



UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers

Introduction

1. A number of countries have introduced provisions in their national asylum legislation which exclude asylum-seekers who have, or could have, found protection in a third country from a substantial examination of their asylum application. So-called “protection elsewhere” concepts are often complemented by readmission agreements to ensure swift return of asylum applicants to the third country.

2. UNHCR supports States’ efforts to address the problem of secondary movement and underlines the necessity for improved burden-sharing mechanisms. However, in UNHCR’s view, a transfer of responsibility should be envisaged only between States with comparable protection systems, ideally on the basis of an agreement which clearly outlines their respective responsibilities.

3. Furthermore, since the primary responsibility to provide protection remains with the State under whose jurisdiction the applicant is, “protection elsewhere” concepts should, in UNHCR’s view, at least fulfil the following requirements:

- It has been established through an examination in the individual case that the applicant had or could have had access to effective protection in the third country that the asylum-seeker has entered earlier.
- The third country expressly agrees to readmit the applicant and to provide him/her with access to effective protection.
- The concept should allow for exceptions, *inter alia* for unaccompanied or separated children and other vulnerable groups or individuals who can demonstrate a particular close link with the current country of asylum.

4. The legal requirements for the application of “protection elsewhere” concepts are further elaborated elsewhere.¹ This paper provides information on and an analysis of the protection situation of asylum-seekers and refugees in Ukraine and concludes with

¹ See especially, United Nations High Commissioner for Refugees (UNHCR), *Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001, para. 7-18, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b36f2fca>, and UNHCR, *UNHCR Provisional Comments on the Proposal for a European Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=42492b302>.

a recommendation as to whether return of third country asylum-seekers and refugees to Ukraine could be considered in principle. The paper does not take any position on individual cases. To ensure adherence to the principle of *non-refoulement* and to avoid breaches of international law, the requirements outlined above must be examined individually for each case.

International Legal Framework

5. Ukraine is a signatory to the *1951 Convention relating to the Status of Refugees*² (hereafter: *1951 Convention*) and its *1967 Protocol*.³ Ukraine ratified the Convention and its 1967 Protocol without reservations on 10 January 2002.

6. Ukraine is also signatory to the following conventions and treaties:
- 1965 *International Convention on the Elimination of All Forms of Racial Discrimination*;
 - 1966 *International Covenant on Civil and Political Rights*;
 - 1966 *International Covenant on Economic, Social and Cultural Rights*;
 - 1979 *Convention on the Elimination of All Forms of Discrimination Against Women*;
 - 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;
 - 1989 *Convention on the Rights of the Child*; and
 - 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

An overview of the international treaties to which Ukraine is a party to is provided in the Annex.

7. The *Constitution of Ukraine*⁴ is the supreme law in Ukraine and has direct effect. Laws and other normative legal acts, including international treaties, need to comply with it. The *Law of Ukraine on International Agreements*⁵ of 29 June 2004 foresees that international treaties, which require ratification, are adopted in the form of a law, with the text of the international treaty as an integral part. In case of conflict, they prevail over national legislation.⁶

² Available online in UNHCR's Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3be01b964>.

³ Available online in UNHCR's Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3ae4>.

⁴ Available online, including December 2004 amendments, in UNHCR's Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44a280124>.

⁵ *Law of Ukraine on International Agreements of Ukraine*, adopted on 29 June 2004. See the Official Ukraine Parliamentary website under the general reference at <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi>.

⁶ See, for example, Myroslava Kryvonos, *Research Guide to Ukrainian Law*, LLRX.com, 1 May 2002, "Main Sources of the Ukrainian Law", <http://www.llrx.com/features/ukraine.htm>.

8. In practice, the authorities are often reluctant to apply international law directly, but prefer to wait for Parliamentary amendments to the respective legislation in order to change their practice. Established practice therefore is often only changed if court verdicts confirm the violation of a particular treaty obligation. Cases submitted by Ukrainian nationals to the European Court of Human Rights in Strasbourg have assisted in changing this practice. The European Court has decided in favour of the plaintiffs on 13 cases brought forward against Ukraine in 2004. In 2005, the number of cases rose to 119 and stood at the same number in 2006.

9. Concerning the direct application of international refugee law to individual cases, 11 of the 65 cases recognized by Ukraine were granted refugee status following a national court's positive decision on their appeals. Another two cases received refugee status after the national courts referred to the obligations of Ukraine in the context of its international treaties.

National Legal Framework

10. The 2001 *Law of Ukraine on Refugees* (hereafter: *Refugee Law*)⁷ is the principal legislation governing refugee matters in Ukraine. It includes a definition of the term "refugee" (Article 1) that is in accordance with the *1951 Convention*, provisions which regulate the procedures for the granting (Articles 13-14), loss⁸ and deprivation⁹ of refugee

⁷ Available online, including 2005 amendments, in UNHCR's Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44a286534>.

⁸ Para. 1 of Article 15 of the *Refugee Law* stipulates that:

"Refugee status is lost if the person:

- 1) voluntarily used protection of the country of which he/she is a citizen (national);
- 2) acquired Ukrainian citizenship or voluntarily acquired previous citizenship or acquired citizenship of a third country and uses its protection;
- 3) voluntarily repatriated to the country, which he/she left or was outside the territory of which he/she stayed due to well-founded fear of becoming a victim of persecution;
- 4) being a stateless person, is able to return to the country of previous habitual residence because the circumstances under which refugee status was given have ceased to exist;
- 5) was granted asylum or permit for habitual residence in another country;
- 6) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

Provisions of paragraph 4 of part one of this article shall not apply to the refugee if he/she is able to invoke compelling reasons (arising from a previous persecution) for his/her refusal to return to the country of previous habitual residence.

Provisions of paragraph 6 of part one of this article shall not apply to refugee if he/she is able to invoke compelling reasons (arising from previous persecutions) for his/her refusal to avail himself of the protection of the country of his/her nationality."

⁹ Para. 2 of Article 15 of the *Refugee Law* stipulates that:

"Person shall be deprived of refugee status if: such person is involved in activities posing a threat to national security, public order or health of the population of Ukraine.

Basis for the request for migration service agency on loss of refugee status may be provided by personal application of a person who was granted refugee status in Ukraine or petition of agencies of Internal Affairs, Security Service of Ukraine or other governmental agency.

Basis for the request of migration service agency on deprivation of refugee status may be provided by petition of agencies of Internal Affairs, Security Service of Ukraine or other governmental agency."

status in Ukraine (Article 15), and a degree of protection from *non-refoulement* (Article 3). It also includes the principle of family unity (Article 4), a safe third country definition (in line with UNHCR standards) (Article 1), and special procedures for refugee children separated from their families (Articles 9 and 11-12). It further provides for the issuance of refugee travel documents (Article 1) and the granting of social and economic rights for refugees (Article 20).

11. In Ukraine, up to 13 key ministries, services and government entities (committees, the Cabinet of Ministers, the Presidential Secretariat), as well as the Parliament are involved in making refugee policy.

12. The structure of the asylum system in Ukraine is based on a two-tier system. The central executive body in charge of migration, the State Committee for Nationalities and Religions (SCNR) and the Public Prosecutor Offices are responsible for the implementation of the *Refugee Law*. They are supported by 24 Regional Migration Services (RMS)¹⁰ which are located and service each of the Regions (or “*Oblast*”) of Ukraine.

13. Under the *Refugee Law*, the Regional Migration Services are responsible for considering the initial applications for asylum and can decide on the admissibility. If the Regional Migration Service decides to admit a case into the procedure, it will then consider the substance and make a recommendation to the SCNR. The SCNR then takes a decision on the case. The SCNR may approve the RMS recommendation or may take a different approach. Asylum-seekers can appeal a negative decision from the Regional Migration Service either to the SCNR or to the courts.

14. Over the years, there has been a constant reorganization of the asylum authorities in Ukraine. The State Committee, in particular has undergone eight reforms in nine years of its existence. Similarly, the number of Regional Migration Services has fluctuated. From 27 in 2006, their number was reduced to 24 in 2007. On 8 November 2006, based on the adoption of Resolution No. 1575 on the “*Creation of the State Committee for Nationalities and Religions*”, the Cabinet of Ministers decided to restructure the State Committee for Nationalities and Migration into the State Committee for Nationalities and Religion.¹¹ Since then, discussions and consultations have taken place on the identification of the authority entrusted with the implementation of the legislation on refugees of Ukraine. These continuous reorganizations, exacerbated by frequent changes in management and limited financial resources allocated by the State Budget have lead to problems of access to asylum and substantive procedures, and have negatively impacted on the quality and speed of asylum decisions.

¹⁰ As of August 2007, the Regional Migration Services in Ivano-Frankivsk and Mykolaiv regions, as well as in Sevastopol city, were closed.

¹¹ The new regulations were enacted on 14 February 2007. See: *Cabinet of Ministers of Ukraine Enactment No. 201 on Approval of the Regulations of the State Committee of Ukraine for Nationalities and Religions*, 14 February 2007, available online in UNHCR’s Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=472b54832>.

15. The *Refugee Law* also has several shortcomings. UNHCR is particularly concerned about the accelerated procedure (Articles 9 and 12) that it establishes, which is frequently used to reject claims without considering the substance of the claim. In addition, the *Refugee Law* has no provisions on non-discrimination of refugees on grounds of their race, religion or country of origin.¹² It does not provide access for legal specialists of non-governmental organizations (NGOs) or UNHCR to refugees' individual files, or for refugees to have legal representation during refugee status determination (RSD) interviews with the Migration Services. In addition, the *Refugee Law* (under Article 8) does not establish a timeframe within which asylum applications of persons who have entered Ukraine irregularly should be referred from the State Border Service and the Ministry of Interior (MOI) to Migration Services' bodies.

16. The threshold for revocation permitted by the *Refugee Law* under the circumstances foreseen in Article 1 F is much lower than that those permitted by the *1951 Convention*. Paragraph 11 of Article 15 of the *Refugee Law* permits the withdrawal of refugee status if the refugee has been involved in activities threatening national security, public order or public health, if the seriousness of the accusations would call for judicial procedures. The procedural safeguards for revocation are very limited and while the applicant has the right to appeal, the withdrawal of the refugee documentation takes place immediately.

17. The 2005 amendments to the *Refugee Law* removed the deadlines for submission of asylum applications (3-5 working days). Currently, according to paragraph 4 of Article 9 of the *Refugee Law*, asylum applications have to be submitted "without delay". The migration authority is required to examine an application within 15 working days from the date of registration of the application.¹³ Decisions taken by the migration authority may be appealed in court.¹⁴

18. Persons who attempted to cross or crossed the border of Ukraine illegally and stay in Ukraine with the intention of acquiring refugee status shall be exempt from liability for these actions when they apply for refugee status with the Migration Services "without delay". This is consistent with the 1984 *Code of Ukraine for Administrative Offences*¹⁵ (hereafter: *Code*).¹⁶ However, since no definition of the term "without delay" was given by the 2005 amendments to the *Refugee Law*, the "period required for applying" for asylum is often interpreted by the authorities in a restrictive manner.

¹² This is important for the ethnic Chechens from the Russian Federation who are generally not recognized. .

¹³ See Article 12 of the *Refugee Law*.

¹⁴ See Article 16 of the *Refugee Law*.

¹⁵ Selected parts of the *Code of Ukraine for Administrative Offences* are available online in UNHCR's Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44a90e69a>.

¹⁶ Article 203 of the *Code* indicates: "cases when foreigners or stateless persons, intending to acquire refugee status, have illegally crossed the state border of Ukraine and have been staying in the territory of Ukraine during the period required for applying to a corresponding migration service body for granting the refugee status according to the *Law of Ukraine on Refugees*".

19. Those determined to have exceeded this period for submitting an asylum application, commit an offence under the *Code*.¹⁷ This offence may be subject to a fine from UAH 340-680 (equivalent to USD 67-134). Furthermore, the same *Code* in its Article 24 (types of administrative penalties) stipulates that the laws of Ukraine “may envisage the expulsion from Ukraine of foreigners and stateless persons who have committed administrative offences that constitute gross violation of legal order”. In addition to “entry cases”, these provisions create also particular difficulties for the applicants who apply for asylum only upon detention for attempting an illegal departure from Ukraine.¹⁸ An application for asylum does not prevent detention or threat of deportation when a person is repeatedly found attempting to leave the country illegally (or who may have been returned under existing readmission agreements).

20. In 2001, the *Code*’s provision on “illegal crossing or an attempt of illegal crossing of the state border of Ukraine” (Article 204-1), was amended to include a protection safeguard for refugees.¹⁹ However, exemption for refugees from the penal sanctions under this Article would only be possible when the definition of the term “without delay” would be introduced under the *Refugee Law*.

21. In order to be registered with the MOI Units for citizenship, immigration and registration, the applicants should be registered with the Migration Service, which should forward the information to the relevant MOI Units. Based on such notification, these MOI units are obliged to register the person.

22. The 2005 amendments to the *Refugee Law* introduced, in Article 9, new grounds for rejecting claims as “manifestly unfounded and abusive applications” (already existing in Article 12).²⁰ As the criteria were not clearly defined,²¹ the amendments resulted in more

¹⁷ In addition to asylum-seekers who entered the country illegally, this provision affects foreigners or stateless persons who arrived legally in Ukraine with student visas or on other legal grounds, and who apply for asylum after the expiration of their visas in the belief that they cannot return to their countries of origin.

¹⁸ See also below at paragraph 45.

¹⁹ The text of the article states:

“This Article shall not apply to the cases of arrival in Ukraine of foreigners or stateless persons for the purpose of obtaining asylum or acquiring the refugee status if they applied to the appropriate public authorities *within the statutory term* to obtain asylum or acquire the refugee status.”

²⁰ Article 12 paragraph 6 establishes that

“Decisions on refusal to process documents for resolving the issue of granting refugee status shall be made in relation to applications which is manifestly unfounded, i.e. when no conditions stipulated in paragraph 2 of article 1 (refugee definition) of this Law apply to the applicant, and when applications are associated with abuse, i.e. when applicant pretends to be some other person, and in relation to applications submitted by persons who were denied refugee status for not meeting the conditions stipulated in paragraph 2 of article 1 of this Law.”

²¹ It indicates:

“The migration service body may decide to refuse the acceptance of application for refugee status when the applicant pretends to be some other person or when the applicant was denied refugee status for not meeting the conditions stipulated in paragraph 2 of Article 1 of this *Law*, if such conditions did not change. The decision to refuse the acceptance of application for refugee status could be also adopted when the person was refused in acceptance of application for refugee status or in processing of documents for resolving the issue of granting such status due to abuse of the procedures, except for the cases when the applicant provided credible information about himself.”

arbitrary and formal rejections by the Migration Services, and even less of a readiness to consider asylum applications on their merits.

23. While the principle of *non-refoulement* is reflected in the *Refugee Law* (Article 3), it is not incorporated in the 1994 *Law of Ukraine on the Legal Status of Foreigners and Stateless People* (further: *Aliens Law*).²² This presents a serious concern in that the *Aliens Law* regulates, in Article 32, the expulsion of aliens and stateless persons who committed crimes, administrative offences and/or severely violated Ukrainian laws. Thus, foreigners and stateless persons who stayed without MOI registration, or who tried to cross or crossed the border illegally, face serious risks of deportation.

Asylum Policy and Practice

24. Ukraine is located on the eastern border of the European Union, at one of the major migration routes to the West. This brings considerable challenges to the country's migration and asylum management. While in recent years Ukraine has been reviewing its legislation to address inconsistencies with international standards, the Government's policy continues to focus on combating irregular migration, smuggling, trafficking²³ and the protection of State security, without sufficiently differentiating between those who have and those who do not have international protection needs. A lack of national and international funds for the creation of adequate refugee reception and integration programmes as well as a latent sentiment of xenophobia have resulted in a highly inhospitable asylum environment in Ukraine.²⁴ Asylum-seekers consistently face problems with access to territory, access to asylum and access to substantive RSD procedures. They are often subject to police harassment, arbitrary and protracted detention²⁵ as well as a serious risk of *refoulement*, while refugees face serious obstacles to the enjoyment of their rights and to access local integration.

25. **Access to the territory** is hampered by a differentiated approach of border authorities to certain nationalities. This is especially the case for asylum-seekers from the Russian Federation who, notwithstanding the visa-free regime that exists between the two countries, have faced particular difficulties to access Ukraine, since the Beslan school

²² Available online in UNHCR's Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44a275ff4>.

²³ According to the US Department of State, Ukraine increased its law enforcement capacity in 2005, proactively investigated trafficking, and strengthened its anti-trafficking criminal code. See: US Department of State, *Trafficking in Persons Report – Ukraine*, 5 June 2006, <http://www.state.gov/g/tip/rls/tiprpt/2006/65990.htm>.

²⁴ See, for example, Human Rights Watch (HRW), *On the Margins: Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union*, 30 November 2005, Volume 17, No. 8(D), <http://hrw.org/reports/2005/ukraine1105/ukraine1105webwcover.pdf>, "Systematic Profiling of Foreign Nationals", p. 35-37.

²⁵ See: Council of Europe, *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Ukraine 10 – 17 December 2006*, CommDH(2007)15, 26 September 2007, para. 94-100.

massacre in the Russian Federation in September 2004.²⁶ Reports received by UNHCR indicate that persons from the Russian Federation seeking entry at the eastern borders face restrictions in their access to the Territory, leaving the border authorities to decide arbitrarily who enters the territory.²⁷

26. In July 2007, the Committee of Ministers adopted Resolution No. 917, which introduced amendments to the entry rules. The State Border Guards will now require entrants to demonstrate that they have funds for their stay in Ukraine. No caveats or reservations were made in the Resolution for refugees or asylum-seekers. This may effectively prove an additional hindrance to the entrance on the territory of Ukraine of potential asylum-seekers.

27. The following reasons have been stated by border officials for rejections at borders: inappropriate or undefined reasons for entering Ukraine, lack of a place of residence in Ukraine, or of a host party or presentation of false documentation. Border guards have stated that in the past years, very few persons have applied for refugee status upon entering Ukraine, and they see no objective reason for changing their admission practice.

28. More recently, UNHCR has received some reports of denial of access to Uzbek citizens who, in principle, should also benefit from a visa-free regime with Ukraine. The same reports indicate that such access was denied even to Uzbek citizens of Tatar origin, who according to Ukrainian legislation would qualify for the status of “Formerly Deported Persons” with a right to a simplified naturalization procedure.

29. As the capacity of the Ukrainian Migration Services to provide accommodation and food and to process cases of asylum-seekers is very limited,²⁸ asylum-seekers are hesitant to seek protection in Ukraine. In Kyiv, asylum-seekers generally had to wait up to six months to be registered by the Migration Service Department. During this time, they remained undocumented and subject to police harassment and fines. In Kiev, the time asylum-seekers were waiting to register an asylum application was shortened to a matter of weeks by late 2006. UNHCR believes that a major factor contributing to the clearance of the backlog of cases was the spontaneous departure from Ukraine of many asylum-seekers who situation too difficult to cope with.

30. The lack of adequate integration prospects in Ukraine and higher standards in Western European countries motivate asylum-seekers and refugees to move irregularly to the European Union. Many persons (around 900 out of 1,740 in 2005, and 859 out of 1,959 in 2006) apply for protection only when caught during their attempt to move onwards irregularly. In this context, and given the limited access to the State Border Service and

²⁶ U.S. Department of State, *Country Report on Human Rights Practices 2006 – Ukraine*, 6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78846.htm>.

²⁷ See also HRW op. cit. footnote 22 at page 35

²⁸ In 2006, around 115 of the 1,500 were accommodated by the Ukrainian authorities, while four persons were registered per week at Kyiv City Migration Service.

MOI detention facilities for UNHCR and its NGO implementing partners, the respect for the principle of *non-refoulement* in Ukraine remains a serious concern for UNHCR.

31. Regarding the **quality of the asylum procedure**, one of the main problems in Ukraine's asylum management (as stated in paragraph 13 above) has been the constant reform of the asylum institutions which have been remodelled by successive governments,²⁹ and in particular of the central executive body. In March 2007, by decree of the Cabinet of Ministers (No. 201), the State Committee for Nationalities and Religions (previously the State Committee for Nationalities and Migration) became the authorized central body of executive power to deal with asylum issues. Its activities are directed and coordinated by the Cabinet of Ministers through the Vice Prime Minister of Ukraine.³⁰

32. These numerous reorganizations, exacerbated by frequent changes in management and limited financial resources allocated from the State budget, have led to increasing gaps in the performance by the respective authorities and have negatively affected the efficiency and quality of and access to asylum and substantive procedures. These problems are further aggravated by the lack of interpretation facilities at the State Border Service, MOI detention facilities and at the Ukrainian Migration Services as well as the absence of a free legal aid system.

33. The RSD procedures in Ukraine also have a number of shortcomings with regard to fairness and efficiency. While the procedures include two stages (admissibility and substantive review), most cases are rejected at the first stage, as **manifestly unfounded and/or abusive claims** without considering their merits. The reasons for rejecting the applications as *manifestly unfounded* are not provided in the written notifications. All of this has resulted in an extremely low recognition rate of asylum-seekers in Ukraine.

34. Thus, according to official statistics, of the 1,959 asylum applications submitted in 2006, 170 were initially denied access to the procedures based on Article 9 of the *Refugee Law*. While many of them were later admitted, the statistics also indicate that the majority of them (1293 cases – 67%) were then rejected by Regional Migration Services (based on Article 12). Only about 330 cases (16%) of the new asylum applications were admitted into substantive procedures in 2006. Adding those claims that were granted admissibility upon appeal, the Regional Migration Services admitted a total of 448 asylum claims into the procedure in the 2006. Between 2002 and 2005, the average recognition rate has been less than 4%, while in 2006 it was 2.7%.

²⁹ See, for example, HRW, *European Union: Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees*, Backgrounder, 17 October 2006, <http://hrw.org/backgrounder/eca/eu1006/eu1006web.pdf>, "The Case of Ukraine", p. 8.

³⁰ See: Cabinet of Ministers of Ukraine Decree No. 201 and 213 on Regulation of the *State Committee for Nationalities and Religions* issued on 14 February 2007.

35. The main countries of origin of new asylum-seekers were India (22.8%), Pakistan (17.3%), Bangladesh (9.3%), Afghanistan (6.2%), Palestine (6.2%), Iraq (4.9%), Russian Federation (4.1%), Uzbekistan (4%), Somalia (3.2%). The remaining 22% comprise asylum-seekers from other Asian, African, CIS, European and other countries.

36. The appeals process in Ukraine is lengthy since appeals may be lodged at each stage of the procedure. If a case is rejected on the basis of admissibility under Article 9 or because the Migration Service considers the case to be manifestly unfounded under Article 12 of the law, the asylum-seeker may either appeal to the SCNR within seven days, or appeal to the court within one year. If the SCNR rejects the Article 9 or Article 12 appeal, or if the SCNR has refused to grant the asylum-seeker status upon substantive consideration of the case (under Article 10), the asylum-seeker may appeal to the court and must do so within one year. Favorable consideration of a case by the court does not necessarily result in the decision of the SCNR being overturned. Instead, the case is returned to the Migration Service or SCNR for a new decision to be taken.

37. It is worth noting that the justice system is still evolving in Ukraine and that until recently, judicial officers did not specialize in either administrative or asylum law. Asylum appeals should be heard in the District Administrative Court as the court of first instance. However, as the District Administrative Court is not yet established in all regions of Ukraine, in their absence appeals may still be heard before the court of general jurisdiction. If the court of first instance does not allow an appeal, the asylum-seeker – when appealing on the merits of his/her claim – may appeal again to the Administrative Appeal Court in the region or “*oblast*”. A further appeal on procedural aspects is possible before the High Administrative Court in Kyiv. The maximum timeframe for lodging an appeal to the Administrative Appeal Court is 30 days and to the High Administrative Court one month. In exceptional cases (and to date un-tested in asylum cases), the appellant could take a case to the Supreme Court.

38. In 2006, the total number of appeals against the negative decisions under Articles 9, 10 and 12 of the *Refugee Law* considered either at the court or at the SCNR was 693. Of them, 11 were decided positively, 529 were rejected and 153 were closed due to the absence of the asylum-seeker.

39. The overall asylum situation is aggravated by the **lack of complementary forms of protection**. In addition, although the national law on refugees calls for the completion of the RSD procedure within six months,³¹ most cases obtain their final decision, inclusive of the appeal period, after two or three years. Without any support to make a living or access to the labour market, this causes considerable hardships for asylum-seekers.

³¹ Articles 13 and 14 of the *Refugee Law*.

40. Asylum-seekers often are not provided with **timely and proper documentation**. They are therefore often subject to detention and at risk of *refoulement*. The local MOI Units for citizenship, immigration and registration, dealing with the residency registration of asylum-seekers, have in some regions declined their registration in violation of the existing laws, which again has resulted in unjustified administrative sanctions or risks of sanctions for this group.

41. The combination of the above factors has resulted in several instances of *refoulement* in 2005 and 2006. Most notably, in February 2006, the combination of limited or no information sharing between the National Security Service and UNHCR, the misapplication of manifestly unfounded clauses by the Migration Services and the lack of respect for due process of court procedures, led to the *refoulement* of a group of 11 Uzbek asylum-seekers.³² The migration authorities, claimed that the applications did not have the necessary information for admission into the substantive procedures. In spite of repeated requests, the files were not shared with UNHCR.

Living Conditions of Refugees and Asylum-Seekers

42. With regard to reception standards, neither asylum-seekers nor refugees have adequate access to State-sponsored accommodation, material assistance or employment. According to Article 20 of the *Refugee Law*, only recognized refugees are eligible for the financial aid and accommodation. In Ukraine, there is only one temporary accommodation centre for refugees that currently has a capacity of up to 250 places, but uses only 100 due to the limited State budget allocation. According to Article 7 of the *Refugee Law*, the Regional Migration Services should determine places for temporary accommodation and generally facilitate the provision of housing to refugees and asylum-seekers. In practice, however, the Regional Migration Services are unable to provide such services. Instead, refugees and asylum-seekers have to rent accommodation from private owners. As “foreigners”, the rents requested from them are much higher than those charged to nationals. Rents for private accommodation, especially in the cities, are high and continue to increase. As a result, many refugees are obliged to spend almost their complete income on accommodation. Many remain homeless or live in sub-standard conditions, risking their physical and psychological health.

43. Moreover, asylum-seekers and refugees recently faced problems related to their residency registration.³³ According to the former U.S.S.R. system of registration, a person

³² See, for example, U.S. Committee for Refugees and Immigrants, *World Refugee Survey 2007 – Europe*, 11 July 2007, p. 60, http://www.refugees.org/uploadedFiles/Investigate/Publications_&_Archives/WRS_Archives/2007/48-69_Congo-Kinshasa-India.pdf. The report indicated that Ukraine forced ten asylum-seekers back to Uzbekistan in February 2007, claiming they had passed through Moldova and Russia and should have sought asylum there instead. See also: Amnesty International, *Amnesty International Report 2007 – Ukraine*, 23 May 2007, <http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Ukraine>.

³³ See for more on residency registration procedures, for example, Immigration and Refugee Board of Canada, *Ukraine: Residential registration procedures; whether a person deregistering from his or her former*

without “*propiska*” was extremely limited in exercising political, social, economic and cultural rights. On 14 November 2001, the Constitutional Court of Ukraine declared the “*propiska*” system as illegal and unconstitutional. Although a new system of registration was introduced in 2003, the old “*propiska*” system has not been fully abolished, and residency registration is still necessary in order to get access to medical assistance in public hospitals, to marry or to obtain a birth certificate.

44. In order to be registered with the citizenship, immigration and registration MOI Units, the applicants should be registered with the Migration Service, which should forward the information to the relevant MOI Units. Based on such notification, these MOI units are obliged to register the person. In this regard, however, MOI authorities in some regions impose additional requirements than those prescribed by the law. They have often requested that a property owner or housing office certify that the person concerned is staying on a temporary basis in a certain apartment and that the owner of the apartment does not object to that. In many cases, landlords refused to provide refugees and asylum-seekers with such confirmation letters since they do not want to disclose officially the fact that they are renting their apartments in order to avoid the payment of taxes.

45. Consequently, many refugees and asylum-seekers failed to comply with the additional registration requirements and were unable to register. Non-registration rendered them vulnerable to harassment by law enforcement authorities and, in some instances denied them access to the aforementioned national services including those related to health care, education and employment. Following contacts with the authorities, the Prosecutor General of Ukraine investigated the matter and declared the practice of imposing additional requirements illegal, which was abolished in late 2006. The MOI authorities, however, are seeking to amend the legislation to expand the requirements for registration.

46. The overall situation motivates some asylum-seekers to try to leave in search for better protection elsewhere. They are often **apprehended for crossing illegally the Western border**³⁴ of Ukraine. **Detention** has therefore been on the increase. Although detention conditions have improved in recent years, they are still poor due to the ever-growing number of irregular migrants and difficulties of the State to cope with the increased numbers.³⁵ Asylum-seekers are detained jointly with other foreigners and remain

*place of residence must inform the registration office of his or her new address and registration, UKR101787.E, 25 January 2007, http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.view_rec&gotorec=451054. See also: *Law of Ukraine, On the Right to Freedom of Movement and Choice of Place of Residence in Ukraine*, available online in UNHCR’s Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46b343f22>.*

³⁴ See, for example, HRW, 17 October 2006, see above footnote 24, p. 8.

³⁵ See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2005*, 20 June 2007, <http://www.cpt.coe.int/documents/ukr/2007-22-inf-eng.pdf>, p. 31 and further. See also: Amnesty International, see above footnote 32, under “Harsh detention conditions”.

in detention for protracted periods.³⁶ This type of administrative detention may amount to a denial to the right to seek asylum.³⁷

47. The recently negotiated and agreed readmission agreements between the European Union and Ukraine and between Ukraine and the Russian Federation, whilst not explicitly mentioning their non-application to asylum-seekers and refugees, run the risk of creating “chain-*refoulement*”, from the European Union or of overburdening the nascent Ukrainian asylum system in the future.

48. The yearly increase of *mala fide* asylum applications submitted at the Western Ukraine border impacts negatively on *bona fide* asylum-seekers and refugees. This in turn creates a negative perception of the existing asylum system by border and law enforcement authorities whose primary objective is to combat irregular migration.

Conclusion

49. UNHCR is fully aware of the challenges Ukraine is facing due to its proximity to the extended EU border and recognizes the efforts of the Government to manage migration in the context of mixed movements of migrants and asylum-seekers. While recognizing the need to combat irregular migration and criminal activities, including trafficking and smuggling, and to protect State security, UNHCR remains concerned over the state of general respect for human rights and refugee protection in line with international standards.

50. UNHCR, hence is committed to continue to work with the authorities on the creation of an efficient and effective asylum/migration system and is actively working with the authorities in this endeavour. This should include the adoption and implementation of:

- 1) a new comprehensive *Law on Refugees, Persons Eligible for Complementary and Temporary Protection* which should address the existing shortcomings and introduce complementary forms of protection;
- 2) the *Law of Ukraine on Free Legal Aid* which should include refugees and asylum-seekers amongst the beneficiaries; and
- 3) the *Aliens Law* should also be amended and harmonized with Articles 32(2) and 33 of the *1951 Convention* as well as Articles 3, 6 and 13 of the *1950 European Convention for the Protection of Human Rights and Fundamental Freedoms*.

51. In this process, UNHCR welcomes Ukraine’s yearly increase of the State budget allocations directed towards asylum-seekers’ documentation, transportation, accommodation, and translation of their asylum applications. However, UNHCR is concerned about the lack of funds necessary for refugee integration into Ukrainian society,

³⁶ HRW, 17 October 2006, see above footnote 24, p. 8.

³⁷ Council of Europe, see above footnote 25, para. 94.

including accommodation, adequate welfare provisions and assistance, language and vocational training.

52. In view of the above considerations, UNHCR advises States, to refrain from returning third country asylum-seekers to Ukraine as at present no assurances can be given that the persons in question: a) would be readmitted, b) would have access to a fair and efficient refugee status determination procedure, c) would be treated in accordance with international refugee standards or d) that there would be effective protection against *refoulement*.

UNHCR
October 2007

Annex: Overview of International Treaties, to which Ukraine is a party

	Entry into force in the country	Individual complaint mechanisms applicable	Latest report submitted in (year)	Last Concluding Observations issued by Treaty Monitoring Body in year¹ (session)	Next report due in/ report overdue since**
International Covenant on Civil and Political Rights (ICCPR)	23.03.76	OP1 Decl. under Art. 2	2006	88 th session 2006	
ICCPR Optional Protocol 1	23.03.76				
ICCPR Optional Protocol 2	11.07.91				
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	03.01.76	N/A	2006	69 th session 2006	
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	04.01.69	Decl. under Art. 14	2006	69 th session 2006	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	26.06.87	Decl. under Art. 22 CAT	2005	2002	2007
CAT Optional Protocol	-				
Convention on the Rights of the Child (CRC)	02.09.90	N/A	2001	31 st session 2002	2007
CRC Optional Protocol on the sale of children, child prostitution and child pornography	18.01.02		2006		

CRC Optional Protocol on the involvement of children in armed conflicts	12.02.02				
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	01.07.03	Decl. under Art. 77			
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	03.09.81	OP1 Decl. under Art. 1	1999	1996	
CEDAW Optional Protocol	22.12.00				