

Ukrainian asylum seekers and a Polish immigration paradox

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The recognition rate for Ukrainian asylum seekers in Poland remains at an extremely low level, with the concept of ‘internal flight alternative’ serving as the legal basis for rejection of many asylum applications.

In 2014 the total number of applications for asylum in Poland by nationals of all countries reached just over 8,000.¹ Compared to 428,000 in Hungary or 646,000 in Italy (two other states situated at the EU’s external border), the Polish statistics are surprisingly low, especially since they include the period following the outbreak of the conflict in Ukraine.

While the majority of refugees fleeing military conflict in Ukraine have sought asylum in Russia, a much smaller number applied for international protection in the EU, including Poland. The number of Ukrainian asylum seekers in Poland increased significantly as compared to previous years but remains small in absolute numbers: 46 applications in 2013, 2,253 in 2014 and 2,061 by mid-November 2015.² Nevertheless, the recognition rate is extremely low, as it was in 2014 in most of the other main countries where Ukrainians sought refuge. Germany made 20 grants of refugee or subsidiary protection status out of 2,705 applications; Italy 45 grants of refugee or subsidiary protection status out of 2,080 applications; Sweden 10 grants of refugee status out of 1,320 applications; and France 30 grants of refugee status out of 1,425 applications. Interestingly, the Czech Republic received 515 applications and granted refugee or subsidiary protection status to 145 of them.

In Poland, up until 15 November 2015 only two persons were granted refugee status and 24 were granted subsidiary protection, which in turn may deter some Ukrainians from seeking asylum in Poland. At the same time, the number of Ukrainians in residence legalisation procedures in Poland almost doubled, both

with regard to the number of applications and the number of positive decisions.

What is problematic is that Poland, while accepting Ukrainian students and economic migrants, does not recognise refugees, even if they come from war-torn Eastern Ukraine. At the beginning of the conflict in Ukraine, Poland’s political elite publicly expressed support for potential asylum seekers from Ukraine arriving in Polish territory. But the current Polish approach seems to consist of limiting the inflow of asylum seekers while the procedure for legalisation of residence is very accessible. However, many Ukrainians lack this information and still apply for asylum. This often puts them in a complicated legal position; they cannot work in Poland and if their claims are rejected they are forced to leave the country.

The legal paradox

The reason behind the low asylum recognition rate for Ukrainians is the application of the concept of ‘internal flight alternative’ (IFA) by the Polish authorities. While neither the 1951 Refugee Convention nor its 1967 Protocol expressly refers to this concept, it has over time been developed in state practice and legislation. It exists, for example, in Article 8 of the recast EU Qualification Directive of 2011 which introduced the condition that the possibility of securing protection elsewhere within one’s own country should serve as part of the assessment of an application for international protection. The practice in this regard is highly divergent even among EU Member States.

In Polish law,³ an asylum seeker has to prove lack of the possibility of safely relocating and settling in any other part of their country of origin. The application

of this concept to Ukrainian asylum seekers, the majority of whom come from the eastern rebel-held areas and have a possibility (at least theoretically) of resettling to the western parts of the country, leads to the situation where it is almost impossible for Ukrainian asylum seekers to obtain protection in Poland.

As stipulated by the United Nations High Commissioner for Refugees Guidelines on International Protection,⁴ the 'internal flight alternative' is neither a stand-alone principle nor an independent test allowing for refugee status determination. It should therefore be considered as a part of a holistic approach to making a decision on provision of international protection. In Poland, however, IFA seems to be a key determinant for decisions on international protection in relation to Ukrainian asylum seekers.

According to the European Court of Human Rights,⁵ in order to apply IFA specific guarantees have to be in place – namely, the person must be able to travel to the area concerned, gain admittance and settle there. Accordingly, the policy applied by a receiving state should not lead to a possibility of a person being expelled and ending up in a part of the country of origin where he or she may be subjected to ill-treatment. International

reports and on-site accounts point out that, with over 1.4 million internally displaced persons (IDPs) and insufficient resources, the situation facing IDPs in Ukraine is extremely difficult. There are problems with registration procedures, securing adequate housing, medical assistance, and jobs and pensions. In addition, there are increased tensions between IDPs and host communities who often blame the former for social problems and for the conflict itself.

Apart from applying for international protection, Ukrainians have the option of legalising their stay on Polish territory with temporary or permanent residence permits. In this regard, Poland possesses very liberal regulations. An average of 80% of applications for legalisation of residence are recognised, offering a tangible opportunity of obtaining legal status. Consequently, in 2014 the number of applications for temporary residence permits rose by 60% and by 104% for permanent residence permits as compared to 2013. Nevertheless, lack of clear information regarding both legalisation and international protection procedures leads to a situation where many Ukrainians, while fulfilling the requirements for legalisation of residence, still decide to file asylum applications.

Many of them are not aware of the legal consequences of entering the procedure, such as the general lack of permission to work during the first six months of the process. This is mostly due to the fact that they do not receive timely and reliable information either from the Ukrainian or the Polish authorities. This policy has affected in particular those coming from the Eastern Ukraine who were already residing and working legally in Poland but who were



Destroyed school building in Nikishino, Ukraine, March 2015.

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advised to apply for international protection when the conflict broke out. As the work permit is automatically cancelled at the moment of lodging an asylum application, they could no longer stay employed. More importantly, the refusal to grant protection – which was the outcome of the vast majority of applications – meant that they had to leave Poland and, in many cases, received a temporary re-entry ban. Similarly, Ukrainian students from the Donbas region studying at Polish universities who hoped to be granted international protection and had therefore lodged an asylum application instead of prolonging their residence permit eventually lost their right to stay in the country. As a consequence, those two groups of migrants have been faced with the choice of either returning to Ukraine or staying in Poland on an irregular basis.

The on-going conflict in the Eastern Ukraine raised high expectations among Ukrainians coming from the region of being granted international protection in Poland. But the Polish authorities' application of

IFA as an independent test puts Ukrainian asylum seekers in a very vulnerable position. The repeated application by the Polish authorities of this concept requires some liberalisation in the light of the absence of a real possibility for Ukrainian asylum seekers of such relocation inside Ukraine.

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