "Guiding Principles on the Issue of Internal Displacement and Internal Legal Order of the Russian Federation: A Comparative Analysis", 2 November 2004.

³⁹ Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Addendum: Profiles in Displacement: the Russian Federation, 24 February, E/CN.4/2004/77/add.2 Petrosyan (2004), supra note 37.

⁴⁰ 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](http://assembly.coe.int/Documents/AdoptedText/ta04/EREC1667.htm)

⁴¹ In 1989 about 25 % of Chechnya's population were ethnic Russians. Source: AlterNet, 17 February 2005

⁴² UNHCR Paper on Asylum Seekers from the Russian Federation in the Context of the Situation in Chechnya, February 2003, p. 4.

⁴³ Supra note 38.

⁴⁴ According to an October 2002 census, the population of Chechnya is 1.088 million. In the Russian Statistical Yearbook for 2003, the indicated number for the population in Chechnya was 813,000.

⁴⁵ Supra note 42, p. 16.

⁴⁶ Numbers from the Danish Refugee Council

⁴⁷ Numbers from the Danish Refugee Council.

⁴⁸ According to the Council of Europe in March 2004. Situation of refugees and displaced persons in the Russian Federation and some

other CIS countries. Doc.10118 25 March 2004. Report. Committee on Migration, Refugees and Population. Rapporteur Mr Tadeusz Iwinski, Poland, Socialist Group

⁴⁹ According to Russian authorities in June 2004.

⁵⁰ Situation of refugees and displaced persons in the Russian Federation and some other CIS countries. Doc.10118 25 March 2004. Report. Committee on Migration, Refugees and Population. Rapporteur Mr Tadeusz Iwinski, Poland, Socialist Group.

⁵¹ UNHCR (2003), supra note 42, p. 24.

⁵² Ibid, p. 15.

⁵³ See: Amnesty International "Dokumenty! Discrimination on grounds of race in the Russian Federation" (AI Index: EUR46/001/2003; On the Situation of Residents of Chechnya in the Russian Federation, June 2003 - May 2004", Svetlana Gannushkina, Memorial Human rights Centre, Migration Rights Network, Moscow 2004, pp. 9-13.

⁵⁴ Moscow Helsinki Group, "Chechens as a particularly vulnerable group", www.mgh.ru/english/1FE5A84

⁵⁵ The Christian Science Monitor, "Ethnic Chechens face revenge attacks in Moscow", 1 October 2004, <http://www.cmonitor.com/2004/1001/p04s01-woeu.html>.

⁵⁶ Svetlana Gannushkina is also member of the Commission for Human Rights under the President of the Russian Federation.

⁵⁷ Information provided in March 2005.

⁵⁸ See "Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination, An NGO Report to the UN Committee on Elimination of Racial Discrimination (62nd session, March 2003), Moscow December 2002.

⁵⁹ See supra note 54

⁶⁰ Amnesty International, " Russian Federation: Amnesty International Statement on the Situation of Chechen Asylum Seekers, AI Index: EUR 46/010/2004, March 2004.

⁶¹ Ibid.

⁶² See supra note 54.

⁶³ Memorial (Svetlana Gannushkina), Migration Rights Network, "On the Situation of Residents of Chechnya in the Russian Federation, June 2003 - May 2004", Moscow 2004, pp. 9-13;

⁶⁴ See supra note 54.

⁶⁵ Memorial (2004), supra note 64, p.46.

⁶⁶ Ibid.

⁶⁷ Ibid, p. 62.

⁶⁸ Ibid, p. 48.

⁶⁹ Ibid, p. 51.

⁷⁰ Ibid, p. 48.

⁷¹ Ibid, p. 47.

Chapter 3: Protection issues

3. 1. IDPs from Chechnya are not recognized as IDPs

All persons who have been displaced as a result of the first and second conflict in Chechnya qualify as internally displaced persons according to the definition in the UN Guiding Principles. Therefore, according to Principle 4 (2) the Principles should be applied to all of them without discrimination. Principle 4 prohibits discrimination among the displaced on the basis of race, ethnic or social origin, language, religion, sex and other criteria enumerated.

Guiding Principle 4 embodies the principle of non-discrimination firmly established in international law. Its wording closely follows formulations of human rights and humanitarian law provisions that prohibit discrimination.⁷³

The concept of internally displaced persons as defined in the UN Guiding Principles is not reflected in Russian legislation. But the Russian Federation has a Law on Forced Migrants that provides a similar status for persons who are forcibly displaced.⁷⁴ The law was adopted in 1993, and amended in 1995 and 2000. According to article 1 (a) of the Law on Forced Migrants, a forced migrant is:

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 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 violation of public order.

The Law on Forced Migrants covers two different categories of displaced persons. In addition to persons who have been displaced *within* the Russian Federation, it also covers persons who have Russian citizenship, and are repatriating *from other former Soviet Republics*. When the Soviet Union dissolved it was felt that the Russian state was responsible for those who had once lived on the territory of the Russian Federal Republic, but currently were living on the territory of one of the other former republics when the Soviet Union dissolved in 1991.⁷⁵

The Law on Forced Migrants covers some categories of internally displaced persons as defined in

the UN Guiding Principles, but not all. The definition of a forced migrant is narrower than the definition of an IDP in the UN Guiding Principles as concerns the causes of displacement. The Law on Forced Migrants lists specific human rights violations and reasons for persecution while the Principles list more general causes. Also, the Law on Forced Migrants does not cover persons who have been displaced as a result of natural or “human-made” disasters.⁷⁶ Forced migrant status is also limited to those who leave their place of permanent residence on the territory of one subject of the Russian Federation and move to another.⁷⁷ This means that those within Chechnya itself cannot, under the current law, qualify for forced migrant status and the benefits this status entails.

Regional agencies of the Federal Migration Service under the Ministry of Interior conduct the forced migrant status determination procedure. The status is given for 5 years, with the possibility of one-year renewals thereafter.

Rights granted by forced migrant status

The primary purpose of forced migrant status is to facilitate the integration of displaced persons in their new place of residence.⁷⁸ The status provides for the right to accommodation and specific allowances and loans.⁷⁹ In practice, forced migrants are often not given the special material assistance they are entitled to.⁸⁰ Despite this, human rights organizations consider the status of crucial importance because it serves as precondition for the exercise of some general basic rights. The Law of Forced Migrants provides for the right to independently choose a place of residence in the Russian Federation, and forbids forced returns to the original place of residence.⁸¹ With forced migrant status, it is easier to obtain residence registration, to get a job, and to avoid arbitrary police action.⁸² In the 2002 NGO shadow report to the UN Committee for the Elimination of Racial Discrimination “forced migrant” status is described as “vitaly important” for displaced persons. According to Memorial the forced migrant status is for IDPs “the only hope to get minimal support from the state and a minimal guarantee of social rights.”⁸³

Granting of forced migrant status to IDPs from Chechnya

During the 1994-96 conflict IDPs, mostly of Russian ethnicity, were generally granted forced migrant status. Victims of the current conflict in

Chechnya, most of whom are ethnic Chechens, have practically been uniformly denied forced migrant status⁸⁵, even though they would appear to fall within the scope of the Law on Forced Migrants.⁸⁶ During the first conflict some 162 000 IDPs received forced migrant status.⁸⁷ Although some ethnic Chechens also received the status, especially in regions adjacent to Chechnya, most IDPs that were granted the status as a result of the first conflict were of non-Chechen origin.⁸⁸ Precise numbers of IDPs from the second conflict granted forced migrant status are not available. It is estimated that at least some 240 000 persons had fled Chechnya by January 2000. According to government statistics, between October 1999 and late 2001 only 12 464 IDPs from Chechnya were granted forced migrant status.⁸⁹ This number also includes IDPs from the 1994- 1996 conflict who were granted the status late, so the real number is probably lower. Federal authorities have confirmed that most of the persons granted forced migrant status in 1999- 2001 were not of Chechen ethnic origin.⁹⁰

Human rights organizations have highlighted discriminatory practices in granting forced migrant status, and the UN Committee on the Elimination of Racial Discrimination has also expressed concern that ethnic Chechens are denied forced migrant status.⁹¹

Russian NGOs and legal experts have pointed out that the norms in the Law on Forced Migrants regulating status definition are vague and therefore allow for the granting of forced migrant status to depend on political directives.⁹² The law contains no mention of displacement as a result of armed conflict. It is explicitly mentioned in the law that persons who left their places of residence “as a consequence of hunger, epidemic, or emergency conditions caused by natural disasters or man-made catastrophes” are not acknowledged as forced migrants, but the issue of the application of the provision of the law to persons who are displaced as a result of armed conflict theoretically remains open.⁹³ The definition is open to at least two different interpretations:

“One [interpretation] enables us to consider mass disorders as a separate legitimate ground for claiming the status, the other one rests on the assumption that mass disorders are mentioned in the law only as an additional component of persecutions. [-] Usually the people who just escape from “simple” disorders or from warfare cannot obtain the status

unless they prove that they were at risk of persecution on ethnic, religious or similar grounds. Besides the vague criteria of “persecution” provide for officials’ freedom of discretion. Consequently, the system creates thresholds of different heights for different ethnic groups.”⁹⁴

During the first conflict, when most IDPs were of non-Chechen origin, the federal government officially declared that the situation in Chechnya represented a mass violation of public order.⁹⁵ Fleeing a situation of mass violation of public order was also often recognized as sufficient reason to qualify as forced migrants⁹⁶, or the presumption of persecution was applied to this wave of IDPs.⁹⁷

According to UNHCR, during the second conflict, most forced migrant status applications based on allegations of mistreatment by federal forces, lost property/and or “a mass violation of public order” were rejected by the competent migration authorities on the grounds that the on-going anti-terror operation conducted by the Russian Government, by definition does not constitute a “mass violation of public order”, and that the federal forces cannot be considered to have committed such violations.⁹⁸ Persons applying for forced migrant status reportedly have to provide evidence that they have been discriminated against for ethnic, confessional political or social reasons.⁹⁹

According to Memorial, immigration officers have been instructed to not grant forced migrant status to ethnic Chechens on the grounds that they are not considered to be victims of discrimination for ethnic, confessional political or social reasons.¹⁰⁰ In a letter to regional bodies, the federal authorities officially recognized that ethnic Chechens are not deemed eligible for the status:

“Reasons for leaving Chechnya by citizens of the title nationality (ethnic Chechens) don’t fall into the characteristics and circumstances of granting forced migrant status mentioned in art 1 of the RF law on Forced Migrants. Their exodus primarily represents moving to safe regions in connection with measures for fighting terrorist groups being undertaken by the law-enforcement authorities.”¹⁰¹

Although ethnic Russian IDPs also face problems obtaining forced migrant status, they are generally perceived to be victims of persecution from Islamic

«Human rights organizations have highlighted discriminatory practices in granting forced migrant status, and the UN Committee on the Elimination of Racial Discrimination has also expressed concern that ethnic Chechens are denied forced migrant status.»

«According to Memorial the forced migrant status is for IDPs “the only hope to get minimal support from the state and a minimal guarantee of social rights”»

«According to the Council of Europe the politically “undesirable” Chechens have in many instances been restricted in their possibility to reside legally outside Chechnya, especially in Moscow and other big urban centers as well as in North-Caucasian republics.»

fundamental groups, while ethnic Chechens are not considered victims of persecution. This happens, despite well-founded claims that ethnic Chechens are also victims of persecution from Islamist groups¹⁰², and solid documentation of systematic and widespread violations of human rights violations committed by federal forces in Chechnya.

This letter stating that Chechens are ineligible for the status, and the instructions not to grant the status to Chechens are seemingly evidence of direct discrimination.¹⁰³ A blanket ban on the granting of the status on the grounds of ethnicity is also a clear violation of provisions of the Law on Forced Migrants which make it clear that an assessment of whether status should be granted should be carried out on a case-by-case basis.¹⁰⁴

Access to the status determination procedure

In 2004 Memorial reported that while the authorities used to receive, consider, and reply to applications for forced migrant status from Chechen IDPs, it has become the norm for the authorities to no longer process applications from this group.¹⁰⁵ Sometimes their cases are not processed with reference to lack of residence registration, place of sojourn or other additional circumstances not required by the law.¹⁰⁶ People who have received compensation for ruined property in Chechnya are generally denied extensions of their status.¹⁰⁷ There have also been instances where IDPs have been misinformed about the conditions regarding forced migrant status, and been told that they would lose their right to other forms of government assistance if they obtain the status.¹⁰⁸ Very often Chechens who apply for forced migrant status receive only an oral negative answer to their claim, and increasingly, Chechen IDPs are denied the opportunity to submit their written applications for the status. In 2004 it was common for requests not be accepted at all. Memorial has concluded that “it can be said with a great deal of certainty that there is no access to the process that provides forced migrant status”.¹⁰⁹

In practice, taking the case to court is perceived as the only real possibility for Chechens to get this status without having to pay bribes. There are examples of successes with such legal proceedings, but only after lengthy, and sometimes humiliating rounds in court, with only a slim chance of a positive decision.¹¹⁰ The fact that Chechens are increasingly receiving oral rejections is rendering this option impossible for many.

Other problems with the Law on Forced Migrants

According to Russian lawyer and member of the Memorial Human Rights Centre Migration Rights Network, Margarita Petrosyan, who has conducted a comparative analysis of the Guiding Principles and the Law on Forced Migrants, the main problem with the Law on Forced Migrants is that it is not clear if it covers persons displaced from armed con-

flict. But even if there was acceptance of a definition that includes victims of armed conflict, she argues, the Law on Forced Migrant is not a well-suited tool to provide protection to IDPs.¹¹¹ The Law on Forced Migrant does not protect *against* forced displacement and does not cover *durable solutions* to displacement. It is also a substantial weakness that the law in its current form does not cover persons displaced within one of the federal entities of the Federation.

According to Margarita Petrosyan, the Law on Forced Migrants is oriented primarily towards the protection of Russian citizens who were forced to leave their place of residence abroad and returned to Russia. It has also been pointed out by other actors that the fact that the Law on Forced Migrants covers categories of displaced persons other than IDPs has created much confusion.¹¹² At a conference on internally displaced persons in the Russian Federation in Moscow in 2002 it was argued that since the term “internally displaced” does not appear in Russian legislation, this group “got lost among the other categories of forced migrant”.¹¹³

Memorial has pointed out the total number of persons granted status as “forced migrants” in the Russian Federation is in decline in general, despite continued flows of internal displacement and forced migration from other former Soviet states. This is both because the status is not granted to newly displaced persons, and because of refusals by the Migration authorities to extend the validity of the period of the status. According to Memorial, this decrease in the number of “forced migrants” is an indication of a strategy on behalf of the government to “eradicate this status and a denial of any kind of obligation on the part of the Russian government to this group of people”.¹¹⁴

Violation of Guiding Principle 4 (1)

The Guiding Principles do not explicitly require that national authorities establish a special legal status for IDPs. However, Principle 4 (1) states that the principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria. The fact that some IDPs – those who have been granted legal status as a forced migrant – have access to rights that are not granted to IDPs without this legal status can represent a breach of the prohibition of discrimination in Principle 4 (1). This will be the case if the rights in question are rights that IDPs are entitled to according to the Guiding Principles, and if the legal status is necessary in order to obtain them. According to Guiding Principle 3 (2) IDPs have the right to request and to receive protection and humanitarian assistance from the national authorities. The fact that only IDPs with forced migrant status can apply for special allowances and have a right to temporary shel-

ter in the Russian Federation, demonstrate a discretionary practice against IDPs who have not been granted this legal status.

Conclusion

The fact that IDPs from Chechnya are not granted a special legal status as IDPs seriously weakens their opportunities to reside in safe regions of the Russian Federation. They are deprived of social benefits and protection that respond to their special protection needs, such as the right to accommodation and the right not to be forcibly returned. The lack of a clear legal status also makes it problematic for Chechen IDPs to access basic services offered to the Russian population generally, and makes them vulnerable to arbitrary police action. The proper application of the UN Guiding Principles would not allow for the discrimination currently shown with respect to the Chechen civil population fleeing the conflict, and would require that they were granted the necessary protection. Even if the granting of legal status to Chechen IDPs in the current context may not have guaranteed the necessary material assistance, it would have constituted an acknowledgement on behalf of the state of its obligations towards this group, and provide them with a proof of their right to protection. The general decline in the granting of forced migrant status in the Russian Federation raises concern about the political will of the Russian authorities to recognize IDPs as a particularly vulnerable group with special protection needs.

3. 2. The Issue of Residence Registration

The right to freedom of movement and the system of residence registration in the Russian Federation

According to Guiding Principle 14, every internally displaced person has the right to liberty of movement and the freedom to choose his or her residence. This principle corresponds to Article 12 (1) of the Convention on Civil and Political Rights and other human rights instruments.¹¹⁵

Article 27 of the Russian Constitution (1993) guarantees freedom of movement and the freedom to choose residence to every person legally staying on the territory of the Russian Federation. This right is, however, strictly limited by federal and local regulations and administrative requirements based on the Soviet era *propiska* regime.¹¹⁶ The 1993 “Law on Freedom of Movement” established a two-tier system of registration of individuals within the Russian Federation: “temporary registration” (at place of sojourn) and “permanent registration” (at place of residence) whereby citizens who move around in the Russian Federation notify the local authorities of

their place of stay and residence respectively.¹¹⁷ However, regional authorities often accord themselves through local laws or practices a *de facto* right to issue or deny such registration. The Constitutional Court of Russia has handed down a number of judgments pronouncing the unconstitutional nature of sub-statutory acts which maintains a residence registration system based on *authorization* rather than *notification*.¹¹⁸ Despite this, various regional authorities have adopted rules which have similar effects as the mechanism declared unconstitutional, and local officials still rely on old methods to limit freedom of movement in order to keep people who are perceived as undesirable out of their communities.¹¹⁹ The authorizing nature of the *propiska*-like restrictions has a disproportionate impact on Chechens (IDPs) and other minority ethnic groups, who are often denied residence registration.

Registration of IDPs from Chechnya

There are no numbers available on the total number of IDPs from Chechnya that have been granted residence registration outside Chechnya. According to the Moscow Helsinki Group, the number is very small.¹²⁰ According to the NGO shadow report to CERD, in most regions, the local authorities have systematically refused to register Chechen IDPs since 2000, in violation of federal regulations and the constitution.¹²¹

UNHCR, UN CERD and the Parliamentary Assembly of the Council of Europe have all issued statements on the difficulties IDPs face due to restrictive legislation and/or the discriminatory administration of residence registration or “*propiska*”.¹²² According to the Council of Europe the politically “undesirable” Chechens have in many instances been restricted in their possibility to reside legally outside Chechnya, especially in Moscow and other big urban centers as well as in North-Caucasian republics. In other places, like in the North-West-Caucasus, the desire to protect the local labor market and to control the internal flow of migrants has resulted in many restrictive practices.¹²³ Meanwhile, UNHCR, has acknowledged that it has become “almost impossible” for ethnic Chechens to receive registration in Moscow, Kabardino-Balkaria and Karachai-Cherkessia, and that there are barriers to receiving registration in other areas such as St Petersburg, Voronezh, Stavropol Krai, North-Ossetia-Alania and Krasnodar Krai.¹²⁴ According to Memorial, authorities in Moscow and Krasnodar Krai remain the worst offenders of restrictive laws and practices, while other regions also create a number of problems for citizens arriving there, Chechens in particular.¹²⁵ The authorities in Kabardino-Balkaria are reported to systematically adopt statutory acts in order to “legalize discrimination against Chechen residents”.¹²⁶

Between 2000 and 2004 it was reported that Chechens have been denied registration for a num-

«Based on reports from legal aid offices in various regions of the Russian Federation, Memorial claims that regional bodies seem to have been tacitly instructed from the top to deny registration to IDPs from Chechnya, or at the least, to limit its duration to a minimum.»

ber of reasons. Only those IDPs with a forced migrant status have to a certain degree been protected against the arbitrary rule connected to the registration procedure.¹²⁷ Violations range from simple refusals to issue sojourn registration to administrative obstacles. IDPs have been denied registration on the ground that only persons with family connection at the new place of registration are allowed to register. Permanent registration has been denied on the grounds that the applicant must first go back to Chechnya and de-register their permanent registration there. Illegal limits have been placed on the size of living space required. Illegal time limits have also been practiced. IDPs from Chechnya are often registered for a period no longer than six months, even if they have a place to stay for a longer period.¹²⁸ Chechens have also experienced to be de-registered without any further explanation.¹²⁹ In some cases the procedure of registering is made extremely complicated with demand for finger-prints, tax information etc.¹³⁰ Very often, however, the applicant simply receives an oral rejection from police officers during preliminary oral interviews.¹³¹

In some instances, personnel from the passport offices or police have openly explained their refusal by referring to the applicant's ethnic affiliation.¹³² It has also been reported that officials have been given instructions not to give registration to Chechens.¹³³ Based on reports from legal aid offices in various regions of the Russian Federation, Memorial claims that regional bodies seem to have been tacitly instructed from the top to deny registration to IDPs from Chechnya, or at the least, to limit its duration to a minimum.¹³⁴

The fact that applicants often simply receive an oral rejection, makes it very difficult to appeal the decisions.¹³⁵ In some regions, however, appeals have been successful. The Czech NGO, Organization for Aid to Refugees, reported in June 2004 that in Stavropol, 95 to 97 percent of appeals submitted result in a positive decision.¹³⁶ Many IDPs do not, however, appeal because they do not believe that the courts will defend their rights, or because they fear that it may irritate the authorities.¹³⁷ Those who have the financial capacity go to dealers or firms who have made false registrations their business.¹³⁸ Another problem facing Chechens is that they cannot register because people do not dare to rent apartments to Chechens. Sometimes potential landlords are directly threatened by officials from the passport and visa service with being charged for assisting terrorists, or they become the objects of constant checks by inspectors.¹³⁹

Consequences of not being registered

According to the Code on Administrative Violations in the Russian Federation, a Russian citizen's lack of registration on the territory of the Russian Federation can result in a monetary fine, detention or expulsion to an individual's former

residence.¹⁴⁰ In a report from 2004, the Swiss Refugee Council concludes that it is "possible" to stay illegally in Russian cities, but that it is associated with permanent danger of being detained by the police, ill-treated, have criminal charges fabricated against you, or risk expulsion to Chechnya.¹⁴¹

A lack of registration also has other serious consequences. Under the Constitution and the laws of the Russian Federation and the civil administrations rights cannot be restricted or granted based on registration or the absence thereof. Despite this, basic social rights continue to be conditional upon the existence of residence registration. According to Petrosyan, "the presence of registration is what the executive on-the-spot considers as the necessary prerequisite for the implementation of such vitally important rights as the right to employment, access to medical care, school education and social housing".¹⁴² The Moscow Helsinki Group considers the absence of residence permit as de facto deprivation of civil- and socio-political rights.¹⁴³

Federal laws regulating medical insurance, free education, employment, pensions etc do not require registration of citizens at their place of sojourn as a condition for accessing these services. In fact, the laws regulating the two latter topics explicitly prohibits discrimination on the grounds of registration.¹⁴⁴ Despite this, contrary practices and laws exist at regional levels. In a report from 2002, Memorial has documented how Chechen IDPs have been denied employment, medical aid, education, pensions and child allowances in a number of regions on the grounds that they are not registered at their de facto place of residence.¹⁴⁵ According to this report, an absence of registration is an insurmountable obstacle when seeking employment, although being of Chechen ethnicity is described as an even bigger obstacle. In many places Chechen IDPs were denied free or other medical assistance if they had no registration, although the Ministry of Health is considered to discriminate on the basis of registration less often than other ministries.¹⁴⁶ As for education, parents were still asked to present residence registration, despite court decisions and instructions prohibiting such practice. Pensions were paid only to persons with registration at their de facto residence, with the exception of refugees or persons with forced migrant status. Most Chechens are not granted forced migrant status, and without registration they do not receive their pensions. The report also documents refusals to deliver child allowances, marriage certificates and formalize property ownership due to a lack of registration.

The only way deemed effective to overcome such discrimination is to take cases to court. A number of such cases have been successful. For example in August 2002 the Supreme Court ruled that Moscow rules restricting the right of persons with a temporary residence permit to medical

insurance contradicted federal legislation. Similarly in 2001, a ban in Moscow on the admission of children to schools when parents did not have registration was ruled unconstitutional. These are encouraging developments, but do not always result in changes in practice on the ground. For example, in a report published by Memorial in May 2004, it is stated that refusals to admit children to schools and kindergartens due to a lack of registration continue to be a problem: "perhaps the complaints were not as numerous as in the past, but there were still too many to speak of a radical change".¹⁴⁷ According to Russian lawyer, Margerita Petrosyan, "discrimination on the basis of registration will not cease to exist till the federal administration gives up its laissez-faire approach to the local lawmaking that violate federal legislation and the Internal Affairs Ministry stops winking at the arbitrary rule and corruption of its officers and establishes strict control over the conformance of their actions to the law."¹⁴⁸

Conclusion

As a consequence of the widespread practice of denying residence registration to IDPs from Chechnya, many Chechen IDPs are prevented from residing, or reside illegally, in regions outside Chechnya. The practice of denying registration to Chechens is not just contrary to the principle of freedom of movement. When registration is necessary in order to access basic social, economic and other rights, the refusal to grant registration to persons forced to flee their habitual place of residence amounts to a violation of the UN Guiding Principles, which state that IDPs shall enjoy the same rights and freedoms as other persons in the country, and that they shall not be discriminated against on the ground that they are internally displaced.¹⁴⁹ IDPs from Chechnya are not the only persons who are affected by restrictive laws and practices with regard to residence registration. Due to strong anti-Chechen feeling in the Russian Federation, IDPs from Chechnya are, however, more likely to be exposed to it than most other groups. The impact of a lack of registration is also more serious for IDPs from Chechnya than for most others because it is accompanied by ethnic discrimination and harassment. Left in a legal limbo in a society characterized by increasingly hostile attitudes to their ethnic group, Chechens are extremely vulnerable to abuse and discrimination. Finally, the impact of a lack of registration is more dramatic for IDPs from Chechnya simply because they are IDPs. They have been forced to flee their homes and do not have the option to return to a safe region of origin.

3.3 The issue of access to personal documents

The right to personal documents and the Russian passport system

Guiding Principle 20 explicitly recognizes that IDPs should be issued all the documents necessary for the enjoyment and exercise of their legal rights, and that requiring that they return to their habitual area of residence is an unreasonable condition that shall not be imposed:

1. *Every human being has the right to recognition everywhere as a person before the law*
2. *To give effect to this right to internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other documents.*

The wording of the first paragraph corresponds to Article 6 of the Universal Declaration of Human Rights. Similar provisions are set forth in other human rights instruments. Most human rights treaties do not, however, explicitly address the question of identity documents. During the development of the UN Guiding Principles it was recognized that present international law does not adequately protect the needs of IDPs for identity documents. Paragraph 2 of Principle 20 attempts to fill this gap.¹⁵⁰

From the age of 14, all Russian citizens are required to be in possession of a so-called internal passport. This is not a travel document, but an identity document, recognizing the person as a citizen of the Federation. Russian citizens are required to be in possession of their internal passport at all times. Not having an internal passport is in itself an administrative offence that can be punished.

Temporary and permanent registration is recorded in the internal passport. The possession of an internal passport is, therefore, necessary in order to enjoy freedom of movement and freedom to choose place of residence as well as access to social allowances. The internal passport also enables the citizen to realize other constitutional rights, such as the right to take part in the management of affairs of the state, the rights to vote and to be elected etc.

The European Court of Human Rights has concluded that, "in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets"¹⁵¹. The internal

«According to Memorial, by 2002 IDPs from Chechnya were denied internal and external passports all over the Russian Federation.»

passport is also needed for more crucial needs, for example finding employment or receiving medical care.¹⁵² Without a passport a person will not be able to register marriages or births¹⁵³, enroll in schools, receive pensions¹⁵⁴ pay taxes, register a vehicle, obtain a drivers license etc.¹⁵⁵ According to common practice, a person cannot bring an action before a court of justice if she/he has no passport.¹⁵⁶

Many Chechen IDPs, who lost their identity documents during their flight from Chechnya, have not been able to get new passports at the places where they are temporarily staying.¹⁵⁷ Cases where passport have been seized by law enforcement officials are also reported.¹⁵⁸

In early 2000, IDPs from Chechnya were given internal passports at their places of factual residence (rather than at the place where they were officially permanently registered), but according to Memorial, by 2002 IDPs from Chechnya were denied internal and external passports all over the Russian Federation.¹⁵⁹ Refusals to issue passports are reported to be based on unpublished instructions from the Passport and Visa Service or the Federal Ministry of Interior Affairs, which explained that since passport sections had started to function in the Chechen Republic in 2001, people should go there for documents.¹⁶⁰ It should be emphasized that this policy applied to all IDPs from Chechnya, irrespective of their ethnic affiliation.¹⁶¹

According to Article 20 of the Civil Code of the Russian Federation a place of residence is defined as a place where a citizen lives permanently or for the majority of the time. The place of residence is not defined as the place of registration or “propiska”. Therefore, instructions tying the issuance of passports to the place of permanent registration or propiska contradict federal legislation.

Improvements were made in May 2003, when the Ministry of Interior issued regulations concerning making issuance of passports more flexible, and allowing the issuing of passports at the place of de facto residence.¹⁶² The effect of these changes in practice is questionable. Memorial reports that in 2004, more and more incidents were reported whereby IDPs from Chechnya are facing difficulties trying to formalize their status with regard to passports and other documents.¹⁶³

In 2004 the period of replacement for and the validity of the 1974 version of Soviet passports ended, and since then the problem of obtaining passports has grown significantly more acute for IDPs from Chechnya. Memorial reports that as a rule applicants that are rejected are advised to return to the Chechnya where they will supposedly be able to have their passports replaced with no regard to the danger they might face and the large financial expenses they would incur.¹⁶⁴ Going back to Chechnya represents a threat to the life and safety of

the IDPs. It is well documented that young men especially are at risk of being detained and ill-treated if stopped at military checkpoints without identity documents. There are reports that persons have been wounded or disappeared while going back to Chechnya to get a passport.¹⁶⁵ Persons exposing themselves to these dangers are by no means guaranteed of getting a passport, and normally have to pay a high amount of money in order to get it.¹⁶⁶

Between 2000 and 2002, the Deputy of the State Duma sent several requests to the Passport and Visa service of the Interior Ministry of the Russian Federation about establishing a mechanism for issuing documents to IDPs from Chechnya. Letters were also sent to the President of the Russian Federation who several times replied that “there is no need to create different rules of issuing documents to IDPs from the Chechen Republic”.¹⁶⁷

Conclusion

The possession of an internal passport is essential for the enjoyment of basic rights and necessary in order to live a normal life in the Russian Federation. The practice of demanding that Chechen IDPs without permanent registration at their de facto residence have their identity documents replaced or renewed in Chechnya is a breach of UN Guiding Principle 20. Chechens that are not granted internal passports at their factual place of residence may be forced to travel to Chechnya to get it. The combination of the widespread practice of refusal to grant residence registration to ethnic Chechens, and the lack of effective measures to ensure that Chechens are granted passports and other necessary identity documents outside Chechnya can at best be described as a failure by the Russian authorities to ensure that Chechen IDPs are granted effective protection as IDPs and citizens. The effect may be that Chechens feel compelled to return to unsafe conditions in Chechnya.

3. 4. The issue of forced return to Chechnya

“Nobody is standing with a gun to my head, forcing me to leave. But they are telling me that the school will be closed tomorrow, and that they will turn off the electricity and gas here in two weeks. Now, you tell me if my decision to return is voluntary”

IDP in Satitsa tent camp, Ingushetia, February 2004.

The Guiding Principles on Return

According to Guiding Principle 15 (d) IDPs have the right to be protected from forcible return to (or resettlement in any place) where their life, safety, liberty and/or

health would be at risk. Protection from forced return to unsafe places is well established in the refugee law (the principle of non-refoulement) and in human rights protection relating to the deportation of aliens. In Guiding Principle 15 the reasoning behind these principles is applied in the context of internal displacement.

Guiding Principle 28 (1) states that, “competent authorities have duties to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.” According to the Handbook for Applying the Guiding Principles on Internal Displacement, the right to return voluntarily, in safety and dignity or to resettle voluntarily in another part of the country is a logical extension of the right to liberty of movement and freedom to choose one’s residence. The right of IDPs to safe, dignified and voluntary return or local resettlement in another part of the country has been frequently reaffirmed by states in the Security Council, the General Assembly, the Commission of Human rights and other international forums.

Return is one of three durable *solutions* to a displacement crisis. There are no agreed upon criteria or benchmarks for when displacement ends, but it is often assumed that displacement ends when the conditions that caused the displacement crisis cease to exist.¹⁶⁸ Before this, displaced persons are in need of, and have the right to, protection and assistance in a safe area. They must not be forced to return. When displacement is over they have the right to choose to return or to resettle in another part of the country. The Guiding Principles make clear that returns should not just be voluntary, but also take place in safety and dignity. Safety in this context includes physical, legal and material safety. Physical safety can only be ensured when the circumstances that

caused an individual to flee no longer exist, violence and intimidation have come to an end, and enforcement agencies ensure human rights compliance, including an independent police service and judiciary.¹⁶⁹ Legal safety is considered to require the existence of functioning legal institutions and a legal framework that guarantee basic rights.¹⁷⁰ Material safety includes access to basic services, such as health services, education and employment.¹⁷¹ According to the UN Guiding Principles it is the duty of national authorities to establish such conditions.

Russian policy on the return of IDPs

The Russian authorities have repeatedly declared its respect for the need to preserve the voluntary nature of return of IDPs to Chechnya, but at the same time consistently maintained the official position that IDPs should return to Chechnya.¹⁷² The Russian authorities have argued for return by asserting that the federal forces control most of Chechen territory, that IDPs should take part in the reconstruction and administration of the Republic and that IDPs constitute a destabilizing factor in the host regions, specifically those in Ingushetia.¹⁷³ Already in October 1999, the federal authorities suggested resettling IDPs in Russian-controlled areas in Chechnya. The construction of tent camps for IDPs in Ingushetia was only authorized after long negotiations with UNHCR. Pressure on IDPs to return from Ingushetia gradually intensified in 2001, when the authorities stopped the registration of new IDPs on lists granting them the right to humanitarian assistance and halted the provision of essential utilities to the tent camps.

Closure of tent camps in Ingushetia

In May 2002 the government adopted an Action Plan for the Return of Chechen IDPs that envisioned the closure of all 6 existing camps in Ingushetia, and the return of all IDPs by end of September 2002. Implementation of the



A UNHCR Protection officer interviews a Chechen IDP who is planning her return to Chechnya, Ingushetia, February 2004. Photo: Anne Marit Austbø.

«The international community and NGOs have voiced grave concerns about the return process from Ingushetia to Chechnya, describing the process as “forced”, “coerced”, or “induced”.»

plan started immediately, but was accelerated after the October 2002 theatre hostage crisis in Moscow. The first camp was closed in December the same year. By June 2004, all the camps had been closed. The closures of the camps happened despite strong protests from the international community¹⁷⁴ and from IDPs residing there. According to a survey conducted by Medecins Sans Frontieres in February 2003, 98 percent of the Chechen population living in tents in Ingushetia did not want to return to Chechnya.¹⁷⁵ After a field visit to the region in September 2003, Francis Deng, the first UN Special Representative on IDPs, stated that his visit revealed significant discrepancies between positive official policy statements and the perspectives of the displaced who remained “acutely apprehensive that the camps may be closed and that they might be forced to return to a situation in Chechnya that they regarded to be unsafe”¹⁷⁶.

The manner in which the camps were closed was strongly criticized by NGOs and the international community. Strong pressure was put on the residents to return to Chechnya. During camp closures, immigration and law-enforcement officials often harassed the residents. Human rights organizations have provided extensive documentation to show that IDPs were threatened in numerous ways, including with arrests on false charges, with withdrawal of registration and food allowances and with cutting of gas, water and electricity supplies for weeks during winter months.¹⁷⁷ IDPs were told that they were eligible for compensation for ruined property, but that they risked losing their right to compensation unless they returned to Chechnya more or less immediately.¹⁷⁸ At times IDPs were physically forced to leave their tents.¹⁷⁹ During the first two camp closures, UN representatives and other humanitarian agencies were prevented from visiting the sites. This was a breach of Guiding Principle 25 (3) which states that the authorities should grant persons engaged in humanitarian assistance unimpeded access to the IDPs. This triggered a strong reaction by the international community, which might have led to the authorities decision to temporarily postpone the closure of further camps.¹⁸⁰ During the period of closing the camps, the number and intensity of search operations and arrests conducted by the governmental security forces in Ingushetia, including in IDP settlements and camps, reached unprecedented levels, and increased the general sense of insecurity for IDPs from Chechnya.¹⁸¹ Since the camps were closed, the security situation has not improved, and the cutting of utilities to temporary accommodation centers where IDPs reside have continue to be reported.¹⁸² The international community and NGOs have voiced grave concerns about the return process from Ingushetia to Chechnya, describing the process as “forced”, “coerced”, or “induced”¹⁸³.

The return process and criteria for voluntary return

The UNHCR Handbook on voluntary repatriation defines “voluntary” as “absence of any psychological or material pressure”¹⁸⁸. According to this definition, the return process from Ingushetia to Chechnya has clearly not been voluntary. Extensive pressure, both material

and physical, has been applied. As a general rule positive pull-factors at the place of origin is considered to be more indicative of voluntary return than possible push-factors at the place of displacement, or negative pull factors, such as a threat to property at the place of permanent residence.¹⁸⁷ The measures implemented to make IDPs return from Ingushetia to Chechnya have often been referred to as a mixture of “sticks and carrots”. Closing camps, utility cuts, deregistration from lists granting humanitarian assistance, threats to physical security etc. are considered as “sticks”, or factors that push IDPs to return from Ingushetia. The main “carrot”, or “pull” factor, is the prospect of receiving financial compensation upon return to Chechnya. According to the UNs Office for the Coordination of Humanitarian Affairs (OCHA), in 2004 the determining factor for many returnees was the financial incentive of compensation for lost property.¹⁸⁸ The paying of compensation is in theory a positive development that should enable the return of people whose homes have been destroyed. However, the fact that compensation is only paid to persons with permanent residence in Chechnya, and that IDPs have been told that they would lose their right to compensation unless they return more or less immediately, make this a negative, rather than a positive pull-factor. It is also a problem that the amount of money actually paid in compensation is considerably less than what was established by the government of the Russian Federation in 2003.¹⁸⁹

In general UNHCR defines the principle of voluntary return as meaning that besides expressing their *consent*, IDPs should be *properly informed* of the conditions upon return as well as being provided with a *genuine alternative to return*.¹⁹⁰ With regard to consent, IDPs who have returned to Chechnya have been asked to sign “voluntary return forms”. It is however, documented that residents in tent camps at times have been pressured by representatives of the federal immigration service and the federal security service to sign such forms. “According to numerous witnesses, the major message migration officers and especially Chechen government representatives have tried to convey to the displaced is that their choice is between immediately leaving “voluntary” or being forcibly evicted at a later date.”¹⁹¹ When it comes to proper information, promise of shelter, compensation and assistance in Chechnya have in some cases been illusory, and the conditions in government-run TACs in Chechnya have not corresponded with promises made by the authorities.¹⁹²

Access to adequate alternative shelter in Ingushetia has progressively been recognized as the key benchmark to assess the voluntary nature of the return process.¹⁹³ Not all IDPs evicted from tent camps since 2002 were offered alternative shelter. When the first tent camp was closed in December 2002, the government did not offer any alternative accommodation in Ingushetia.¹⁹⁴ Shelter allegedly provided to tent dwellers during later tent closures were in some cases inhabitable, occupied or simply non-existent.¹⁹⁵ Between 2003 and 2004, the authorities prevented efforts by humanitarian organizations to provide alternative shelter when camps were closed.¹⁹⁶ Access to alternative shelter in Ingushetia is reported to

have improved in 2004.¹⁹⁷ Despite this improvement, intense pressure on IDPs to return to Chechnya continued, and humanitarian agencies defined the returns in connection with the camps closures in 2004 only as “largely voluntary”.¹⁹⁸ The improvement in access to shelter can largely be attributed to continuous advocacy by international humanitarian agencies and NGOs. NGOs continued, however, to report that alternative shelter for IDPs who did not want to leave Ingushetia has been lacking, or is in a very poor condition.¹⁹⁹ As of March 2005, threats of evictions from TACs in Ingushetia were reported without alternative shelter being offered.²⁰⁰

Even when alternative shelter was offered, it is highly questionable whether persons can be said to have been presented with a *genuine alternative* to return, allowing them to make a free choice between return or resettlement. In order for an alternative to return to be genuine, IDPs need to have some legal guarantees, adequate housing, access to humanitarian assistance - in short they need protection during displacement as defined by the UN Guiding Principles. Return cannot be considered to be voluntary when the government cuts off aid to encourage IDPs to go home.²⁰¹ IDPs need to know that they do not risk being thrown out of the places where they are residing or being cut off from humanitarian assistance. For an alternative to be genuine, the physical security of IDPs must be ensured. The gradual spilling over of the conflict into Ingushetia has led people to question the safety of the “safe haven” in Ingushetia.²⁰² In fact, in some instances IDPs are reported to have returned to Chechnya because they considered it unsafe to stay in Ingushetia.²⁰³

The difficulties in obtaining residence registration, employment, personal documents etc. restrict the possibilities of settling in other regions of the Russian Federation. During 2003 and 2004, IDPs from Chechnya were also increasingly evicted from temporary accom-

modation centres in other regions of the Russian Federation.²⁰⁴ The authorities have a Plan of Action for the Return of IDPs, but no similar plan for the resettlement of IDPs. Ingushetia has accepted 19 000 IDPs for resettlement²⁰⁵, but the UN has emphasized the need for a more extensive resettlement programme.²⁰⁶ Return can only be seen as truly voluntary as long as IDPs are presented with credible guarantees of an alternative.

Enforced returns

The UN Guiding Principles on Internal Displacement do not elaborate on what “enforced returns” constitute. But the Annotations to the Guiding Principles imply that return does not necessarily have to have an element of physical force in order to amount to “forcible return”. According to the Annotations, “it is clear that states bear an affirmative duty to ensure that internally displaced persons *are not compelled* to return to (-) places where their lives or liberty are at risk”²⁰⁷. Reports from international governmental and non-governmental organizations show that the general security and human rights situation in Chechnya is life-threatening.²⁰⁸ Furthermore, IDPs returning from Ingushetia are not safe in the temporary accommodation centres (TACs) provided by government structures in Chechnya. According to the International Helsinki Federation, returnees have been arbitrarily detained and have disappeared from TACs, despite the presence of armed guards.²⁰⁹ According to a survey from January-February 2004, 66.8 percent of IDPs living in TACs in Chechnya indicated that they never or only occasionally felt safe.²¹⁰ The accumulated effect of the measures implemented by the government (the closing of camps, the lack of alternative shelter, deregistration from list providing access to humanitarian assistance, various forms of threats etc.) is likely to have compelled some IDPs to return, and, therefore, amounted to forcible return and a breach of UN Guiding Principle 15.

«The improvement in access to shelter can largely be attributed to continuous advocacy by international humanitarian agencies and NGOs.»

Conclusion

Efforts by Russian authorities to rebuild the material and social infrastructure in Chechnya, including the issuing of compensation are important, but not sufficient measures in establishing conditions that allow for voluntary return in safety and dignity. After ten years of conflict there is a lack of housing for IDPs generally and TACs set up for returnees cannot cope with the number of returnees from temporary settlements in Ingushetia²¹¹. The system of awarding compensation for lost housing is at best described as inadequate²¹². The health of those still in Chechnya is at serious risk with higher rates of diseases such as tuberculosis, hepatitis A, cancer and AIDS than in the rest of the Russian Federation and a struggling health service. After ten years of war there are also many suffering from psychological trauma and illnesses.²¹³ Despite the prolonged and recurring conflict in Chechnya, and well-documented human rights violations, the international community has virtually no presence in the region. Human rights organizations have repeatedly emphasized the importance of seeking a

political solution to the conflict in Chechnya and to holding accountable those responsible for human rights violations. According to the UN Special Representative on IDPs, Walter Kälin, victims of human rights violations do not just have the rights to “compensation and repairs”, but also “satisfaction” which includes an element of justice.²¹⁴

Russian authorities have imposed a premature end to the displacement of IDPs from Chechnya. Chechnya is still in a situation of low-intensity armed conflict, and human rights violations continue with practical impunity. Governments have a duty to establish the conditions and means necessary for IDPs to choose between return in safety in dignity or resettlement in safety and dignity. What means are acceptable to “push” or “pull” must be seen in light of the security situation at the place of potential return. Given the current human rights and security situation in Chechnya, any attempt to pressure IDPs to return to the Chechen Republic will amount to forced return.

3. 5. Consequences of a lack of effective protection in the Russian Federation

The protection issues analyzed above show that on a number of important issues, the Russian authorities fail to provide the protection Chechen IDPs are entitled to according to the UN Guiding Principles on Internal Displacement. The analysis in this report is based mainly on information from human rights organizations, whose task is to monitor and document violations of human rights. Not all Chechen IDPs in the Russian Federation may be equally affected by the conditions described in our analysis, but the extensive documentation of abuse and failure to provide protection provides a clear picture of a situation whereby Chechens who have fled from armed conflict and human rights violations in Chechnya, are not granted the protection by their own government that they are entitled to under international standards.

As a consequence of this, UNHCR has concluded that there is a no internal protection alternative for Chechens in the Russian Federation (see Chapter 7), and that Chechens whose permanent residence was in Chechnya should be considered in need of international protection. UNHCR distinguishes between those Chechens who have obtained a permanent residence registration outside Chechnya, and those without, and does not rule out the possibility of an internal protection alternative for the first group. Amnesty International has challenged the validity of making such a distinction, arguing that there is no internal protection alternative for either group. According to Amnesty International, it is the *ethnic identity* of the person that is the key factor to take into consideration in light of the discrimination Chechens

face within the Russian Federation. Although Chechens with a permanent resident registration – and hence a legal right to reside – outside Chechnya have better chances of accessing social and economic rights, they still risk being victims of serious human rights violations, such as unlawful arrests and searches, fabrication of criminal evidence, and discrimination with regards to social and economic rights.

A more detailed discussion of the application of the so-called internal protection alternative with regard to Chechen asylum seekers will follow in chapter 7 of the next part of this report. However, it should be mentioned here that the UN Guiding Principles on Internal Displacement, Principle 1 (c) 5 states that IDPs have the right to apply for asylum in another country. Also, when considering the possibilities of Chechen IDPs to obtain protection in the Russian Federation one should take into account the general policy of the Russian authorities towards this group. The fact that Chechens are not granted status as forced migrants, the fact that effective measures to ensure that Chechen IDPs have the legal right to reside outside Chechnya with the necessary documents have not been taken, the fact that Russian authorities have put direct pressure on Chechen IDPs to return to Chechnya, the failure of the Russian authorities to hold accountable those responsible for human rights violation in Chechnya and racially-motivated violations in other regions of the Russian Federation, as well as the involvement of state actors in such abuses all lead us to question the ability and willingness of Russian authorities to provide effective protection to this group. ■

⁷³ For example Article 2 (2) of the Convention on Civil and Political Rights, Article 2 of the Universal Declaration of Human Rights. For more details, see "Guiding Principles on Internal Displacement: Annotations" p 11.

⁷⁴ UNHCR (2003) see supra note 42, p. 9.

⁷⁵ International Conference on Internal Displacement in Russia (2002), see supra note 32, p. 5.

⁷⁶ Ibid, p. 6. Russian legislation lists specific human rights violations and reasons for persecution (e.g. religious belief, belonging to a particular ethnic or social group) while the Principles list more general causes. Russian legislation does not include natural or human-made disaster.

⁷⁷ Article 1.2

⁷⁸ UNHCR (2003), supra note 42, p. 10.

⁷⁹ Organization for Aid to Refugees (OPU) , "Report on the Situation of Chechen Refugees in the Russian Federation (2004).

⁸⁰ Ibid.

⁸¹ Matthew Naumann, "The right not to return: the situation of displaced Chechens in the Russian Federation", Dissertation submitted pursuant to an LL.M degree in International Human Rights Law, University of Essex, August 2003, p. 16.

⁸² Memorial (2004), supra note 62, p. 32.

⁸³ Memorial (S.A. Gannushkina), "The Internally Displaced Persons from Chechnya in the Russian Federation", 2002, p. 10.

⁸⁴ NGO-report to CERD (2 002), supra note 58.

⁸⁵ Gannushkina (2004), supra note 62, pp. 32-33.

⁸⁶ International Conference on Internal Displacement in the Russian Federation, supra note 32, p. 7.

⁸⁷ UNHCR (2003), supra note 42, p.10.

⁸⁸ Petrosyan (2004), supra note 37.

⁸⁹ Memorial (2002), supra note 83, p. 10.

⁹⁰ Ibid.

⁹¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Russian Federation. 21 March 2003, CERD/C/62/CO/7.

⁹² Petrosyan (2004), supra note 37.

⁹³ Ibid.

⁹⁴ NGO-report to CERD (2002), supra note 58.

⁹⁵ Naumann (2003), supra note 81.

⁹⁶ Memorial (2003), supra note 64, p.10.

⁹⁷ Petrosyan (2004), supra note 37.

⁹⁸ UNHCR (2003), supra note 42, p. 10.

⁹⁹ Memorial (2002) , supra note 83, p. 8.

¹⁰⁰ Ibid, p. 10.

¹⁰¹ Petrosyan (2004), supra note 37.

¹⁰² Memorial (2002), supra note 83, p. 11.

¹⁰³ See Naumann (2003), supra note 80.

¹⁰⁴ Ibid.

¹⁰⁵ Memorial (2004), supra note 64, p. 33.

¹⁰⁶ NGO-report to CERD, supra note 58.

¹⁰⁷ Memorial (2004), supra note 64, p. 33.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Memorial (2002), supra note 83, p.15

¹¹¹ Petrosyan (2004), supra note 37.

¹¹² Conference on Internal Displacement, supra note 32, p. 6.

¹¹³ Ibid.

¹¹⁴ Memorial (2004), supra note 64, p. 32.

¹¹⁵ See Walter Kälin (2000), supra note 30, p. 35.

¹¹⁶ Naumann (2004), supra note 81.

¹¹⁷ Parliamentary Assembly of the Council of Europe. Situation of refugees and displaced persons in the Russian Federation and some other CIS-countries, Doc.10118 25 March 2004. Report. Committee on Migration, Refugees and Population.

¹¹⁸ European Court of Human Rights, " Decision as to the Admissibility of Application no. 58964/00 by K.K.C. against the Netherlands, 3 July 2001, p. 8.

¹¹⁹ Ibid.

¹²⁰ Moscow Helsinki Group, supra note 54.

¹²¹ Supra note 58.

¹²² For an analysis of the "propiska" regimes in light of States' international obligations, see Council of Europe, Parliamentary Assembly, the Propiska System Applied to Migrants, Asylum Seekers and Refugees in Council of Europe Member States: Effects and Remedies, 12 October 2001, <http://assembly.coe.int/Documents/WorkingDocs/docs01/EDOC9262.htm>

¹²³ Situation of refugees and displaced persons in the Russian Federation and some other CIS countries. Doc.10118 25 March 2004. Report. Committee on Migration, Refugees and Population. Rapporteur Mr Tadeusz Iwinski, Poland, Socialist Group

¹²⁴ UNHCR (2003), supra note 42, p. 31.

¹²⁵ Memorial (2004), supra note 50, p. 35.

¹²⁶ Ibid, p.36.

¹²⁷ Petrosyan (2004), supra note 37.

¹²⁸ UNHCR (2003), supra note 42.

¹²⁹ OPU (2004), supra note 79.

¹³⁰ Memorial (2004), supra note 64, p.35.

¹³¹ Memorial (2002), supra note 83, p. 15 and Memorial (2004), supra note 64, p. 37.

¹³² Moscow Helsinki Group, supra note 54, p. 7.

¹³³ Ibid, p. 9.

¹³⁴ Memorial (2002), supra note 83, p. 37.

¹³⁵ Petrosyan (2004), supra note 37.

¹³⁶ OPU (2004), supra note 79, p. 7.

¹³⁷ Memorial (2004), supra note 64, p.37.

¹³⁸ Ibid., p. 16.

¹³⁹ Information from Svetlana Gannushkina, March 2005.

¹⁴⁰ European Court of Human Rights (2001) see supra note 118.

¹⁴¹ Swiss Refugee Council (2004), Klaus Amman, "Tschetschenien und die tschetschenische Bevölkerung in der Russischen Föderation", p. 20.

¹⁴² Petrosyan (2004), supra note 37.

¹⁴³ Moscow Helsinki Group, supra note 54.

¹⁴⁴ Petrosyan (2004) , supra note 37.

¹⁴⁵ Memorial, (2002), supra note 83.

¹⁴⁶ Ibid, p. 24.

¹⁴⁷ Memorial (2004), supra note 64, p. 56.

¹⁴⁸ Petrosyan (2004), supra note 37.

¹⁴⁹ Ibid.

¹⁵⁰ Walter Kälin (2000), supra note 30, p. 51.

¹⁵¹ European Court of Human Rights, case of Smirnova v Russia, Judgement 24 July 2003.

¹⁵² Ibid.

¹⁵³ Information provided by Svetlana Gannushkina, March 2005.

¹⁵⁴ UNHCR (2003), supra note 42, p.28.

¹⁵⁵ NGO-report to CERD (2002), supra note 58.

¹⁵⁶ Ibid.

¹⁵⁷ Memorial (2002), supra note 83, p. 20.

¹⁵⁸ Ibid, p. 39.

¹⁵⁹ Ibid, p. 20.

¹⁶⁰ Ibid, p. 19.

¹⁶¹ Ibid, p. 21.

¹⁶² Petrosyan (2004), supra note 37. According to information from Svetlana Gannushkina, changes were made to point 13 of the Instruction "On the Procedure for Issuing , Exchanging, Registration and Storing of Passports for Russian Federation citizens" in accordance with an Order of the Ministry of Interior Affairs from July 1999. The order was based on a decision by the Supreme Court of the Russian Federation in 1999.

¹⁶³ Memorial (2004), supra note 64, p. 39.

¹⁶⁴ Ibid, p. 38.

¹⁶⁵ Memorial (2002), supra note 83, p. 21.

¹⁶⁶ Ibid, p. 21.

¹⁶⁷ Ibid.

¹⁶⁸ The Brookings Institution Project on Internal Displacement, "Handbook for Applying the UN Principles on Internal Displacement", European Council on Refugees and Exiles, "ECRE Policy on Return", p. 8, at www.ecre.org

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Tullio Santini, "North Caucasus: Upholding the principle of "voluntary return" for IDPs", Journal of Humanitarian Affairs, September 2004 at <http://www.jha.ac/>

¹⁷³ UNHCR, (2003), supra note 42, p. 15.

¹⁷⁴ Santini (2004), supra note 172.

¹⁷⁵ Medecins Sans Frontieres, " The Trauma of ongoing War in Chechnya", August 2004.

¹⁷⁶ Supra note 38.

¹⁷⁷ See for example Human Rights Watch (2003), " Into Harms Way: Forced Return of Displaced Persons to Chechnya" and the International Helsinki Committee (2004): " The Coerced Return of Chechen IDPs from Ingushetia".

¹⁷⁸ Ibid.

¹⁷⁹ Human Rights Watch (2003), supra note 177, p. 3.

¹⁸⁰ Santini, (2004), supra note 172.

¹⁸¹ Ibid.

¹⁸² In July 2004, a total of 20 temporary settlements, hosting around 7 800 IDPs were under threat of eviction or were affected by utility cuts, but no alternative had been proposed apart from return to Chechnya. Source: UNHCR, mid-year CAP.

¹⁸³ See Human Rights Watch (2003), supra note 177.

¹⁸⁴ See International Helsinki Federation (2004), " The Coerced Return of Chechen IDPs from Ingushetia".

¹⁸⁵ UNHCR (2003), p. 15.

¹⁸⁶ UNHCR, Handbook on Voluntary Repatriation, 1996.

¹⁸⁷ Ibid.

¹⁸⁸ See Consolidated Appeals Process for Chechnya 2005, p. 11

¹⁸⁹ For more information about the compensation issue, see "UNHCR Information Note On the Implementation of Compensation for Lost Housing and Property to the Victims of the Conflict in the Chechen Republic", April 2004.

¹⁹⁰ UNHCR (2003), supra note 42, p. 14.

¹⁹¹ Human Rights Watch (2003), supra note 177, p. 6.

¹⁹² Amnesty International, EUR 46/027/2004 " Russian Federation: Chechen Republic; Normalization in whose eyes?", 23 June 2004, p. 12.

¹⁹³ Tullio Santini, supra note 172.

¹⁹⁴ UNHCR (2003), supra note 42, p. 19.

¹⁹⁵ Human Rights Watch (2003), supra note 177, p. 8.

¹⁹⁶ For one year a block of alternative shelter constructed by NGOs were left unoccupied pending official approval by the authorities. See the OCHA, "UN Consolidated Appeals Process, Mid-Year Review 2004", p. 2

¹⁹⁷ According to UNs Consolidated Appeal Process for Chechnya in 2005: "in 2004 mostly the Government asked the IDPs to choose between return to Chechnya or relocation to alternative shelter in Ingushetia.

¹⁹⁸ Santini (2004), supra note 172.

¹⁹⁹ Norwegian Refugee Council, "Report from seminar on IDPs from Chechnya, Moscow, August 2004".

²⁰⁰ According to information from Svetlana Gannushkina in March 2005.

²⁰¹ Andrew Lawday, "Displacement only ends with safety and choice", Forced Migration Review 17, May 2003, p. 53.

²⁰² Supra note 1999.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ OCHA, "Consolidated Appeals Process for Chechnya 2004, Mid-Year Review", p. 3.

²⁰⁶ See OCHA, Consolidated Appeals Process for Chechnya 2005, p. 11

²⁰⁷ Supra note 30.

²⁰⁸ In a policy paper in October 2004, UNHCR stated that : ...the overall situation in Chechnya still raises grounds for serious concern due to targeted persecution, including arbitrary detentions, widespread violence, insecurity and violations of human rights, as well as ongoing hostilities significantly affecting the civilian population and leading to continued forced displacement".

²⁰⁹ The International Helsinki Federation, " Chechnya: Enforced Disappearances, Extrajudicial Killings and Unlawful Detentions – An Update", 4 August 2004.

²¹⁰ Medecins Sans Frontieres, " The Trauma on ongoing War in Chechnya", Quantitative assessment of living conditions, and psychological and general health status among war displaced in Chechnya and Ingushetia, August 2004.

²¹¹ See supra note 206, p.7.

²¹² See Memorial (2004), supra note 64, pp.16-18.

²¹³ See Medecins du Monde, Report on Chechnya 2002 <http://www.reliefweb.int/library/documents/2002/mdm- Chec-31jul.pdf>; Chechnya stricken by tuberculosis - <http://www.hrvc.net/news4-03/24d-5-2003.htm>; Precarious Health Situation prevailing in Chechnya (2003), Global IDP Database, <http://www.db.idproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewCountries/053B0FBFC11AA8D5C1256E01005A0ABF>

²¹⁴ Human Rights Commission (2004), supra note 29, p. 18.

Part 2: Asylum seekers and refugees from Chechnya



Chechen refugees in the Pankisi Gorge, Georgia, are lining up to receive blankets from UNHCR. October 2003. Photo: The Norwegian Helsinki Committee.

Introduction

This part of the report will analyze the policies of different countries towards asylum seekers from Chechnya. The analysis does not just cover the outcome of the asylum determination procedures, but also address other barriers facing Chechens seeking asylum abroad. After an overview of the general movement of Chechen asylum seekers, the issue of access to the territories of other states will be addressed. Access to asylum procedures will be addressed in the third chapter. Chapter 4 describes reports about the detention of Chechen asylum seekers. The next chapters examine the outcome of refugee status determination

procedures in countries outside the EU (chapter 5) and within the EU (chapter 6). The application of the so-called “internal protection alternative” with regard to Chechens will be discussed separately in chapter 7. In chapter 8, 9 and 10 exclusion from refugee status, mandatory returns to Russia and demands for the extradition of Chechens will be discussed. Finally, chapter 11 will address the current situation in the EU whereby many Chechens are awaiting deportations to “new” EU countries as a result of the enlargement of the EU in May 2004 combined with the application of the Dublin II Regulation. ■

Chapter 1: Movement of Chechen refugees and asylum seekers

At the beginning of the current conflict, many Chechens sought refuge in countries neighbouring Russia. Kazakhstan, Azerbaijan and Georgia were the main recipients of Chechen refugees. The refugee populations in these countries have remained relatively stable over the last five years. Almost 14 000 Chechen refugees reside in Kazakhstan.²¹⁵ The majority has been in the country for about 5 years,²¹⁶ and women and children make up 85 percent of them.²¹⁷ Almost 8 000 Chechen refugees have been registered by UNHCR in Azerbaijan.²¹⁸ During the first half of 2004 the flow of Chechen asylum seekers registration with UNHCR in Azerbaijan was still continuing at a steady rate of over 60 individuals a month.²¹⁹ An estimated 6 000-7 000 Chechen refugees arrived in Georgia in 1999/2000, but the current number of Chechen refugees in Georgia is estimated at 3540.²²⁰ Almost 80 percent of them are women and children.²²¹

In 2003, there was a dramatic increase in the number of Chechen asylum seekers in European countries. Russia topped the list of major countries of origin of asylum seekers arriving in industrialized countries, and in European countries, both in 2003 and 2004. In 2004 asylum seekers from Russia made up 9.8 percent of asylum seekers to European countries.²²²

Most governments do not provide statistics according to ethnicity or nationality, but the majority of asylum seekers originating from Russia over the last couple of years are considered to be from Chechnya.²²³ In 2003, 33 364 asylum seekers from Russia arrived in 29 European and non-European industrialized countries providing monthly statistics to UNHCR (32 274 arrived in European countries).²²⁴ This represented an increase of 68 percent compared to 2002.²²⁵ In 2004, the number decreased by 14 percent, but there was an increase during the last quarter of the year.²²⁶

An unknown number of asylum seekers from Chechnya are residing in Belarus and Ukraine. These countries are mainly considered as transit countries for Chechens trying to get asylum in Western Europe. In 2003 and 2004 hundreds of Chechens were apprehended by Ukrainian border guards when trying to cross illegally the border from Ukraine to Slovakia or Poland.²²⁷

Although we cannot prove a direct link between the flow of asylum seekers to European countries and increased pressure on IDPs in Ingushetia and other regions of the Russian Federation, there are striking correlations between the two. The increase

«Although we cannot prove a direct link between the flow of asylum seekers to European countries and increased pressure on IDPs in Ingushetia and other regions of the Russian Federation, there are striking correlations between the two.»

in Chechen asylum seekers to European countries intensified in early 2003. This was right after Russian authorities had closed the first tent camp in Ingushetia, and announced that more closures would take place soon. In Moscow and other big cities, document checks and other police measures targeted at Chechens intensified following the theatre hostage crisis in October 2002. The months with the highest increases in Russian asylum seekers to European countries in 2003 were March and

Chapter 2: Access to territory

In practice, access to territory is a necessary precondition for exercising the right to apply for asylum. In most cases, if an asylum seeker is not able to reach the border of a foreign country, he or she will not be able to file an application for asylum.²²⁹ Chechen asylum seekers' rights to seek asylum are restricted by the visa policies of European countries. In some instances, Chechen asylum seekers have also been rejected from the border of foreign countries without being allowed to apply for asylum (see below).

Visa policies affecting Chechen asylum seekers

Azerbaijan, Kazakhstan, Belarus and Ukraine have bilateral non-visa agreements with the Russian Federation. This means that with valid Russian internal passports, Chechens have the right to enter these countries without any further authorization. Not all Chechens do, however, possess valid internal passports (see part 1 of the report, section 3.3). In Moldova there are also no visa regulations for Russian citizens.

In order to travel to EU countries, as well as Switzerland and Norway, citizens of the Russian Federation need to have a visa. Without a visa, airplane companies will reject travellers. European embassies in Russia (or neighbouring countries) are, however, extremely reluctant to issue visas to Chechens.²³⁰ It is sometimes possible to obtain visas from middlemen through bribes or falsifications, but for most Chechens the only opportunity to enter other European countries is by travelling by land. Even with a visa, an airplane ticket may be too costly.

Rejection at borders and the principle of non-refoulement

According to article 33 (1) of the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

September. In these months a referendum and presidential elections were held in Chechnya, events that were expected to cause disturbances and pressure on IDPs in Ingushetia and the civilian Chechen population in general. In June 2004 extensive armed attacks took place in Ingushetia, and at the beginning of September 2004 the infamous Beslan school hostage crisis happened. Between July and September 2004, there was a 40 percent increase in the number of asylum seekers from Russia.²²⁸ ■

This principle of non-refoulement is now a widely accepted principle of customary international law. The prohibition against *refoulement* under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 3 of the UN Convention against Torture is broader than that provided for under the Refugee Convention and its 1967 Protocol. The treatment of asylum seekers must be in accordance with states' obligations under these international instruments not to return any person to a country where they could be at risk of torture, ill-treatment, or inhumane or degrading treatment. If a person is deported to another country that does not respect the principle of non-refoulement, the first state has also violated the principle via so-called chain-refoulement.

It is generally accepted that the obligation of states to respect the principle of non-refoulement should be respected from the point when a person is at the border of the country in question. If a person is not allowed to enter a country and a request to apply for asylum is turned down, not only has the person's right to apply for asylum been violated. The state in question may also have failed to respect the principle of non-refoulement. There are several reports of instances when Chechen asylum seekers have been rejected from borders of European countries.

Chechens are often denied access to **Ukrainian territory**. The State Border Service in Ukraine reported that during January-August 2004, 260 Chechens were refused entry to Ukraine.²³¹ According to information from Ukrainian NGOs, after the school hostage siege in Beslan in September 2004, the control regime at Ukraine's border with the Russian Federation was tightened. Border guards are reported to check all Chechens against blacklists provided by the Russian security service. Persons appearing on the list are refused entry to Ukraine.²³² Also, Chechens coming to Ukraine by train or by plane from the Russian Federation or other countries, for example Azerbaijan or Moldova, are routinely denied access to the territory, even if they have valid travel documents. According to Ukrainian NGOs, some Chechens are

not allowed to enter Ukraine even when they have valid travel documents, and want to cross Ukraine territory to return to Russia.

During the first half of November 2002, right after the Dubrovka theatre hostage crisis in Moscow, Chechens were denied access to **Polish and Lithuanian territory**. Lithuanian border guards refused entry to 26 Chechens and returned them to Belarus.²³³ At least 17 of them were detained by the Belarus authorities and subsequently put on a train bound for Moscow.²³⁴ Another group of 150 Chechens were stuck in Brest, Belarus, after Polish border guards refused to allow them entry into Poland. The border guards cited irregularities in their travel documents as the reason for the rejection²³⁵, but at the same time the Polish interior minister was reported to have cited "national security" as the reason why Poland would no longer allow in Chechens.²³⁶ Also Lithuanian officials linked the incidents to the terrorist act in Moscow. The issue was addressed by the Belarus President and UNHCR. UNHCR emphasized that denying Chechens the opportunity to apply for asylum was incompatible with the two countries' national laws and international commitments.²³⁴ After a couple of weeks the majority of the Chechens stranded in Brest were allowed to enter Poland to apply for asylum.²³⁸

Similar incidents happened on the Polish-Byelorussian border in 2003 and 2004. Several incidents have been brought to the attention of UNHCR when Chechens had been repeatedly denied entry to Poland with Polish border guards citing inconsistencies in their valid travel documents with their oral statements as to the purpose of their trips.²³⁹ Chechen asylum seekers were also reportedly prevented from crossing the border by Byelorussian law-enforcement officials.²⁴⁰

In September 2004, shortly after the school hostage crisis in North-Ossetia, a group of almost 100 persons, almost half of them children, were rejected at the Belarusian-Polish border and returned to Brest.²⁴¹

According to UNHCR, all of them possessed valid travel documents. According to the local Brest authorities a large group of Chechens were accepted by Polish Border Guards a few days later.²⁴²

These are some of the incidents that have been reported. It is reasonable to assume that many similar incidents are not reported, especially when it concerns individuals or small groups. With regards to the Lithuanian - Byelorussian border, UNHCR's office in Stockholm concludes that "following the conclusion of the re-admission agreement with the Russian Federation in 2003, cases of rejection have been reported of Russian citizens of Chechen nationality from the borders. Asylum seekers risk rejection and refoulement at the border."²⁴³

During the UN Human Rights Committees' consideration of Poland's 5th periodic report to the Committee, the Polish delegation was asked to comment on the situation of asylum seekers and the principle of non-refoulement, in particular with regard to Chechen asylum seekers. The delegation said that as of 2003 the non-refoulement principle was being fully observed in Poland, and this concerned nationals of Chechen origin in particular.

The French NGO, Forum Réfugiés, provided information in January 2005 that asylum claims made at **French ports** by Chechens on several occasions were regarded as "manifestedly unfounded" by the authorities, and that it was only after a court ruling that the applicants were allowed entry into French territory and to apply for asylum. In one case, in 2003, a woman with two children was returned to Moscow before the court had decided whether her claim was "well-founded" or not. Such incidents have led some French NGOs to publicly question if French authorities are willfully trying to deter Chechens from arriving to France and/or to protect "French interests" with Russia. ■

«There are several reports of instances when Chechen asylum seekers have been rejected from borders of European countries.»

²²⁸ UNHCR, "Country Operational Plan for Kazakhstan, Planning year 2005

²²⁹ Many joined relatives who had been living there since the Chechen population was deported to Kazakhstan en masse by Stalin in 1944. Officially, more than 30,000 Chechens that have been living in Kazakhstan for a long time enjoy Kazakh citizenship today.

²³⁰ UNHCR, "Country Operational Plan for Kazakhstan", Planning Year 2005.

²³¹ UNHCR, "Country Operational Plan for Azerbaijan", Planning year 2005.

²³² Ibid.

²³³ UNHCR, "Country Operational Plan for Georgia", Planning year 2005.

²³⁴ Ibid.

²³⁵ UNHCR, "Asylum levels and Trends in Industrialized Countries, 2004", Table 3.

²³⁶ See for example UNHCR, "Asylum Levels and Trends in Industrialized Countries, 2004", p. 6.

²³⁷ UNHCR, "Asylum Levels and Trends: Europe and Non-European Industrialized Countries, 2003, 24 February 2004, Table 7.

²³⁸ UNHCR, "Asylum levels and Trends: Europe and Non-European Industrialized Countries", 2003, 24 February 2004, p. 5.

²³⁹ UNHCR, "Asylum Levels and Trends in Industrialized Countries", 2004.

²⁴⁰ Information provided by Ukrainian NGOs in January 2005.

²⁴¹ UNHCR, "Asylum Levels and Trends in Industrialized Countries, Third Quarter, 2004", p. 5.

²⁴² In theory, asylum seekers can also approach a foreign embassy in her home country, but few countries grant asylum via their embassies.

²³⁰ See Norwegian Refugee Council, "Report from seminar on IDPs from Chechnya", Moscow, August 2004. See www.chechnyaadvocacy.org/refugees

²³¹ Information provided by Ukrainian NGOs.

²³² If entry is prohibited Ukrainian border guards put stamps in the passports of the person. Prohibition for entry to Ukraine varies from 2 to 5 years.

²³³ UNHCR News Stories, "UNHCR urges Poland, Lithuania not to turn away Chechens", 14 November 2002.

²³⁴ Ibid.

²³⁵ According to sources within UNHCR.

²³⁶ Supra note 233.

²³⁷ Supra note 235.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Many Chechens in Poland interviewed by the Czech NGO, Organization for Aid to Refugees (OPU), in December 2003 complained about the treatment they received from the Byelorussian authorities. According to OPU, the Byelorussian border guards often return asylum seekers from the Byelorussian-Polish border.

²⁴¹ Information from sources within UNHCR.

²⁴² Ibid.

²⁴³ Information from UNHCR Stockholm, 6 December 2004.

Chapter 3: Access to asylum procedures

The existence of a refugee determination procedure and access to that procedure is another necessary precondition for a person to be able to exercise her or his rights as a refugee or person in need of other forms of protection. All the countries covered in this report have national asylum status determination procedures, but Chechen asylum seekers have no, or only limited, access to asylum status determination procedures in countries neighbouring the Russian Federation. It is a concern that countries to which Chechens have easiest access do not grant them access to their asylum systems. Most Chechens reside there without any legal status.

No access to national asylum procedures in Kazakhstan, Azerbaijan and Belarus

The authorities in Kazakhstan, Azerbaijan and Belarus do not register applications for asylum filed by Chechens. This happens despite the fact that these countries have ratified the 1951 Convention, and have national asylum procedures. The Kazak authorities consider all citizens of former Soviet Republics as immigrants, not asylum seekers.²⁴⁴ The non-status of Chechen refugees is, however, considered to be a particularly politically sensitive issue, and the position of the Kazak government presumed to be a reflection of Moscow's view that Chechens are not in need of international protection. According to a representative of UNHCR in Kazakhstan, "under pressure from Moscow, which views the conflict in Chechnya as an internal matter, [President] Astana, has refused to acknowledge their refugee status all together."²⁴⁵ The Azeri government has never officially stated its reasons for denying Chechens access to the asylum procedures. There have been cases where other CIS-citizens have been granted asylum in Azerbaijan.²⁴⁶ According to UNHCR, the government finds Chechens too politically inexpedient to consider as refugees.²⁴⁷ According to national legislation in Belarus, all applications for asylum filed with the authorities are to be registered and reviewed on their merit. Despite this, the authorities refuse to register applications from citizens of the Russian Federation. When refusing to register these applicants, Belarus immigration authorities and courts refer to the Treaty on the Creation of a Union State between Belarus and Russia and the Treaty on Equal Rights of the Citizens, which give Russian citizens the right to obtain a residence permit. According to sources in UNHCR, the real reason for these rejections is the political sensitivity of such cases given the proclaimed integration policy of the two states.

In Azerbaijan, Kazakhstan and Belarus, Russian citizens can reside or settle permanently upon registration with the authorities. As in the Russian Federation, the



A Chechen refugee with her child in Pankisi, Georgia. Many of the Chechen children in Georgia are born with handicaps and many are suffering from psychological trauma. October 2003. Photo: The Norwegian Helsinki Committee.

systems of registration in these countries are based on the Soviet "propiska" regime, and the difficulties acquiring registration are similar to those in Russia (see part 1 of the report, section 3.2).

In Azerbaijan, Russian citizens who will be staying in the country for more than 30 days are obliged to register with the police in Baku within three days after arrival. The formal criteria for registration are an internal passport and a lease agreement. In practice, however, the process is much more complicated. According to UNHCR in Baku, it is common for registration officials to demand large bribes or make bureaucratic obstacles to registering people. This is also the case for Azeri citizens who want to register in Baku. Chechens often chose not to register, not just because they are likely to face such problems, but also because they fear increased attention from the police. UNHCR in Baku has con-

firmed that only a small number of Chechens have obtained legal registration.

The situation in Kazakhstan is similar. Russian citizens are required to register with the authorities in order to stay in the country legally, with the right to work or attend school. The registration of Chechens is, however, unpredictable, and, according to the local NGO, "Vainakh", the Association for the Cultural Development of the Ingush and Chechen People, "totally depends on the mood of the heads of the local migration police".²⁴⁸ According to "Vainakh", Chechens are registered for between 15 days and three months, or refused registration altogether. A lack of registration can be punished with high fines and administrative expulsion from the country. According to Vainakh, Chechens often choose not to contact the local police to register because they fear repercussions. Others pay bribes to "buy" more time.

According to the treaty of Equal Rights of the Citizens of Belarus and Russia (1998), Russian citizens have the right to legally reside, work and settle permanently in Belarus. They must, however, obtain registration. In order to get registration you need to have a job, and to find someone willing to register you. According to sources within UNHCR all ethnic non- Russians would have great problems obtaining registration in Belarus.

From prima facie recognition to restricted access in Georgia

Georgia is the only country that has recognized Chechens in need of protection as a group. In 1999, Georgia recognized a group of an estimated 7000 Chechens as prima facie refugees. By mid-2004, the number of Chechen refugees in Georgia was reduced to almost half of the original number. Potential Chechen asylum seekers to Georgia now have to apply for asylum with the Ministry of Refugees and Accommodation.²⁵³ According to UNHCR, Chechens applying for asylum in Georgia are currently in a very vulnerable position. Their office in Tbilisi has provided information that in early 2005 some Chechen asylum seekers entered Georgia illegally from Azerbaijan. When they contacted the Ministry of Refugees and Accommodation they were taken to an anti-terrorist center where they were interrogated before they were returned to the Azeri border.²⁵⁴

Chechen refugees reside in Pankisi Gorge, only kilometers away from the border with Chechnya. The security situation inside the valley has been a concern, but the situation is reported to have somewhat improved in 2004.²⁵⁵ The Russian authorities claim that terrorists reside in and enter Chechnya from the Pankisi Gorge, and Georgian authorities have repeatedly faced pressure from Russian authorities to expedite the voluntary

Registration by UNHCR in Azerbaijan and Kazakhstan

In Azerbaijan and Kazakhstan UNHCR has negotiated so-called "de facto temporary protection regimes" with the local authorities whereby the governments let UNHCR register refugees from Chechnya. Chechens registered by UNHCR are given a registration certificate that protects them against forced return to Russia. This arrangement is described by UNHCR as "a pragmatic approach, and the only practical measure to ensure protection against forcible return to Chechnya"²⁴⁹. The Azeri and Kazakh governments tolerate Chechens staying on their territory, but do not accord any legal rights or access to any social assistance.

Chechen refugees do not have the right to work in these countries. Absence of employment opportunities, poverty and poor health conditions have had a serious negative impact on the condition of refugees in Azerbaijan and Kazakhstan. Many are dependent on assistance from UNHCR, but UNHCR's resources for providing financial, medical and other support are strained. Poor living standards influence people's health negatively. UNHCR in Baku has noticed a high rise in the number of medical consultations and hospitalizations in 2004.

During the first year of the current conflict, Chechen refugees got help from quite a few international humanitarian governmental organizations, including those from Arab countries. After 9/11, all Arab organization stopped functioning in Azerbaijan. According to UNHCR, the population of Chechen asylum seekers in Azerbaijan is becoming increasingly destitute and despondent.²⁵⁰

Resettlement of Chechens to third countries is taking place, but on a very small scale. The numbers of persons resettled were 31 in 2002, 81 in 2003 and 23 by mid-2004.²⁵¹ Countries that have accepted Chechen refugees from Azerbaijan include Canada, the US, Sweden, Ireland and the Netherlands. According to UNHCR in Azerbaijan, larger scale resettlement to third countries remains difficult to effect in practice, and UNHCR will continue to advocate that the Azerbaijani government grant Chechen asylum seekers a subsidiary form of protection. During the discussion of Azerbaijan's third and fourth report to the UN Committee on Elimination of Racial discrimination, the Azeri authorities stated that the situation of those not considered refugees, but who could not return to their home country, was currently being discussed between Azeri officials and the International Organization for Migration.²⁵²

«According to UNHCR, the government finds Chechens too politically inexpedient to consider as refugees.»

«It is a concern that countries to which Chechens have easiest access do not grant them access to their asylum systems. Most Chechens reside there without any legal status.»

«Georgia is the only country that has recognized Chechens in need of protection as a group.»

return of the Chechen refugee population to Chechnya. According to UNHCR, this pressure has not developed into any concrete action.²⁵⁶ In August 2004, the Georgian authorities conducted a re-registration of Chechen refugees in Pankisi. The refugee population has been concerned that some Chechen lost their refugee status after the re-registration.²⁵⁷ Human rights organizations have voiced concern about human rights' violations suffered by Chechen refugees in Pankisi as a result of anti-terrorist operations conducted by the Georgian security services and the Interior Ministry, and argued that food distribution by UNHCR in the Gorge is unsatisfactory.²⁵⁸ Chechen refugees in Pankisi have clearly indicated that they are not interested in return in the current circumstances, but an unknown number of refugees returned spontaneously in 2003 and 2004. According to UNHCR, the refugees are tired of harsh living conditions and a lack of possibilities for a self-sustaining livelihood in the Valley.²⁵⁹ UNHCR is resettling Chechen refugees to third countries. In 2004, about 140 persons (40 cases) were received by Sweden, Ireland, the Netherlands and Canada.²⁶⁰

Limited access to asylum procedure in Ukraine
Severe shortcomings in the asylum system and special

instructions regarding Chechens seriously hamper Chechens' access to the asylum procedures in Ukraine. General shortcomings in the asylum procedures include strict deadlines for submission of claims, deprivation of refugee status in administrative decisions upon mere suspicion of involvement in activities posing a threat to national security, and a lack of mechanisms to hand asylum seekers and applicants over from border guards and law-enforcement authorities to the immigration authorities.²⁶¹ According to information from Ukrainian NGOs, the immigration authorities increasingly deny access to refugee status determination procedures for Chechens. Border guards in the Zakarpattia province, for example, keep Chechens in a separate detention facility while preparing their deportation. During the first half of 2004, 759 Chechens were apprehended there, but border guards did not hand a single asylum application to the Regional Migration Service. Although it is theoretically possible that none of these 759 had any protection concerns, this is highly unlikely given the current situation for Chechens in the Russian Federation, and it would seem that the border guards did not provide an opportunity for effective protection for Chechens fleeing persecution. ■

Access in EU countries: The Dublin Regulation

The processing of asylum claims in EU countries (plus Iceland and Norway) is regulated by the Council Regulation (EC) no 343/2003, the so-called "Dublin II Regulation". The regulation establishes which party to the regulation is responsible for examining asylum claims submitted in one of the member states. It aims at ensuring both that each asylum application is being examined and that asylum seekers do not apply in more than one Member State (the 'one-chance-only' principle). The regulation establishes a hierarchy of criteria to determine responsibility. In practice, very often the first state on EU territory entered by the asylum seeker is the one responsible for the determination of refugee status. But there are exceptions to this rule, most importantly in cases where a family member has been recognised as a refugee or his application is currently being examined in another member state, where the applicant is an unaccompanied minor with a family member legally present in another member state, or where the applicant holds a valid visa or residence document of another member state.²⁶² Whenever a state party is able to establish that another party is responsible for the application, the latter is obliged to accept the asylum seeker. However, the State where the application was first lodged may choose not to return the applicant to the responsible State, for example for purposes of family unifica-

tion.²⁶³ National legislation determines the conditions for choosing not to do so. As a general rule, a country that receives an asylum seeker and can establish that another "Dublin" country is responsible, will not process that person's case on its merits, but will make a decision in an accelerated procedure to transfer the applicant. The transfer decision may be challenged, but the appeal does not necessarily have suspensive effect.²⁶⁴

In May 2004, 8 former communist countries, including Poland and the Czech Republic and Slovakia, joined the EU, and the Dublin regulation. This strongly affected Chechen asylum seekers' access to asylum procedures. Before this date, Chechens were in most cases able to have their applications processed on their merits in Austria, Germany or other Western European countries even after having been registered as asylum seekers in Poland, the Czech Republic, Slovakia or other new member states. After EU enlargement Chechens arriving in these countries often have their asylum claims processed there, as these are usually the countries of first entry into the EU – even if they manage to reach the territory of countries further west. Thus, a large number of Chechen asylum seekers are currently waiting to be returned to Poland, the Czech Republic, and Slovakia from Western European countries.

Chapter 4: Detentions

The Refugee Convention, Article 31 exempts refugees from punishment due to illegal entry. UNHCR Detention Guidelines stipulate that the detention of refugees should be neither automatic nor unduly prolonged²⁶⁵, and UNHCR Executive Committee Conclusion 44, states that detention of asylum seekers "should normally be avoided."²⁶⁶ Chechen asylum seekers are reported to be kept in detention after crossing the border illegally both in EU and non EU countries. There is a lack of documentation about the extent, length and conditions of these detentions. We can only provide some examples and underline the importance of further research on this matter.

UNHCR is aware of several cases of the detention of Chechens in Belarus.²⁶⁷ In Ukraine, asylum seekers in general are detained together with other undocumented foreigners in Ministry of Interior and Border Guard Detention Facilities. Some asylum seekers are detained for many months in detention facilities that are over-crowded and do not provide sufficient nutritional, medical and sanitary provisions.²⁶⁸ Special detention facilities for Chechen asylum seekers exist. Detentions are usually based on invalid documents or attempts to irregularly cross the border.

In 2002, the Norwegian Helsinki Committee and the Norwegian Organization for Asylum Seekers documented incidents where Chechens, including children, were held in detention for several months in Greece.²⁶⁹ In some countries, Chechens who are to be returned to another Dublin country are detained. This is the case at least in Austria²⁷⁰, Germany²⁷¹, and Belgium²⁷². According to the Czech NGO, Organization for Aid to Refugees, in the Czech Republic, claimants that are to be transferred to another Dublin country (mainly Poland) are often detained before the transfer is made.²⁷³ The organization has not observed cases of detention of someone returned from Austria or Germany pending the outcome of his or her asylum application in the Czech Republic.

NGOs have been concerned about reports from Chechen asylum seekers that Chechens have been kept in detention in Poland for several months. According to Polish legislation, asylum seekers who enter Poland illegally – without the necessary visa – can be detained. The length of a stay in a detention centre should not exceed 90 days, in exceptional cases it can be extended, but it cannot be for longer than one year.²⁷⁴ 95 percent of Chechen asylum seekers arriving in Poland are estimated to arrive without a valid visa for Poland.²⁷⁵ According to rep-

resentatives of German NGOs, who visited Poland in November 2004, all asylum seekers arriving without a visa risk being detained, but Chechens who apply for asylum when entering Poland are normally not detained, mainly due to lack of places in detention centres.²⁷⁶ The German NGO mission did, however, come across a Chechen family with a young child in the detention centre they visited.²⁷⁷ According to Polish NGOs that monitor the situation, they believe that detentions often happen without NGOs knowing anything about it.²⁷⁸ The German mission concluded that it seemed clear that the Polish authorities intend to build up their capacity for detaining asylum seekers.²⁷⁹

Asylum seekers risk detention in Poland not just as a result of arriving without proper documents. According to Polish legislation, persons who try to leave Polish territory illegally can be imprisoned for up to three years.²⁸⁰ It is hard to obtain concrete facts about the practice of detaining those who have tried to leave Polish territory illegally. According to the Polish authorities, as a rule, this does not take place, but individual cases are known to NGOs.²⁸¹ According to UNHCR in Poland, it is not rare for persons who have tried to leave Polish territory illegally to be kept in detention for several months.²⁸² The Polish Helsinki Committee confirms that the detention of persons returned from other Dublin countries is taking place, but is not able to say why this happens in some cases, and in other cases not.²⁸³ The German NGO-mission to Poland concluded that Polish practice with regard to the detention of asylum seeker prevents asylum seekers from considering Poland a safe country of refuge.²⁸⁴ ■

²⁴⁴ US Committee for Refugees and Immigrants, World Refugee Survey 2004, Country Report on Kazakhstan.

²⁴⁵ Integrated Regional Information Networks, "KAZAKHSTAN: Chechens mark 10th anniversary of war", 13 December 2004.

²⁴⁶ A Turkmen national was granted asylum in Azerbaijan in 2004.

²⁴⁷ UNHCR, "Country Operational Plan for Azerbaijan", Planning Year 2005.

²⁴⁸ Information provided by the NGO Vainakh, December 2004.

²⁴⁹ Ibid.

²⁵⁰ See supra note 218.

²⁵¹ Numbers provided by UNHCR in Azerbaijan in January 2005.

²⁵² Reliefweb, Press release, "Committee on elimination of racial discrimination considers report of Azerbaijan", 7 March 2005.

²⁵³ Information provided by UNHCR in Georgia, April 2005.

²⁵⁴ Ibid.

²⁵⁵ UNHCR, Country Operational Plan for Georgia, Planning Year 2005.

²⁵⁶ Ibid.

²⁵⁷ KavkazCenter.com, "Anxiety among Chechen residents", 8 March 2005.

²⁵⁸ The Norwegian Helsinki Committee and the International Helsinki Federation, Report, "Fact-Finding Mission to Georgia", 21 – 27 October 2003.

²⁵⁹ UNHCR, supra note 220.

²⁶⁰ Numbers provided by UNHCR in Georgia in December 2004.

²⁶¹ Information from Legal-Counseling Centre of the Trade Union "Solidarity", "Human Rights Have No Borders", Ukraine.

²⁶² Council Regulation (EC) no 343/2003, articles 6 – 14.

²⁶³ Council Regulation (EC) no 343/2003, articles 3 (2) and 15.

²⁶⁴ Council Regulation (EC) no 343/2003, article 19 (2).

²⁶⁵ UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers (February 1999).

²⁶⁶ UNHCR Executive Committee Conclusion on Detention of Refugees and Asylum Seekers, No. 44 (1986).

²⁶⁷ According to sources within UNHCR.

²⁶⁸ Supra note 42.

²⁶⁹ The Norwegian Organization for Asylum Seekers and the Norwegian Helsinki Committee, "The Transfer of Chechen Asylum Seekers from Norway to Greece in Accordance with the Dublin Convention", 2002.

²⁷⁰ See Rozumek Martin, "The Fiction of Harmonized Safety", Article for www.migrationonline.cz, November 2004.

²⁷¹ See Barbara Esser (Biefelder Flüchtlingsrat), Barbara Gladysch (Mütter für den Frieden), und Benita Suwelack (Flüchtlingsrat Nordrhein-Westfalen), "Die Situation tchechenischer Asylbewerber und Flüchtlinge in Polen und Auswirkungen der EU-Verordnung Dublin II", February 2005.

²⁷² Information provided by the Belgium Refugee Council, 14 March 2005.

²⁷³ Information provided in April 2005.

²⁷⁴ The Polish Aliens Act, article 106.

²⁷⁵ Supra note 271, p. 6.

²⁷⁶ Ibid, p. 11.

²⁷⁷ Ibid, p. 9.

²⁷⁸ Ibid, p. 10.

²⁷⁹ Ibid, p. 11.

²⁸⁰ Ibid, p. 8.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Supra note 271, p. 27.

²⁸⁴ Ibid, p. 1.

Chapter 5: Status determination in European countries outside the EU

Due to the exclusion of Chechens from asylum procedures in Azerbaijan, Kazakhstan and Belarus the possibilities for Chechens to seek asylum in European countries outside the EU is limited.²⁸⁵ Individual cases may appear in other countries, but among European non-EU countries that receive relatively large groups of Chechens; this group has only had access to asylum determination procedures in Ukraine and Moldova and Georgia. However, the possibilities of obtaining protection in these countries are scarce.

Ukraine

In 1993-96, special temporary regulations regarding “war refugees” from Chechnya were in force in Ukraine. Since 1996, however, asylum seekers from Chechnya have been channelled through normal procedures. Between 1996-2004 about 380 refugees from Chechnya were granted asylum in Ukraine.²⁸⁶ Representatives of Ukraine’s civil society have reported that the Ukrainian government has secret agreements with Russia to do its best not to recognize Chechens as refugees, and that this makes it more difficult for them to obtain refugee status than for other asylum seekers.²⁸⁷ 90 percent of Chechen asylum seekers are estimated to be rejected by the immigration authorities with reference to safe country of origin/ the internal protection alternative (see chapter 7).²⁸⁸ According to the Ukrainian NGO, Human Rights Have no Borders, the real reason for the rejections is that the Ukrainian authorities support Russia’s claim that there is no armed conflict in Chechnya, only fight against terrorism. According to the same source, corruption within the Ukrainian immigration service does sometimes enable Chechens to obtain refugee status. Ukraine’s policy with regards to Chechens is expected to change after the Western-orientated politician, Victor Yushenko, won the presidential election in Ukraine in late 2004.

Moldova

In February 2005, 42 of a total of 184 asylum seekers in Moldova were Chechens.²⁸⁹ According to human rights organization in Moldova, as of January 2005 only two Chechens had been recognized as refugees in Moldova since the state took over the refugee status determination procedure from UNHCR in January 2003. The authorities are generally of the view that Chechens would be more eligible for subsidiary protection, but there is no possibility of this at the moment as a draft law on subsidiary forms of protection has not yet been passed. In February 2005 Chechen asylum seekers in Moldova were on hunger strike

²⁸⁵ Even though Switzerland and Norway are not members of the EU, they are parties to the Dublin regulation, and are therefore in this context included in the discussion regarding EU countries.

²⁸⁶ Source: Human Rights Have No Borders (Ukrainian NGO)

²⁸⁷ Ibid.



A Chechen refugee holds a Chechen flag and a portrait of the slain Chechen rebel leader Aslan Maskhadov during a protest at the Russian embassy in Tbilisi, March 14, 2005. Photo: Scanpix/REUTERS/David Mdzinarishvili

protesting against their treatment in Moldova, in particular against lengthy asylum procedures.

Georgia

The Norwegian Refugee Council does not have information about the number of Chechens that may have applied for asylum in Georgia in 2004. According to the US Committee for refugees and Immigration, in 2004 the Refugee Department within Georgia’s Ministry of Refugees and Accommodation processed only four asylum applications, all from Iranians, and had accepted none by year’s end.²⁹⁰ ■

²⁸⁸ Ibid.

²⁸⁹ According to information from NGOs in Moldova, February 2005.

²⁹⁰ US Committee for Refugees and Immigrants, World Refugee Survey 2004, Country Report on Georgia 2004 at <http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=107>

Chapter 6: Status determination in the EU, Norway and Switzerland

6.1. An overview

Austria, Poland, and the Czech Republic topped the list of countries receiving asylum seekers from the Russian Federation in 2003, followed by Germany, France, Norway and Slovakia. Chechens have usually considered the Central and East-European states as transit countries on their way to countries further west, and many are presumed to have been registered as asylum seekers in more than one country at the same time. According to the Czech NGO, the Organization of Aid to Refugees, which has interviewed Chechen asylum seekers in Poland and the Czech Republic, family links play an important role in the secondary movement of Chechen asylum seekers.²⁹¹ Recognition rates, as well as integration systems for recognized refugees, are also important factors in the secondary movements of Chechens: “They often express their goal to have “a normal life” elsewhere. However, during [-] interviews with them, they often said that they did not consider the Czech or Polish [asylum procedures] procedure and integration system to be sufficient for achieving their goal.”²⁹²

Poland has been the main “point of entry” for Chechen asylum seekers to the EU and other Western-European countries for several years. According to a 2004 IOM study, a growing share of persons from Russia is turning to organized trafficking through Poland. The study also reveals that Chechens who apply for asylum in Poland often use special “middlemen of their own migrant group” to organize and facilitate transport to, and to find out-

how to stay in Poland.²⁹³ Most Chechen asylum seekers have registered in Poland, but moved on to Austria and other EU countries via the Czech Republic. According to estimates from the Polish Immigration Service (URiC) in 2003 three quarters of all Chechens who applied for asylum in Poland moved on without waiting for their case to be processed.²⁹⁴ The Czech government has estimated that about 90 percent of Chechen asylum seekers do not stay in the country for more than 35 days.²⁹⁵ After May 2004, Chechens who arrived in the Czech Republic after having been registered in Poland were returned to Poland to have their applications processed there. The number of asylum seekers arriving from Russia in the Czech Republic decreased significantly from 2003 to 2004, while the number of Chechen asylum seekers in Poland increased. According to the Polish immigration authorities, Chechen asylum seekers have continued to leave Poland before their cases have been processed there, even after Poland entered the Dublin regulation.²⁹⁶

There was also a significant decrease of asylum seekers from Russia to Norway in 2004. This may be due to the fact that Norwegian immigration authorities “froze” the processing of applications from Chechnya for a large part of the year (see section 6.3), creating insecurities about the possibilities of obtaining protection there. If this assumption is correct, it indicates that Chechen asylum seekers are well informed about the asylum policies in different countries.

«Poland has for several years been the main “point of entry” for Chechen asylum seekers to the EU and other Western-European countries. According to a 2004 IOM study, a growing share of persons from Russia is turning to organized trafficking through Poland.»

Number of asylum seekers from the Russian Federation in 2003:²⁹⁷

1. Austria	6 715
2. Poland	5 581
3. Czech	4 852
4. Germany	3 389
5. France	3 251
6. Slovakia	2 663
7. Norway	1 923
8. Belgium	1 680
9. Sweden	1 361
10. USA	1 001

Number of asylum seekers from the Russian Federation in 2004:²⁹⁸

1. Poland	7 180
2. Austria	6 185
3. France	2 919
4. Germany	2 767
5. Slovakia	2 402
6. Czech Rep	1 499
7. Belgium	1 361
8. Sweden	1 288
9. Norway	937
10. USA	884

«The great differences in recognition rates show that for many Chechens, the outcome of their application for asylum largely depends on the country in which their claim will be processed.»

Refugee recognition rates

According to statistics provided by UNHCR, the refugee recognition rate²⁹⁹ for Russian asylum seekers in European and industrialized countries in 2003 was 21 percent.³⁰⁰ For some countries this number includes *decisions* made in both first and second instance, and it should be emphasized that the recognition rate therefore is not an accurate indication of how many *persons* were granted asylum. A case that is rejected in both first and second instance will count twice, and the refugee recognition will be underestimated. What this number tells us, therefore, is that *at least* 21 % of the asylum seekers from the Russian Federation, whose cases were processed in 2003, were recognized as refugees and granted asylum. It should also be underlined that this number concerns asylum seekers from Russia, of whom Chechens are considered to constitute the majority, but not all.

The tables above show that recognition rates for Russian citizens, most of whom are considered to be of Chechen origin, vary considerable in different European countries. Austria stands out with a refugee recognition rate that is considerably higher than any other country (79.6 percent). The “difference” to the next European country (France at 39.5 percent) is considerable. There is also a dramatic gap between Austria and its neighbouring, new EU countries. In 2003, Austria’s

neighbour Slovakia had a recognition rate of asylum seekers from Russia at 0 percent. Refugee recognition rates for Russian asylum seekers in the Czech Republic were only 5.4 percent. In Poland, the refugee recognition rate for asylum seekers from Russia in 2003 was 9.7 percent - somewhat higher than in the Czech Republic, but dramatically lower than in Austria. The great differences in recognition rates show that for many Chechens, the outcome of their application for asylum largely depends on the country in which their claim is processed.

Policies towards Chechen asylum seekers in European countries

Very few governments render public guidelines or policy with regard to Chechen asylum seekers. It is often unclear, even from individual letters of rejections/approval, the exact reasons why an asylum seeker has been rejected or granted asylum. Countries change their policies over time, and the first and the second instance in a country may have different policies. This may also be the case between different regions in the same country. In Germany, for example the different “länder” (regions) have their own first instance asylum procedures. Because of these factors, it is difficult to provide accurate information about government’s policies with regard to Chechen asylum seekers. Our report is based on information from NGOs and other actors providing

assistance to Chechen asylum seekers, or monitoring their situation. This information was provided between March 2004-April 2005. The information may not always be complete, but should be sufficient to provide a picture of the main trends.

In a few European countries³⁰², ethnic Chechens who have fled from Chechnya (who can establish that they risk being victim of serious human rights violations) seem to be granted asylum as long as they are able to establish their Chechen origin. Rejections happen mostly when the immigration authorities do not find it credible that the applicant actually is Chechen. In many countries³⁰³, however, a majority of Chechen asylum seekers is not considered to qualify as refugees. Governments largely seem to acknowledge that gross and systematic human rights violations are taking place in Chechnya, but in many cases do not consider violations that many Chechens have been, or fear being a victim of, to amount to persecution for one of the reasons mentioned in the 1951 Convention (political opinion, religion, ethnicity, race, belonging to a particular social group). Unless they can establish that they have done something that put them at particular risk of grave human rights violations, (like being a Chechen fighter, a well-known human rights activist, a politician or a close relative of such persons) they are considered to be victims of armed conflict or generalized violence, and are not granted asylum. In some countries, some of those Chechen asylum seekers not considered to qualify as refugees are granted other forms of protection. This is, however, not always the case, and when it is, the protection provided is often weaker than protection granted to those recognized as refugees. In many cases, Chechen asylum seekers are granted neither asylum nor other forms for protection, but referred to return to the Russian Federation and resettlement in other regions than Chechnya. (The so-called “internal protection alternative”). In a few countries, Chechens not granted protection, but for various reasons not considered not able to be deported to the Russian Federation, are granted so-called “tolerated stay permits”. This status protect them against returns to the Russian Federation, but provides the individuals with a weak legal status in the country of asylum.

The following section will describe the policies towards Chechen asylum seekers in different European countries. The first part will address policies on recognizing refugee status. The second part will describe the application of other protection statuses granted to Chechen asylum seekers. Finally, the last part of this section will describe the policy of granting “tolerated stay” in Germany and Poland. The application of the so-called “internal protection alternative” in refugee status determination procedures will be discussed in a separate chapter.

6.2. Policies on asylum

In new EU countries

For most Chechen asylum seekers, the new EU

Member states are their first point of entry to the EU. These countries are considered less prepared to cope with large influxes of asylum seekers than “old” EU countries, and UNHCR has expressed concern that the Dublin Regulation, which makes it possible to return asylum seekers to the first EU country in which a person sought asylum, may overwhelm the weak asylum systems in these countries.³⁰⁴

The Slovak Republic

The Slovak Republic stands out as a country that has not recognized any Chechen asylum seeker as refugees. In an analysis of the decisions by the Slovak Migration Office UNHCR’s office in Bratislava concluded that the reasons for denial generally are based on a restricted interpretation of the Geneva Convention.³⁰⁵ In 35 cases in which the applicant had been returned from the Austrian authorities the rationale of the decision was that “*the asylum seeker irresponsibly left the refugee centre during the first asylum procedure and illegally crossed the Slovak-Austrian border, and this confirms that the [person] had no serious intention to stay in the Slovak Republic. If he had been persecuted as claimed, he would have remained in the first country, where eventually he would be granted asylum*”³⁰⁶. UNHCR also noted that the reasoning of cases by the Slovak authorities had been general instead of individual and concluded that “the fact that the decisions are mostly all the same using the same terminology denotes a lack of depth in the analysis of the case.” Furthermore, the benefit of doubt was never considered as well as the possibility to utilize the option of granting protection for humanitarian reasons. There is no indication that Chechens are particularly discriminated against. Between January and September 2004, Slovakia had received 9025 asylum seekers, but only 2 persons had been granted asylum.³⁰⁸ With a general 0.002 refugee recognition rate in the first ten months of 2004, Slovakia has the lowest refugee recognition rate in Europe.

Poland

Poland, the current main recipient of asylum seekers from Chechnya, granted asylum to less than 10 percent of this group in 2003. Only 154 Russian citizens were recognized as refugees. According to the Polish Helsinki Committee, “the Polish authorities do not consider Chechens as persons who have a well-founded fear of persecution because of their nationality, but as victims of war who have not proved individual persecution on the territory of Chechnya”. Refugee status is granted only to persons who can prove that they have been political activists or that they have been fighting against Russian soldiers.³⁰⁹ Almost all positive decisions (99 percent) were granted in first instance.³¹⁰ Decisions in the second instance can be appealed to the administrative courts, but they only assess if the decision is in accordance with the law (if there has been any violation of procedural or material law) and they may only cancel a decision and send the case back to the first or second instance. In 2004, the number of

Refugee recognition rates for Russian asylum seekers rates in various countries in 2003*

Country	Refugee recognition rate	Number of positive decisions
Austria	76.9	788
US	61.3	379 Executive office of Immigration Review ³⁰¹ 224 US Immigration and Naturalization Office
Canada	59.1	178
France	36.4	255 First instance (FI)
	39.5	828 Administrative review decisions (AR)
Spain	31.1	32
Germany	11.8	354 New applications (NA)
	30.0	9 Repeat/reopened applications (RA)
Belgium	16.9	13 Administrative review decisions (AR)
Hungary	12.9	9
Norway	11	139
Poland	9.7	185
Denmark	8.8	10
Ukraine	6.5	6
Czech Republic	5.4	62
Switzerland	4.2	12
Netherlands	4.1	17
Sweden	1.6	19
United Kingdom	1.19	10
Finland	0.0	-
Cyprus	0.0	-
Slovakia	0.0	-

* The numbers are from UNHCRs 2003 Global Refugee Trends, 15 June 2004, Table 8.

recognized Chechens increased to 265.³¹¹ Asylum seekers from Russia constituted 88 percent of all asylum seekers arriving in Poland in 2004.³¹²

In a decision from the Supreme Administrative Court in Warsaw in June 2004, Chechen asylum seekers were divided into three different categories, of which only one was considered to qualify for refugee status:

“The first group is the civilian population, people who are afflicted and suffer due to the military conflict, who did not get involved in this conflict, nevertheless becoming its victims. The other group is the Chechen fighters, participants of the conflict on the Chechen side, activists of the liberation movement, who are wanted by the Russian military forces and authorities, exposed to repressions and prosecutions and who cannot count on a fair trial. Another category is those Chechens who use terror as their main course of action, i.e. persons who are war criminals, common criminals or perpetrators of acts contrary to the aims and principles of the United Nations (Article 1 letter ‘F’ of the 1951 Geneva Convention). In the opinion of the Refugee Board, the refugee status should be considered only with reference to the second group of inhabitants of Chechnya. The first group that is the fugitives from war-afflicted territories should be granted temporary protection for humanitarian reasons.”

The Czech Republic.

According to the Czech Organization for Aid to Refugees (OPU), Chechen asylum seekers have a very small chance of being granted asylum in the Czech Republic. The main arguments used by the Ministry of Interior in the Czech Republic when rejecting Chechen asylum seekers are reported to be that:

- bad social conditions and security conditions apply generally and affect the whole population
- a fear of arbitrary arrests does not constitute persecution since the whole male population is targeted. Further, these arrests are generally reported as being motivated by economic reasons
- the Russian Ministry of interior has started fulfilling its obligations
- significant improvement in the security situation in Chechnya, though acknowledging that the fights between Russian forces and Chechen rebels continue to some extent.

Czech NGOs have argued that the Czech authorities have been deliberately slowing down the refugee status determination procedure at times in the hope that Chechen asylum seekers will move on to another country. Czech legislation does not provide an absolute deadline for how long an applicant must wait for a decision, and many Chechens must wait more than a year. According to OPU, the long waiting period, with dire prospects of getting a positive answer has made some Chechens decide to

return to Russia voluntarily. Rejected asylum seekers can appeal to the courts. It is, however, a concern that the Czech courts are overburdened, and that the courts cannot overturn a decision made in first instance, but simply refer a case back to the first instance if the decision is considered to have been taken in an unlawful manner. According to OPU, in 2003, this was the case with only one Chechen case.

Other EU-countries, Switzerland and Norway

Austria

Austrian NGOs confirm that almost all Chechen asylum seekers are granted asylum in Austria, and that rejections normally only happen in cases of lack of credibility.³¹³ In mid-2004, the first instance body started to grant negative decisions to Chechens, allegedly due to instructions from the Minister of Interior who was concerned about the high number of recognized Chechens in Austria.³¹⁴ As of December 2004, all negative decisions had, however, been cancelled by the second instance body (UBAS) that is independent from the government and “gives asylum to nearly all Chechen refugees”.³¹⁵ According to the Austrian NGO, Asyl in Not, the recognition rate for Chechens in Austria was 96 percent at the end of 2004.

France

According to the French NGO, Forum Réfugiés, as of January 2005 most Chechen asylum seekers granted access to the asylum procedures seemed to obtain asylum.³¹⁶ In most cases where refugee status was denied, it was because the French authorities were not convinced that the applicant was of ethnic Chechen origin.³¹⁷

Belgium

According to estimates by the Belgian Board of Appeal, as of March 2005 about 50 percent of the asylum seekers from Chechnya are granted asylum.³¹⁸ Belgian legislation does not provide for any other forms of protection. The Appeal Board is estimated to have a 60- 70 percent recognition rate for Chechen applicants.³¹⁹ Rejections at appeal level will generally happen only when there is no doubt that the applicant is not from Chechnya, or if they have had a permanent residence registration outside of Chechnya for many years.³²⁰ UNHCR in Brussels confirms that Chechens who can prove that they were in Chechnya during the second conflict will normally get asylum.³²¹

Netherlands

In spring 2004, the responsible Minister informed Parliament that in 2003 45 Chechens had applied for asylum, and that 32 had been granted refugee status in the first instance and another 20 after appeal.³²² The Dutch Refugee Council considers the interpretation of the refugee convention to be highly individualised in the Netherlands. In their view, asylum seekers from countries with a pattern of gross human rights viola-

tions seem to have even less of a chance to qualify as refugees, as they will have to show that they are individually targeted rather than being the victim of group oriented persecution/random violence.³²³ According to the same source, draft evasions will normally not lead to recognition as a refugee. Chechen “nationalists” have a better chance of getting asylum if they can show that they face discriminatory or disproportional punishment. Traumatic experiences can also lead to refugee status.

Germany

Asylum seekers from the Russian Federation constituted the third largest group of asylum applicants in Germany in 2004. The share of applicants from Chechnya among the asylum seekers from Russian Federation was 49.8 percent.³²⁴ 27.8 percent of Chechens were granted asylum in 2004. According to UNHCR in Germany, the main reasons for the granting of asylum were targeted measures by the Russian authorities towards alleged Chechen fighters or persons who had been Chechen fighters during the first war or who had allegedly supported the Chechen resistance. This included women who were persecuted for having provided material or other support to fighters. Women were often reported to have been raped, and rape was also reported by one male. Another group granted asylum were members of opposition political parties, employees of the former Chechen government, and relatives of persons it is claimed that the FSB is looking for. Monitoring of the decisions in Germany showed that the main reasons for rejections were credibility issues and the conclusion that “the encroachments of the person in question were not more acute than for the whole population”.³²⁵

Greece

According to statistics from UNHCR, Greece received 52 applicants from the Russian Federation in 2003, and 138 in 2004.³²⁶ The Greek government does not provide ethnic breakdowns of statistics, but according to the Greek Council for Refugees, it is estimated that the majority of Russian asylum seekers are of Chechen origin.³²⁷ According to the same source, the majority of Chechen asylum seekers who arrived in Greece over the 2-3 last years have been returned to Greece from other Dublin-countries. According to the Greek Ministry of Public order, 25 Russian citizens applied for asylum in Greece in 2003. None of them were granted refugee status or other forms of protection.³²⁸ According to a report by the Norwegian Helsinki Committee (NHC) and the Norwegian Organization for Asylum Seekers (NOAS) “the Greek system of asylum is strongly objectionable on several accounts: by not providing all refugees with basic information, interpretation and judicial assistance; by extensive use of detention, even of children; and by what appears as tactical means to prevent refugees from seeking asylum”. The authors also concluded that the Greek system of asylum is excessively strict, since most asylum seekers are rejected. According to the report, several Chechen asylum seekers in Greece

had been asked to sign a paper stating that they did not wish to apply for asylum in Greece.³²⁹ According to the same report, the processing of asylum claims in Greece can take up to five years. After being interviewed by the police, asylum seekers have the right to apply for asylum and to receive medical services, but not the right to receive housing or economic support, not even food. The authors of the report concluded that in practice, Greece is a country where asylum seekers and refugees are left to take care of themselves.

Denmark

According to the Danish Refugee Council, as of spring 2004, in order to be recognized as refugees in Denmark, Chechens must establish that they are at particular, individual risk of persecution. This means that general hardship and random abuse by Russian soldiers do not qualify unless there are indications that abuses are NOT merely random abuse, but specifically targeted at the applicant because of his/her or his/her family’s activities or imputed political opinion.³³⁰ High profile military or political opponents to the Russian authorities are likely to be recognized as refugees, but simply having fought the Russians in one of the two wars generally “does not count in itself”.³³¹ Draft evaders as such are not recognized as refugees unless they can point to specific circumstances rendering them particularly targeted and subject to particularly harsh treatment/punishment compared to the “average draft evader”. According to estimates by the Danish Support Committee for Chechnya in January 2005, between 33- 50 percent of applicants from Chechnya are granted asylum in Denmark.³³²

Sweden

In Sweden, Chechen asylum seekers have in general been rejected based on the availability of an internal flight alternative in the Russian Federation³³³ (see chapter 7). Since February 2004, however, Chechen asylum seekers have been granted other forms of protection (see section 6.3).

Finland

Despite having a border with Russia, Finland has received relatively few asylum seekers from Chechnya. According to the Directorate of Immigration about 40-50 Chechen asylum seekers have arrived annually over the last couples of years.³³⁴ According to the Finish Refugee Advice Centre, very few Chechens have been granted refugee status in Finland. As the statistics show there were none in 2003. During 2004, however, the administrative court granted asylum to several asylum seekers from Grozny.³³⁵

Norway

The Norwegian Immigration authorities have estimated that only 7- 8 percent of asylum seekers from Chechnya are considered to qualify as refugees.³³⁶ Information from Norwegian lawyers indicates that only Chechens who can establish that they are partic-

ularly wanted by Russian authorities – either because they have been fighting with the Chechen separatists or because they are well-known political activists, or relatives of such persons are granted asylum. Human rights violations are not considered to amount to persecution if they are random, in the sense that they could happen to any other Chechen as well. This view is reflected in a standard formulation in a letter of rejection by the Norwegian immigration authorities. The decision concerned a Chechen man who claimed to have been detained and ill-treated by federal forces during a mop-up operation. The applicant's brothers had been fighters during the first war, and the applicant believed that he was on a federal list because of this. The applicant was hospitalized as a result of the ill-treatment. The immigration authorities did not question the person's credibility, but wrote that:

“The immigration authorities acknowledge that federal authorities have exposed the local population to arrests and violations during the conflict in Chechnya. Sporadic and relatively short lasting detentions and other violations have often hit civilians arbitrarily. The reactions towards the applicant seems, in the opinion of the immigration authorities, as a random violation in a conflict situation, and not as an expression of targeting by the federal forces to the extent that it can be characterized as individual and systematic persecution.”

Switzerland

Out of the caseload available to the Swiss Refugee Council, three reasons for the rejection of claims for asylum by Chechens in Switzerland were noted: 1) doubts about ethnic origin; 2) the persecutor is not the state, but unknown third parties; and 3) the existence of an internal protection alternative. Many of these decisions have been appealed.

Conclusion

An overview of policies towards Chechen asylum seekers in some European countries shows that restrictive interpretations of the Refugee Convention and other restrictive refugee policies in some countries prevent Chechens from being granted asylum.

European states have different interpretations of what constitutes “persecution” in the Chechen context and a different threshold for what is considered “individual persecution”. The more “liberal” states in this context, like Austria, France and Belgium seem to recognize that a person can be a victim of persecution, even though the majority of the population risks being a victim of the same acts. Most other countries seem to require that violations be more targeted in order for it to amount to persecution. This requirement is difficult to meet for many Chechen asylum seekers. Human rights organizations are describing a situation in Chechnya where practically everyone risks being a victim of abductions and other serious human rights violations. Observations in a report by the International Helsinki Federation about human rights defenders from Chechnya, can be interpreted to imply that in the Chechen context it is not always possible to separate between “random” or “targeted” human rights violations. According to the report, “it is not always clear whether abuses against them (human rights defenders) are committed because of that special reason”, since “people in Chechnya and Ingushetia are always in danger of becoming victim of human rights violations”.³³⁷

One can also say that the more liberal approach recognizes that ethnic Chechens are persecuted because of their ethnicity or nationality, while a restrictive policy does not recognize that the whole population may be at risk of persecution for a Convention ground. Only Chechens that are considered persecuted because of their political opinion (fighters, separatists, and human rights activists) qualify for asylum.

As pointed out by the Dutch Refugee Council, persons fleeing a situation of gross violations of human rights may paradoxically have greater difficulties obtaining asylum than other asylum seekers. In the general debate about European asylum policies, an argument has been launched by some commentators and courts that unless a person fleeing an armed conflict can show that she is “differently at risk” i.e. more at risk than other victims or potential victims of generalized violence, for a convention reason then that person is not a refugee. This argument has been expressed as a way of highlighting the need for a refugee claimant to show a fear of persecution for a reason on one of the Convention grounds rather than a fear of violence that affects everyone equally. However, persecution for one of the convention reasons often occurs in situations of armed conflict. ECRE has pointed out that this approach means that one must show an additional risk of persecution even in situations where there is a conflict which is based on racial or religious differences. ECRE believes that in a situation of generalized violence, only those who can show persecution for a Convention reason qualify for asylum. However, if everyone within a region is at risk for a Convention reason then they will all potentially qualify for asylum.³³⁸

It is outside the scope of this report to discuss the extent to which the current conflict in Chechnya is an “ethnic” or “religious” conflict. Probably very few conflicts in the world will fit perfectly into such categories. Information from human rights organizations show, however, that the civilian population in Chechnya risks being a victim of grave human rights violations for no other reason than the fact that they are ethnic Chechens.³³⁹ Widespread discrimination and harassment of Chechens in other regions of the Russian Federation supports the claim that the conflict has a strong ethnic dimension and that Chechens are victims of grave human rights violations due to their ethnicity.

6.3. Other forms of protection and total recognition rates

In order to get a complete picture of international protection granted to Chechen asylum seekers, one must also look at other forms of protection granted to this group. According to UNHCR statistics, in 2003 11 out of 26 countries that receive asylum seekers from the Russian Federation granted some kind of “other protection” to Chechens not considered to qualify as refugees according to the 1951 Convention.³⁴⁰ As the table below shows, some countries have relatively low refugee recognition rates for Russians, but still have a relatively high total recognition rate³⁴¹ for this group. For example, in 2003 Norway had a refugee recognition rate of 11 percent, but a total recognition rate of 56.7 percent. In the same year Finland had a 0 refugee recognition rate, but a 60.9 total recognition rate.

Table: Total recognition rates for Russian asylum seekers in 2003*

Austria	76.9
Hungary	74.3
US	61.3 (EO) 33.4 (IN)
Finland	60.9
Canada	59.1
Norway	56.7
Spain	53.8
Denmark	46.5
France	36.4 (FI) 39.5 (AR)
Belgium	16.9 (AR)
Germany	16.5 (NA) 50.0 (RA)
Netherlands	26.3
Poland	10.7
Switzerland	10.2
Ireland	7.3
Sweden	7.0
Ukraine	6.5
Czech Republic	5.4
Cyprus	0

* The numbers are from UNHCR's Global Refugee Trends 2003, 15 June 2004, Table 8.

Protection provided by “other kinds of protection” varies from country to country. Below is a description of the forms of protection granted to Chechen asylum seekers in different countries.³⁴²

Lithuania

According to the US Committee for Refugees and Immigrants, most Chechens applying for asylum in

Lithuania in 2002 and 2003 were granted temporary residence permits on humanitarian grounds.³⁴³ In May 2004, when Lithuania became a member of the EU, the country introduced the status of “subsidiary protection”. According to estimates by UNHCR's Liaison Officer in Lithuania almost 99 % of all Chechens who have applied for asylum in Lithuania after May 2004 have been granted subsidiary protection.³⁴⁴ Subsidiary protection is granted for one year, and new applications have to be filed after that.³⁴⁵ Persons who receive this status are included in integration programs, but in contrast to those who receive asylum, they are not included in national health programs.³⁴⁶

Germany

German legislation does contain provisions regarding other kinds of protection, including humanitarian protection, but this status is not applied to a large number of Chechens. In 2003, only 4.5 percent (81 persons) of Chechen asylum seekers were granted humanitarian status.³⁴⁷ From 2003 and 2004, the total recognition rate for Chechens increased from 22.2 percent to 23.3 percent.³⁴⁸

Finland

According to the Refugee Advice Center, Chechens who have been denied asylum have received other kinds of protection, either residence permits based on the need for protection or one-year temporary permits because they are considered unable to return for practical reasons. As of November 2004, Finnish practice was to grant subsidiary protection to Chechen asylum seekers originating from outside Chechnya.

Sweden

In February 2004 several Chechen asylum seekers were granted two-year residence permits due to the armed conflict in Chechnya and the unavailability of an internal protection alternative. The initial decision to apply the provision in Swedish legislation that provide for protection to victims of armed conflict to Chechen asylum seekers was made by the Swedish Cabinet. The Immigration Board of Appeal forwarded several Chechen cases to the Cabinet because they were considered “of importance to the country's relation to foreign states”.

Norway

Until October 2003, Chechens were generally granted some kind of protection in Norway. The majority of those not granted asylum in 2003 were granted residence permits on protection grounds. A relatively small number was granted a residence permit on humanitarian grounds. Among the 555 Russian citizens that were rejected in 2003, most would have been ethnic Russians or Ingush.³⁴⁹

In October 2003, the immigration authorities “froze” the processing of asylum claims from Chechens, while evaluating its practice towards this group. Norwegian NGOs were informed that the authorities

were considering returning Chechens that were not recognized as refugees to other regions of the Russian Federation. Norwegian NGOs strongly advised and campaigned against this, referring to widespread discrimination against Chechens in the Russian Federation. The immigration authorities restarted the processing of Chechen cases in June 2004.

According to the immigration authorities, by the end of October 2004, 80 percent of 847 Chechen asylum seekers to Norway in 2004 had been granted either asylum or another form of protection. Information from lawyers and NGOs suggests that the majority received residence permits on humanitarian grounds. Residence on humanitarian grounds is granted for an initial period of one year, but is normally prolonged, and gives the holder the right to a permanent resident permit after three years. Persons with this status enjoy many of, but not all, the same rights as those who are granted asylum. They are for example not granted travel documents, and do not have the same right to family reunification as persons granted asylum. Chechens in Norway with a residence permit on humanitarian grounds have appealed to the Norwegian authorities to be granted travel documents, arguing that any contact with the Russian Embassy will lead to harassment and is likely to endanger any relatives who are still in Chechnya.³⁵⁰ Allegedly, in Norway, a lack of a passport creates difficulties in establish a bank account, applying for employment, and accessing language classes. Without valid travel documents, Chechens cannot visit relatives in other European countries.

Switzerland

According to the Swiss Refugee Council, as of November 2004, most Chechen asylum seekers had not been recognized as refugees, but were granted a form of protection (Vorläufige Aufnahme). This status does not provide the same rights as asylum, and the protection is weaker. Persons granted "vorläufige aufnahme" do not have the right to family reunification or the same right to employment as refugees, and have limited access to travel documents. Usually the Vorläufige Aufnahme is valid for one year. It can be extended, but also withdrawn. De facto a very large part of those with the status stays indefinitely in Switzerland, and consequently lives a long time with the consequences of this weak status. Relief organizations have required improvements in this status.

6.4. Tolerated stay

Poland

In September 2003, Poland introduced so-called "tolerated residence" in new legislation. Many Chechens are now granted this status. According to the Polish Office for Repatriation and Aliens, if persons granted "tolerated residence" are included, the percentage of Chechen asylum seekers who receive some kind of protection exceeded 80 percent in December 2004.³⁵¹ 734 Chechen asylum seekers were granted "tolerated residence" in Poland in 2004.³⁵² "Tolerated residence" status protects the person against deportations. The status can be withdrawn by the authorities if the reason for granting the permit has ceased to

exist.³⁵³ It gives the recipients the right to work, to elementary education and to apply for social assistance.³⁵⁴ But they are not allowed to register as unemployed, do not have access to medical insurance if they are not working, and are not included in integration programmes. Unlike persons who get refugee status, they do not receive Polish travel documents and can travel abroad only if they have their country of origin passport. According to the Polish Helsinki Committee, Chechens with this status cannot renew their passport because it may raise a case for withdrawing "tolerated stay". According to the same organization, the social situation of a person who has received "tolerated residence" is much worse than a person who has received refugee status, and that in practice, "tolerated residence" status only means that the person will not be deported from Poland.³⁵⁵ UNHCR has pointed out that life for those who have received official protection in Poland is difficult due to 19 percent unemployment and scarcely affordable accommodation.³⁵⁶ Interviews with Chechens asylum seekers confirm that they do not consider Poland a viable option:

Germany

Most Chechens who have had their application for asylum rejected in Germany have received a so-called "duldung", which means that their deportation has been timely suspended. The "duldung" is an individual decision relating to the enforceability of a deportation order, and is not conceived as residence status.³⁵⁸ It has been granted to persons who would upon return be at risk of serious harm.³⁵⁹ "Duldung" has generally been granted for a maximum of one year, and could be renewed.³⁶⁰ Often the status has been granted for less than a year. Persons who have received a "duldung" may apply for a work permit for a specific job, but the job must first have been offered to Germans and other EU nationals. Persons receiving this status may not settle where they choose to; their freedom of movement is restricted to a local district or region. They have a right to housing, but receive limited social assistance. They do not get German travel documents, and have limited access to the national obligatory health system.³⁶¹

In July 2004, a new German immigration law was adopted that will limit the practice of granting "duldung". According to the new law, that entered into force in January 2005, those who are not recognized as refugees, but are recognized as facing threats of torture or death upon deportation shall be granted a residence permit.³⁶² UNHCR has welcomed this development, but also stated that the new law's treatment of the concept of subsidiary protection, insofar as it relates to people fleeing conflict or generalized violence, "is neither totally in line with UNHCR's views, nor with the new EU qualification directive".³⁶³ Still, the new law is expected to reduce the uncertainty faced by rejected asylum seekers who cannot go home, and may have a positive effect on the situation of Chechen asylum seekers. ■

Conclusion

Some of those countries with a relatively low refugee recognition rate for Chechens provide other forms of protection to members of this group. This is, however, not always the case. Some countries grant asylum only to a minority of the asylum seekers they receive from Chechnya, like the Czech Republic, or none, like the Slovak Republic, and offer no other forms of protection. In some countries, the legal status granted to Chechens that are not granted asylum is very weak. The "duldung" that has been granted in Germany is little more than a temporary protection against refoulement. The situation for those provided by the "tolerated stay" status in Poland is of special concern since Poland is the main recipient of asylum seekers from Chechnya, and many Chechens risk being returned to Poland from other Dublin countries.

In September 2004, the Council of the European Union adopted a Directive on minimum standards for the qualification of refugees and persons who otherwise need international protection (EU Qualification Directive).³⁶⁴ The directive was the fourth piece of legislation adopted in order to accomplish the goal of an EU harmonized asylum policy set forth in the Amsterdam Treaty. The directive set out the criteria for subsidiary protection and the content of the protection that should

be afforded. According to the directive the risk of the following elements amounts to "serious harm" and are grounds for subsidiary protection: **a)** death penalty or execution; **b)** torture or inhuman and degrading treatment or punishment of an applicant in the country of origin, or **c)** serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Given the fact that UNHCR has stated that Chechens fleeing Chechnya who do not have a well-founded fear of persecution have left Chechnya owing to serious and indiscriminate threats to life, physical freedom or freedom resulting from generalized violence or events seriously disturbing public order, one should think that the latter group at least would be covered by the qualification criteria for subsidiary protection in the EU directive and that there would be a good case to include Chechens with residence registration from other areas of the Russian Federation. The states bound by it are, however, not obliged to bring into force the domestic legislation necessary to comply with the directive until 10 October 2006. Furthermore, states may also apply these provisions in restrictive manner, and they may not always agree on what constitutes "serious and individual threat to a civilian's life or person", or what constitutes "indiscriminate violence in situations of [-] internal armed conflict".

³⁵¹ This observation is based on interviews OPU has made with Chechen asylum seekers in Poland and the Czech Republic.

³⁵² Organization of Aid to Refugees, "Current Situation for Chechen Asylum Seekers in the Czech Republic, Poland and Austria", 23 December 2003.

³⁵³ International Organization on Migration (IOM), "Migration Trends in Selected Applicant Countries, Volume III- Poland; Dilemmas of a Sending and Receiving Country" (2004), p. 16 and 35.

³⁵⁴ Supra note 271, p. 5.

³⁵⁵ According to information from OPU provided at seminar on Chechen IDPs, organized by the Norwegian Refugee Council and Memorial in Moscow, August 2004.

³⁵⁶ Supra note 271, p. 6.

³⁵⁷ UNHCR, "Asylum Levels and Trends in Industrialized Countries", 2004, Table 5.

³⁵⁸ Ibid, Table 6.

³⁵⁹ Refugee recognition rate = Number of recognized refugees divided by the total number of recognized refugees, number of persons granted other forms of protection, and persons rejected protection x 100 %.

³⁶⁰ UNHCR, 2003 Global Refugee Trends 2003, 15 June 2004, Table 7.

³⁶¹ The Immigration and Naturalization Service no longer exists – it was dissolved in 2003, but its functions were absorbed into the newly created Department of Homeland Security (DHS). If the asylum seeker is applying after arriving in the U.S. and not at an airport or land border, generally DHS is the "first instance" and the Executive Office of Immigration Review (EOIR) is the second. If, however, the alien applies at the border, at an airport, or after being placed in removal proceedings, EOIR is the first instance.

³⁶² For example Austria, France, Belgium

³⁶³ For example Poland, Norway, Germany, the Czech Republic, the Netherlands

³⁶⁴ See for example UNHCR, "Asylum requests jump in new European Union Countries", 31 August 2004

³⁶⁵ The study covered decision made between July 2003- November 2004.

³⁶⁶ Information provided by UNHCR in the Slovak Republic in December 2004.

³⁶⁷ Martin Rozumek (2004), supra note 270.

³⁶⁸ Only 1,081 cases were processed in 2003. The Slovak Spectator, Editorial by Beata Balgova: "Who are our new neighbors", 15 November 2004

³⁶⁹ Information provided by the Polish Helsinki Committee, June 2004.

³⁷⁰ Ibid.

³⁷¹ UNHCR, "8079 applications – 315 recognized refugees", 5 January 2005 at www.unhcr.pl

³⁷² Ibid.

³⁷³ According to information provided by Asylkoordinaten in spring 2004, and Asyl in Not in December 2005.

³⁷⁴ Information from Ayl in Not, December 2004.

³⁷⁵ Ibid.

³⁷⁶ Information from Forum Refugees, January 2005.

³⁷⁷ Ibid.

³⁷⁸ Information provided by the Appeal Board in Belgium, March 2005.

³⁷⁹ Ibid.

³⁸⁰ Information provided by UNHCR in Belgium, December 2004.

³⁸¹ Information provided by the Dutch Refugee Council, April 2004.

³⁸² Ibid.

³⁸³ Information provided by UNHCR Germany, 25 February 2005.

³⁸⁴ Ibid.

³⁸⁵ UNHCR, Asylum Levels and Trends in Industrialized Countries, 2004, Tables 5 and 6.

³⁸⁶ Information provided by the Greek Council for Refugees in spring 2004.

³⁸⁷ Ibid.

³⁸⁸ Supra note 269.

³⁸⁹ Information provided by the Danish Refugee Council in spring 2004.

³⁹⁰ Ibid.

³⁹¹ Information provided by the Danish Support Committee for Chechnya in January 2005.

³⁹² According to information from the Swedish Red Cross in spring 2004.

³⁹³ Information provided by the Finnish Refugee Advice Center in spring 2004.

³⁹⁴ Information provided by the Finnish Refugee Advice Center in November 2004.

³⁹⁵ Internal Memo of the Norwegian Directorate of Immigration, 22 March 2004.

³⁹⁶ The International Helsinki Federation, "The Silencing of Human Rights Defenders in Chechnya and Ingushetia", 2004, p. 5.

³⁹⁷ European Council on Refugees and Exiles (ECRE), "ECRE Position on the interpretation of article 1 of the Refugee Convention", at www.ecre.org

³⁹⁸ See Part 1 of the report, chapter 1.

³⁹⁹ Denmark, Finland, Germany, Hungary, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland, and the United Kingdom.

⁴⁰⁰ A "total recognition rate" includes decisions on granting "other forms of protection"

⁴⁰¹ For more information about other forms of protection in European countries, see ECRE policy paper: "Complementary/Subsidiary Forms of Protection in the EU Member States; An Overview", December 2003, at www.ecre.org

⁴⁰² The US Committee for Refugees and Immigrants, Word Refugee Survey, Country Report on Lithuania 2003.

⁴⁰³ Information provided in April 2005.

⁴⁰⁴ According to information from UNHCR Liaison Officer in Lithuania, April 2005.

⁴⁰⁵ Ibid.

⁴⁰⁶ Numbers provided by UNHCR in Germany in February 2005.

⁴⁰⁷ Ibid.

⁴⁰⁸ Information provided by the Norwegian Organization for Asylum Seekers (NOAS), June 2004.

⁴⁰⁹ Letter dated 19 January 2005.

⁴¹⁰ UNHCR, "Hunger strike reveal strains in Polish asylum system", 13 December 2004.

⁴¹¹ UNHCR, "8079 applications – 315 recognized refugees", 5 January 2005 at www.unhcr.pl

⁴¹² Information brochure on Tolerated stay permits, Helsinki Committee for Human Rights in Poland.

⁴¹³ Ibid.

⁴¹⁴ Human Rights House Warsaw, "Chechen Refugees Without Refugee Status", Press release 16 February 2004

⁴¹⁵ Supra note 351.

⁴¹⁶ Ibid.

⁴¹⁷ For more information about the "duldung status", see ECRE research paper: "Complementary/Subsidiary Forms of Protection in the EU Member States; An Overview", December 2003, www.ecre.org/policy/research

⁴¹⁸ Duldung is granted to persons who are at risk of either a) torture, capital punishment, inhuman or degrading treatment or violations of the European convention of Human Rights, or b) immediate threat to life or freedom or persons forced to flee some situations of starvation or c) there are pressing humanitarian or personal reasons against return.

⁴¹⁹ Supra note 358.

⁴²⁰ Ibid.

⁴²¹ UNHCR News Stories: "New German immigration law includes advances in refugee protection, says UNHCR", 12 July, 2004.

⁴²² Ibid.

⁴²³ Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Chapter 7: Application of the internal protection alternative (IPA)

«Many Chechens are rejected asylum or subsidiary protection in Europe, not because it is considered safe for them to return to Chechnya, but with reference to the fact that they can return to other regions of the Russian Federation. Such practice is generally referred to as the “internal flight alternative” or, the “internal protection alternative” (IPA). The principle is that a person at risk of being persecuted can reasonably seek safety in another part of her/his country and, therefore, is not in need of asylum. In the course of the last twenty years industrialized states have increasingly applied this principle when processing asylum claims. There is, however, no reference to the principle in the Refugee Convention, and state practice concerning the interpretation and application of this principle has not been consistent.

Information from ECRE members indicates that many Chechens are rejected asylum or subsidiary protection in Europe, not because it is considered safe for them to return to Chechnya, but with reference to the fact that they can return to other regions of the Russian Federation. Such practice is generally referred to as the “internal flight alternative” or, the “internal protection alternative” (IPA). The principle is that a person at risk of being persecuted can reasonably seek safety in another part of her/his country and, therefore, is not in need of asylum. In the course of the last twenty years industrialized states have increasingly applied this principle when processing asylum claims. There is, however, no reference to the principle in the Refugee Convention, and state practice concerning the interpretation and application of this principle has not been consistent.

UNHCR Guidelines on the Internal Protection Alternative

According to Guidelines on internal protection published by UNHCR, the application of this principle is relevant only in certain cases, and particularly when the source of persecution emanates from a non-state actor.³⁶⁵ According to the guidelines issued by UNHCR, an analysis of whether an IPA exists should include an assessment of whether a specific geographical area is safe and accessible (the relevance analysis) and whether it is reasonable to expect the person to move there (the reasonableness analysis). Also according to the EU Qualification Directive, an internal protection alternative must be both safe and reasonable.³⁶⁶ According to UNHCR, a relevance analysis includes assessments of whether the area of relocation is practically, safely and legally accessible to the person as well as risk of persecution based on the nature of the agent of persecution (state versus non-state actors). If persecution emanates from or is condoned or tolerated by State agents, an IPA is generally not considered to exist.³⁶⁷ The reasonableness analysis is defined as a tool to answer whether the claimant, in the context of the country concerned, can “lead a relatively normal life without facing undue hardship”.³⁶⁸ It includes assessments for example of the individual’s access to basic social, cultural, economic rights as well as psychological trauma of the individual in question.³⁶⁹ If the conditions are such that the claimant may be compelled to go back to the original area of persecution, no IPA exists. It is the authorities that bear the burden of proof to establish that an analysis of IPA is relevant.

ECRE Position on the Internal Protection Alternative⁷⁰

ECRE’s position is that the focus of enquiry must always

be on whether a refugee claimant has a well-founded fear of being persecuted in his or her country of origin. In order to assess the reasonableness of an IPA the protection must be afforded by a de jure authority; the claimant must be able to access the area of internal protection in safety and in dignity and legally; there must be conditions to meet the needs of vulnerable groups; conditions in the area must ensure that the applicant is not forced back into the area where there is risk of serious harm for a convention reason; and the absence of a risk of serious harm in the proposed site must be objectively established rather than considered unlikely to occur. An IPA rarely exists where the state is the persecutor.

Recommendations from UNHCR, PACE and NGOs

According to UNHCR, there is no genuine internal protection alternative for asylum seekers from Chechnya. In a report from February 2003, UNHCR concluded that: “the combination of local restrictive regulations on freedom of movement and freedom of choice of place of sojourn/residence, anti-Chechen feelings among the republic, and concerns among local authorities to contain ethnic tensions and to prevent terrorist attacks, deprives Chechen IDPs of a genuine internal relocation alternative”.³⁷¹ UNHCR emphasized that this conclusion concerned ethnic Chechens displaced from Chechnya proper, not ethnic Chechens who were permanent residents of other regions of the Russian Federation. The paper specifically warned against considering Ingushetia a safe alternative. In a new policy paper published in October 2004, UNHCR confirmed the lack of a genuine internal flight alternative within the Russian Federation for Chechens.³⁷² The agency stated that internal protection should only be considered with regard to Chechens whose place of permanent residence was not the Chechen Republic.³⁷³

In January 2005, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) underlined the importance of continued international protection of refugees from Chechnya and stated that “the de facto application of the internal residence permit (former “propiska”) system in the Russian Federation makes an internal flight alternative unavailable in most cases”.³⁷⁴

According to Memorial and Amnesty International, there is no internal protection alternative even for Chechens who have permanent registration outside of Chechnya. Amnesty considers Chechens to flee not just mass devastation and human rights violations associated with the armed conflict, but also the discriminatory

treatment and human rights violations they are subject to because of their nationality.³⁷⁵ In its argumentation Amnesty International emphasizes that the involvement of state actors in abuses calls into question the ability and willingness of the Russian authorities to provide effective protection for Chechens.

State practice with regard to Chechen asylum seekers

Not all countries consider that there are safe areas in the Russian Federation where one reasonably can expect Chechen asylum seekers to return to. Austrian authorities generally do not consider there to be an internal protection alternative for Chechen asylum seekers. In the second quarter of 2004, some first instance decisions were made in which claims from Chechens were rejected with reference to the existence of an internal protection alternative, but according to Austrian NGOs these decisions have so far been overturned by the second instance. In Finland, using IPA on applications from Chechen asylum seekers has been considered, but has not been applied. Sweden actually did consider an IPA to exist for Chechen asylum seekers, but the government concluded in a decision at the beginning of 2004 that this was not the case. France recently allowed for the use of IPA in immigration laws, but French NGOs are not aware of it being applied to asylum seekers from Chechnya.

The application of the IPA with regard to Chechen asylum seekers has been reported from the Netherlands, Belgium, Germany, Switzerland, Norway, Poland, Spain and Denmark. According to the Dutch Refugee Council, in the Netherlands Chechens are considered to have an internal protection alternative unless their personal background shows otherwise. All Chechens who are rejected on material grounds are referred to this alternative.³⁷⁶ In Belgium, the existence of an IPA is examined in every case, but according to UNHCR in Brussels, the Belgian authorities will not refer to an IPA in cases concerning IDPs from Ingushetia or Dagestan. According to information provided in March 2005, the Appeal Board in Belgium will generally not consider there to be a reasonable internal protection alternative for Chechens in the Russian Federation.³⁷⁷ According to the Polish Helsinki Committee, persons who have been registered for a substantial time in regions of the Russian Federation other than Chechnya are often denied tolerated stay in Poland.³⁷⁸ This normally applies to persons who have not been affected by the war, but it may also apply to IDPs. In Germany, a significant number of cases were turned down on the basis of an existing IPA in

2004.³⁷⁹ However, during 2004, the federal immigration office (first instance) increasingly rejected the idea that an internal protection alternative existed, in most cases referring to a worsening of the situation for Chechens after May 2003.³⁸⁰ In other cases, the Federal Office in Germany concluded that internal protection did not exist because the necessary registration would only be available to ethnic Chechens if the applicant had relatives in other parts of Russia where the person could live.³⁸¹ Requirements that Chechens return to Chechnya in order to get a passport, or fear of continued persecution upon return were referred as reasons for concluding that an IPA did not exist.³⁸² Often young, male Chechens were considered at particular risk of the latter.³⁸³ In many of these cases, the Federal Commissioner for Asylum³⁸⁴ appealed against these positive decisions (see below).

There seems to often be a considerable gap between UNHCR’s interpretation and recommendations on the application of IPA and practice in many European countries. In Norway, the first instance body has in letters of rejections referred Chechens to resettlement in the Russian Federation, even if they have not had permanent registration outside Chechnya. At least in two cases in 2004, the first instance body has referred Chechens to resettlement in Russia, due to prior temporary stay in Ingushetia. These cases have not yet been processed by the Board of Appeal. In December 2004, a spokesman of the Directorate of Immigration stated that Chechens arriving directly from Chechnya were not expected to return to other regions of the Russian Federation. In a statement in Parliament in January 2005 the Minister of Interior confirmed that the Norwegian authorities did not share UNHCR’s view that all persons with permanent residence in Chechnya were in need of international protection. The Minister stated, however, that families with children, the elderly, ill and single parents were considered particularly vulnerable groups, and that very high thresholds existed for the return of these groups.

Information from ECRE members indicates that immigration authorities often do not carry out a full relevance analysis and do not even consider whether it is reasonable to expect the person to relocate. According to UNHCR, a potential IPA must be practically, safely and legally accessible – the individual must have the legal right to travel, to enter and remain there. An uncertain legal status can create pressure to move to unsafe areas.³⁸⁵ The question of “propiska” should therefore be included in an analysis of IPA with regards to Russian citizens. According to the Danish Refugee Council, the Danish authorities consider that Chechens who are not high

«Information from ECRE members indicates that immigration authorities often do not carry out a full relevance analysis and do not even consider whether it is reasonable to expect the person to relocate.»

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profile activists are able to settle anywhere in the Russian Federation, and “do not take into account the question of propiska, nor the question of the rising discrimination/harassment of Chechens and other groups looking like Chechens in Russia”.³⁸⁵ The issue of internal protection is regulated in national legislation in the Netherlands, but according to the Dutch Refugee Council, the social-economic situation in the country of origin has no influence unless it is really disastrous.³⁸⁷

In Germany, the Federal Commissioner for Asylum Matters has raised the issue of residence registration as the crucial issue in the debate about the existence of an IPA. The Commissioner took the position that after the official abolishment of “propiska”, everyone has the right to register, and that it is possible to do this in regions of Russia which are not economically attractive (without mentioning which ones).³⁸⁸ The Administrative courts in Germany (second instance) differ on this matter. In a decision in March 2004, the administrative court in Karlsruhe considered the refusal of the Russian authorities to intervene in unlawful practices with regard to residence registration as continuing persecution.³⁸⁹ With regard to the question of whether it is reasonable to expect the person in question to return, such considerations were generally not found in decisions where it is concluded that an IPA exists.³⁹⁰

According to UNHCR's Guidelines, if internal flight is to be considered in the context of refugee status determination, a particular area must be identified and the claimant provided with an adequate opportunity to respond. According to the Dutch refugee Council, the authorities in the Netherlands do not identify the particular geographical area within the Russian Federation that is considered to be a reasonable internal protection alternative. Most Chechen asylum seekers appear to simply be referred to the existence of an IPA in the Russian Federation, without any references to a specific geographic area. Similar practice is also reported from Germany, where “generally, the internal protection alternative concept is more often applied to the general assumption that in a huge country like the Russian Federation there are places where the asylum seeker is deemed to be safe”.³⁹¹ Often references are made in a general way by listing several possibilities like e.g. Moscow and South Russia.³⁹²

UNHCR has also stressed the importance of an individual analysis taking into account the personal circumstances of the individual claimant when considering if an IPA exist. There is concern that this is not always the case with regard to Chechen asylum seekers. According to UNHCR in Germany, decisions about an IPA have recently started to change from a mainly general assumption to a more individual assessment of conditions of an internal protection alternative.³⁹³

Internal flight or internal relocation?

It is not clear to what extent IPA is used to reject persons who are considered to be at risk of persecution in Chechnya, or if states mainly apply the concept to return asylum seekers that they do not recognize as refugees,

but victims of armed conflict. The latter situation is the case at least in Norway and Denmark. If a person is considered to have an individual fear of persecution in Chechnya, an internal protection alternative is not considered to exist for that person. The applicant will be granted asylum. Only Chechens considered not to be individually persecuted in Chechnya are considered able to safely resettle in other regions of the Russian Federation. In some cases in Germany, an IPA is considered to exist because the applicants are not considered persecuted prior to leaving the Russian Federation.³⁹⁴

Norwegian immigration authorities argue that in such cases, it is not really a matter of internal flight, but refers to the term “internal relocation”. This reasoning has been expressed in the following way:

*“Most applicants from such areas [Chechnya] will not be covered by the legal definition of a refugee. In the assessment of a potential return it is the possibility of internal relocation that must be considered and not the possibilities of internal flight as such. The applicant can in such situations not strictly legally be defined as refugees, and it is therefore neither an assessment of internal flight that is triggered.”*³⁹⁵

As a consequence of this reasoning, Norwegian authorities do not apply the criteria for internal protection developed by UNHCR when assessing relevant cases. Instead, the authorities make an assessment of whether return to other regions in the Russian Federation is in accordance with the principle of non-refoulement. According to domestic legislation this means assessing whether return amounts to “risk to life or inhumane treatment”. This is a much more restrictive criteria than the one set out in the “relevance” analysis recommended by UNHCR, namely that the claimant can “lead a relatively normal life without facing undue hardship”.

In an internal memo from the Norwegian Directorate of Immigration it is, however, stated that in practice, the criteria for “internal protection” and “internal relocation” will be more or less the same because the Directorate will always consider if return can take place in accordance with the principles of “return in safety and dignity”.³⁹⁶

In a standard formulation from a letter of rejection to a Chechen asylum seeker from 2004, the immigration authorities do address the issue of legal access (registration) and access to some social rights, but conclude in contradiction to UNHCR and NGOs recommendations:

“The immigration authorities are aware that persons of Chechen origin can be victims of stigmatization and harassment in the Russian Federation as a consequence of the conflict in Chechnya. According to the directorate's knowledge of the general human rights situation in the federation, settlement and residence outside Chechnya does not contain any risk to life or to be exposed to inhumane treatment. Freedom of movement accorded by the constitution is somewhat restricted by the existing system

of registration, but all Russian citizens may be victims of this. Even though access to registration, especially in urban centres like Moscow, can be difficult and time-consuming, it the directorate considers that it will be possible to obtain. Even without registration, there is access to basic social rights such as education and necessary medical assistance.”

When discussing the IPA, UNHCR makes no distinction between persons who have fled persecution and persons who have fled a situation of armed conflict. The Guidelines published by UNHCR in July 2003 refer to the “Internal Flight or Relocation Alternative”, but treat the two terms as a meaning the same thing. The 2003 policy paper refers to internal relocation as “the so-called internal flight alternative”.³⁹⁷ The 2004 policy papers on Chechen asylum does not mention “internal relocation”, but concludes that there is no genuine internal flight alternative for Chechens in the Russian Federation and that all those Chechens whose permanent place was the Chechen prior to their seeking asylum abroad should be considered in need of international protection.³⁹⁸

To apply different standards regarding internal protection outside Chechnya for persons not considered to

qualify for refugee status is problematic for several reasons. Firstly, the consideration that these persons do not qualify for refugee status seem in many cases to be based on a restrictive interpretation of the Refugees Convention. Persons granted subsidiary protection in some countries would have been granted asylum in countries with a more liberal interpretation of the Refugee Convention. Secondly, if a consideration in these cases is limited to a risk of breach of non-refoulement in parts of the country, states are treating these persons as “normal returnees” and disregarding the fact that they will often actually become IDPs – a particularly vulnerable group with special needs. According to the EU Qualification Directive, an assessment of whether an internal protection alternative exist is relevant also in cases where the applicant is not considered to be a victim of persecution, but qualifies for subsidiary protection. Article 8 of the Directive states that “As part of the assessment of the application for international protection, member states may determine that an applicant is not in need of international protection if in a part of the country of origin there is no fear of being persecuted or no risk of serious harm and the applicant can reasonably be expected to stay in that part of the country. ■

Conclusion

There is no requirement in the Refugee Convention that a refugee should first seek safety in another part of his or her country of origin before seeking surrogate protection or that the fear of that protection should extend to the whole territory of the country of origin. If States do not focus on the key question of whether a refugee claimant is genuinely free from a risk of serious harm in the country of origin they are directly contributing to the worsening of a problem of internal displacement of persons.

The fact that Russian Federal forces are reported to have committed widespread human rights abuses in Chechnya; the atmosphere of impunity and lack of prosecution of these abuses; the lack of a federal response to local and region-

al authorities introducing legislation that contradicts both national and international law in Stavropol Krai, Krasnodar Krai, Moscow, St Petersburg and other large cities in Western Russia – the very places most Chechens settle; the tide of “anti-Chechen” feeling and an increase in racially motivated attacks; discriminatory treatment toward Chechens by law-enforcement agencies, arbitrary arrests and detention; the discriminatory and authorizing nature of registration at place of residence and sojourn, the violation of rights during checks on identity documents and the fact that documents have been taken away illegally; all lead to the conclusion that an internal protection alternative for Chechens should not be considered at the present time.

³⁸⁵ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: “Internal Flight or Relocation Alternative” within the Context of Article 1 A 8 “of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, p. 8.

³⁸⁶ See Article 8

³⁸⁷ Supra note 365.

³⁸⁸ Ibid, p. 6.

³⁸⁹ The EU Qualification Directive also reiterates that for internal protection to exist it is not sufficient that there is no well founded fear of persecution or serious harm in that place. It is also a precondition that the applicant can reasonably be expected to stay in that part of the country.

³⁹⁰ See ECRE Position on the interpretation of article 1 of the Refugee Convention at www.ecre.org.

³⁹¹ UNHCR (2003), supra note 42, February 2003, p. 3.

³⁹² UNHCR, “Position regarding Asylum-Seekers and Refugees from the Chechen Republic, Russian Federation, October 2004.

³⁹³ Ibid.

³⁹⁴ PACE Committee on Legal Affairs and Human Rights, “Declaration on the recent human rights violation in the Chechen Republic”, 27 January 2005.

³⁹⁵ Amnesty International, “Statement on the situation of Chechen asylum seekers”, AI Index: EUR 46/010/2004, 1 March 2004.

³⁹⁶ Information provided by the Dutch Refugee Council, spring 2004.

³⁹⁷ Information provided by the Appeal Board in Belgium, March 2005.

³⁹⁸ Information provided at seminar on IDPs from Chechnya, supra note 1999.

³⁹⁹ Information provided by UNHCR in Germany, February 2005.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ The Federal Commissioner for Asylum Matters is entitled to participate at all stages of the asylum procedures in order to ensure a uniform decision practice. The post of the Federal Commissioner for Asylum Matters was abolished in September 2004.

³⁸⁵ Supra note 365.

³⁸⁶ Information provided by the Danish Refugee Council, May 2004.

³⁸⁷ Information provided by the Dutch Refugee, December 2004

³⁸⁸ Information provided by UNHCR Germany, March 2005.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ Ibid.

³⁹² Ibid.

³⁹³ Information from UNHCR in Germany, February 2005.

³⁹⁴ See decision of Administrative Court (AC) of Braunschweig 23 February 2004, decision of Ac Aachen 20 July 2004, decision of AC Schleswig 19 August 2004)

³⁹⁵ Internal memo of the Norwegian Directorate of Immigration (First Instance), 22 March 2004.

³⁹⁶ Ibid.

³⁹⁷ Supra note 42, p. 30.

³⁹⁸ Ibid.

Chapter 8: Exclusion from refugee status

«Over last couples of years and especially after the school hostage crisis in Beslan in September 2004, Russian authorities have put increased pressure on countries hosting Chechen refugees not to provide a safe haven for terrorist.»³⁹⁰

Over last couples of years and especially after the school hostage crisis in Beslan in September 2004, Russian authorities have put increased pressure on countries hosting Chechen refugees not to provide a safe haven for terrorist.³⁹⁰ UNHCR has underlined that the 1951 refugee Convention does not provide a safe haven for terrorists.⁴⁰⁰ According to article 1 F refugees who are responsible for the most serious crimes as defined in paragraphs (a) to (c) are excluded from the protection of the 1951 Convention.⁴⁰¹

This exclusion clause is often confused with Articles 32 and 33 (2) of the same Convention which allow for exceptions to the prohibition on non-refoulement for reasons of national security or where an individual poses a danger to the community following conviction for a particularly serious crime.⁴⁰² Articles 32 and 33 (2) should be applied only to crimes committed in the country of refuge. Persons covered by article 1 F can be excluded from all rights granted by the Refugee Convention, including protection against refoulement. Articles 32 and 33 (2) simply provide exceptions to the prohibition on non-refoulement. However, individuals may still have recourse to protection as Article 3 of the European Convention on Human Rights places an absolute prohibition on the return of individuals who would face torture or inhumane/degrading treatment in their countries of origin.

The Norwegian Refugee Council has not succeeded in obtaining much information about the potential application of the exclusion clause on Chechens applying for asylum. Apparently, in Sweden there have been a few cases where Chechens have been excluded from refugee status by applying

the exclusion clause, but the number does not seem to be very big.⁴⁰³ In Germany, no cases explicitly taking up the application of Article 1F of the 1951 Convention are known at present. In a very few negative decisions the immigration officer have argued that the prosecution of terrorist does not tie in with asylum related criteria because it is a criminal procedure. This has, according to UNHCR in Germany only been a side issue in these decisions. The Chechen Support Committee in Denmark has reported that according to new anti-terror legislation in Denmark, the security services can deny persons asylum in a secret decision. The person in question is to be denied asylum, but the real reasons for the rejection is not to be given.⁴⁰⁴ According to the Chechen Support Committee in Denmark, this has, however, not been a problem with regard to Chechen asylum seekers.

The Norwegian Refugee Council does not know if the persons in question in Sweden have been returned to Russia or not. Even if a person is excluded refugee status or for other reasons stripped of the 1951 Convention's protection against non-refoulement, protection against non-refoulement in human rights instruments still apply.⁴⁰⁵ In its Guidelines on human rights and the fight against terrorism, the Committee of Ministers of the Council of Europe has stated that if there are serious grounds to believe that a person is involved in terrorist activities, refugee status must be refused.⁴⁰⁶ The Guidelines do, however, emphasize that the country of asylum is obliged not to return the applicant to a country where he or she risks being exposed to the death penalty, torture or inhumane or degrading treatment or punishment. ■

Chapter 9: Mandatory returns to the Russian Federation



A child holding a Chechen flag stands in front of a banner reading "In Chechnya Europe Finalizes Crimes Against Humanity" during a demonstration by some 300 people 18 March 2005 in front of the Centre Pompidou in Paris against Russian President Vladimir Putin's one-day visit to France. PHOTO: SCANPIX/JEAN AYISSI.

Mandatory return of rejected asylum seekers

The EU and the Russian Federation initiated negotiations on a readmission agreement covering failed asylum seekers in 2003, but so far the negotiations have not led to an agreement.⁴⁰⁷ Mandatory return of rejected asylum seekers from EU-countries is not reported to take place on a large scale. NGOs do, however report that mandatory returns are taking place in some countries.

According to the Danish Support Committee for Chechnya, there have been very few instances of mandatory returns from Denmark to Russia. Most Chechens whose claims are rejected move on to other countries, or return to live in hiding in Russia. The Committee is aware of two cases in the very beginning of 2005 of young, single men being returned. The Swiss Refugee Council has reported that mandatory returns normally seem not to happen from Switzerland to Russia, but that it does occur, especially if the asylum seeker in question is not "doing well", is involved in crime etc. In one instance in February 2004, a Chechen asylum seeker that had threatened a social worker, refused to speak Russian during the interview and made contradictory statements about his case was forcibly returned. In June 2004, the Society for Threatened People in Germany reported that four German regions consider it safe to return failed asylum seekers from Chechnya. In November 2004, the NGO reported that mandatory returns were taking place, both to Moscow and to other regions in the Southern part of the Russian Federation. As far as

UNHCR, is aware, as of March 2005, deportations of Chechens from Germany were carried out only very rarely.⁴⁰⁸ Mandatory returns of failed asylum seekers from Chechnya are taking place from Norway. In November 2004, the parliament in the Netherlands decided that Chechens not qualifying for refugee status could be returned to the Russian Federation. Motions of the opposition parties asking for deportation stops/subsidiary protection were rejected by the majority in the parliament. This happened despite protests from UNHCR, and active lobbying by the Dutch Refugee Council. Failed asylum seekers are returned from Ukraine to Russia, and there is no procedure to consider whether a particular area is safe.⁴⁰⁹ Ukrainian NGOs claim to have information about cases where asylum seekers were handed directly from the Ukrainian to Russian security services after being interviewed.⁴¹⁰ The French NGO, Forum for Refugees is not aware of any mandatory returns of failed Chechen asylum seekers from France, but does not rule out that it does exist. According to the Polish Helsinki Committee, Poland does not return failed asylum seekers to Russia. The organizations for Aid to Refugees (OPU) reported in April 2005, that this is also the case in the Czech Republic. According to OPU, even Chechens who do not apply for asylum in the Czech Republic are not forcibly returned to Russia. From time to time the Aliens Police issues expulsion orders to such persons, but OPU are not aware of any cases of actual deportations of Chechens to the Russian Federation.

³⁹⁰ See for example "Russia seeks UN terrorist asylum abuse crackdown", The Russia Journal, 24 September 2004

⁴⁰⁰ UNHCR, "Ten Refugee Protection Concerns in the Aftermath of September 11", Press release 23 October 2001.

⁴⁰¹ The following crimes are included: "Crime against peace, a war crime or crimes against humanity", a serious non-political crime, acts contrary to the purposes and principles of the UN.

⁴⁰² See ECRE, "Policy on Exclusion", March 2004, at www.ecre.org

⁴⁰³ Information provided by UNHCR Stockholm, 6 December 2004.

⁴⁰⁴ According to information from the Chechen Support Committee in Denmark, 13 January 2005.

⁴⁰⁵ See Chapter 2.

⁴⁰⁶ Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and Terrorism, adopted on 11 July 2002.

«A Chechen asylum seeker who arrived in Norway after having been detained in Ukraine claims that he was told by Ukrainian law-enforcement officials that none of the Chechens that were deported and handed over to Russian law-enforcement officials “reached Russia in one piece”.»

Establishing facts about Chechens that have been returned to the Russian Federation from other countries is difficult as no independent body or organization monitors this group. According to the Danish Support Committee for Chechnya, both the men returned from Denmark in 2005 were temporarily detained upon arrival in Moscow. The release of one of the men is attributed to the fact that he had relatives in Moscow who protested against the detention. This person is currently living “under-ground” in Moscow. The committee has not had any contact with the other person after his return. The person referred to above who was returned to Russia by Swiss authorities, claims that he was ill treated by Russian law-enforcement officials upon arrival. The man told the Swiss Refugee Council that he was apprehended and questioned by the police at the airport in Moscow, and then brought to a police station where he was ill treated before he was released after 24 hours. Allegedly he had to give the police officers money in order to be released, and was told by the police officers that he had been lucky and that he should not stay in Moscow.⁴¹¹ A Chechen asylum seeker who arrived in Norway after having been detained in Ukraine claims that he was told by Ukrainian law-enforcement officials that none of the Chechens that were deported and handed over to Russian law-enforcement officials “reached Russia in one piece”.⁴¹²

According to a report from 2002 by the Norwegian Helsinki Committee, the problems returnees have faced have been similar to the difficulties experienced by the Chechen population in general, except that young male returnees will be interrogated by the police about possible guerilla affiliations and that any temporary registration of residence of the returnees will be cancelled.⁴¹³ This assessment is from late 2002, before a series of new grave terrorist attacks in Moscow and Beslan. In February 2004, Human Rights Watch expressed concern that Chechens cannot, or are not able to safely access, the necessary documentation to ensure a secure return.⁴¹⁴ In March 2004, Amnesty International wrote that most Chechen asylum seekers rejected in European countries are returned to Moscow, and that information available suggested that many of them are immediately subject to thorough questioning at Moscow Airport.⁴¹⁵ Some of the returned Chechens are allegedly also deprived of money or other belongings by Russian security officers.⁴¹⁶ In a statement from May 2004, Svetlana Gannushkina⁴¹⁷ emphasized that even though she could not document that Chechens were persecuted “exactly for having been to a foreign state, asking for asylum and deported to Russia” this did not mean that there were no such cases.⁴¹⁸ In the same statement, Svetlana Gannushkina underlined that all Chechens are in need of international protection, and that Memorial considers mandatory and forced returns unacceptable.

Allegations about chain-refoulement

According to the Austrian NGO, Asyl in Not, Chechens risk being victims of so-called chain-refoulement from Slovakia to Russia via Ukraine. Asyl in Not is basing their claim on information that at least ten Chechens in July- August 2004 were expelled by Slovakian border guards and turned over to Ukrainian border police before they were deported to Russia. The whereabouts of these persons is unknown, with the exception of a young woman, who as of December 2004 was reported to be in prison in Rostov, Russia. According to the same source, agents of Russian secret service cooperate with the Slovak authorities in identifying and apprehending Chechens wanted by the Russian authorities.

The office of UNHCR in the Slovak Republic reports not to have not witnessed cases of refoulement. According to UNHCR, “intercepted people entering the country illegally have been allowed into the system when requesting it. [-] Due to the consistent and continuous flow into the refugee centres of applicants from the Russian Federation (mainly of Chechen origin) the office considers that the security system is not prejudicially inclined to prevent cases from the Russian Federation from entering the asylum procedure.”⁴¹⁹

UNHCR’s office in the Slovak Republic has investigated some of the cases brought to its attention by Asyl in Not. According to UNHCR, the Slovak authorities in one instance reported that the case in question was not registered among those registered as having requested asylum. There was however no record if the person had been then returned (or denied access) at the border.

We may talk about cases where the persons in question have not asked for asylum – perhaps with the intention of applying for asylum in countries further West. If these persons have entered Slovakia illegally, and do not apply for asylum they will be considered illegal immigrants. Slovakia has entered into readmission agreements with Russia and Ukraine that allow the readmission of foreigners if they do not ask for asylum. But Slovakia has also ratified the 1951 Refugee Convention and the European Human Rights Convention. The Slovak authorities are consequently obliged not to refoule anyone to a place where the person may risk persecution, or risk to life, torture or inhuman treatment. A Chechen asylum seeker in Norway has told the Norwegian Refugee Council that he was deported to Ukraine, after Chechen border police had forced him to sign papers that he did not apply for asylum in Slovakia. The asylum seeker, a young Chechen fighter, claimed that he was imprisoned in Ukraine for several weeks, and told that he was going to be deported to the Russian Federation.

In March 2005, the Chechen diaspora in Belgium reported that in February 2005 a young

Chechen male was deported from Belgium to Poland. Allegedly, he was met at the airport in Warsaw by people who spoke Russian. The day after his departure from Belgium he called his sister in Belgium, telling her that he had been taken to a police station in Belarus. The day after his departure from Belgium to Poland, he called his sister from a police-station in Belarus. Since then, no information about his whereabouts has been reported.

Other reports about the mandatory and forced return of Chechens

The Chechen diaspora group “Vainakh” claims to have information that many Chechens who had been deported from Kazakhstan were murdered during sweep-up operations in Chechnya in 2000-2001.⁴²⁰ According to the US Committee for Refugees and Immigrants, a number of cases of deportations of Chechens to Russia were brought to the attention of UNHCR during 2002, but the agency was unable to establish how many persons might have been deported or *refouled* without ever having a chance to make their claims.⁴²¹ In 2003, a UNHCR protection officer stated that in some parts of the country offi-

cial were trying to force Chechens to leave.⁴²² According to “Vainakh”, in the majority of cases the decision about deportation is taken only under pressure of Russian law-enforcement structures: “In the framework of inter-governmental agreements on the fight against terrorism each of the country-participants take preventive measures and for Kazakhstan Chechen refugees and Chechen citizens of Kazakhstan have become a very good basis to implement the clauses of the agreement.”

According to the “Law on the Legal Status of foreigners” (1966) foreigners who violate the rules for legal registration in Azerbaijan can be expelled from the country. UNHCR in Baku does, however report, that they do not experience that Chechens is deported from the country for the reason.

According to reliable sources within UNHCR there have been several cases of police harassment, detention and deportations of Chechens in Belarus. In 2004, UNHCR received information on 139 cases of Russian citizens being deported, 19 of which were escorted. Between 2001- 2003, the number was 413. ■



Omar, a Chechen boy of 11, carries his one-year-old brother in Austrian largest and oldest refugee camp in Traiskirchen, 28 October 2004. The camp set some 30 kilometers south of Vienna, shelters 1,300 asylum seekers coming from 64 countries. In October 2004, the population of the village called for the closure of the camp, with a petition of 12,000 signatures. PHOTO: SCANPIX/JOE KLAMAR

⁴⁰⁷ European Union, “EU/Russia: The Four “common spaces””, The Hague, 25 November 2004

⁴⁰⁸ Information provided by UNHCR in Germany, February 2005.

⁴⁰⁹ Information provided by Human Rights Have no Borders in June 2004.

⁴¹⁰ Ibid.

⁴¹¹ Supra note 141.

⁴¹² Interview with Chechen asylum seeker, 9 December 2004.

⁴¹³ The Norwegian Helsinki Committee, “The Ethnic War”, 2002, p. 7.

⁴¹⁴ Human Rights Watch, Letter to the Dutch Immigration Minister, 13 February 2004.

⁴¹⁵ Amnesty International Deutschland, Asyl – Landerbericht, Russische Föderation, 31 March 2004.

⁴¹⁶ Ibid.

⁴¹⁷ Svetlana Gannushkina is chair of the Civic Assistance Committee for Refugees, head of the Migration Rights Network of Memorial Human Rights Center and a member of the Commission on Human Rights for the Russian President.

⁴¹⁸ Caucasian Knot, “Gannushkina convinced Chechens can be given refugee status rightfully”, 12 May 2004.

⁴¹⁹ Information provided by UNHCR, Bratislava, 17 December 2004.

⁴²⁰ Information provided in December 2004.

⁴²¹ US Committee for Refugees and Immigrants, World Refugee Survey 2003.

⁴²² US Committee for Refugees and Immigrants, World Refugee Survey 2004.

Chapter 10: Extraditions

There is not much public information available about Russian demands for extradition of Chechens asylum seekers, with the exception of a few very high profile cases. Human rights organizations have voiced their concern about the extradition of Chechens, wanted by Russia on “terrorism” charges, because they were believed to be at risk of serious human rights violations including torture if returned to Russia.

All UN multi-lateral, anti-terrorist conventions contain a clause that permits the state to refuse extradition where the fugitive would be punished on account of race, religion, nationality, and political opinion. The Guidelines on human rights and the fights against terrorism of the Committee of Ministers of the Council of Europe recognizes that states “may not grant extradition of a person to a country where he or she risks being sentenced to death penalty or subject to torture”.⁴²³

In 2002-2003, Russian authorities sought the extradition of Ahmed Zakaev, a leading representative of the Chechen opposition and envoy of Aslan Maskhadov. Russian authorities initially sought the extradition of Mr Zakaev from Denmark (partly) based on allegations that he was involved in the Moscow theatre siege in October 2002. The Danish authorities refused extradition due to lack of evidence. The Russian authorities later withdrew the allegations about Zakaev's involvement in the theatre siege, but sought extradition of Mr Zakaev from the United Kingdom in respect of allegations of a number of criminal offences. In a decision from 2003, a London court concluded that it would be “unjust and oppressive” to return Mr Zakaev to stand his trial in Russia. According to the decision, Russian authorities were seeking extradition “for purposes of prosecuting Mr Zakaev on account of his nationality and political opinions” and there was substantial risk that Zakaev would be subject to torture.⁴²⁴ Zakaev was later granted political asylum in the United Kingdom.

According to information from the US Committee for Refugees and Immigrants, Azeri authorities extradited to Russia Chechens alleged to have terrorist connections both in 2002 and 2003. Unconfirmed reports state that the government turned over 38 Chechens to the Russian authorities during 2003.⁴²⁵ At a NATO Parliamentary Assembly seminar in Baku in October 2004, the Azeri Minister of the Interior stated that 14 “Wahabbis” from the Northern Caucasus had been apprehended and extradited from Azerbaijan to Russia.⁴²⁶ UNHCR in Baku reports that the office is not

aware that any persons of concern to it being among those who have been extradited.⁴²⁷

Amnesty International has repeatedly raised its concern about the extradition of Chechens with the Georgian authorities. In August 2002, 13 Chechens were detained by Georgian border guards for illegally crossing the border and the possession of arms. In October the same year, five of the men were extradited to Russia. In 2003, after the men had filed an application to the European Court of Human Rights, Georgian courts decided not to extradite the Chechens detained, but they remained imprisoned. In February 2004, the court acquitted two of them. However, shortly after their release both of them mysteriously disappeared and the Russian Federal Security Service then reported that Russian law enforcers had detained them at the Georgian-Russian border. The news triggered protests among the Chechen community in Georgia, which accused the Georgian authorities of kidnapping the Chechens and secretly extraditing them to Russia.⁴²⁸ In January and February 2005, the remaining Chechens in detention were released from prison. In April 2005, the European Court of Human Rights made a decision in the case.⁴²⁹ The Court held that there had been no violation of Article 3 of the European Human Right Convention (ECHR) (the prohibition of inhuman and degrading treatment) with regard to the extraditions in 2002. According to the Court, in 2002 there were not serious and well-founded reasons to believe that extradition would expose the applicants to a real personal risk of inhuman and degrading treatment. The court did, however, hold that the situation had changed during the past two years. In particular, the Court noted the “extremely alarming phenomenon of persecution and killings of persons of Chechen origin who had lodged applications with [the European Human Rights Court]. The Court concluded that an extradition of these persons today would be a violation of Article 3 of the ECHR.”⁴³¹ ■

⁴²³ Supra note 406.

⁴²⁴ The Bow Street Magistrates' Court, *The Government of the Russian Federation v Akhmed Zakaev*, 13 November 2003.

⁴²⁵ US Committee for Refugees and Immigrants, *Word Refugee Survey, Country Report on Azerbaijan* 2003.

⁴²⁶ Information provided by UNHCR in Azerbaijan, 11 January 2005.

⁴²⁷ Ibid.

⁴²⁸ Civil Georgia, “Released Chechens Fear ‘Secret’ Extradition”, Tbilisi / 2005-01-05 18:37:05http://www.civil.ge/eng/article

⁴²⁹ Ibid.

⁴³⁰ European Court of Human Rights, *Chamber Judgement Shamayev and 12 others v. Georgia and Russia* (application no.36378/02), Press release by the Registrar 12 April 2005.

⁴³¹ Ibid.

Chapter 11: «Dublin-returns» to Poland and other new EU-countries

Concerns about the situation in Poland and other new EU-member states

After EU-enlargement many Chechen asylum seekers have been, or are waiting to be returned from “old” to “new” EU-countries to have their cases processed there. Since most Chechens first point of entry to the EU is the new EU-countries, other members of the Dublin countries normally have the right to return them there. Concern has, however, been voiced that the systems of asylum and integration in new EU-members states are not up to European standards. Allegations about deportations to Ukraine and Belarus from the Slovak Republic and Poland raise the question if the latter can be considered safe third countries in all instances.

Most Chechens arrive in Europe via Poland. During the second half of 2004, 1320 persons were returned to Poland from other Dublin-countries.⁴³² Most were returned from Germany (8432), Austria (320), Belgium and France.⁴³³ An overburdening of the reception system there, risk of long-lasting detentions, as well as poor systems of integration for recognized refugees have created concern about such returns. According to the Polish Office for Repatriation and Aliens, Poland needs financial help from the EU, but most of all an EU approach to Chechen asylum seekers.⁴³⁴ During his visit to Poland in September 2004, the former UN High Commissioner for Refugees, Ruud Lubbers highlighted the need to support the new EU member states in addressing the needs of refugees and asylum seekers who arrive in the EU through Poland or other new border countries. The German NGO-mission to Poland in November 2004, concluded that serious deficits in the Polish system for asylum and integration exists, and appealed to other members states not to automatically return Chechen asylum seekers arriving from Poland to their countries.⁴³⁵

As of November 2004, an average of 40 Chechens applied for asylum every day in Poland.⁴³⁶ The influx of Chechen asylum seekers to Poland is overwhelming reception centres there. The country has 14 reception centres for asylum seekers, five of which were opened in 2004. The total capacity of the centres is 2700 persons.⁴³⁷ At the beginning of January 2005, 3131 people were accommodated there.⁴³⁸ In December 2004, a group of 200 asylum seekers in one of the centres went on hunger strike for two weeks, demanding that Poland opens safe

passage to Western Europe and protesting against their living condition at the centres. Asylum seekers complained about lack of proper food, clothing and education for children. According to UNHCR, the standards of assistance provided by Poland are generally perfectly reasonable, but the system is overloaded and under-resourced.⁴³⁹ After visits in November 2004, German NGOs also concluded that the situation in the open reception centres is relatively good, but that capacity and financial resources are lacking.⁴⁴⁰

The fact that recognized refugees only receive integration assistance for one year is considered to constitute an often insurmountable barrier for Chechens to establish a viable future in Poland.⁴⁴¹ Those who only receive “tolerated stay” - which is the majority of Chechens - are considered to be in a hopeless situation (see section 6.3).⁴⁴² Particular concern has been raised about the lack of satisfactory medical and social care offered to Chechen asylum seekers and refugees in Poland.⁴⁴³ According to the afore-mentioned German NGO-report, severe problems in the Polish social and health system at large, has a negative effect on assistance to asylum seekers and refugees.⁴⁴⁴ The same source has pointed out that that the risk of long-lasting detentions in Poland, both upon arrival to Poland and upon return from other Dublin-countries, may re-traumatize Chechens who already have been exposed to extreme experiences. In several instances Chechen asylum seekers have reported that they fear returning to Poland due to threats and intimidation by other Chechens residing there.⁴⁴⁵ In addition to these concerns, the allegations that Chechens have been turned over to Russian security service in Poland raise concern about the risk refolement from Poland.

The situation in other new EU-countries has not been documented as thoroughly as the situation in Poland. The zero recognition rate in the Slovak Republic, and the allegations about “chain-refoulement” to Russia via Ukraine give serious reason for concern (see p. 41 and p. 54). Low recognition rates and the practice of detention of “Dublin”-cases in the Czech Republic are also worrying.

The Dublin Regulation does not oblige states to return asylum seekers to the “first country of asylum”. Article 3 (2) of the Regulation allows states to

«After EU-enlargement many Chechen asylum seekers have been, or are waiting to be returned from “old” to “new” EU countries to have their cases processed there.»

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adopt responsibility for examining all asylum claims lodged on its territory of the member state. Article 15 (the humanitarian clause) can be used to ensure that family unity is preserved and that applications from family members can be processed in the same country. There is concern, however, that Chechen asylum seekers arriving from new EU-countries are processed in accelerated procedures and that the above mentioned exemption rules are not applied to ensure access to a fair and efficient asylum procedure.⁴⁴⁶

The Norwegian Refugee Council does not have accurate information about the procedures regarding Chechen "Dublin-cases" in different European countries. The high number of asylum seekers returned to Poland during the first half of 2004 (see above) can be seen as an indication that in most cases Chechens are not having their cases considered on their merits in a another country if it can be established that they have arrived via Poland . In addition to the countries mentioned above – Germany, Austria, France, Belgium and the Czech Republic – we are aware that Chechens have been returned to Poland from Norway, Sweden and Denmark. In March 2005, the Dutch Refugee Council in Belgium reported that the Belgian authorities are applying the Dublin-regulation in a very strict way in Chechen cases. Since the beginning of 2005, the Belgian authorities have systematically asked for a transfer of Chechens arriving through Poland (which almost everybody do) and Poland accepts in most cases

(almost 90%).⁴⁴⁷ There have also been allegations that deportations of Chechens from Belgium to Poland have taken place in a violent manner.⁴⁴⁸

A few instances are known whereby Chechens have not been returned according to the Dublin regulation. In at least one instances, Austria provided protection to a Chechen man despite prior stay in the Slovak Republic. The decision was based, not on a consideration of the situation in the Slovak Republic, but on a provision in Austrian law that exempt persons who have suffered serious trauma from being returned to the first country of asylum.⁴⁴⁹ Similarly, in March 2005, Norwegian authorities granted residence permit for humanitarian reasons to a Chechen who had arrived via the Slovak Republic. Also in this case, the decision officially had nothing to do with the situation in the Slovak Republic, but was based mainly on the applicant's special connection to Norway.

The problem of different policies and standards in Dublin- countries with regard to treatment of asylum seekers in general, and Chechen asylum seekers in particular, existed also before the EU enlargement. In 2002 Norwegian authorities temporarily stopped the deportations of Chechen asylum seekers to Greece due to information that minor Chechen asylum seekers were kept in detention, and claims of risk about chain-refoulement. (See box below). ■

Since 2000 hundreds of Chechen asylum seekers have arrived in Norway from Russia on Greek visas. In 2001 Norwegian immigration authorities started deporting these persons to Greece with reference to the principle "first country of asylum," as found in the Dublin Convention. These deportations were halted temporarily in January 2002 after the NHC forwarded information that Chechen families with minors were held in detention for up to three months upon their arrival in Greece, and in some cases asked, without access to interpreter, to waive their right to seek asylum. After a woman and her three children were released from detention and granted asylum in Greece, the Norwegian authorities resumed the deportations. The Norwegian Helsinki Committee (NHC) argued that the release of this family should not be viewed as a guarantee that other Chechen asylum seekers would get satis-

factory treatment, and appealed to the Norwegian government to halt the deportations. After a fact-finding mission of the NHC to Greece in June 2002, deportations were again temporarily stopped, however they resumed once again after a couple of weeks. The Norwegian deportation policy was premised on the assumption that the asylum seekers were being treated in a satisfactory manner by the Greek authorities. Throughout 2002 the NHC continued to document the fact that asylum seekers, including minors and sick people, were, upon arrival in Greece, often detained by the Greek authorities or simply left on the streets and that some attempts were made to return asylum seekers to Russia without individual consideration of their applications.

Exert from the international Helsinki Federation's Annual Report 2003

⁴⁴² Supra note 271, p. 22.

⁴⁴³ Ibid.

⁴⁴⁴ UNHCR New Stories, " Hunger Strike reveals strains in Polish asylum system", 13 December 2005

⁴⁴⁵ The report of the mission recommended extensive use of the exemption clauses of the Dublin-regulation. See p. 3 of the summary.

⁴⁴⁶ UNHCR, "Number of Chechen asylum seekers grows", 16 November 2004 at www.unhcr.pl

⁴⁴⁷ UNHCR, supra note 351.

⁴⁴⁸ Supra note 271, p. 12.

⁴⁴⁹ UNHCR, supra note 351.

⁴⁵⁰ Supra note 271, p. 12

⁴⁴¹ Supra note 271, p. 2

⁴⁴² Ibid.

⁴⁴³ Supra note 271, pp. 18-20.

⁴⁴⁴ Supra note 271, summary p. 2.

⁴⁴⁵ Supra note 271, p. 12.

⁴⁴⁶ See for example the report by German NGOs, supra note 271.

⁴⁴⁷ Information provided by the Dutch Refugee Council, 15 March 2005.

⁴⁴⁸ In March 2005, Tina Ismailova, President of the Chechen diaspora in Belgium reported one incidents where a Chechens allegedly had been deported from Belgium to Poland in a violent manner.

⁴⁴⁹ Martin Rozumek, supra note 270.

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