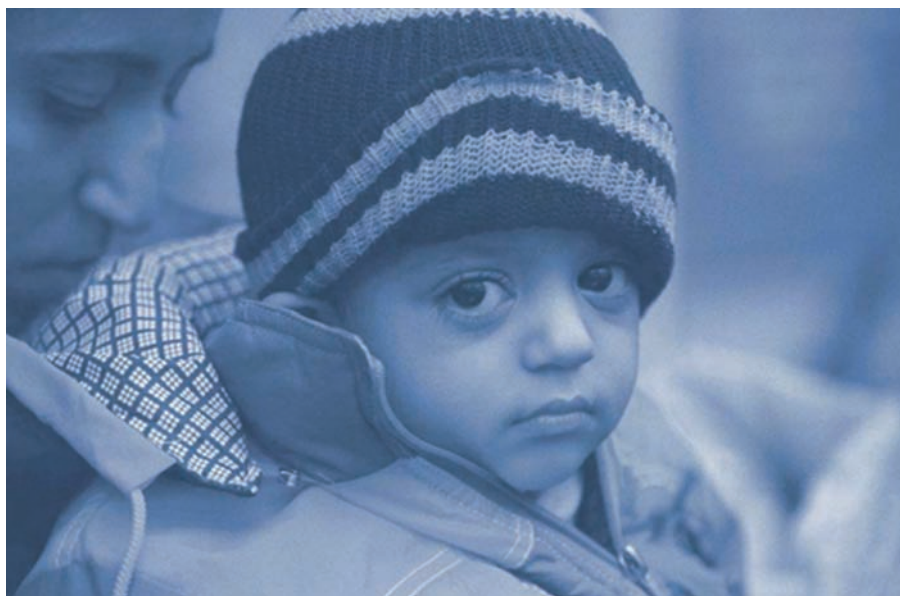


# Ukraine

## Country Report 2009: Situation for refugees and asylum seekers



УКРАЇНСЬКА РАДА З ПИТАНЬ БІЖЕНЦІВ  
UKRAINIAN REFUGEE COUNCIL

**ECRE**  
EUROPEAN COUNCIL ON  
REFUGEES AND EXILES





## Ukraine

### Statistics

According to official statistics from the State Committee on Nationalities and Religions (SCNR) some 2,334 people were recognised as refugees in 2009<sup>1</sup>. 2009 saw the number of applications for refugee status fall by 50% in comparison with 2006-2008 with 1255 applications made to territorial migration offices. In 2009 the majority of asylum seekers in Ukraine came from Asia (74.4%), Africa (17.2%), Europe (5.6%) and other countries (1.5%).

Year	2007	2008	2009	Total
Applications for refugee status	2155	2155	1255	5565
Recognised as refugees	33	126	125	284
Refugee recognition rate %	1,53	5,84	9,96	

49 refugees received Ukrainian citizenship in 2009, and 63 refugees had their status withdrawn.

Ukrainian legislation on refugees includes the 1951 UN Convention "On the Status of Refugees", the Ukrainian Law "On Refugees" and other normative legal acts. The Ukrainian Constitution provides for the institution of asylum but does not specify a mechanism for its implementation. National legislation does not provide for additional forms of protection.

2009 saw an increase in the number of applications for refugee status receiving positive decisions (9.96% in 2009 compared to 1.53% in 2007).

### Legal and Procedural Changes

On 26<sup>th</sup> June 2009 the Ukrainian Cabinet of Ministers (UCM) adopted Resolution No. 643 "On the creation of a State Migration Service of Ukraine". A new, central executive authority was created, whose work was to be directed and coordinated by the UCM through the Ministry of Internal Affairs of Ukraine. This new agency was created on the basis of the State Department of Citizenship, Immigration and Registration of Individuals (DCRIPP). The new service is also the appointed successor of the State Committee on Nationalities and Religions (SCNR), in that it is responsible for granting

<sup>1</sup> Information from State Committee on Nationalities and Migration  
[http://scnm.gov.ua/control/uk/publish/article?art\\_id=134359&cat\\_id=47922](http://scnm.gov.ua/control/uk/publish/article?art_id=134359&cat_id=47922)

refugee status. The new State migration service system incorporates those agencies previously responsible for receiving and reviewing applications for refugee status in different regions and for temporary accommodation centres. However, on 14<sup>th</sup> July 2009 the Ukrainian President suspended some provisions of UCM Resolution No. 643, arguing that the UCM had changed the scope of functions of the Ministry of Internal Affairs of Ukraine which, in accordance with the Ukrainian Constitution, can only be determined by law.

In response to the President's action the UCM passed new regulatory acts. UCM resolution №. 750 of 17<sup>th</sup> July 2009 introduces amendments into the paragraphs suspended by the President, and approved a new provision on the State Migration Service. Resolution № 810 of 29<sup>th</sup> July 2009 terminates UCM Resolution № 1347 from 21<sup>st</sup> November 2007 which appointed the State Committee on Nationalities and Religion as the central executive authority on migration issues.

In his Decree No. 675 from 27<sup>th</sup> August 2009, the Ukrainian President again ruled to selectively suspend individual points of the new UCM resolutions and asked the Constitutional Court to rule on the compliance of the UCM decisions with the Ukrainian Constitution.

Therefore, the activities of the State Migration Service were suspended until a decision by the Constitutional Court, and the State Committee on Nationalities and Religion lost its mandate for taking decisions relating to the implementation on the Ukrainian Law "On Refugees".

This uncertain situation led to asylum seekers who appealed the rejection of their applications for refugee status to courts (under Article 10 of the Ukrainian Law "On Refugees") not being issued with documents certifying they had lodged court appeals. And asylum seekers who were recognised as refugees by the courts were not able to get refugee documents for four months, forcing them to extend their documents confirming having lodged a court appeal. These documents do not provide the same rights as those granted to recognised refugees because they do not allow access to social security benefits and those who have these documents are not able to legally work in many parts of Ukraine (due to the way the majority of local authorities interprets existing legislation).

In one case the State Executive Service<sup>2</sup> refused to implement a court decision to grant refugee status in Ukraine on the grounds that the State Committee on Nationalities and Religion (SCNR) was no longer the state executive authority on asylum issues.

In 2009 the situation was worse still for asylum seekers who appealed decisions of the SCNR to court, because they were not able to obtain a document confirming their case was under court review. The only document available was the court's ruling on the commencement of proceedings on the case. However, according to the Ukrainian Law "On Refugees" from 21<sup>st</sup> June 2001 this document does not confirm legality of stay in Ukraine.

On 19<sup>th</sup> April 2009 amendments were made to the Ukrainian Law "On Immigration"<sup>3</sup>, which provided for residence permits for "war refugees" from Abkhazia and any children

<sup>2</sup> The State Executive Service is the authority responsible for the implementation of court decisions

<sup>3</sup> From 7<sup>th</sup> June 2001 №2491-III

who had arrived in Ukraine as minors with their parents. In addition the validity of the temporary permits, which provided the legal right to remain in Ukraine, was extended to 1<sup>st</sup> March 2010<sup>4</sup>.

In May 2009 amendments were introduced to the “Rules of Entry of Foreigners and Stateless Persons to Ukraine, their exit from Ukraine and transit through the territory” (No 1074 approved by the Cabinet of Ministers on 29<sup>th</sup> December 1995), to include a requirement of financial means to stay in Ukraine for people from 92 countries. In order to enter Ukraine or transit it, citizens of these countries need to show that they have funds of 20 times the minimum cost of living in Ukraine established on the date of their entry into Ukraine for each month they will stay in Ukraine or 12,000 UAH<sup>5</sup> for one month or less. In addition the possibility of selective document checks for proof of the required funds is foreseen, as is the denial of admission to the territory of Ukraine in the absence of such documents.

The Law of Ukraine “On Border Control ” entered into force on 05.12.2009, detailing aspects of border control at the state borders of Ukraine. The new law introduces the concept of two levels of controls, as well as risk assessments to establish the probability of violation of migration legislation. Based on this risk assessment border guards carry out a second level of checks upon entry into the country. The second level of checks includes a legal check on the presence of sufficient financial support, which until now had only been regulated by by-laws. The purpose of second level should be explained to the foreigner in English, Ukrainian or the language of the state bordering on Ukraine

A positive outcome was the new law emphasizing the need to follow legal procedures to review refugee claims made by foreigners or stateless persons irrespective of their compliance with the conditions for crossing the state border of Ukraine. A person who does not comply with one or all of the conditions for crossing the state border can be allowed to do so by the Head of the State Border Service if there are humanitarian grounds, or in order to protect national interests or to implement international obligations.

However, these changes have created additional problems for asylum seekers seeking access to Ukrainian territory. The civil society organisation “Social Action” (Kyiv) has experience of such checks being carried out in respect of asylum seekers from Uzbekistan, and of attempts to remove them from Ukraine in Autumn 2009.

### **Important national and international legal precedents**

In 2009 attitudes of the administrative courts remained negative. Administrative courts are responsible for considering appeals against refusals of the migration service and the central executive authority on migration (SCNR) to grant asylum. The majority of judges handed down negative decisions in such cases, arguing that the asylum seeker had not provided documental or other proof to back up their verbal testimony, and ignoring the violations committed by state organs when considering the refugee claim.

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<sup>4</sup> By order of the Cabinet of Ministers of Ukraine № 648 of 17 June 2009

<sup>5</sup> Approximately 1100 Euro

The situation improved somewhat after the Supreme Administrative Court Plenary adopted Decision No. 1 of 25<sup>th</sup> June 2009 “On Judicial practice on disputes concerning refugee status, expulsion of a foreigner or a stateless person from Ukraine and disputes relating to the stay of a foreigner or stateless person in Ukraine”.

After the adoption of these regulations, some judges ceased to dismiss asylum seekers' claims on the grounds of lack of concrete proof supporting their verbal testimonies, and started to take into account the fact that the migration service may not have undertaken sufficient research into the situation of the refugees country of origin, and no longer put the burden of proof entirely on asylum seekers.

It should also be noted that in connection with the reorganization SCNR and the creation of the State Migration Service, the majority of cases brought against the SCNR have been frozen by the courts until the reorganization is complete.

Among the positive decisions passed down by the courts is a decision by the Appeal Administrative Court of Kyiv on the appeal of an Azerbaijani citizen against the decision of the court of first instance. The court decided to uphold the appeal in connection with the SCNR's failure to prove the legality of its decision and its incomplete study of the materials of the case, in particular information on the applicant's country of origin. After this court decision the SNCR granted refugee status to the applicant.

Another positive decision on an appeal against expulsion from the territory of Ukraine came when the District Administrative Court of Kyiv upheld the appeal by a citizen of Cameroon against his expulsion from Ukraine, as his case was under consideration in the refugee status determination procedure and multiple procedural violations had taken place.

The European Court of Human Rights' (ECtHR) decision in the case *Kabulov v Ukraine*<sup>6</sup> set another important legal precedent for Ukraine.

In June 2003, Mr. Kabulov was charged *in absentia* in Kazakhstan with murder, and the Kazakh authorities issued an international arrest warrant. Murder with aggravating circumstances in Kazakhstan is a crime, which carries the death penalty. Mr Kabulov was arrested in Ukraine on August 23<sup>rd</sup> 2003 at 21.20 and was kept in detention from that time. The court's grounds for detention were the fact that there was an arrest warrant for Mr Kabulov, issued in Kazakhstan, and the fact that the extradition process had been started.

In September 2004, the Kazakh authorities requested the Prosecutor General of Ukraine to detain Mr. Kabulov pending extradition and provided assurances that, among other things, he would not be subjected to the death penalty in Kazakhstan and that his rights and legal interests would be respected. The Ukrainian authorities agreed to his extradition. On 11<sup>th</sup> April 2005 he applied for refugee status in Ukraine. On 22<sup>nd</sup> November 2004, Mr. Kabulov appealed to the ECtHR to complain about the illegality of his detention and the lack of opportunity to challenge it. He claimed that his extradition to Kazakhstan would threaten his life, health, and endanger his right to a fair trial. In addition, he complained that the Ukrainian authorities had pressured him

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<sup>6</sup> Application № 41015/04

to withdraw his Court appeal. He relied on Articles 2, 3 and 5 (parts 1, 2, 3, 4 and 5), articles 6, 13 and 34 of the Convention.

Having considered the reports of various international and national organizations, the European Court of Human Rights decided that Mr. Kabulov was at risk of real and serious abuse if he were extradited to Kazakhstan and that the Ukrainian authorities would violate article 3.

The court found that some procedures, initiated on behalf of Mr. Kabulov in Ukraine, were unsuccessful and that the courts had refused to consider them due to lack of jurisdiction. The court found that domestic legislation and practices, including a ruling by the Plenary of the Supreme Court of Ukraine of October 2004, which established limits for reviewing appeals on the legality of detention pending extradition, meant that the applicant had no effective national remedy<sup>7</sup> to challenge his extradition to Ukraine on the basis of risk of ill-treatment upon return. Therefore, it was established that Article 13 had been violated.

The ECtHR concluded that Ukrainian legislation had not provided a sufficiently accessible, clear and transparent extradition procedure, or procedures, which could prevent arbitrary detention pending extradition. Thus, the Court unanimously decided that the detention of the applicant was inconsistent with the requirements of Article 5.1.

The Court noted that the police report was the only document provided by the Ukrainian authorities to prove that Mr. Kabul had been informed of the grounds for his detention. However, the report did not indicate a specific time or date when Mr. Kabul had been informed of the grounds for his detention. The Court therefore concluded that there was no credible indication as to whether Mr. Kabulov had been informed of the reason for his detention in the period from 23<sup>rd</sup> August to 13<sup>th</sup> September. Therefore, the Court unanimously decided that the Ukrainian authorities violated Article 5.2.

The ECtHR noted that Mr. Kabulov had initiated several procedures since October 2004 to check the legality of his continuing detention, and that these procedures had no effect. His application for release had not been considered on its merits. The Court recalled that it had already been established that Ukrainian legislation does not provide for an effective and accessible procedure for challenging the legality of detention pending extradition. Consequently, the Court unanimously concluded that it was a violation of Article 5.4.

The Court also found that there had been violations of Article 5.5, as Mr. Kabulov had been detained in accordance with national law and therefore had no right to compensation under Ukrainian law.

The Court noted that it received a letter from Mr. Kabulov on 3<sup>rd</sup> September 2008, stating that he wanted to withdraw his application to the Court. This letter was accompanied by a letter from the Head of the detention facility where Mr. Kabulov was being held, which showed that the authorities knew the contents of Mr. Kabulov's letter. The authorities had sent his letter with a separate accompanying letter, commenting

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<sup>7</sup> as required by Article 13 of the European Convention on Human Rights and Fundamental Freedoms

on its contents. The Court unanimously decided that this was a violation of Article 34 of the Convention. In accordance with Article 41 of the Convention, the Court set a fine of 5,000 Euros as compensation for moral damage<sup>8</sup>.

### **Return of refugees from Ukraine to countries of origin or other countries**

One of the biggest problems for asylum seekers in 2009 was the partial restructuring of the State Committee for Nationalities and Religions, the central executive authority on migration issues<sup>9</sup> which was responsible for granting or refusing refugee status in Ukraine.

Since UCM resolutions and other subordinate laws suspended the work of the SCNR, decisions on asylum applications were also temporarily suspended. More than half of applicants were unable to obtain documents certifying that they had applied for refugee status, which provides a legal base for temporary stay in Ukraine. Making the most of this situation, the authorities of the Department of Citizenship, Registration, Immigration of Individuals of the Ministry of Internal Affairs (DCRIPP MOI) of Ukraine repeatedly prosecuted asylum seekers for administrative violations as they were unable to obtain the necessary papers required for their temporary residence registration. There was also more than one case of officials from DCRIPP MOI ruling to extradite asylum seekers who had committed administrative crimes. NGOs were left to fight such decisions in the courts. There is a continued risk of refoulement of asylum seekers to their countries of origin today as some of them have still not received documents confirming their legal stay in the territory of Ukraine under Article 1 of the Ukrainian Law "On Refugees".

In November 2009, the ECtHR adopted temporary measures to prevent the forced removal from Ukraine of a family from Afghanistan. On 18<sup>th</sup> November 2009, a family of eight people including four children aged 3 to 9 years old flew into Borispol airport, in transit through Ukraine to the UK. Upon arrest by Ukrainian border guards all the members of the family expressed their wish to seek asylum in Ukraine. However, in violation of the Ukrainian Law "On Refugees", the border guards did not accept their applications for asylum, nor allow them to submit these personally to the migration service. Instead they were detained in the transit zone in the airport pending expulsion to their country of origin. UNHCR representatives, who heard about this case from the applicants' relatives, tried unsuccessfully to get access to them.

Representatives of UNHCR informed about the case by the applicants' relatives, tried in vain to get access to them. An intervention by Representatives of the Commissioner of the Supreme Council of Ukraine on Human Rights who also arrived at the airport, did not help either. The deportation was scheduled for 2pm on 19<sup>th</sup> November 2009. The Centre for Legal Assistance to Victims of Torture and Ill-treatment appealed to the European Court of Human Rights with a request for provisional measures based on very incomplete information received from a relative of the family living in the UK. A few hours later a fax was received confirming the application of provisional measures by the European Court. After this the family was able to apply to the migration service and receive assistance from UNHCR and the Commissioner for Human Rights. Thus,

<sup>8</sup> <http://hrlawyers.khpg.org/index.php?id=1258661450>

<sup>9</sup> see *Legal and procedural changes*



thanks to the joint efforts of many people the deportation of eight Afghan asylum seekers to Afghanistan was prevented<sup>10</sup>. However, asylum seekers from Afghanistan continued to be detained in the transit area of Borispol airport, where they are quickly denied refugee status, not provided with an opportunity to appeal against this decision, and deported to the United Arab Emirates from where they arrived to Ukraine.

Particular attention should be paid to the alleged illegal deportation of the Uzbek asylum-seeker Hamidullah Turgunov. On 5<sup>th</sup> December the Kyiv Regional Migration Service refused to process this asylum seeker's claim for refugee status. This decision was appealed on 9<sup>th</sup> December 2009 in the Kiev District Administrative Court. On 31<sup>st</sup> December 2009 a housemate and compatriot of Mr Turgunov appealed to the NGO "Social Action" saying he had allegedly disappeared on 24<sup>th</sup> December 2009. On 3<sup>rd</sup> January 2010 the NGO received unverified information that the missing asylum-seeker was being held in detention in Tashkent. The Ukrainian Interior Ministry answered the NGO enquiry saying that no such person had been detained or charged with administrative crimes by the Kyiv regional authorities for internal affairs. The Ukrainian State Border Guard Service refused to provide information on whether Mr Turgunov had crossed the state border in order to leave Ukraine. Unfortunately, it was not possible to obtain any more information about the true whereabouts of the asylum-seeker, N. Turgunov.

#### **Groups of particular concern**

- **Unaccompanied minors**

From 1<sup>st</sup> January to 31<sup>st</sup> December 2009 19 unaccompanied children were registered by the legal protection programme of HIAS in Ukraine<sup>11</sup>, and the Danish Refugee Council project "Legal and social protection of children of refugees and asylum-seeking children, in Ukraine"<sup>12</sup>. 14 of these were from Afghanistan, two from the Republic of Congo (Brazzaville), two from Somalia, and one from the Russian Federation. 11 unaccompanied children applied to the Kiev Migration Service with applications for refugee status. This was made possible through cooperation with the Desnyanskiy Service for Minors from the Kyiv Regional State Administration.

The issue of age determination of minors remains a challenge. There are regular cases where the Service for Minors or the migration services try to determine the age of unaccompanied children. In one case an unaccompanied child from Afghanistan applied for refugee status to the Kyiv Migration Service. His application was accepted but he was told to undergo an age determination examination at Solomenskiy regional department of the Ministry of Internal Affairs. The police department refused to refer him to the Office of Forensic Medicine, saying that such referrals are only made in criminal cases.

In 2009 there were cases of unlawful detention by police of unaccompanied children on suspicion of them having violated the rules of residence and transit through Ukraine<sup>13</sup>. Some were made to pay fines of 340 UAH, which is illegal under the provisions of Article 241 of the Code of Administrative offences. These decisions were successfully challenged by HIAS lawyers and the fines withdrawn.

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<sup>10</sup> <http://www.khpg.org/ru/index.php?id=1258644741>

<sup>11</sup> Implementing partner of UNHCR in Ukraine

<sup>12</sup> Funded by the European Commission

<sup>13</sup> Article 203 of the Code of Administrative Offences

On 25<sup>th</sup> August 2009 a police patrol in the central railway station of Kiev stopped and detained unaccompanied minors. When asked to produce documents, one minor showed his certificate certifying he had applied for asylum, issued by the Visa and Passport Office. When the police asked what he was doing at the station, the minor said that he lived there. He was then put into a patrol car and taken to the police station on the other side of Kyiv. At the station, he was left sitting on a chair in an office for forty eight hours. The police argue that they arrested and detained him because they were intending to take him to court. However, after the head of the police station “reminded” them that the detainee was a minor without adult supervision, they decided to let him go.

Unaccompanied minors are vulnerable, they do not receive any social or legal assistance from the state. Notwithstanding the provisions of the Law of Ukraine "On refugees", which require migration authorities and social services to work together to provide temporary shelter in designated foster homes or in special shelters for asylum seekers, housing remains a major and unresolved problem

Two unaccompanied children were resettled to safe third countries in 2009.

- **War refugees from Abkhazia**

In accordance with the amendments from 19<sup>th</sup> March 2009 to the Law of Ukraine "On Immigration"<sup>14</sup>, "war refugees" from Abkhazia who received temporary certificates, and any adult children, who arrived in Ukraine together with their parents, ***have the right to permanent residence in Ukraine.***

However, the procedures for registering and issuing permanent residence permits, approved on 26<sup>th</sup> December 2002 by UCM Resolution No. 1983, requires the provision of a specific list of documents. This group of forced migrants are not able to supply the required documents, as this list was relevant to the situation before the abolition of UCM Resolution № 674 from 26<sup>th</sup> June 1996 "On measures of assistance provision to persons who have fled their homes in the Autonomous Republic of Abkhazia, Georgia and who have arrived in Ukraine".

As a result the situation was similar to that of 2001. At that time “war refugees” from Abkhazia had no time to apply for their residence permits in the six-month period allowed by the Ukrainian Law “On Immigration” as the term had expired before the procedures for issuing permanent residence were approved. (The Procedure provided a list of documents that had to be submitted with an application for a residence permit).

“War refugees” from Abkhazia have submitted applications for residence permits since April 2009, but due to the contradiction between the Ukrainian Law “On Immigration” and UCM resolution No. 1983 only a few have managed to realise their rights. There were very few successful cases before November 2009. Changes to UCM Resolution №1983 from 26<sup>th</sup> December 2002 were also not incorporated. By November 2009 it was clear that this group of people would again not manage to obtain permanent residence permits. It was only then that the State Department on Citizenship, Immigration and Registration of Persons sent their regional offices explanations on the exhaustive list of documents which might be required when making an application for a residence

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<sup>14</sup> № 2491-III adopted 07.06.2001

permit from a “war refugee” from Abkhazia. From mid-November a mass-processing of applications began. But residence permits were not issued to all applicants.

After Resolution № 674 from 26<sup>th</sup> June 1996 was abolished on 24<sup>th</sup> August 2004, those with temporary certificates had problems extending their legal period of stay in Ukraine. It was only after 12<sup>th</sup> September 2005 that people were allowed to extend their stay on the basis of temporary certificates, and even then many people were unable to register with the Ministry of Internal Affairs. While Resolution № 674 was in force “war refugees” wishing to extend their stay in Ukraine were issued with a temporary certificate with residence address where they were to be registered with the Department of Citizenship, Registration, Immigration of Individuals of the Ministry of Internal Affairs (DCRIPP MOI).

Even once the temporary certificates were extended by order of the Cabinet of Ministers, this procedure was not adopted in all regions. Where the migration services did not provide replacement temporary certificates indicating residential addresses problems<sup>15</sup> arose with extending registration. Thus, there were automatic violations of procedure resulting in a lack of registration meaning refugees had to go to court to prove that they had always lived in Ukraine. As there has been no unified approach to registration across Ukraine for four years, this means that many “war refugees” from Abkhazia will still have to use courts to prove they have been resident in Ukraine for five years.

Problems have arisen for the children of “war refugees” from Abkhazia. In individual cases people who have temporary certificates with no information about their children included, even if there are documents confirming the residence of minor children with their parents, they can still have problems with the Migration Service over issuing the correct certificates<sup>16</sup>.

Not being able to register your place of residence after receiving a residence permit is a potential reason for being refused the immigration permit.

Those who live in Ukraine with old USSR passports or who have lost their documents also face problems with extending registration and obtaining residence permits. It is not possible to resolve this problem through the Georgian Embassy if people are unable to provide the necessary documents for the issuance of a Georgian national passport.

- **Refugees from Uzbekistan**

There is a large group of refugees from Uzbekistan in Ukraine (and numbers remain high, despite resettlement to safe third countries), due to a steady flow of new refugees from Uzbekistan and ongoing persecution<sup>17</sup>.

Ukrainian authorities deny refugee status to almost all refugees from Uzbekistan. But there are two factors, which make the situation of these refugees particularly precarious:

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<sup>15</sup> Because of lack of their own housing, absence of a lease and/or unwillingness of the landlords to agree to the refugees being put on the housing register

<sup>16</sup> This is now the situation in Donetsk

<sup>17</sup> Nearly all new arrivals and returnees over the last two years are refugees persecuted for religious reasons and accused of “political” and “religious” crimes under the Uzbek criminal code, in particular under Articles 159, 242 and 244.

- in order to travel abroad Uzbek citizens must have permission from the Uzbek authorities<sup>18</sup>. This authorization is necessary for travel outside the CIS. Given that the majority of CIS countries (Russia in particular), actively cooperate with the Uzbek authorities to forcibly return refugees to their homeland<sup>19</sup> Ukraine remains one of the few countries in the region, which citizens of the Republic of Uzbekistan can travel to legally, and seek asylum without fear of being expelled.

- the Uzbek authorities continue to actively seek out opponents of the current regime and try to return them to Uzbekistan. This is happening in Ukraine. This increases the risks of the illegal deportation of Uzbek citizens.

In addition, Uzbekistan is included in the list of countries whose citizens are required to prove minimum financial security upon entry to Ukraine<sup>20</sup>. According to some sources, more Uzbek citizens are refused entry at Ukrainian borders than citizens of any other country. According to statistics from the Social Action Centre project "Without Borders", the vast majority of Uzbeks who applied for refugee status in Ukraine had to resort to bribing border guards and customs officers in order to get into the country. They are victims of ethnic discrimination by law enforcement officers because of their external appearance.

### **Detention**

Lack of knowledge of the Law "On refugees" by border police and law enforcement officials leads to them treating asylum seekers whose applications have not been accepted for full consideration as "illegal migrants". This results in unjustified detention, administrative penalties and even deportation. The procedures of transmitting asylum applications from the authorities of the Ministry of the Interior (for example the Border Services) to the Migration Services are still not properly established. This leads to a serious threat of deportation.

Border and law enforcement authorities often do not explain refugee determination procedures to detained asylum seekers or provide them with paper and pens, do not transfer applications to the migration services on time or respect the principle of confidentiality of information. The Ukrainian Law "On Refugees" and international law expressly prohibit direct inquiries for information to diplomatic missions or other authorities of the countries of origin about people who have requested refugee status, even if only verbally. However, police and border guard officials systematically violate these prohibitions.

In addition, in cases where there is a court decision on the temporary detention of an asylum seeker (for not more than 6 months) pending expulsion from Ukraine, they refuse to release detainees who have already applied for refugee status. It should be noted that an asylum seeker is not deported before a decision on his application for refugee status is made, but they are not released before the 6-month period expires. The Ukrainian Law "On Refugees" stipulates that asylum seekers cannot be deported until a decision on the granting or refusing of their applications for refugee status in Ukraine is reached. However, the law does not say that such asylum seekers should not be detained.

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<sup>18</sup> colloquially called an "exit visa"

<sup>19</sup> including within the Shanghai Cooperation Organization - SCO

<sup>20</sup> See *Legal and procedural changes*

Potential refugees are detained along with other foreigners who have no documents. Sometimes these people have to stay for months in Ministry of the Interior or Border Guard detention facilities. New temporary detention centres which meet EU standards have been opened in the regions of Volyn and Chernigiv regions which are under the jurisdiction of the Ministry of Internal Affairs, and several temporary detention centres run by the State Border Service have been refurbished, but nevertheless work is still needed on the provision of adequate food, to ensure hygienic conditions and the medical care of migrants, asylum seekers and refugees.

It is primarily men without documents arrested for illegally crossing a state border who are detained in temporary detention centres. This poses an additional obstacle to access to the refugee status determination procedure, as they cannot be released from detention without an identity document. In addition, a lack of sufficient knowledge of the Ukrainian Law "On Refugees" means that authorities of the Ministry of Internal Affairs and the Border Guard Service are not always aware that the lack of asylum seekers' documents does not mean they are excluded from applying for asylum, as the Migration Services have the power to establish an individual's identity and that documents issued by the migration service allow a person to legally stay on the territory of Ukraine.

In 2009, there were also cases where lawyers from NGOs providing assistance to refugees were not given access to detained foreigners, including asylum seekers. In some cases, lawyers were not allowed to advise them or provide legal assistance, or help to lodge an appeal at court, prevent extradition, or appeal detention. Representatives of the Border Guard Service of Ukraine provide information and access to detainees only to those NGOs with whom they have concluded special bilateral treaties, or after a request by a lawyer. In this way, they deny detainees the right to legal assistance and to the lawyer of their choice.

Cases where refugees and asylum seekers are detained during police "Migrant" operations are also common. In most cases, detention occurs at the place of work. Detainees are charged with working illegally, are taken to the police station for identification and to court for the sentencing of an administrative penalty in accordance with Art. 203 of the Administrative Code of Ukraine. This type of detention occurs because of imperfect refugee legislation. Article 18 of the Ukrainian Law "On Refugees" gives people in the asylum procedure the right to work temporarily but does not detail the implementation procedures: there is no separate licensing procedure for temporary employment in the Code on Labour Laws. The fate of each asylum seeker illegally detained in this way is in the hands of the courts. When asylum seekers are represented in court by NGO lawyers it is possible to avoid administrative penalties and get the case closed due to lack of *corpus delicti*.

## **Social rights**

- **Accommodation**

Homelessness remains one of the main socio-economic problems for refugees and asylum seekers. Despite the opening of two additional temporary accommodation centres for refugees (TAC) "Latoritsa" in Mukachevo and "Barvinok" in the town of Perechin in the Transcarpathian region - the issue of temporary housing has still not been resolved, as these centres do not have enough capacity to house all new arrivals. In addition, if an asylum seeker can count on staying in a temporary accommodation centre, a recognized refugee is required to solve this problem independently as there are no social housing programmes in Ukraine for recognized refugees.

The Ukrainian Law "On Social Housing"<sup>21</sup> unfortunately does not cover the vulnerable group of refugees and asylum seekers. Given this, and the fact that refugees have the same rights as Ukrainian citizens<sup>22</sup> the State Committee on Nationalities and Religions, which has the right to take legislative initiatives, should prepare a draft on the provision of housing to refugees for submission to the Supreme Council of Ukraine. Neglected 2-3 story buildings in urban villages near Kyiv and other regional centres could be repaired and used for integration housing projects for recognised refugees.

### **Accommodation for Unaccompanied Minors**

In 2009, there were several attempts to involve state agencies in the process of finding solutions to the problems of juveniles. NGOs held a series of meetings with representatives of the Directorate on Children's Affairs, the Migration Services, public administrations, etc. However, despite these meetings the public authorities continue to play a passive role in resolving the problems of minor asylum seekers. Violations of their rights to access the refugee status determination procedure, to housing, to education, etc are ignored.

In 2009 the Charitable Foundation "Rokada" implemented the Danish Refugee Council project, which involved searching for alternative housing for adolescents. The issue of legal recognition of a possible solution whereby unaccompanied minors stay with families of recognised or naturalized refugees was considered. Another option for addressing this problem would be opening an accommodation centre for unaccompanied minor asylum seekers.

#### **• Citizenship**

Recognised refugees are entitled to obtain citizenship after three years of continuous residence in Ukraine. The main obstacle remains insufficient knowledge of the state language. Refugees who want to obtain Ukrainian citizenship need to have conversational level Ukrainian. However, there are currently no criteria for assessing levels of language proficiency. When applying to the Department of Citizenship, Registration, Immigration of Individuals of the Ministry of Internal Affairs (DCRIPP MOI) for citizenship, a discussion is held in Ukrainian about the information a foreigner should include on the application and submitted documents. If the foreigner does not understand this information, a certificate of conversational proficiency in Ukrainian is disregarded.

The EU and UNHCR's two-year project "Local integration of refugees in Belarus, Moldova and Ukraine" began in March 2009. On 22.07.2009 the UCM issued Resolution № 853-r "On approval of the plan for integration of persons who are granted refugee status in Ukraine for the period until 2012", which set up model state language courses for refugees (through State universities in Kyiv, Kharkiv and Odessa), after which refugees will be tested and obtain a certificate or a state diploma. Perhaps this will help solve the problem of learning the Ukrainian language and citizenship for this group of people.

<sup>21</sup> № 3334 - IV adopted on 12.01.2006

<sup>22</sup> Article 20 of the Ukrainian Law "On Refugees"

- **Employment**

***Asylum seekers***

The rights of asylum seekers to employment are restricted, because in Ukraine the employment procedure for this group of people is not set out in legislation apart from in Articles 18 and 22 of the Ukrainian Law "On refugees". Employers often refuse to employ an asylum seeker because there is no procedure to register such people for temporary employment, and all that the employer can do is to come to a verbal agreement with the employee. Written agreements, and also the payment of taxes, are not possible due to gaps in legislation or inconsistencies in the regulations - for example, the impossibility of obtaining an identification code without a passport, etc. This situation leads to constant harassment of those asylum seekers who work by the police and the extortion of bribes or detention and transfer of cases to court under Article 203.1 of the Administrative Code of Ukraine. In courts, asylum seekers without a competent defence lawyer are often sentenced to fines. Also, asylum seekers cannot always meet the stated requirements.

Moreover, asylum seekers may be in the refugee status determination procedure for several years without the right to state benefits, nor the possibility to work for the above reasons. Because of the lack of the possibility to exercise their right to work, and the lack of support from the state, asylum seekers whose refugee applications are under review for years are often in dire financial straits.

***Refugees***

As part of the EU and UNHCR, "Local Integration of Refugees in Belarus, Moldova and Ukraine" and The Action Plan<sup>23</sup>, the State Employment Service should reconsider its policy towards refugees and asylum seekers. Changes should be made in relation to the legislative framework of Ukraine on refugees and asylum seekers, as although Ukrainian legislation provides the right to employment for this group of people, in practice this right is very hard to realise. However, the crisis of power in Ukraine has led to the paralysis of government institutions in the area of law.

***There are a series of problems connected with refugee employment:***

On April 8<sup>th</sup> 2009 the UCM adopted Resolution № 322, which changed the procedure to issue, extend and cancel work permits for foreigners and stateless persons. According to experts, UCM is trying to protect the Ukrainian labour market from "unregulated external migration", and unskilled labour.

Ukrainian employers think of refugees as foreigners and therefore discriminate towards them. This is not only racial discrimination but also a reluctance to hear any positive information about refugees. Advocacy and awareness-raising work are urgently required by the Employment services to explain refugee rights to employers. This work is being undertaken slowly under the EU UNHCR project "Local Integration of Refugees in Belarus, Moldova and Ukraine, and the Action Plan of the Committee of Ministers. However, this is on a very small scale.

In order to be registered as unemployed, which allows you to access employment service support, an identification document, identification code, permanent registration permit and an official work record document are required. Most refugees do not have

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<sup>23</sup> Resolution of Cabinet of Ministers № 853-p of 22.07 2009)

a work document and cannot therefore be registered with the employment service, meaning that they cannot be registered as unemployed, as UCM Resolution № 219 of 14<sup>th</sup> February 2007 does not include refugees as persons who may be registered with the employment service. However, foreigners residing in Ukraine are treated under a separate proposal and can be registered as unemployed on the basis of a residence permit. In addition, refugees do not have access to free refresher courses or training courses to learn new skills through employment services, as this also requires them to be registered as unemployed

The above-mentioned UCM Action Plan foresees for a review of procedures for the legalization of refugee diplomas. However, the Ministry of Education has not yet started to address this issue.

- **Available integration programmes - language and vocational training**

The EU UNHCR project "Local integration of refugees in Belarus, Moldova and Ukraine" provides for the establishment of State models of language courses for refugees. The project has organized professional language courses in collaboration with specialized education institutions in the towns of Kyiv, Odessa and Kharkov. On completion of the course participants will be tested and will receive a State certificate or diploma (depending on their level of linguistic competence) confirming the level of language acquisition

The project foresees the creation of specially developed techniques that take into account the linguistic and cultural characteristics of refugees, but these techniques have not so far been implemented by the Ministry of Education and Science of Ukraine.

The Charitable fund "Rokada" also runs a Ukrainian language course for newly arrived children and adults. These courses are not licensed, do not issue certificates, but are nevertheless a necessary part of the UNHCR integration programme. An ABC of language, knowledge of the cultural traditions of Ukraine, history and laws of the state — this is how a refugee begins to get acquainted with Ukraine. These initial courses are the only ones that allow refugee children who have elementary knowledge about language and the culture of the country, to attend Ukrainian secondary school.

- **Financial help from the State**

In 2009, there were no radical changes in the procedure for granting financial assistance and pensions to refugees.

The levels of assistance to recognized refugees for the purchase of essential items have not changed. A one-time financial assistance is given to recognized refugees of 17 UAH<sup>24</sup>. Clearly, this sum is not sufficient to cover any real costs. Asylum seekers still do not receive any financial assistance from the state.

According to Ukrainian legislation refugees are entitled to receive other types of social assistance. For example, in accordance with the Ukrainian Law "On state assistance to families with children<sup>25</sup>" refugees are entitled to assistance. However,

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<sup>24</sup> In 2009 due to the value of the dollar, this sum amounted to about 1,5 to 2,1 U.S. \$. For minors under 16 the amount awarded is 10.4 UAH, which is about 0.8 – 1.2 USD.

<sup>25</sup> Adopted on 21.11.1992, № 2811 - XII



under this law refugees, whose children were born in Ukraine, are not entitled to this assistance.

- **Education**

In general, asylum seekers and refugees in Ukraine have access to primary and secondary education. However, state authorities continue to be very passive in resolving the problems of minors, thereby violating their right to education. Ukrainian legislation provides for the right of refugees to education, but in practice, unaccompanied minors find it impossible to access education as the Ukrainian Law "On Refugees" and other refugee legislation are not consistent with the norms of the Ukrainian Law "On General Secondary Education"<sup>26</sup> and "On Higher Education"<sup>27</sup>. These laws restrict the access of children without birth certificates (not one unaccompanied minor registered by NGOs has a birth certificate or other proof of identity) to secondary education or state-funded higher education. They can study at universities under special conditions, as foreigners, which means that tuition fees are double. Thus, according to the Ukrainian Law "On Higher Education" refugees in Ukraine are only able to study at university on a fee-paying basis.

### **Racism and Xenophobia**

- **Protection from discrimination**

Asylum seekers and refugees face discrimination as a constant in their everyday lives, but discrimination by public officials or politicians has the most severe impact. For example, public statements refer mostly to asylum seekers and refugees in a negative context, where they are presented as a threat to "national security" and the well-being of Ukrainian society. Asylum seekers and refugees are often victims of hate crimes committed by extreme right-wing radicals. Such crimes have long been part of everyday life in Ukraine. When asylum seekers and refugees report incidents of attacks to the police authorities, they are often met with an illegal refusal by the police to take action, to register or investigate the crime. These refusals are usually explained by police as being because the applicant himself is to blame for the committed against him, or that the police cannot understand what the applicant says as they do not speak Ukrainian and there are no interpreters.

In addition, asylum seekers and refugees are often victims of discriminatory treatment on the part of police officers in conducting inspections of documents on the basis of ethnic origin (racial or ethnic profiling). In cases like this, illegal detention or demands for bribes are not uncommon.

Ignorance or disregard for the law and the rules of ethical conduct for public officials and politicians also lead to discrimination against refugees and asylum seekers. Discriminatory statements against refugees, and ones, which misrepresent the legal basis for their presence in Ukraine can also lead to misconceptions amongst the general public.

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<sup>26</sup> № 651-XIV adopted 13.05.1999

<sup>27</sup> № 2984-III adopted on 17.01.2002

### • The Right to freedom of movement and choice of place of residence

Refugee assisting NGOs in Ukraine note that asylum seekers and refugees<sup>28</sup> in Ukraine face restrictions on their freedom of movement and residence. Changing residence registration for asylum seekers is extremely complicated, and appealing a refusal in court is practically impossible. This is due to the fact that after applying to the migration service of one city, asylum seekers should then register there. If the asylum-seeker wants to move to another city, he must notify the Migration Service and apply for the transfer of his case to the migration service of the new city. As the Ukrainian Law “On Refugees” does not provide for this, and there is no procedure described for addressing such situations, individual cases are dependant entirely on the will and competence of the Migration Services – and the practice of transmission of applications from one migration service to another varies. NGOs are aware of several cases of applications from one migration service to another in a different region, but often these cases are not reviewed or accepted. This means that by moving, an asylum seeker is being denied the legal possibility to register. These restrictions mean asylum seekers are in a much worse position than other foreigners and also mean they are more vulnerable to police persecution.

### Recommendations

1. The Ukrainian government should take immediate steps to address the problem of providing temporary housing for refugees and asylum seekers, and find a way to provide housing for vulnerable families.
2. Training must be continued for decision makers in refugee issues, the Border Service of Ukraine and judges on refugee status determination procedures (especially concerning the application of European Court of Human Rights jurisprudence in cases concerning asylum seeker and refugees).
3. A solution must be found to the problems of the lack of interpreters for applicants who do not speak Ukrainian or Russian both in order to identify persons in need of international protection who wish to apply for asylum and for refugee status determination procedures, but especially to assist applicants in the event of their detention by police and the courts.
4. The Ukrainian authorities should ensure Ukraine's international obligations in accordance with Article 33 of the 1951 Geneva Convention are respected by careful regulation of deportation procedures, ensuring the non-refoulement of asylum seekers whilst their applications are under consideration and that they have been allowed to appeal any rejections through due process in the courts.
5. There is a need to regulate legislation on additional protection for those who cannot be considered refugees under Article 1 (A) of the 1951 Convention, but who are in need of international protection and cannot be returned to the country of their nationality or habitual residence.

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<sup>28</sup> Especially asylum seekers, for whom the right to freedom of movement is limited to Article 12 of "Law on freedom of movement and free choice of place of residence"

6. The Ukrainian authorities should take measures to ensure that refugee and asylum seeker unaccompanied minors receive the required support, care and services, and that they have full access to the refugee status determination procedure in Ukraine.
7. It is essential that the Ukrainian authorities undertake urgent measures to provide funding for the integration programme, including Ukrainian language courses.
8. Refugees and their children should enjoy same rights to higher education, as citizens of Ukraine, which requires changes in the Ukrainian Law "On Higher Education".
9. Barriers to employment for refugees and asylum seekers need to be removed, by bringing the necessary legislation in line with the Ukrainian Law "On refugees".
10. The international community must continue to work with UNHCR and NGOs to identify vulnerable persons in need of international protection, who should be resettled to a third safe country, until such time as Ukraine can provide long-term solutions for refugees.
11. The process of establishing a single State Migration Service must be completed as an urgent priority. This State Migration Service should be held accountable for any violations of the rights of asylum seekers and refugees, and the government officials taking decisions on applications for refugee status should ensure they fulfil all their responsibilities as set out in Ukrainian legislation.
12. A clear policy on migration is needed, as well as a responsible government body to address migration issues including: the analysis of country of origin information, strategy and policy development for refugee integration etc.
13. The fight against racism and xenophobia and effective investigation of racially- motivated crimes should be a priority for the Ministry of Internal Affairs of Ukraine.

**The European Council for Refugees (ECRE) and the Ukrainian Council for Refugees (UCR) would like to thank the Danish Refugee Council and the HIAS office in Ukraine for providing information for this report.**

**The Ukrainian Refugee Council** – is an informal association of Ukrainian civil organizations and foundations that protect the rights and interests of refugees and asylum seekers. The members of UCR are:

- Regional Association "Vinnytsya Human Rights Group",
- Charitable Foundation "Donetsk social security fund and charity"
- Charitable Foundation Caritas MGCE
- International Movement of Amnesty International in Ukraine
- International Foundation for Health and Environment – Protection "Region Karpat" (NEEKA)
- Charitable Foundation Rokada, Kyiv
- Foundation for naturalization and Human Rights "Promotion"– (Simferopol)
- Legal Advice Centre Trade Union "Solidarity" "Human– rights have no borders" (Lvov)
- Regional organisation "Social Action Centre": "Without Borders" project, (Kiev)
- Charitable foundation "Social Assistance Services",– Kharkov.
- Odessa Foundation "Sympathy"
- Regional Association "South– Ukrainian Center of Young Lawyers" (Odessa),

**The European Council on Refugees and Exiles (ECRE)** is a Pan-European Network of NGOs that provide assistance to refugees. ECRE has 69 full and associate member organizations, including key European NGOs. The ECRE Secretariat is located in Brussels. In 1991 ECRE began supporting refugee assisting organizations from Eastern Europe: Belarus, Moldova, Russia and Ukraine aiming to promote the rule of law and the development of a strong civil society that will lead to more effective protection of refugees and asylum seekers. The current ECRE project in Eastern Europe is "Monitoring the safe and dignified return and detention: protecting the rights of asylum seekers, IDPs and refugees in Belarus, Moldova, Russia and Ukraine" and is financed by the European Commission.



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