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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 have 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.

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 38 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.

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, Memorial (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”.

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 corner stone for protection of refugees. All the countries covered in the report have ratified the Refugee Convention. Two principles of refugee 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.
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 hope in improving the security situation. The assassination of Chechen separatist leader, Aslan Maskhadov, in March 2005 has raised fears about an increase 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 exerted 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 mountable 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 the federal authorities seem to be caught in the security situation. The assassination of Chechen separatist leader, Aslan Maskhadov, in March 2005 has raised fears about an increase 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.

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 therefore 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 the rest of the Commonwealth of Independent States (CIS) countries. 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 76.5 percent and 0 percent respectively. Thus, despite the ongoing process of harmonizing European asylum policy, the outcome of a claim depends on a great extent on the country in which it is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is processed. In many countries, the majority of Chechen asylum seekers seem to be categorized as "forced migrants", which is proces
These recommendations have been drawn up with reference to the ECRE Guidelines on Chechen IDPs, Asylum Seekers and Refugees, approved by the ECRE and emphasize 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 1989 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 1989 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 basic rights, including all socio-economic state benefits and allowances and their right to claim 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 voluntary, 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 Russian Federation 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.

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 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 responsibil-

ity for examining all asylum claims from Chechen asylum seekers lodged on the territory of the Member State, with or without 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 govern-

ments 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.eacre.org.
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 guerrilla 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 separatists, Russian authorities launched a new military intervention into Chechnya.

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 rape and has criticized Russia’s federal anti-terrorism legislation “On the Fight Against Terrorism” for exempting law enforcement and military personnel from liability from harm caused during counter-terrorism operations.” 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.

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 feeling and racist crimes against Chechens in the Russian Federation. The third chapter address 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.
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 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.

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 extra-judicial executions by federal troops and Chechen fighters are everywhere occurrences in Chechnya. 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”.

The number of “disappearances” in Chechnya rose sharply in 2004. According to Vladimir Lukin, Russia’s most frequently abduction, some 1700 people in Chechnya were abducted during the year. 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. 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 people have “disappeared”. 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 militia had carried out two-thirds of the abductions, while federal troops carried out the other third. 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”. 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 fail to conduct even the most basic investigatory steps, and most investigations remain unresolved.

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. Arbitrary detentions and the human rights violations associated with them. 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.”

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 the Northern Caucasus.

The armed conflict in Chechnya is ongoing and there has been no resolution to it. The conflict is characterized by constant fighting, human rights violations, and displacement.”


Disappearances, Rape, Torture and Extra-judicial Executions”.

While the practice that Prosecutor General Vladimír Ustinov of the Russian Federation proposed should be legalized after the Beslan hostage-taking raid last September. 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. 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.
Chapter 2: Protection of IDPs from Chechnya

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. 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.

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, international 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.”

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.

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 are meant to reinforce the duty and responsibility of national authorities to protect and assist their population.

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 as helpful in the legal protection of IDPs. 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, Margarita Petropiyan, IDPs are often minority groups that become disproportionately affected by unconstitutional laws and practices. The Constitution also provides that the Federal Government has the responsibility to reinforce the duty and responsibility of national governments to protect IDPs.

The obligation of the state towards IDPs is not fixed explicitly and not supported by specific regulations that define 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 legislations 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. IDPs are often minority groups that become disproportionately affected by unconstitutional laws and practices. 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
Estimates of the number of people who have been displaced since 1999 vary from 350,000 to 600,000. In comparison, the total number of the Chechen population has been estimated at 800,000 - 1 million. 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. Since the conflict was re-erupted in 1999, most IDPs from Chechnya sought refuge in neighbouring Ingushetia, which shares similarities with Chechnya in social and national conditions. At the height of the armed conflict in 1999/2000 an estimated 240,000 IDPs from Chechnya resided in Ingushetia. 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 65,976. In March 2005, the number was down to 32,446. 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 140,000 to 200,000. In June 2004, UNHCR estimated the number of IDPs from Chechnya to 18,000. An estimated 40,000 IDPs are thought to have moved to other North-Caucasian republics and elsewhere in the Russian Federation. 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.

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 Chechnya, 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 are, however, considered 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 since 1999/2000. In particular, the Moscow Helsinki Committee, the status of Chechens in the internal regions of Russia worsened after the first conflict (1994-96); “the war turned into an additional source of hatred towards Chechens living in Russia”. 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”. According to the head of Memorial’s Migration Rights Network, Svetlana Gannushkina, in most cases, violent attacks on Chechens should not be regarded as random acts of violence, but as an instrument of inciting ethnic or religious hatred and enmity.

While the Russian Constitution and federal laws guarantee equality, rights and freedoms, actual legal remedies against discrimination and racist propaganda are weak and ineffective. The Moscow Helsinki Committee has documented that a number of authorities “prefer to turn a blind eye to these kinds of activities”. According to Amnesty International, “most criminal cases against the perpetrators are hardly ever punished – creating a climate of impunity whereby [...] perpetrators feel they can get away with committing racially-motivated violations”. In fact, racial discrimination is reported to have evolved into state-sponsored, large-scale coordinated campaigns.” 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 homes and the seizure of personal documents. Major police campaigns “initiated from the top” whereby criminal charges against Chechens have been fabricated and not even reported. 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 under constant pressure from their own interior affairs and foreign terrorist attacks, and that police measures had been significantly strengthened in Russia’s southern regions, less obvious forms of discrimination against Chechens, such as discrimination in employment, have become an everyday, commonplace occurrence. 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 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.”

The organization concluded that “discrimination against Chechens has taken on a stable, organisational character, it has coalesced into a certain system, the foundational principle of which is 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.” According to Memorial, the rural areas are the most susceptible to Chechen residents than large cities.”

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 everyday, commonplace occurrence.

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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 conflict internally displaced persons. 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.12

The concept of internally displaced persons as defined in the UN Guiding Principles is not reflected in Russian legislation. But the Russian Federation has promulgated a Law on Forced Migrants that provides a similar status for persons who are forcibly displaced.13 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 a danger of being subjected to persecution by reason of race, nationality, religion, language or membership of some particular social group or political opinion following hostile campaigns with regard to individual persons or groups of persons, mass violations of public order.

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.

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. 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. 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.14 The status provides for the right to accommodation and specific allowances and that they have been discriminated against for ethnic, confessional political or social reasons.

One interpretation enables us to consider mass disorders as a separate legitimate ground for claim of forced migrant status. The original place of residence.15 This means that those within Chechnya itself cannot, under the current law, qualify for forced migrant status and the benefits this status entails.

Russian NGOs and the legal experts have pointed out that the above mentioned rules on Forced Migrants regulate the status definition status and are therefore allowed for granting the status to ethnic Chechens on the grounds that they are not considered to be victims of discrimination.16 The bill was also often recognized as sufficient reason to qualify as forced migrants, or the presumption of persecution was applied to this wave of IDPs.

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have in many instances sought to deny them the possibility to reside legally outside Chechnya, especially in Moscow and other big urban centers as well as in North-Caucasian republics.

According to the NGO shadow report to CERD in most regions, the local authorities have systematically refused to register Chечен IDPs since 2000, in violation of federal regulations and the constitution.

UNHCR, UN CERD and the Parliamentary Assembly of the Council of Europe have all issued statements that the Russian authorities should extend the IDPs due to restrictive legislation and/or the discriminatory administration of registration or “propiska”. According to the Council of Europe the politically “undesirable” Chечен IDPs 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 restrictive practices.

Meanwhile, UNHCR, has acknowledged that it has become “almost impossible” for ethnic Chechens to receive IDP registration in Kabardo-Balkaria and Karachai-Cherkessia, and that there are barriers to receiving registration in St. Petersburg, Stavropol Krai, Nort-Ossetia-Alania and Krasnodar Krai. According to Memorial, authorities in Moscow and Krasnodar Krai remain the worst offenders of restrictive laws and practices. Other regions also create a number of problems for citizens arriving there, Chechens in particular.

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.”

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 regulative. Therefore, “Law on Freedom of Movement” established a two-tier system of registration of individuals within the Russian Federation; “temporary registration” (at place of sojourn or other additional circumstances not connected with the status of the person on the grounds of ethnicity) is also a clear violation of provisions of the Law on Forced Migrants which makes it clear that an assessment of whether status should be granted should be carried out on a case-by-case basis.

In practice, taking the case to court is perceived as the only real possibility for Chechens to get this status. But, about having to pay bribes. There are many examples of successes with such legal proceedings, but only after lengthy, and sometimes humiliating rounds of negotiations. 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 law and member of the Memorial Human Rights Centre Migration Rights Network, Margarita Petrovnya, 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 conflict. But even if there was acceptance of a definition of persons displaced from armed conflict, the Law on Forced Migrant is not a well-suited tool to provide protection to IDPs. The Law on Forced Migrants 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.

Margarita Petrovnya, 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 pointed out that the fact that the Law on Forced Migrants covers categories of displaced persons other than IDPs has created much confusion. A conference on internally displaced persons in the Russian Federation in Moscow in 2002 was argued that since the term “internally displaced” does not appear in Russian legislation, this group “got lost among the other categories of forced migrants.”

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 former Soviet states. This is both because the status is not granted to newly displaced persons, and because of refusals by other authorities that they would lose 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”.

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.”

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“According to the NGO shadow report to CERD in most regions, the local authorities have systematically refused to register Chечен IDPs since 2000, in violation of federal regulations and the constitution.”
"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.

In some cases the procedure of registering is made extremely complicated with instructions not to give registration to Chechens. 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.° Chechens have also experienced to be de-registered without any further explanation.° In some cases the procedure of registration is made extremely complicated with demand for finger-prints, tax information etc.

Very often, however, the applicant simply receives an oral rejection from police officers during preliminary oral interviews.°

In some instances, personnel from the passport offices or police have openly explained their refusal by referring to the applicant’s ethnic affiliation.° It has also been reported that officials have been given instructions from the top to deny registration to Chechens. Based on reports from legal aid offices in various regions of the Russian Federation, Memorial claims that registrational bodies seem to have been tacitly instructed from the top to deny registration to IDPs from Chechnya, or at least, to limit its duration to a minimum.°

The fact that applicants often simply receive an oral rejection, makes it very difficult to appeal the decision.° In some instances, however, appeals have been successful. The Czech NGO, Organization for Aid to Refugees, reported in June that in September 2004, the Ministry of Justice had ordered the Bank of Prague to revoke registeration of an IDP from Chechnya.°

A lack of registration also has other serious consequences. Under the Code 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 Petrovsky, the presence of registration is what the Chechen IDP has come to be a prerequisite for the implementation of such vitally important rights as the right to employment, access to educational care and school education and social protection.° The Moscow Helsinki Group considers the absence of residence permit as a fact of deprivation of civil- and socio-political rights.

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 prohibit discrimination on the grounds of registration.° As a result, the practice continues to exist in regions outside Chechnya. The practice of denying registration to Chechens is not just contrary to the principle of freedom of residence, but has been declared unconstitutional by the Constitutional Court in 1999.° In a report published by Memorial in May 2004, it is stated that refusals to admit 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 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.”°

According to Russian lawyer, Margarita Petrovsky, “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 violates federal legislation and the Internal Affairs Ministry stops taking at the arbitrary rule and corruption of its officers and establishes strict control over the conformance of their actions to the law.”°

Conclusion

As a consequence of the widespread practice of denying residence registration to IDPs from Chechnya, many Chechen IDPs are prevented from exercising their right to move freely in regions outside Chechnya. The practice of denying registration to Chechens is not just contrary to the principle of freedom of residence, but has been declared unconstitutional by the Constitutional Court in 1999.° In a report published by Memorial in May 2004, it is stated that refusals to admit 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 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.”°

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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 Russian 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 required for IDPs that are internal passport holders. 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 services. 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 right 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 usually daily, or even when performing such mundane tasks as exchanging currency or buying train tickets.”°
passport is also needed for more crucial needs, for example in finding employment or receiving medical care.” Without a passport a person will not be able to register marriages or births, enrol in schools, pay taxes, register a vehicle, obtain a driver’s license etc. According to common practice, a person cannot bring an action before a court of justice if she/he has no passport. 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. Cases where passport have been seized by law enforcement officials are also reported.

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. Refusals to issue passports are reported to be based on unpublished instructions from 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.”

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 is not only a breach of the 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.

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”


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 and liberty 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 those principles is applied in the context of internal displacement.

Guiding Principle 28 (a) states that, “competent authorities have duties to establish conditions, as well as to 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. 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. Legal safety is considered to require the existence of functioning legal institutions and a legal framework that guarantee basic rights. Material safety includes access to basic services, such as health services, education and employment. According to the UN, Guiding Principles 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. 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. Already in October 1999, the federal authorities suggested resettling IDPs in Russian-controlled areas in Chechnya. The construction of tents 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 aid and pressure on IDPs to return from Chechnya. 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 aid and pressured them to return to Chechnya.

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 September 2002. Implementation of the
The process of voluntary return

Since the camps were closed, the government did not offer resettlement or any alternative accommodation centres in other regions of the Russian Federation. The UN Guiding Principles on Internal Displacement on Forced Return to (-) places where shelter is not safe or can only be seen as truly voluntary as long as IDPs are presented with alternative shelter being offered.

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 etc. - 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. IDPs need to know that they do not risk being thrown out of Chechnya as long as they return, allowing or being cut off from humanitarian assistance. For an alternative to be genuine, the physical security of IDPs must be ensured. The gradual spilling off of the conflict into Ingushetia questions the safety of the “safe haven” in Ingushetia. In fact, in some instances IDPs are reported to have returned to Chechnya because they considered it unsafe to stay in Ingushetia.24

The difficulties in obtaining residence registration, employment, personal documents etc. restrict the possibilities of IDPs living in TACs in Chechnya indicated that they were considered it unsafe to stay in Ingushetia.

In conclusion

The UN Guiding Principles on Internal Displacement on Forced Return to (-) places where shelter is not safe or can only be seen as truly voluntary as long as IDPs are presented with alternative shelter being offered.

Enforced returns

The UN Guiding Principles on Internal Displacement on Forced Return to (-) places where shelter is not safe or can only be seen as truly voluntary as long as IDPs are presented with alternative shelter being offered.

Conclusion

The process of voluntary return

The UNHCR Handbook on voluntary repatriation defines “voluntary” as “absence of any psychological or material compulsion by any party to the process.” It is generally accepted that the process of voluntary return from Ingushetia to Chechnya has clearly not been voluntary. Extensive pressure, both material and physical, has been applied as a central principle of human rights violations. The closing of the camps was immediately followed by further measures which show that the authorities had not lost their control over and influence on the displaced population in Ingushetia. The main “carrot”, or “pull” factor, is the prospect of receiving financial compensation upon return to Chechnya. According to the UN’s Office for the Coordination of Humanitarian Affairs ( OCHA), in 2004 68.8 percent of IDPs lived in TACs. According to the Annotations, “it is clear that states, on an affirmative duty to ensure that internally displaced persons are not compelled to return to (-) places where their lives or liberty are at risk.”

Reports from international governmental and non-governmental organizations show that the general security and human rights situation in Chechnya is life-threatening. Further- mor e, IDPs returning from Ingushetia are not safe in the temporary accommodation centres (TACs) provided by government structures in Chechnya. According to the UN Human Rights Council, human rights violations continue with practical impunity. Walter Kälin, victims of human rights violations do not just face arbitrary detention and disappearances, they are considered it unsafe to stay in Ingushetia.

The difficulties in obtaining residence registration, employment, personal documents etc. restrict the possibilities of IDPs living in TACs in Chechnya indicated that they were considered it unsafe to stay in Ingushetia.

In conclusion

The UN Guiding Principles on Internal Displacement on Forced Return to (-) places where shelter is not safe or can only be seen as truly voluntary as long as IDPs are presented with alternative shelter being offered.
3. 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 fled a conflict-Russia 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 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. Amnesti International has challenged the validity of making such a distinction, arguing that there is no internal protection alternative for either group. According to Amnesti 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 have a permanent resident registration, and hence a legal right to reside - outside Chechnya they 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 3 (c) states that IDPs have the right to apply for asylum in another country. Thus, while 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 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 violations in Chechnya and racially-motivated violations in other regions of the Russian Federation, as well as continuing reports of acts of violence are all evidence to question the ability and willingness of Russian authorities to provide effective protection to this group.

Principle 3 (c) of the Guiding Principles states that "every person that is the key factor to take into consideration in light of the discrimination Chechens face within the Russian Federation. Although Chechens have a permanent resident registration, and hence a legal right to reside - outside Chechnya they 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 3 (c) states that IDPs have the right to apply for asylum in another country. Thus, while 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 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 violations in Chechnya and racially-motivated violations in other regions of the Russian Federation, as well as continuing reports of acts of violence are all evidence to question the ability and willingness of Russian authorities to provide effective protection to this group. □
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 addresses 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.

Introduction

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. The majority has been in the country for about 5-10 years, and women and children make up 85 percent of them. Almost 8,000 Chechen refugees have been registered by UNHCR in Azerbaijan. 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. 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 3,500. Almost 80 percent of them are women and children.

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. 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. 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). This represented an increase of 68 percent compared to 2002. In 2004, the number decreased by 14 percent, but there was an increase during the last quarter of the year.

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.

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 heightened restrictions on Russian asylum seekers to European countries in 2003 were March and 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 extra-large 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 per cent increase in the number of asylum seekers from Russia.

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. 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 international passports, Chechens have the right to enter these countries without any further authorization. Not all Chechens do, however, possess valid international passports (see part I of this 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, airline companies will not allow travellers. European embassies in Russia (or neighbouring countries) are, however, extremely reluctant to issue visas to Chechens. It is sometimes possible to obtain visas from middlemen through bribes or falsifications, but for most Chechens the journey to other illuminated Chechens 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 (“refoule”) a refugee in any manner whatever to the frontier 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.

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 his or her life or freedom would be threatened if he or she is deported to another country or is sent back to that country without consultation.

It is generally accepted that the obligation 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 must also 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 must also respect the principle of non-refoulement if its first decision is overturned by the courts of another country.

Chechens are often denied access to Ukrainian territory. The State Border Service in Ukraine reported that, during January–April 2004, 260 Chechens were refused entry to Ukraine. 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 services. Persons appearing on the list are refused entry to Ukraine. Also, Chechens coming to Ukraine by train or by plane from the Russian Federation or other countries, for example from 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. At least 17 of them were detained by the Belarus authorities and subsequently put on a train bound for Moscow. Another group of 200 Chechens were shot dead 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 rejection, 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. 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. After a couple of weeks the majority of the Chechens stranded in Brest were allowed to enter Poland to apply for asylum.

Similar incidents happened on the Polish–Byzantium border in 2003 and 2004. Several incidents have made it difficult for Chechens to enter Poland. In 2002, when Chechens had been repeatedly denied entry to Poland with Polish border guards citing inconsistencies in their travel documents as to the purpose of their trips. Chechen asylum seekers were also reportedly prevented from crossing the border by Byelorussian law-enforcement officials.

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

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 events that happen at small or no-go zones. With regards to the Lithuanian–Byzantium 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 border. Asylum seekers risk rejection and refoulement at the border.”

During the UN Human Rights Committee’s consideration of Poland’s 4th periodic report to the Committee, the 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 Régulier, 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 decision 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 willing to try to deter Chechens from arriving in France and to protect “French interests” with Russia.

According to UNHCR, “the large majority of Chechen asylum seekers have been rejected from borders of European countries.”

The authors of this report have found no evidence to support this statement. In CoE member states, asylum seekers face a complex set of regulations that varies from state to state. In some states, asylum seekers are refused entry to the country. In other states, asylum seekers are allowed to enter the country and a request to apply for asylum is turned down. In some cases, the asylum seeker is allowed to enter the country and a request to apply for asylum is turned down. In other cases, the asylum seeker is allowed to enter the country and a request to apply for asylum is turned down.

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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 Kazakh authorities consider all citizens of former Soviet Republics as immigrants, not asylum seekers. The non-status of Chechen refugees is, however, considered to be a particularly politically sensitive issue, and the position of the Kazakh 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.” 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. According to UNHCR, the government finds Chechens too politically insubordinate to consider as refugees. According to the 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 systems of registration in these countries are based on the Soviet “propiska” regime, and the difficulties in 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 is an inter­national 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 confirmed 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.” 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 2000 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. 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.

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. The Russian authorities claim that terrorists reside in and enter Chechnya from the Pankisi Gorge, and Georgian authorities have repeatedly had pressure from Russian authorities to expedite the voluntary resettlement of Chechens to third countries, 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. 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.

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.

Registration by UNHCR in Azerbaijan and Kazakhstan

In Azerbaijan and Kazakhstan, UNHCR has registered 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.” 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 rise in the number of medical consultations and hospitalizations in 2004.

“According to UNHCR, the government finds Chechens too politically insubordinate to consider as refugees.”
Chapter 4: Detentions

The Refugees 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 prolonged. As UNHCR notes in its Executive Committee Conclusion 44, states that detention of asylum seekers “should normally be avoided.” Asylum seekers are reported to be kept in detention after crossing the border, with their return from 2004 to 2007. However, there is a lack of documentation about the extent, length and conditions of detention for asylum seekers in these EU countries. Although UNHCR notes that the Polish authorities intend to build up their capacity for detaining asylum seekers, 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. 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, such a rule does not take place, but individual cases are known to NGOs. 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. The Polish Helsinki Committee confirms that the detention of persons returned from other Dublin countries is taking place, but it is not able to say why this happens in some cases, and in other cases not. 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.

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 2259/2003 of 24 October 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 the rule, most importantly in cases where a family member has been recognised as a refugee or asylum seeker. The applicant 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, where the applicant holds a valid visa or residence document of another Member State or the state party is not able to establish that another party state is responsible for the application. The latter is only in practice in a few cases, for example for purposes of family unifica-

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■ UNHCR, Executive Committee Conclusion on Detention of Refugees and Asylum Seekers, No. 44 (2008).
■ UNHCR, “The Transfer of Chechen Asylum Seekers from Poland to the Czech Republic,” supra note 265.
■ Sebatbara bore (Hitheide Flichtring), Barbara Gläpich (Plüter für den Frieden), and Bernd Sieweke (Flichtring in Polen und Auswirkungen der EU-Verrichtung Dubin II), “report on Kaukaski.”
■ UNHCR, supra note 220.
■ Numbers provided by UNHCR in Georgia in December 2004.
■ Numbers provided by UNHCR in Georgia in December 2004.
■ Numbers provided by UNHCR in Georgia in December 2004.
■ Information from Legal-Counselling-Centre of the Centre for Human Rights (“Solidarity”), “Human Rights have No Border,” Ukraine.

■ UNHCR, supra note 220.
■ Numbers provided by UNHCR in Georgia in December 2004.
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■ UNHCR, “The Transfer of Chechen Asylum Seekers from Poland to the Czech Republic,” supra note 265.
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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 are limited. 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 386 refugees from Chechnya were granted asylum in Ukraine. Representatives of Ukraine’s civil society have reported that the Ukrainian government has had 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. 90 percent of Chechen asylum seekers are estimated to be rejected by the immigration authorities with reference to safe country of origin or the internal protection alternative (see chapter 7). 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-oriented politician, Victor Yuschenko, 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. 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 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.

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. 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 recognized that they did not consider the Czech or Polish [asylum procedures] procedure and integration system to be sufficient for achieving their goal.”

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. 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. The Czech government has estimated that about 90 percent of Chechen asylum seekers do not stay in the country for more than 35 days. After May 2004, Chechens who arrived in the Czech Republic after having been registered in Poland 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.

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.

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

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<th>Country</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>6,710</td>
</tr>
<tr>
<td>Poland</td>
<td>5,581</td>
</tr>
<tr>
<td>Czech</td>
<td>4,852</td>
</tr>
<tr>
<td>Germany</td>
<td>3,389</td>
</tr>
<tr>
<td>France</td>
<td>3,251</td>
</tr>
<tr>
<td>Slovakia</td>
<td>2,663</td>
</tr>
<tr>
<td>Norway</td>
<td>1,923</td>
</tr>
<tr>
<td>Belgium</td>
<td>1,680</td>
</tr>
<tr>
<td>Sweden</td>
<td>1,361</td>
</tr>
<tr>
<td>USA</td>
<td>1,001</td>
</tr>
</tbody>
</table>

**Even though Austria and Norway are not members of the EU, they are parties to the Dublin regulation, and are therefore included in this context. **

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>7,180</td>
</tr>
<tr>
<td>Austria</td>
<td>6,185</td>
</tr>
<tr>
<td>France</td>
<td>2,919</td>
</tr>
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<td>Germany</td>
<td>2,767</td>
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<td>Slovakia</td>
<td>2,402</td>
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<td>Czech Republic</td>
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<td>Sweden</td>
<td>1,286</td>
</tr>
<tr>
<td>Norway</td>
<td>937</td>
</tr>
<tr>
<td>USA</td>
<td>884</td>
</tr>
</tbody>
</table>

**The number of asylum seekers does not include those who were not eventually granted asylum.**
Refugee recognition rates

According to statistics provided by UNHCR, the refugee recognition rate for Russian asylum seekers in Europe and industrialized countries in 2003 was 21 percent. 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 indicator of how many persons are granted asylum. A case that is rejected in both first and second instance will count twice, and the refugee recognition rate 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 considerably in different European countries. Austria stands out with a refugee recognition rate that is considerably higher than any other country (79.6%). The “difference” to the next European country (France at 39.5%) is considerable. There is also a dramatic gap 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 rejection/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 “lander” (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 portray the refugee recognition rates/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 “lander” (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 portray the refugee recognition rates/approval, the exact reasons why an asylum seeker has been rejected or granted asylum.

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Refugee recognition rate</th>
<th>Number of positive decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>76.9</td>
<td>788</td>
</tr>
<tr>
<td>US</td>
<td>61.3</td>
<td>379</td>
</tr>
<tr>
<td>Canada</td>
<td>59.1</td>
<td>178</td>
</tr>
<tr>
<td>France</td>
<td>38.4</td>
<td>255</td>
</tr>
<tr>
<td>Germany</td>
<td>11.8</td>
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</tr>
<tr>
<td>Spain</td>
<td>31.1</td>
<td>32</td>
</tr>
<tr>
<td>Belgium</td>
<td>16.9</td>
<td>13</td>
</tr>
<tr>
<td>Hungary</td>
<td>12.9</td>
<td>9</td>
</tr>
<tr>
<td>Norway</td>
<td>11</td>
<td>139</td>
</tr>
<tr>
<td>Poland</td>
<td>9.7</td>
<td>185</td>
</tr>
<tr>
<td>Denmark</td>
<td>8.8</td>
<td>10</td>
</tr>
<tr>
<td>Ukraine</td>
<td>6.5</td>
<td>6</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>5.4</td>
<td>62</td>
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<tr>
<td>Switzerland</td>
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</tr>
<tr>
<td>Netherlands</td>
<td>4.1</td>
<td>17</td>
</tr>
<tr>
<td>Sweden</td>
<td>1.6</td>
<td>19</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1.19</td>
<td>10</td>
</tr>
<tr>
<td>Finland</td>
<td>0.0</td>
<td>-</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0.0</td>
<td>-</td>
</tr>
<tr>
<td>Slovakia</td>
<td>0.0</td>
<td>-</td>
</tr>
</tbody>
</table>

* The numbers are from UNHCR’s 2003 Global Refugees Trends, 15 June 2004, Table II.
recognized Chechens increased to 26.5. "Asylum seekers from Russia constitute 88 percent of all asylum seekers arriving in Poland in 2004." 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 affiliated 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 repression and prosecution 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;
- the Czech police, who are generally reported to be 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 the asylum seekers will volunteer to return to Russia. 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. In mid-2004, the first instance is the most important factor for the Chechens, allegedly due to instructions from the Minister of Interior who was concerned about the high number of recognized Chechens in Austria.

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." According to the Austrian NGO, Asyl in Not, the rejection rate for Chechens in Austria was 96 percent at the end of 2004.

France

According to the French NGO, Forum Refugees, as of mid-2004, the second instance in the asylum procedures seemed to obtain asylum. "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." According to the Austrian NGO, Asyl in Not, the rejection rate for Chechens in Austria was 96 percent at the end of 2004.

Belgium

According to estimates by the Belgian Board of Appeal, as of March 2004 about 50 percent of the asylum seekers from Chechnya, who are assumed to be Chechens, are granted asylum. Belgian legislation does not provide for any other forms of protection. The Board of Appeal is estimated to have a 60-70 percent recognition rate for Chechen applicants. 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. UNHCR in Brussels confirms that Chechens who can prove that they were in Chechnya during the second conflict will normally get asylum.

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. The Dutch Refugee Council considers the interpretation by the police, asylum seekers from Chechnya being considered potentially dangerous for the Netherlands in their view, as refugees from countries with a pattern of gross human rights violations seem to have even less chance to qualify as refugees than the above groups due to their individual consideration and individual analysis. The Council concludes that the asylum seekers from Chechnya have the right to apply for asylum and to receive medical services, not even though their flight alternative in the Russian Federation is not considered as proportionate 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 in Austrian Federal was 49.8 percent. 27.8 percent of Chechens were granted asylum in 2004. According to reference to UNHCR in Vienna, i.e. persons who 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 Chechen government, and relatives of persons it is claimed that the FSB is looking for. Monitoring of the decisions in Germany, as well as main data for most other EU-countries indicate that rejections are credibility based and the conclusion that "the encroachments of the person in question were not more acute than for the whole population".

Greece

According to statistics from UNHCR, Greece received 52 applicants from the Russian Federation in 2003, and 138 in 2004. The Greek government does not provide ethnic breakdowns of statistics, but according to the Greek National Committee for Refugees, it is estimated that the majority of Russian asylum seekers are of Chechen origin. 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 granted refugee status over the last couple of years were the first group of asylum seekers who face difficulties in moving around, and in obtaining work permits. The second group are the Chechens who have been granted refugee status. The third group are the Chechens who have been granted asylum in the Netherlands. The Greek authorities have not granted asylum to the Chechens who have been granted asylum in the Netherlands. In their view, Chechen asylum seekers from Chechnya have the right to apply for asylum and to receive medical services, but specifically targeted at the applicant because of his/her family's activities or imputed political opinion. 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." Draft evaders as such are not recognized as refugees unless they can point to specific circumstances rendering them particularly targeted and subjected to exceptional 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.

Sweden

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

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 couple of years. 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 the Norwegian administrative court granted asylum to several asylum seekers from Grozny.

Norway

The Norwegian Immigration authorities have estimated that only 7-8 percent of asylum seekers from Chechnya were granted asylum in Norway. Information from Norwegian lawyers indicates that only Chechens who can establish that they are
arily 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 of targeted Norwegian immigration authorities. The decision concerned a Chechen man who claimed to have been detained and illtreated by federal forces during a mop-up operation. The applicant’s brothers had been fighting 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 seem, in the opinion of the immigration authorities, as a random violation in a conflict situation, and not as persecution. This would mean that the person on the basis of the document presented by the applicant cannot be characterized as a victim of an individual and systematic persecution”.

Switzerland

Out of the case load 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 is seen to be a victim of kidnappings 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 approach 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 opinions (political refugees, 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

Protection provided by “other kinds of protection” varies from country to country, even while a restrictive policy does not amount to the formal designation of the kinds of protection granted to Chechen asylum seekers in different countries.

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.339 In May 2004, when Lithuania became a member of the EU, the country introduced the status of “subsidary 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 subsidary protection. Subsidary protection is grant- ed for one year, and new applications have to be filed after that.340 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.341

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. From 2003 and 2004, the total recognition rate for Chechens increased from 22.2 percent to 23.3 percent.342

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 by granting asylum seekers originating from outside Chechnya, Finnish "international protection” (40 persons), and temporary residence permits on humanitarian grounds (40 persons). This decision to apply the provision in Swedish legislation that provide sfor 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”.

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 Swedish decision to apply the provision in Swedish legislation that provide sfor 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 humanitarian 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.343

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Total recognition rate for Russian asylum seekers in 2003*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>76.9</td>
</tr>
<tr>
<td>Hungary</td>
<td>74.5</td>
</tr>
<tr>
<td>US</td>
<td>61.5 (EO)</td>
</tr>
<tr>
<td>Finland</td>
<td>60.9</td>
</tr>
<tr>
<td>Canada</td>
<td>59.1</td>
</tr>
<tr>
<td>Norway</td>
<td>56.7</td>
</tr>
<tr>
<td>Spain</td>
<td>53.8</td>
</tr>
<tr>
<td>Denmark</td>
<td>46.5</td>
</tr>
<tr>
<td>France</td>
<td>38.4 (FI)</td>
</tr>
<tr>
<td>Belgium</td>
<td>39.5 (AR)</td>
</tr>
<tr>
<td>Germany</td>
<td>16.5 (NA)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>50.0 (RA)</td>
</tr>
<tr>
<td>Germany</td>
<td>26.3</td>
</tr>
<tr>
<td>Switzerland</td>
<td>10.7</td>
</tr>
<tr>
<td>Ireland</td>
<td>7.3</td>
</tr>
<tr>
<td>Sweden</td>
<td>7.0</td>
</tr>
<tr>
<td>Ukraine</td>
<td>6.5</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>5.4</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0</td>
</tr>
</tbody>
</table>

* The numbers are from UNHCR’s Global Refugee Trends 2003, 15 June 2004, Table 4.
were considering returning Chechens who 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. Interlocutors within NGOs suggest 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 permanent residence after three years. Persons with this status enjoy many of, but not all, the same rights as asylum seekers. They are eligible for travel documents and, therefore, 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. Allegedly, in Norway, a lack of a passport creates difficulties in establish a bank account, applying for employment, and accessing language classes. Without a passport, Chechens cannot travel abroad if they have their country of origin passport. According to the Polish law, the social situation of a person who has received "tolerated residence" is much worse than that of a person who has received refugee status, and in practice, "tolerated residence" status only means that the person will not be deported from Poland. UNCHR has pointed out that this life for those who have received official protection in Poland is difficult due to 19 percent unemployment and scarcely affordable accommodation. Interviews with Chechen 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 considered as residence status. It has been granted to persons who will not be able to return home due to a serious threat. The "duldung" has been generally granted for a maximum of one year, and could continue to be renewed. Often the time that has been granted has been for 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; 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.

In July 2004, a new German immigration law was adopted that limited 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. UNCHR welcomed this development, but also stated that the new law's treatment of the concept of subsidiary protection, inssofar as it relates to people fleeing conflict or generalized violence, "is neither totally in line with the principles of UNHCR's revised interpretation of article 1 of the Refugee Convention nor with the new EU qualification directive". Still, the new law is expected to reduce the uncertainty faced by rejected asylum seekers who can 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 Chechens who are not recognized as refugees. These countries include the Czech Republic, and offer other forms of protection to Chechens who are not granted asylum, are not compelled to comply with the directive until 10 October 2006. The new 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 who have been obliged to bring into force the domestic legislation necessary to comply with the directive until 10 October 2008. 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."
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 references to that they can return to other regions of the Russian Federation."

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 his/her 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. 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). According to EU Qualification Directive, an internal protection alternative must be both safe and reasonable. According to UNHCR, a relevance analysis is performed to ascertain whether the area of risk is functionally and practically safe and legally accessible to the person as well as of risk perception based on the nature of the agent of persecution (state versus non-state actors). If persecution emanates from or is considered by the relevant authority to be expected by the person to relocate, an IPA is generally not considered to exist.

The reasonableness analysis is defined as a tool to assess whether the claimant, in the context of the country concerned, can "lead a relatively normal life without facing undue hardship". 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. 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 author's view that the burden of proof to establish that an analysis of IPA is relevant.

ECRE Position on the Internal Protection Alternative

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 areas 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 January 2003, UNHCR concluded that there is a "combination of local restrictive regulations on freedom of movement and freedom of choice of place of residence/restrictions on Chechen's feelings about the republic, and concerns among local authorities to contain ethnic tensions and to prevent terrorist attacks, deprives Chechens of a genuine internal relocation alternative". 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 stated that for UNHCR the application of internal protection alternative was "the best available alternative". A new policy paper published in October 2004, UNHCR confirmed the lack of a genuine internal flight alternative within the Russian Federation for Chechens. The agency stated that internal protection should only be considered with regard to Chechens whose place of permanent residence was not the Chechen Republic.

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 international protection principle (IPA) system in the Russian Federation makes an internal flight alternative unavailable in most cases." 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 be 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. 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. French authorities generally do not consider there to be 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 Australian 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, Finland, Norway, Sweden, Spain and Denmark. According to the Dutch Refugee Council, the "combination of local restrictive regulations on freedom of movement and freedom of choice of place of residence/restrictions on Chechen's feelings about the republic, and concerns among local authorities to contain ethnic tensions and to prevent terrorist attacks, deprives Chechens of a genuine internal relocation alternative". In Belgium, the existence of an IPA is examined in every case, but according to UNHCR in Brussels, in the context of 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. According to the Polish Helsinki Committee personnel who have been registered for a substantial time in regions of the Russian Federation other than Chechnya are often denied tolerated stay in Poland. 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. 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 in May 2003. 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. 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.

Often young, male Chechens were considered at particular risk of the latter. In many of these cases, the Federal Commissioner for Asylum 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 spokesperson 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 January 2005, the Norwegian Foreign Ministry 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. All Chechens will be considered as refugees 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. 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
proactive actions about asylum seekers anywhere in the Russian Federation, of registration, and ‘do not take into account the personal circum-
stances of the individual claiming asylum in the Russian Federation’.
In this context, the above-mentioned issues of internal protection are regulated in national legislation in
the Netherlands, but according to the Dutch Refugee Council, the socio-
economic situation in the country of origin has no influence unless it is really disastrous.

In Germany, the Federal Commissioner for Asylum Matters has raised the issue of residence registration as
treatment of 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 the country of origin, Russia, which are not economically attractive (without mentioning which ones). The Administrative courts in Germany have applied the decision in March 2004, the administrative court in Karlsruhe considered the refusal of the Russian authori-
ties to intervene in unlawful practices with regard to resi-
dence registration as continuing persecution. With
regard to the question of whether it is reasonable to expect the person in question to return, such considera-
tions were generally not found in decisions where it is concluded that an IPA exists.

According to UNHCR’s Guidelines, if internal flight is to be considered in the context of refugee status deter-
mination, a particular area must be identified and the claimant provided with an adequate opportunity to respond. Although the Dutch refugee council, the authorities in the Netherlands do not identify the partic-
ular geographical area within the Russian Federation that is considered to be a reasonable internal protection area. Most Russian 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”. Often references are made in a gen-
eral way by listing several possibilities like e.g. Moscow and South Russia.

UNHCR has also stressed the importance of an individual approach, taking into account the personal circum-
cumstances of the individual claimant when considering
if an IPA exists. There is concern that this is not always the case with regard to Chechen asylum seekers. According to UNHCR in Germany, decisions about
IPA have recently started to change from a mainly gen-
eral assumption to a more individual assessment of con-
ditions of an internal protection alternative.

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 in Norway, Denmark, and Austria. If an IPA is consid-
ered to have an individual fear of persecution in Chechnya, an internal protection alternative is not con-
sidered 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 relocate in other regions of the Russian Federation. In some cases, in Germany, an IPA is consid-
ered to exist because the applicants are not considered
persecuted prior to leaving the Russian Federation.

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 IPA decision. 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 in
such situations not strictly legally be defined as
refugees, and it is therefore neither an assessment of
internal flight that is triggered.”

As a consequence of this reasoning, Norwegian authorities do not apply the criteria for internal protec-
tion developed by UNHCR when assessing relevant cas-
es. According to UNHCR, 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 the Norwegian authorities, this means assessing whether return amounts to “risk to life or inhuman treatment”. This is a much more restrictive
criterion 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 hard-
ship”. In an internal memo from the Norwegian Directorate of Immigration it is, however, stated that in
practice, the criteria for “internal protection” and “inter-
national relocation” will be more or less the same because the
Directorate considers that it will be possible to obtain.

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 the general sit-
uation is regulated in national legislation in the
Russian Federation, settlement and residence outside Chechnya
that is considered to be a reasonable internal protection
alternative for Chechens should not be
taken away illegally; all lead to the conclusion that an
internal protection alternative for Chechens should not be
considered at the present time.

Supra note 365.
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Chapter 8: Exclusion from refugee status

Over last couple 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 terrorists.²³ UNHCR has underlined that the 1951 refugee Convention does not provide a safe haven for terrorists.²⁴ According to article 1 F refugees who are responsible for the most serious crimes as defined in paragraphs (a) to (c) are excluded from protection under the 1951 Convention.²⁵

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.²⁶ 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) (a) to (c) do not provide an exception 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 inhuman and 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.²⁷ In Germany, no cases explicitly taking up the application of Article 3 F of the 1951 Convention are known at present. In a 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-terrorism 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.²⁸ 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.²⁹ 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.³⁰ 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 inhuman or degrading treatment or punishment.

Chapter 9: Mandatory returns to the Russian Federation

Mandatory return of rejected asylum seekers

The EU and the Russian Federation initiated negotiations on a readmission agreement coveringArticles asylum seekers in 2003, but so far the negotiations have not led to an agreement.³¹ A 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 in 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 Peoples 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.³²

UNHCR, is aware, as of March 2005, deportations of Chechens from Germany were carried out only very rarely.³³ 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. Members 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 France, Russia, and there is no procedure to consider whether a particular area is safe.³⁴ Ukrainian NGOs claim to have information about cases where asylum seekers were handed directly from the Ukrainian to Russian security services after being interviewed.³⁵ 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.
According to 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.17 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 secure, the necessary documentation to ensure a secure return.18 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.19 Some of the returned Chechens are allegedly also deprived of money or other belongings by Russian security officers.20 In a statement from May 2004, Svetlana Gannushkina emphasized that even though she could not document that Chechens were persecuted “exactly for having been a foreign state, asking for asylum and deported to Russia” this did not mean that there were no such cases.21 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.

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 Belzegum 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 Belzegum. Since then, no information about his whereabouts has been reported.

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 2000-2001.22 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 refused without ever having a chance to make their claims.23 In 2003, a UNHCR protection officer stated that in some parts of the country officials were trying to force Chechens to leave. 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 Kazakhstani Chechen refugees and Chechen citizens of Kazakhstani 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 arrested. Between 2001-2003, the number was 413.

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Chapter 10: Extractions

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 with alleged connections both in 2002 and 2003. Unconfirmed reports edited to Russia Chechens alleged to have terrorist connections were later granted political asylum in the United Kingdom. According to information from the US Committee for Refugees and Immigrants, 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. 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. 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 decision, in 2002 there were not serious and well-founded reasons to believe that the extraditions would expose the applicants to a real and present 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 a growing number of persons of Chechen origin who had lodged applications with the [European Human Rights Court]. The Court concluded that an extradition of these persons would be a violation of Article 3 of the ECHR.

In February 2005, the government turned over 38 Chechens to Russia. According to information from the US Committee for Refugees and Immigrants, 38 Chechens were extradited to 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.”

In 2002-2003, Russian authorities sought the extradition of Ahmed Zakaev, a leading representative of the Chechen opposition and envoy of Adan Askhadskhodzhaev. Russian authorities initially sought the extradition of Mr Zakaev from Denmark (partly based on allegations that he was involved in the Beslan theatre siege in October 2002. The Danish authorities refused extradition due to lack of evidence. The Russian authorities later sought an extradition of Mr Zakaev from the United Kingdom in respect of allegations made by 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 an extradition of Mr Zakaev on account of his nationality and political opinions and there was substantial risk that Zakaev would be subject to torture. Zakaev was later granted political asylum in the United Kingdom.

According to information from the US Committee for Refugees and Immigrants, Zakaev, Chechen 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. At a NATO Parliamentary Assembly seminar in Baku in October 2004, the Azet Minsiter of the Interior stated that 14 “Wahabbi” from the Northern Caucasus had been apprehended and extradited from Afghanistan to Russia. UNHCR in Baku reports that the office is not aware that any persons of concern to it being among those who have been extradited.

Amnesty International has repeatedly raised its concern about the extradition of Chechens with alleged connections in 2002 and 2003. Unconfirmed reports indicate that the government turned over 38 Chechens to Russia “on terrorism” charges, because they were believed to be at risk of serious human rights violations including torture if returned to Russia.

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. According to UNHCR, the number of asylum seekers from Chechnya who have been, or are waiting to be returned from all EU-countries normalyly have the right to return them there. Concern has, however, been voiced that the systems of asylum and integration in new EU-member 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 European countries. Most were returned from Germany (8432), Austria (328), Belgium and France. An overburdening of the reception system there, risk of long-lasting detention, as well as poor systems of integration for recognized refugees have created concern about such return decisions. 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 and refugees.424

According to the afore-mentioned German NGO-report, serious problems in the Polish social and health system at large, has a negative effect on asylum seekers and refugees.425. The same source has pointed out that the EU’s policy is to return asylum seekers to the “first country of asylum” did not work for the majority of asylum seekers and refugees. The fact that they fear returning to Poland due to threats and intimidation by other Chechens residing there.426 In addition to these concerns, the allegations of protection for those who have been, or are waiting to be returned from “old” to “new” EU countries have been turned over to Russian security service in Poland raise concern about the risk of refoulement 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 reasons for concern (see pp. 41 and 54). Low recognition rates and the practice of detention in the “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...
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 wave their right to 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 satisfactory 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.

Excerpt from the International Helsinki Federation’s Annual Report 2003

“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 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 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 2003, 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%). There have also been allegations that deportations of Chechens from Belgium to Poland have taken place in a violent manner.

A few instances are known whereby Chechens have not been returned according to the Dublin regulation. In at least one instance, 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. 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.)