

Chechen refugees denied access to Europe

by Martin Rozumek

A decade of conflict has forced an estimated 350,000 people to flee Chechnya. For Chechen asylum seekers Central Europe has become the transit point for those seeking entry to the EU. Expansion of the EU has failed to offer protection and imposed further burdens on asylum systems in new member states.

The tiny republic of Chechnya proclaimed its independence from Russia in late 1991, a declaration that went unrecognised by Russia and the international community in general. Since then, Chechen civilians have lived through two major waves of conflict: the first between 1994 and 1996, when an estimated 50,000 people were killed and the capital city of Grozny was largely destroyed and the second from 1999 when Russian troops re-entered Chechnya in response to a series of bombings in Moscow and Dagestan blamed on Chechen insurgents. More than 600,000 people were displaced between 1999 and 2000, many for the second time (having returned after fleeing the first wave of conflict in 1994). Significant numbers of the displaced found temporary – and often precarious – shelter in the neighbouring province of Ingushetia.¹

210,000 Chechens – more than 20% of the population of Chechnya – remain displaced within the Russian Federation.² Chechnya continues to suffer from insecurity and human

rights abuses. In March 2005 Human Rights Watch noted that “Chechnya continues to be the single largest human rights crisis in Europe and the only place on the continent where civilians are killed and ‘disappeared’ on a daily basis as a result of an armed conflict”.³ The ongoing Russian ‘cleansing’ campaign and enforced closures of camps for Chechen IDPs in the neighbouring republic of Ingushetia are well documented.⁴

Chechen asylum seekers in Europe

The consequences of the war in Chechnya have inevitably spilled across borders with implications for the refugee protection regime in Europe. According to UNHCR statistics, around 120,000 Russian citizens sought asylum in the industrialised countries from 2000-2004. In both 2003 and 2004 asylum seekers from the Russian Federation were the largest group of people claiming asylum in the countries of Europe. Although statistical information on asylum seekers from Chechnya is

not separately recorded from that on asylum seekers from other parts of the Russian Federation, UNHCR estimates that the vast majority of asylum seekers from the Russian Federation are Chechens.⁵ Today Chechens comprise the largest single group registered with official refugee status determination (RSD) systems operated by the Czech Republic, Poland and Austria.

Clearly, 30-40,000 Chechens cannot keep arriving at Europe’s doorstep every year without causing a policy reaction. This policy reaction is most clearly being seen in the newest EU member states, which have less experienced asylum systems but are receiving nearly as many Chechens as more traditional asylum countries. Further, it is the accession states that now make up the new ‘frontiers’ of the EU and which are expected to protect Europe’s borders.

One of the consequences of this process is that whilst Europe heads towards harmonisation of asylum policy there are inconsistencies in the way in which Chechen asylum seekers are currently dealt with in the countries where they seek protection. Moreover, despite concerted efforts on the part of EU Member States to reduce multiple applications for asylum, the same asylum seeker from Chechnya can be registered in Poland, the Czech Republic and Austria. Many of those who have arrived in Poland over recent years have either been refused asylum or have become increasingly frustrated about the way in which their applications have been dealt with and about the facilities that are available to them during the determination process.

Unable to return home a group of Chechens headed for the Czech Republic in 2003 in the hope that their applications would have a better chance there. All of the Chechens who had claimed asylum in Poland and who submitted new asylum claims with the Czech border authorities were allowed to enter the

Chechen asylum seekers, Vysni Lhoty reception centre for new arrivals, in northern Moravia, Czech republic.



regular Czech RSD system. Ironically those asylum seekers from Chechnya who had entered the country from Poland but had not applied there were rejected by the Czech Ministry of Interior on the manifestly unfair grounds that they could apply for asylum in Poland and would be able to do so if returned to Poland.

The approach taken by Austrian asylum authorities towards Chechen asylum seekers followed that of the Czech Republic. Prior to May 2004 Austria did not consider the Czech Republic to be a safe third country for return due to a two-year ban on re-submission of a new asylum application in the Czech Republic and a legal provision to terminate the RSD process if an asylum seeker left or attempted to leave the country illegally. These provisions still form part of the Czech asylum law. In October 2003 Austria ended its policy of *non-refoulement* of asylum seekers to the Czech Republic despite the fact that there were no changes introduced into the Czech Asylum Act. The expectation now is that if asylum seekers from Chechnya enter Austria from the Czech Republic they can be returned there. And if they entered the Czech Republic from Poland without claiming asylum in Poland, they can again be returned.

A legal limbo

As a consequence of these processes, many Chechen asylum seekers in Europe find themselves in a legal limbo whilst different countries decide what to do about their applications for protection. Many Chechens left Poland because they found themselves without legal protection or status. Similarly asylum seekers from Chechnya who move from the Czech Republic to Austria can find themselves in this position. This situation can sometimes result from the deliberate attempts of some countries to absolve themselves of responsibility for determining these claims.

The Czech Aliens Police in the South Bohemian border town of Ceske Velenice previously facilitated, rather than deterred, the unauthorised entry of Chechen refugees to Austria. The town became known in the North Caucasus as an easy entry point to the EU. In October 2003 a group of eight asylum seekers from



UNHCR/L Taylor

Chechnya arrived at the Austrian border post and claimed asylum. The Austrian border police officials conducted interviews with the asylum seekers, filled out the necessary asylum claim forms but did not allow the Chechen asylum seekers to enter Austrian territory. The asylum seekers were told to return to a Czech refugee camp to await the result of the Austrian RSD border procedure. However, by the end of the year none had heard the results of their asylum claims in Austria.

Subsequently, a larger group was neither granted entry to Austrian territory nor allowed to submit their asylum applications. The Austrian Interior Minister stated that the refugees from Chechnya had been told that refugee reception centres were full and had voluntarily returned to the Czech Republic without claiming asylum in Austria. In fact, as interviews with the Chechens confirmed, all the returned Chechens had claimed asylum in Austria but had been served with three-year expulsion orders by the Austrian authorities. Some subsequently appealed against the expulsion decisions and complained of their inhumane treatment. In early 2004 Austria changed its policy and again allowed Chechens to apply for asylum.

Czech treatment of the returned Chechens was in line with the provisions of the Czech Asylum Act. The RSD procedure of the returned Chechens was terminated and they were told that they had to wait two years to submit a repeat asylum application. The authorities resolved

to expel the returned Chechens from Czech territory. Only because most of the group appealed against the decision were they allowed then to stay in the Czech Republic. However, as a result, no country would make an assessment on the merits of asylum applications lodged by them. Czech NGOs have campaigned to find a solution for the Chechens in the Czech Republic either on basis of a new Temporary Protection Act or a toleration regime. So far, there has been no response from the Czech government

The need for a 'protected entry' solution

The international community is currently failing to protect those fleeing from human rights violations in Chechnya. Neither Ingushetia nor the rest of the Russian Federation can be considered as adequate internal flight alternative destinations.⁶ Efforts to reduce the number of asylum seekers in Europe adopted by EU states make the access of Chechen refugees to effective protection extremely difficult and expensive. We are close to a situation in which almost every application for asylum in Europe could be rejected as inadmissible or manifestly unfounded.

Part of the problem stems from the fact that Poland and the Czech Republic are still seen by most asylum seekers as only transit countries and the treatment that their applications receive in these countries often reflects this. Both the Czech and Polish asylum laws must be amended to come into line with provisions of the

Chechen asylum seekers in library, Vysni Lhoty reception centre for new arrivals, in northern Moravia, Czech Republic.

1951 Convention to ensure that asylum claims are dealt with in a regular RSD procedure. The safe third country notion must be implemented on an individual basis.

Before any country can be designated as safe, an assessment of individual protection needs must be carried out for every single asylum seeker. The fact that a country is an EU Member State, a signatory to the 1951 Convention and other international human rights conventions, and has an asylum system in place, does not necessarily mean that it is a safe place of return for all asylum seekers arriving from a particular country. The fact that asylum seekers from Chechnya are rarely granted asylum in either of these countries – despite extensive evidence of on-going conflict and persecution in their country of origin – is illustrative of this problem. Moreover, the Austrian government (as well as the German government) could well be in breach of their *non-refoulement* obligations as they have effectively denied entry and RSD procedure to individuals coming from the Czech Republic and Poland.

What is also clear, however, is that the asylum system being created in Europe, particularly when combined with the enlargement of the EU and the inevitable uneven distribution of asylum seekers across EU Member States, has itself generated new problems both for receiving coun-

tries and for individual refugees and asylum seekers in need of protection. Since 2004 many of those who are genuinely in need of protection and who have sought asylum in Poland and the Czech Republic have remained underground and turned to the services of smugglers to reach territories of countries more likely to recognise their needs and grant them refugee status. The Dublin II Regulation provides the legal basis for establishing the criteria and mechanism for determining the State responsible for examining an asylum application in one of the Member States of the EU. In order to save their lives Chechen refugees are forced to bypass it.

Recent proposals to establish EU processing centres in Ukraine or Libya can neither reduce protection needs nor diminish the demand in Europe for cheap labour. The likely result of such centres is that more people will be forced to live in non-legal situations, dependent upon criminal networks. The burdens and costs of border control will be further increased.

Future asylum systems in Europe must better differentiate between the voluntary and forced dimensions of migration. States argue that the concept of asylum is widely abused by illegal migrants coming to Europe, yet offer almost no legal avenues for those who are in need of protection. People with real protection needs

suffer in poverty and are forced to use illegal channels to reach the EU.

One of the solutions to be explored is an introduction of the protected entry idea in regions of origin involving Embassies of the EU Member States.⁷ The EU should follow the example of the US, Canada and Australia and increase their resettlement quotas as well as rapidly introduce pro-active migration management schemes. At the same time, discussion of improved law enforcement with regard to illegal immigrants and greater focus on labour integration of immigrants would make the EU more open, fair and competitive to its newcomers.

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1. Further information available at www.migrationpolicy.org/research/chechnya.php
2. www.unhcr.pl/english/newsletter/20/stanowisko.php
3. <http://hrw.org/english/docs/2005/03/10/russia10298.htm>
4. Tullio Santini 'North Caucasus: upholding IDPs' right to 'voluntary' return', *FMR 1*, www.fmreview.org/FMRpdfs/FMR21/FMR2121.pdf
5. www.unhcr.ch/cgi-bin/texis/vtx/home/opedoc.pdf?tbl=STATISTICS&id=422439144&page=statistics
6. Marx, R 'The Criteria of Applying the 'Internal Flight Alternative' Test in National Refugee Status Determination Procedures', *International Journal of Refugee Law*, Vol. 14, No. 2/3 (2002), page 179.
7. Noll, G 'From 'protective passports' to protected entry procedures? The legacy of Raoul Wallenberg in the contemporary asylum debate', UNHCR, Working Paper No 99, December 2003.

A new asylum paradigm: rhetoric or reality?

This research project, based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford and headed by COMPAS senior researchers Liza Schuster and Nicholas Van Hear, explores whether a 'new asylum paradigm' (NAP) is emerging around recent policy initiatives that seek to shift asylum processing and management closer to the regions from which asylum seekers come.

Although similar ideas have been around in various forms for some time, there appears currently to be a convergence of thinking, seen in related initiatives such as the British government proposal on 'new' approaches to asylum seekers, debate within the EU on managing asylum, UNHCR's Convention Plus and

recent proposals by the German, Italian and Dutch governments.

The project traces the evolution of the debate, its policy manifestations and, most important, the implications for asylum seekers and other migrants.

Project outputs to date include a number of papers by doctoral student Alexander Betts and a paper by Liza Schuster on 'New asylum paradigms: the rhetoric and the reality', exploring the manifestations of the new asylum paradigm on the ground in North Africa and elsewhere. Schuster's fieldwork in Morocco is being undertaken in conjunction with the Refugee Studies Centre at Oxford, the University of Oujda in Morocco and UNHCR.

As part of a study commissioned by the UK's Department for International Development, 'Developing DfID's policy approach towards refugees and IDPs', a wide range of documents has been collected on various aspects of the NAP. Parts of the DfID report (online at www.rsc.ox.ac.uk/dfid.html) relate directly to the NAP. Stephen Castles of the RSC and Nicholas Van Hear have taken the lead on this work, with Heaven Crawley of AMRE Consulting contributing an expert paper.

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