

# Access to Protection Denied

**Refoulement of Refugees and Minors  
on the Eastern Borders of the EU –  
the case of Hungary, Slovakia and Ukraine**



**Report by Border Monitoring Project Ukraine**

## Imprint

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## Preface

The *Border Monitoring Project Ukraine* (BMPU) was set up in Western Ukraine with the aim to monitor the implementation of social, human and refugee rights in the border region. The situation of refugees and migrants in Western Ukraine on the one hand and the treatment of asylum seekers by the border guards of EU member states on the other hand are the most important content of the BMPU.

The *stiftung PRO ASYL* and the *stiftung .do* supported the project financially. We thank the BMPU for its commitment to documenting and revealing the treatment of asylum seekers at the eastern external borders of the European Union.

This report on Refoulement at the EU external borders is the outcome of the research work of the BMPU in 2009 and 2010. The report is based on oral interviews that were conducted by the human rights activists that work in the BMPU. The interviews were conducted until July 2010. It is a great achievement that the BMPU was able to rise the trust of many asylum seekers that were victims of severe human rights violations. To bring the perspective of refugees to the table and to give a voice to their experiences is one of the most important results of the work of the BMPU in Transcarpathia.

We thank the BMPU for publishing its results of the monitoring work at the eastern border region of EU and Ukraine.

Marei Pelzer, Board of *stiftung PRO ASYL*

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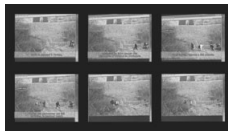
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# Introduction

## July 2009 at the border between Hungary and Ukraine:

Fatima<sup>1</sup>, a 16 year old girl from Somalia, crossed the border into Hungary together with a group of three other Somalians. After entering the country, the refugees walked for a long time, spending one night deep in the Hungarian forest. The next day, the group was stopped and arrested by Hungarian border patrol upon entering a village at around 6 PM. Fatima, who speaks English, explicitly alerted officers that she was in need of help: "I am a refugee. I am a girl. Please help me!" The officers responded with the words, "Yes, we will help you", but, instead of doing so, handcuffed everyone and brought them to a cell at the Hungarian border station. The following morning, all four refugees from Somalia were interviewed, and their fingerprints and photos were taken. Although Fatima emphasized that she is a minor and a member of the Asharaf ethnic minority, none of this information was noted in her case file. Even though Fatima told the officers that she had fled Kismaayo after Hawiye militia killed her father, the officers didn't bother to note it in the file. Instead, interrogating officers were only interested in information about how Fatima entered Hungary. They also searched

her belongings and found an Ukrainian phone number listed in her mobile phone. In the evening, Fatima and the other refugees were handcuffed again, taken to a car, and Hungarian border police deported them to Ukraine. There, the group was arrested and jailed under extremely poor conditions for one and a half days at a Ukrainian border post. Fatima and another minor were then taken to the city of Mukachevo, where Fatima was imprisoned in a cell on the 4th floor of a building. She was kept there for one month and 15 days before she was released and was allowed to file her application for asylum with the Migration Service. Subsequently, Fatima was transferred again, this time to Uzhgorod, where she spent another month, living under highly precarious conditions.

## Ongoing violations of refugee rights

A Human Rights Watch<sup>2</sup> report was published in 2004 and a UNHCR<sup>3</sup> report in 2007, on the continuous violation of refugees' rights at the Eastern borders of Europe. In both reports, the unlawful refoulement of refugees to Ukraine was identified as a serious problem. As

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1 Name has been changed.

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2 Human Rights Watch 2004: [www.hrw.org/en/reports/2005/11/29/ukraine-margins](http://www.hrw.org/en/reports/2005/11/29/ukraine-margins).

3 UNHCR 2007: [www.unhcr.org/refworld/docid/472f43162.html](http://www.unhcr.org/refworld/docid/472f43162.html).



Refugees in Uzhgorod, Photo: Dörthe Hagenguth

Fatima's example shows, the situation has not improved in recent years, although several politicians in charge promised to comply with minimum standards of the EU concerning the admission and treatment of asylum-seekers. But the cases documented in this brochure, demonstrate that little has changed. The reports, which are based on interviews with refugees over the past two years, show that international refugee laws are systematically violated at Europe's Eastern border.

We know for sure that Fatima's experience is not an isolated case. The Border Monitoring Project Ukraine (BMPU) has documented an alarming number of unlawful returns to Ukraine. These returns are clear incidents of refoulement, as the text and interviews beginning on

page 14 explain. Fatima's example shows that even unaccompanied minors are not protected from such illegal action. According to international and EU asylum laws, she, like any other person, has the right to seek protection both as a refugee from Somalia *and* as an unaccompanied minor. Her forceful return to Ukraine is a violation of both the Geneva Refugee Convention and the Convention on the Rights of the Child. Pro Asyl staff member Marei Pelzer's article on page 8 describes this problem in more detail.

The illegal action by law enforcement officers of an EU member state put Fatima in a situation where she did not receive the protection she requires. As a member of the Asharaf minority, she has a good chance to receive the status of a

person in need of international protection in any EU member state. However, every asylum seeker has the right to apply for asylum, no matter what the outcome of the proceedings will be and whether the refugee is likely to receive asylum or not. In any case, it is unacceptable that unaccompanied minors are sent back to Ukraine, where they are not treated in accordance with international laws on children's rights.


### Illegal practices of the border guards

How do Hungarian and Slovakian authorities, border patrols and asylum officers justify the unlawful return of refugees across the border? In official files of the

Hungarian border police, their practice of refoulement is described as a lawful action, allegedly, because no application for asylum was ever filed. According to statistics, public authorities in charge denied the risk of refoulement in all cases of deportation to Ukraine. For more background information on the situation in Hungary, see the contribution by the Helsinki Committee in Budapest on page 26.

Reports by refugees contradict the statements of the Hungarian border police and other public authorities. Even if a person had clearly and explicitly uttered the word "asylum", in most cases border guards ignored the person's wish to apply for asylum. Similarly, ignoring requests by apprehended refugees to

RESPONSE: JO JUPITER



**General objective:**  
**To enhance border surveillance and border check at Eastern external EU borders.**

**Participation of +18 MS**

**Participation of Third Countries: MD, UA**

**Operational results (until June 2009):**

- **Detected illegal migrants – 36**
- **Falsified documents – 19**
- **Illegal overstayers - 113**
- **Refusals of entry - 664**



apply for asylum appears to be common practice in Slovakia. Interviews with refugees that are documented in this brochure demonstrate the failure of state officers to comply with the law; the contribution by the Human Rights League in Bratislava on page 32 provides additional information on the situation and treatment of refugees in Slovakia.

Instead of gaining access to asylum procedures, refugees are deported from the Eastern borders of the EU to Ukrainian territory within 24 hours. Rejected refugees usually end up in border posts or detention centres in Transcarpathia. The article on page 36 describes the situation at this hotspot of transit migration in more detail.

Refoulement appears as a common practice at the external borders of Eastern EU member states. It cannot be explained away as an exceptional case, or as a by-product of a system still under construction. Rather, this practice must be considered to be a systematic violation of international law.

### **The responsibility of Western European member states of the EU**

Is the situation at the EU's Eastern border only a problem of Eastern European member states of the EU? The violation of international law at Europe's external borders is the outcome of an externalization strategy. The so called "external dimension" of European asylum policy puts pressure on EU member states at the external border of the union, requiring them to keep migrants and

asylum seekers out of EU territory at all costs. An essential part of this policy is to generally depict the migration flows as forms of "illegal migration". Using such terminology constitutes a deliberate misrepresentation of the processes for the broader public. Crossing the border might be irregular, but persons in need of protection have the right to seek for asylum.

The lack of shared responsibility among EU member states is another important factor affecting the situation at Europe's external borders. Following the Dublin II Regulation, the EU member state of a refugee's first entry is responsible for the person's asylum proceedings. However, countries like Germany and France are sending more and more asylum seekers to EU member states at Europe's external border. Consequently, these countries try everything to prohibit first entries and access to their asylum system. Eventually, they try to place the "burden" on the nearest possible country; in Eastern Europe, in most cases the Ukraine is the closest non-EU state.

While we criticize the violation of international and EU law through border patrols, immigration authorities and individual politicians in Hungary, Slovakia and Ukraine, we hold the EU as a whole and "big players" like Germany responsible for the daily injustice against refugees and migrants.

*Border Monitoring Project Ukraine,  
November 2010*

# Turning-back asylum seekers to Ukraine: A violation of the principle of Non-Refoulement

by Marei Pelzer (PRO ASYL)

In several cases asylum seekers tried to enter EU-countries Hungary or Slovakia in order to seek asylum, but were stopped by the border police and turned back to Ukraine. Being confronted with such cases, the border police usually claims that they hadn't received any asylum applications. Later, some of the refugees were able to enter the EU after a second or third attempt. They stated that they had already tried to apply for asylum when they first entered the EU. Border officials' ignoring of asylum applications, failing to ask why a migrant or refugee has left his home country or even discouraging the persons from applying for asylum are illegal practices by the border police of the abovementioned EU member states. These cases clearly demonstrate that it is not only at the external borders in the south of the EU and the situation in the Mediterranean that have become regions where international and European refugee law is being severely infringed, but also at the eastern borders of the EU. There is an urgent need for the EU to take responsibility and start infringement and monitoring procedures that ensure – on an individual case basis – that refoulement no longer takes place.

The following report summarizes the legal positions asylum seekers can refer to on the basis of international, and EU law and which consequences have to be drawn out of this.

## I. Violation of the Non-Refoulement principle

The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of host states. The 1967 Protocol removed geographical and temporal restrictions from the Convention. The core obligation is that of Non-Refoulement. That means not sending someone back into a situation of possible persecution. Article 33 para. 1 of the Refugee Convention states:

*“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”*

Art. 33 para. 1. Refugee Convention does not only provide protection against





Detention centre Mukachevo

being returned to the country where the person concerned would be in danger of persecution. The Non-Refoulement principle also leads to some specific implicit obligations of the states and – in turn – to the rights of the asylum seekers. As an implicit right, the Non-Refoulement principle also contains:

### **Access to proceedings**

In order to observe Art. 33 para. 1 Refugee Convention (Non-Refoulement principle), states are obliged to provide access to official proceedings for determining refugee status. The proceedings must be organised as an individual procedure to investigate the circumstances of each case in question. This follows directly from the Convention's protective purpose.

### **Access to effective legal protection**

Art. 33 para. 1 Refugee Convention contains the implicit right to effective legal remedy, because the Non-Refoulement principle of the Refugee Convention is only guaranteed if the person concerned can claim effective legal protection.

### **Entry into a state's territory**

At least temporary entry into a state's territory must be granted. It is not only the authorities responsible for examining international protection claims that are based on state territory. With regard to an individuals' awareness that judicial remedy is possible, it must be remembered that courts as well as governmental and non-governmental advisory centres and structures are all to be found on state territory. The particularly strong effi-

ency requirements mean that permission for temporary residence is indispensable.

### **Safety from chain deportations**

Effective protection against refoulement also includes safety from chain deportations. The term “chain deportation” describes cases in which a refugee should not fear persecution directly in the state he is sent back to, but will possibly face refoulement from this country to a third state where he is in danger of persecution. An example for chain deportation is when a person of concern will be at risk of being expelled, returned or transferred from that third country to another State in which he does actually fear persecution or other serious human rights violations. Sending refugees back to Ukraine

entails the risk of being chain-deported to the country of persecution. The fact that Ukraine actually sends refugees back to their home countries has been proven in the past. For example, in 2006 the following case of refoulement from Ukraine was published in international Media: Ukraine extradited eleven refugees to Uzbekistan without access to any asylum procedure, where their life and security was in extreme danger. UNHCR protested against the deportations, but without any success. There were even more cases of refoulement in the following years. Amnesty International reported cases of refugees from the Congo who were deported to the Congo in 2009 without having their cases examined in accordance with asylum laws.



Detention Center Mukachevo

It is not only a breach of the Non-Refoulement principle if the asylum seeker faces immediate deportation to his or her home country, it is also a case of chain deportation if the person will not have access to asylum procedure or legal protection in the third country. Thus, in any case, returns to Ukraine violate the 1951 Convention.

### **The Non-Refoulement principle in other conventions**

The 1951 Convention is the most specific convention concerning refugees, but other international instruments also incorporate the Non-Refoulement principle. In some cases there has been a direct transfer of the wording of the Convention, whereas in others the principle has been put in a different way. The practice of EU member states returning asylum seekers to Ukraine without any access to asylum proceedings is also in conflict with the Non-Refoulement principle of these human rights conventions:

Article 7 of the International Covenant on Civil and Political Rights (ICCPR): This protects against torture and cruel, inhuman or degrading treatment or punishment.

Article 3 para. 1. of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: This provides that 'no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'.

Article 3 of the European Convention on Human Rights prohibits torture or other

cruel, inhumane or degrading treatment, and therefore provides protection against refoulement.

### **II. Violation of the UN Convention on the Rights of the Child**

Concerning children, states must fully respect the Non-Refoulement obligations derived from international human rights and humanitarian and refugee law. Additionally, the United Nations Convention on the Rights of the Child contains further obligations. Article 6 of the Convention protects children's right to life. Article 37 of the Convention protects not only children's rights to not be subjected to torture or other cruel, inhuman or degrading treatment or punishment, but also their right to liberty, humane treatment in detention and prompt access to legal and other appropriate assistance when in detention. The Committee on the Rights of the Child points out:

*"States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 and of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children shall benefit from available forms of complementary protection to the extent determined by their protection needs."*

*(General Comment No 6: Treatment of unaccompanied and separated children outside their country of origin, UN Doc CRC/GC/2006/6.)*

There have been cases reported where EU member states returned unaccompanied minors to Ukraine. In one documented case, the child was returned without being allowed to see a lawyer. This treatment violates not only the Non-Refoulement principle but also the right of the child to prompt access to legal and other appropriate assistance, which is guaranteed under Article 37 of the Convention. If the border guards of EU member states respected the right of legal assistance, there would be fewer violations of international law.

### III. Violation of EU law

Not only international law but also EU asylum law that guarantees protection against refoulement. The Charter of Fundamental Rights of the European Union provides a right to asylum (Art. 18 CFR):

*“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in concordance with the Treaty establishing the European Community.”*

This primary law and also a secondary law – especially the Qualification Directive (Directive 2004/83/EC) and the Procedures Directive (Directive 2005/85/EC) – provide protection against refoulement with the implicit rights mentioned above.

Art. 21 para. 1 of the Qualification Directive obliges the member states to “respect the principle of non-refoulement in accordance with their international obligations”. According to the wordings of Art. 3 para. 1 of the Asylum Procedures Directive member states are obliged to accept and examine requests for international protection submitted in their territory, including requests made at the border or in transit zones. Art. 29 Procedures Directive guarantees access to an effective remedy. Furthermore, under Art. 7 para. 1 and Art. 35 para. 3 lit. a) states must permit an asylum seeker to remain in the member state, at the border or in the transit zone until the request for protection has been examined.

### IV. Consequences

The return of asylum seekers by EU member states to Ukraine violates international and European Union law. The EU needs to rethink its external dimension strategy, in particular the involvement of third countries like Ukraine in migration issues. Current practice leads to severe cases of refoulement that are unacceptable under existing international and EU law.

The EU has to take the following actions:

- Refoulement must be stopped in every individual case.
- If cases of refoulement from EU-territory to Ukraine occur, the EU Commission should initiate an infringement procedure against the

## Slovakia returned to Transcarpathia seven illegal migrants

Published on June 9, 2010 in Translated Media-News from Ukraine.

In the end of the last month, 7 persons crossed the border in the district Ubyla-Malyi Bereznyi. There were 4 citizens of Somali and 3 persons from Palestine. They all crossed Ukrainian-Slovakian border in Transcarpathian region through so-called “green way” i.e. through the neutral line of the border...

As it was reported by press-secretary of Border Police Administration in Sobrantce, Agnessa Kopernitskaya, illegal migrants left their homes already in February of the present year and each of them spent \$ 3000 for the trip to Slovakia. So, the day before three Somalis and four Palestinians were returned to the border guards of Transcarpathia, as according to Law on Readmission, illegal migrants are sent back to that country they illegally get from.

Source: [www.ua-reporter.com](http://www.ua-reporter.com)

**Media-News from Ukraine on [www.bordermonitoring-ukraine.eu](http://www.bordermonitoring-ukraine.eu)**

respective EU member state immediately, because such cases constitute a treaty breach.

- In addition to existing border monitoring projects, a systematic and independent monitoring of the situation at the border must be established.
- Free legal counseling has to be provided 24 hours a day by independent lawyers. The EU has to provide the funds for this.

### Further reading:

See the legal arguments with further explanations:

- “Border Controls at Sea: Requirements under International Human Rights and Refugee Law”, Expertise by Dr. Andreas Fischer-Lescano, LL.M., and Tillmann Löhr, September 2007.
- The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary (Oxford Commentaries on International Law), by Andreas Zimmermann (Editor), Forthcoming, Oxford 2011.

## “No access to protection!” – 15 refugees complain about the violation of their rights

### *Refoulement at the borders of Hungary and Slovakia with Ukraine*

Hungarian police regularly initiates legal cases against refugees who were apprehended on suspicion of crossing the border into Hungary illegally, before they send the refugees back to Ukraine. In addition to personal data, photos and fingerprints, case files include brief descriptions of the arrest and subsequent interrogations. Based on subsequent interviews with refugees returned to Ukraine by Hungary, it is clear that questions posed by border guards aimed at demonstrating that the arrested person did not mention their personal

persecution and, most importantly, did not officially apply for asylum. Reports about the interviews, consequently, serve to justify that refugees are treated and deported as “illegal migrants” in line with bilateral readmission agreements between Hungary and Ukraine, or Slovakia and Ukraine, respectively. And the reports are also designed to insure that border police are not accused of refoulement.

Contrary to this official portrayal of arrests at the border, all 15 interviewees said that they had asked for protection or asylum before they were deported. However, these requests were constantly





ignored, and some refugees were actively denied the chance to file a claim for asylum. In some cases, the border police initially promised to help the refugees or even pretended to take them to a reception-centre. Instead, they transported the refugees back to the border and handed them over to Ukrainian border guards.

Among others, an Afghan minor reported such strategies of deception. He was sent back to Ukraine in March 2009, where we were able to speak to him in Uzhgorod a few weeks after his deportation. His case is not only outrageous because he was underage and in need of particular protection, but the Hungarian border police's file also clearly admitted that the youth had reported his father's killing in Afghanistan, and that he himself escaped oppression by Taliban in his area. The Hungarian interrogator, however, did not ask for further information to confirm the young refugee's account. The authorities denied the danger of refoulement and deported the boy back to Ukraine within a few hours.

The case of the Afghan minor was documented as part of a series of interviews with refugees from Somalia, Afghanistan and Sri Lanka that have been conducted in Uzhgorod. All of these refugees had been apprehended by Hungarian or Slovak border guards and were deported back to Ukraine, even though they had asked for protection or even explicitly applied for asylum. All of them had crossed the border in separate small groups (which in total were comprised of more than 40 refugees) and over several months between June 2008 and February 2010.

Our interviews confirm earlier reports and estimates that instances of refoulement at the Hungarian and Slovak border to Ukraine are no exceptions. Rather, we observe that such illegal push-backs are a systematic practice in this section of the external borders of the European Union and represent a continuous violation of refugee conventions.

Most of the Somali refugees that we were able to interview belong to ethnic minorities and had experienced serious threats and persecution by dominant clans or forced recruitment to clan militias. If they had not been denied access to the asylum-procedure in Hungary or Slovakia, most likely they would have received refugee status, or at least subsidiary protection. Those coming from other war-zones such as Afghanistan or Sri Lanka are in a similar situation; they would have a good chance to obtain legal protection and permanent residence – if only they would have access to the legal system.

Instead, all interviewed refugees experienced a failure by authorities to comply with the law and even outright abuse; they were refused skilled translators, and suffered insults or deception. Oftentimes, Ukrainian border guards abused them physically. Most of the refugees endured imprisonment in Ukraine for six months or longer, mainly at what is called “the hell of Chop”<sup>4</sup>. After their release, refugees had to live under extremely difficult

<sup>4</sup> Our series of interviews ended in February 2010. Interviewees had been detained in Ukraine mainly in 2008 and 2009, so that the refugees' reports describe conditions before the detention centre in Chop was renovated in late 2009.

conditions in Uzhgorod. Some of them now fear that their asylum-applications will be rejected, or that they will be imprisoned again if their case fails. Others try to enter a Schengen country again, hoping for a new chance, while at the same time risking deportation and renewed imprisonment. One of our interview-partners had been imprisoned three times already; his desperation appears as a result of an inhuman and illegal system of deterrence.

## Documenting 15 cases

### **CASE 1: 2ND JUNE 2008**

#### **Summary of the interview with Y., 22 years old, from Somalia**

Y. crossed the border to Hungary in a group with three other persons from Somalia. At 6 a.m. they were stopped and arrested by Hungarian border guards in a nearby village and taken to a border post. Y. asked for, and insisted on, a Somali translator, yet his request was refused and he had to communicate in broken English. He explained to the border guards: "I need protection and help, please." The border police separated the group for interrogations. Every person had to fill out a form, and everyone's fingerprints and photos were taken. Police officers were mainly interested in finding out, which route Y. had taken to get to Hungary. His answer – that he does not know since the transport was organised by mafia – was met with disbelief. At 6 p.m. he and the other three persons were taken to a car. They were not told that they would be deported to Ukraine. They

received some receipts and were handed over to Ukrainian border guards. For two days and one night, the four refugees were jailed in a cell at the Ukrainian border post. They did not receive any food; instead, they were insulted and beaten. A brief interview was first conducted in English. Y. was then taken to Pavchino, where he was held for two months. Within just ten days of his release, his asylum application was rejected; his appeal was refused a few months later. On 12th of December 2008, Y. was arrested again at home by Ukrainian police and jailed for another six months in Chop. On 15 June 2009 he was released, with another court case pending. Y. had fled the Somali city Afgooye. As he and his family (his parents and three sisters) are from the ethnic minority of Galadi, they experienced continuous mistreatment and threats by the majority clan of Hawiye. Since Y. expected forced recruitment by the Hawiye militia, he decided to escape and to leave the country.

### **CASE 2 AND 3: 4TH DECEMBER 2008**

#### **Summary of the interviews with O., 34 years old, and J., both from Somalia**

O. and J. crossed the border to Hungary with a third person from Somalia. At 7 p.m., they were arrested in a forest by Hungarian border guards. With hands tied behind their backs, the group was taken to a border post. O. spoke neither English nor Arabic, yet he was refused a Somali translator. As a result, he was not interrogated; officers took only his fingerprints and a photo. J. did speak English, and he requested asylum for the whole group. He explicitly said: "I am a refugee;

I am an asylum-seeker." However, O. and J. and the third Somali were handcuffed again the next day at 10 a.m.; they received their files and were deported to Ukraine. For two days and nights they were jailed at the Ukrainian border post. They were abused, beaten, and were forced to shovel snow. Afterwards, O. and J. were taken to Mukachevo, where they were imprisoned for eight days. Later, they were transferred and remained in prison in Chop for another six months. O. is from Mogadishu and belongs to the minority clan of Bandhabow. He has a wife and four children. He was attacked by the majority clan of Hawiye, and was forced to work for them as a farmer. Eventually, he decided to flee and left Somalia in May 2008; he arrived in Ukraine via Dubai and Moscow. J. comes from Tumul, a village near Mogadishu. Because his father and mother were killed in the civil war, he was in danger of forced recruitment. He also came to Ukraine via Dubai and Moscow. O. and J. tried to cross the Ukrainian border for the first time in the summer 2008. They were arrested on the Ukrainian side and imprisoned in Pavchino for two months. After their release and a final rejection of their asylum applications, they made a second attempt on December 4th.

#### **CASE 4: 25TH DECEMBER 2008**

##### **Summary of the interview with H., 21 years old, from Somalia**

On 25 December, 2008, H. and a group of three other Somali refugees, two women and one man, were stopped in Hungary by border guards. They had walked for approximately 20 km, or five hours through forest and fields before they

encountered a village in Hungary. While crossing a street, the group was stopped by border guards. The officers introduced themselves as "Hungarian border guards." H. and the others then explicitly asked for refugee asylum status, but after eight hours in arrest and after interviews and registration procedures including fingerprints and photos were completed, he and the others were told that they will be deported back to Ukraine because of illegal entry. H. was first taken to a Ukrainian border police station near Mukachevo, where he was held in a very small cell. Later he was transferred to Chop. There, he lived through about six months of detention under horrible and inhuman conditions, before he was released and could apply for asylum at the Migration Service office.

#### **CASE 5: 31ST DECEMBER 2008**

##### **Summary of the interview with A., 34 years old from Somalia**

A. crossed the border into Hungary with three other persons from Somalia. At 12p.m., he was stopped and arrested by Hungarian border guards in a forest; his three traveling companions managed to run away (they were arrested a few hours later at a different place and were also deported back to Ukraine). A. was not interviewed and his finger prints were not taken. He explicitly stated: "I am an asylum seeker. There are fights and war in my country." Nevertheless, the border guards accused him of crossing the border illegally, when they found a notice in his pocket that contained a Ukrainian phone number. They also commented that Ukraine is a good and safe country. A. was handed over to Ukrainian border

guards at 3p.m. For the following three days, he remained chained to a heater in the Ukrainian border post. He received only a small piece of bread and no other food; he was made to clean toilets and clear away snow. He was then transferred to Mukachevo, where he was held for another three days; subsequently he was jailed for six months in Chop. A. originates from Afgooye; he has a wife and seven children. His family belongs to the ethnic minority of Bagadi and was persecuted by the clan of Hawiye for a long time. His father was killed in 2000, and A. himself was forced to produce wooden coal for the Hawiye. When they confiscated his house, he decided to flee.

#### **CASE 6: 2ND FEBRUARY 2009**

##### **Summary of the interview with S., 20 years old, from Somalia**

S. crossed the border to Ukraine with a group of three other people from Somalia, two men and one woman. They were stopped and arrested by Hungarian border guards in a village at 8p.m. and taken to a border post. S. clearly announced: "I need asylum!" A border guard responded to his call with the words, "do not worry, everything is ok, we accept you." The group was taken to a cell. They were interviewed, fingerprinted and photographed on the next day (3rd February). A woman who identified herself as a representative of the UNHCR and who spoke English participated in the process. Furthermore, Ukrainian border guards arrived at the Hungarian post and confronted S. with photos of Somali men, which he was requested to identify, but S. did not know these people. At 9 p.m., the group was taken to a car, the

guards explained to them that they were going to be transported to a Hungarian reception centre. As it turned out, this was not true, as all four refugees were deported to Ukraine. They were jailed for one night at the border post; S. was beaten and insulted. The next day he was transferred to a jail in Mukachevo, where he was held for 20 days, and was later jailed for another five months in Chop. S. is from Mogadishu and belongs to the ethnic minority of Asharaf. The Hawiye militia recruited him and his father against their will. S's father was killed when he refused to join. S. was able to flee at the beginning of January 2009.

#### **CASE 7: 28TH MARCH 2009**

##### **Summary of the interview with H., 17 years old from Somalia**

H. crossed the border into Hungary with another person from Somalia. They were stopped and arrested by Hungarian border guards at 9 a.m. when they passed through a village. H. cannot speak English, but his companion was able to clearly explain their need in English: "asylum and protection." They were taken to the border post, interviewed and fingerprinted. At 6 p.m. on the same day, both men were handed over to the Ukrainian border post. Documents filled out by the Hungarian guards identified H. as a 17year-old, but Ukrainian border guards changed the entries, giving H.'s age as "19". The two refugees were held at the Ukrainian border post for one day. H. was then transferred to Mukachevo, where he was imprisoned for one month; later he was held for another two months in Chop. He was released in July, with his asylum procedure still pending. H.

# General data on Transcarpathia

Transcarpathia is the most western part of Ukraine with borders to four EU-countries: Poland, Slovakia, Hungary and Romania. According to the most recent census in 1986, the population of Transcarpathia is 1.252.300 people. The population of the capital city, Uzhgorod, is about 120.000. Currently, 712.000 persons of working age reside in the region. Some 540.000 people work in the region, with 80.000 of them employed only seasonally. Transcarpathia is a multiethnic region. The main ethnic groups are: Ukrainians (78,4%), Hungarians (12,5%), Russians (4%), Romanians (2,4%). Roma make up to 1% of the population, people of Slovak, German, Jewish, Belarusian or other background less than one percent each.



is from Mogadishu, where he had lived with his parents and another brother. The family members belong to the ethnic minority of Asharaf. H. was threatened with forced recruitment by the Hawiye clan. He fled from Mogadishu in February.

#### **CASE 8: 31ST MARCH 2009**

##### **Summary of the interview with A., 16 years old, minor from Afghanistan**

A. was part of a group of four persons, all refugees from Afghanistan and including another minor. The group was stopped by Hungarian border police on 29th March, 2009. He was only asked for his name and personal data, yet was not asked to name a reason for his coming to Hungary. Guards promised to take him to Budapest. Instead, however, he was handed over to Ukrainian border police. He was not detained in Chop, presumably because he is a minor. Instead, he was put up in the (semi-) open centre in Mukachevo (for more details on his story, see his official Hungarian case file, summarized by the Helsinki Committee).

#### **CASE 9: 26TH JULY, 2009**

##### **Summary of the interview with F., 16 years old, female from Somalia**

On 25 July, 2009, F. crossed the border to Hungary in a group with three other people from Somalia, among them two men and one boy who was also underage. The group walked through a forest area, and spent one night in the countryside. The next day, on 26th July, at 6 p.m. they were stopped and arrested by Hungarian border guards in the first village that they had reached. F. speaks

English and told the border guards, "I am a refugee, I am a girl, please help me!" The guards answered with "Yes, we will help you", but instead of doing so, handcuffed the four and took them to a cell at the Hungarian border post. The next morning, everyone was interviewed, fingerprinted, and photographed. None of the documents produced that day indicate that F. is underage and that she belongs to the ethnic minority of Asharaf, although she clearly explained her situation. To the contrary, the border guards were solely interested in how she had entered Hungary, because they had found a Ukrainian phone-number saved to her mobile phone. The group of refugees did not receive any food all day, except for a small piece of bread. And yet, F. continued to hope and believed that the border guards would help her. At 6 p.m., the four were handcuffed again and taken to a car. The Hungarian border guards made fun of them and deported them to Ukraine.

Across the border, F. and her companions were jailed for one and a half days, again not receiving sufficient food. Since there were no mattresses, they slept on the floor of the cell. F. and the underage boy were then transported to Mukachevo; F. was imprisoned on the 4th floor of the detention centre. She was held there for one month and 15 days, before she was released and was able to file an application for asylum at the office of the Migration Service. In Somalia, F. had lived with her family in Kismaayo. Belonging to the Asharaf minority, the family was threatened by Hawiye militia. F. decided to flee from Somalia when her father was killed in 2008 by Hawiye militia.



**CASE 10: 29TH OF OCTOBER 2009****Summary of the interview with A.,  
17 years from Somalia**

A. crossed the border to Slovakia in a large group of refugees, eleven people from Somalia and three from Afghanistan, in the early morning of 29 October, 2009. They had made their way into Slovak territory for about five hours when Slovak border guards stopped them. Everyone was arrested and jailed for six hours in a small room at the border post. A. recalls, "We told them that we are refugees. We cannot return to Somalia and we cannot return to Ukraine because they will not give us asylum. We asked for asylum." The detained refugees also asked for a piece of paper so that they could submit a written application for asylum. But the Slovak border guards refused to hand out paper and systematically ignored all requests. When the refugees were interviewed, one by one, Slovak officers registered only each person's name and age, and took everyone's fingerprints. When A. addressed one of the Slovak border guards for another time with a request, he answered: "If you will ask me one more question, I will beat you." Six hours later, the refugees were transported to the Ukrainian border, where Ukrainian border guards took them to a border crossing. The refugees had to sleep on the floor of the border guards' office. There, they were locked up for 24 hours before they were taken to Chop. A Ukrainian border guards said to A., in Russian, "welcome again to Ukraine". The officers recognized him because he had been detained in Chop some months ago. Thus, A. made a first unsuccessful attempt to cross the border to Hungary, and now he was in Chop for the second

time. In addition, A. was detained for twelve months; he spent seven months in Chop and five months in Volyn. A. had left Somalia because of the civil war and because he had lost several relatives. He managed to travel through Russia before he faced refoulement by EU-border guards and one-year detention in Ukraine.

**CASE 11: 16TH NOVEMBER, 2009****Summary of the interview with T.,  
a 25 years old Tamil man from Sri  
Lanka**

Together with another Tamil man, T. crossed the border to Slovakia in a forest area, during the night. In the morning, Slovak border guards arrested both of them. The men were held for one day at the Slovak border crossing. Border guards took their photos and fingerprints, but did not interview them. The guards only filled out some forms and asked the men to sign them. T. asked the guards to give him a paper so that he could write an application for asylum, he audibly asked for asylum. However, the border guards did not react to his request, arguing that they do not understand his English. Early in the morning the next day, T. and the other man were handed over to Ukrainian border guards; from the border they were taken to Chop. For T., this was the beginning of a second detention in Ukraine; he had been jailed for six months when he tried to cross the border between Ukraine and Slovakia in April 2009. At that time, he was arrested on the Ukrainian side before he even managed to cross the border. As of now, T. has spent twelve months in various detention camps in Ukraine. T. left Sri Lanka because he was persecuted as a

young Tamil man after the state army had won the civil war. With the help of “smugglers” he traveled to Dubai, then to Russia, and finally to Ukraine.

**CASE 12: 24TH FEBRUARY 2010**

**Summary of the interview with M., 18 years from Somalia**

M. walked for about seven hours through the forest after he had crossed the Hungarian border before he was stopped by Hungarian border guards at around 9 a.m. The guards took him to the border post and interviewed him. Although M. asked for asylum, he was sent back to Ukraine in the middle of the night. After he was handed over to Ukrainian border guards, they handcuffed him to a radiator in the border post. He remained under arrest until 3 p.m. the following day, receiving only little food, and he was interviewed for a second time. He was then taken to Latoritsa camp in Mukachevo, where he remained for 15 days. A lawyer came to meet with M. and he was able to apply for asylum. Afterwards M. lived in Uzhgorod. M. had lost contact with his family in Mogadishu because of the civil war. He belongs to the minority of Asharaf and decided to flee Somalia in December 2009 when he was in danger of being forcibly recruited to clan militias. He arrived in Ukraine after a trip through Ethiopia and Russia.

**CASE 13/14/15: 25 TH FEBRUARY 2010**

**Summary of the interviews with A., H. and S., three minor men from Somalia**

The group of three refugees from Somalia crossed the border to Hungary in the

night. Hungarian border police apprehended them at 9 a.m. while they were walking along a street. The refugees were taken to the border post in a police car and interviewed separately, in different rooms. The main question was how and where the men had crossed the border. Eventually, one of the officers answered to A’s statement that he is in need of “a safe place” and told him, “We accept you, we do not want to deport you.” The whole conversation took place in English, but the three Somalis had to sign several documents in Hungarian. A few hours later, the three minors were deported back to Ukraine, where they were told that they would be banned from entering Hungary for three years. All documents and the refugees’ mobile phones were handed over to Ukrainian border guards, who immediately handcuffed the three. They were then held at the Ukrainian border post for nearly 24 hours (from 1 p.m. to 10 a.m. the next day). For most of the time they were chained to heaters. Interviews took place during the night, and the border guards mainly wanted to know, who had helped the refugees to cross the border. They also showed pictures to Somali minors and asked them to identify potential “smugglers”. A., H. and S. fled from Mogadishu because they feared forced recruitment through Islamic groups. All three minors belong to the minority of Gaboye and endured the death of close relatives during the civil war. They came through Ethiopia and Russia to Ukraine





## Case of an Afghan minor crossing the Hungarian-Ukrainian border

*Summary of the Hungarian Helsinki Committee, according to official files:*

### **Interception and apprehension**

On 31 March 2009, at 05.15 AM, field officers of the Hungarian Police in Barabás intercepted an Afghan national close to the Hungarian-Ukrainian border. Since the person was unable to produce credible evidence of his identity or verify his lawful residence in Hungary, he was apprehended and taken into short-term custody by the Hungarian Police accor-

ding to Section 67 (4) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (illegal border crossing).

### **Interrogation**

The interrogation of the Afghan national began at 09.45 A.M. on 31 March 2009 in the presence of a Farsi interpreter. Due to the fact that the person in consideration was a minor, an officially appointed case guardian was also present at the



interrogation. The Afghan minor told the police that he left Afghanistan two days prior to his interception by the police. He claimed that his father was killed in Afghanistan and he was fleeing from the Taliban oppression in his country. He was in possession of 4.000 US dollars when he left Afghanistan that was to cover the expenses of his trip. He stated that he left his country alone and that nobody helped him. He was travelling by car, taxi and on foot. He travelled from Afghanistan to Romania; he did not have any travel documents with him. He paid the taxi driver to take him across the Romanian border. It was very dark when they crossed the border and he could not see which way they were going. He remembered walking and suddenly being caught by the police. The police officer asked questions that mostly focused on terrorist activities, weapons of mass destruction, illegal organisations or the secret service in Afghanistan. The officer also asked the minor if he was persecuted by the above-mentioned organisations and if he was a member of these groups. The Afghan minor stated that he had never been a member of such a group and he was never threatened or discriminated by them. Even though he had told the officer that his father was killed, no further questions were asked to clarify the obvious contradictions between his own story and his responses to the police officer's questions.

### **Examination of the obligation of non-refoulement**

In order to obtain information regarding the *prohibition of refoulement*, the Hungarian Police contacted the Asylum

Department of the Office of Immigration and Nationality (OIN) in Debrecen. In its response, the OIN informed the Hungarian Police that the deportation of the Afghan person to Ukraine would not amount to refoulement. The OIN did not provide any information as regards the factors on which its opinion was based. The field office in Barabás transferred the case to the Alien Policing Department of the Szabolcs-Szatmár-Bereg County Police, which issued an *expulsion* order and an *entry ban* for the duration of three years against the person, and ordered his *deportation* to Ukraine.

The Alien Policing Department based the expulsion order on the following:

- The fact that the apprehended Afghan minor crossed the Hungarian-Ukrainian border illegally, which constituted a minor threat to the national security, public security and the public order.
- The opinion given by the OIN regarding the application of the principle of non-refoulement in the present case (the expulsion would not amount to refoulement).
- The *bilateral readmission agreement* between Hungary and Ukraine.

The Afghan minor was handed over to Ukrainian authorities at 10.30 AM on 31 March 2009.



Refugee-camp in East-Hungary

*Guest contribution*

## **Access to protection at the EU's external border: Summary of the Hungarian Helsinki Committee's experience**

### **Introduction**

Monitoring border areas is essential to ensure that the principle of *Non-Refoulement* is respected and that asylum seekers may fully enjoy their right to seek protection, have access to territory and to the asylum procedure. Since Hungary's membership in the European Union also means that the country is located at the European Union's external border, border monitoring has become even more important.

In order to improve refugees' access to protection, after a lengthy negotiation

process, a tripartite Memorandum of Understanding was concluded in late December 2006 between the UNHCR Regional Representation in Central Europe, the Border Guards (succeeded by the Police) and the Hungarian Helsinki Committee, a human rights NGO. The agreement allows the HHC to monitor Hungary's land borders and the Budapest International Airport on a regular basis. This monitoring aims to gather protection information on the actual situation affecting persons in need of international protection. It also aims to identify individual cases of persons in need of international protection who may



be or may have been affected by measures that could amount to *refoulement*, and to provide legal assistance to such persons.

Since the border monitoring project's start in early 2007, the parties to the Tripartite Agreement achieved a constructive working relationship. Experiences, problematic issues and questions are discussed in the Tripartite Working Group where representatives of the parties meet at least four times a year to follow-up and evaluate the border monitoring project.

The HHC's monitors pay regular visits (generally twice a month) to the Hungarian border areas neighbouring Ukraine and Serbia and to the Budapest international airport. Monitors visit border checkpoints and detention facilities along the border and the transit zone at the airport, where foreigners may be detained for a short period before they are returned or are granted entry into the country. Furthermore, the monitors may interview foreigners placed in short-term detention facilities and may also access the files of persons who have already been returned.

The border monitoring is aimed at assessing the effectiveness of the legal protection of foreigners' rights in seeking international protection. HHC monitors observe, among other things,

- practices concerning how the right to seek asylum may be exercised in Hungary,
- how authorities provide for the special needs of vulnerable foreigners during their procedures,

- whether foreigners are given appropriate information about their situation.

### Protection against refoulement?

The first report summarizing the findings of the border monitoring project in 2007 was published in early 2009<sup>5</sup>. During the project's following years, the recommendations put forward in the 2007 report are also being followed up.

Hence, in the course of carrying out the monitoring activity, the HHC pays particular attention to issues related to protection against refoulement and the application of Article 33 of the 1951 Geneva Convention and its incorporating legal provisions in Hungarian domestic law.

Experience shows that in practice, the exercise of the right to seek asylum depends greatly on practical issues, and foremost on the quality of the communication between the Police and foreigners. In an overwhelming majority of the cases, access to protection will be determined by whether the asylum claim is heard and understood by the authorities, and whether persons potentially in need of international protection are able to express their intention to submit an asylum application in a way that the Police may comprehend it.

According to the Hungarian Act II of 2007 on the entry and stay of third

<sup>5</sup> See the report on Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, [http://helsinki.hu/dokumentum/Border\\_Monitoring\\_Report\\_2007\\_ENG\\_FINAL.pdf](http://helsinki.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf).

country nationals, the Police are obliged to interview an intercepted foreigner in order to take a decision on removal and its enforcement (readmission, return). However, the Police must conduct these actions within an extremely short time (usually just a few hours), without the legal obligation or possibility to carry out a longer and more in-depth interview with the foreigner. Thus, these written interview records remain less informative for all authorities, and it is impossible to correctly assess the risks of enforcing removal to a third country on an individual basis in each case.

Files examined by the HHC at the Ukrainian-Hungarian border section were mostly related to expulsion orders of foreigners who had entered Hungary in an unlawful manner. It could be established in each case of expulsion that the Police – complying with its legal obligations – had requested an opinion from the on-duty service unit of the Office of Immigration and Nationality (the asylum authority, OIN) to see if the prohibition of refoulement would be respected if the foreigner would be returned to Ukraine under the bilateral readmission agreement. In cases where the necessity of an expulsion order arose, based on the record of the foreigner's police interview, the OIN gave the Police country of return information on Ukraine during the non-refoulement assessment. The HHC's experience shows that the country information assessment carried out by the OIN and its conclusion is often too short, and fails to provide sufficient time and space for an exhaustive assessment and consideration of the individual's specific circumstances and

prospects for protection in Ukraine upon readmission. Therefore, expulsion orders that are not based on a thorough assessment of the individual circumstances the specific foreigner would face in Ukraine inherently carry the risk of leading to refoulement.

Information from the UNHCR confirmed that in the year 2009, out of the total of 1159 country of return information requests (regarding return proceedings and readmissions) sent by the Police to the on-duty service of the OIN, the OIN responded in 1159 cases (100 %) that the foreigners in question would not face treatment contrary to Article 33 of the 1951 Geneva Convention and Article 3 of the ECHR, and that therefore there was no risk of refoulement.

While carrying out the border monitoring project in 2008, the Hungarian Helsinki Committee became aware – from its lawyers or partner NGOs or directly from foreigners – of cases where foreigners claimed that they had tried to seek asylum in Hungary. However no data confirming these statements were later found in police files. A number of reasons might explain this: e.g. the foreigner did not find a language to clearly communicate her intention to seek asylum to the police officer, or expression or oral communication referring to persecution were spoken but the officer did not consider these as an asylum claim.

There are several recognised refugees amongst the HHC's clients who stated that in the past they had unsuccessfully tried to leave Ukraine and enter Hungary on several occasions. According



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to our clients, even if they stated to the police officer that they wished to seek asylum in Hungary, their claim was not registered. Moreover, based on the OIN's finding that Ukraine constitutes a safe third country in respect of the foreigners' citizenship (Somalia and Afghanistan), these foreigners had been readmitted to Ukraine several times. All of them claimed that they had faced serious difficulties and hardship in Ukraine after their return, and had been all detained for several months under very difficult, often degrading conditions. After several unsuccessful attempts to cross the Hungarian-Ukrainian border, however, they managed to gain access to Hungary and to the Hungarian asylum procedure, which eventually resulted in them obtaining international protection statuses.

In 2009, the HHC was informed by Ukrainian NGOs of about 20 potential refoulement cases of Somali and Afghan nationals at the Ukrainian-Hungarian border. In the framework of the Tripartite Working Group, upon receiving information provided by the HHC, the Police investigated these cases using their official files. However, the Police established in all cases that interview records and other official documents had not made obvious that foreigners in question were seeking asylum in Hungary – nevertheless, all of the foreigners clearly stated to the Ukrainian NGOs that they had expressed a desire to seek asylum in Hungary.

## **Respect for Article 31 of the 1951 Geneva Convention**

The border monitoring activity also brought to light an important gap in the full implementation of Article 31 of the 1951 Geneva Refugee Convention (non-penalisation for illegal entry) into Hungarian law. Criminal procedures on account of forgery of official documents are regularly launched against foreign nationals who arrive at the Hungarian border carrying falsified or forged travel documents, even if they express a wish to seek asylum in Hungary immediately or within a short time period after arrival. Many of these foreigners are also taken into pre-trial detention, which is carried out in prisons.

The HHC's attorneys have acted as defence counsel in a total of 13 criminal cases involving Afghan, Iraqi and Somali defendants. Although several clients were eventually granted protection status in Hungary (refugee status or subsidiary protection), they were nevertheless subjected to a criminal procedure, lengthy pre-trial detention and possibly criminal sanctions merely for using a false travel document to gain entry into Hungary and seek protection there.

Many of these criminal cases were launched at the Budapest Airport. The Budapest 18-19th District Prosecutor's Office, which supervises the criminal investigations, argued that pre-trial detention was necessary as there was a well-founded assumption that these asylum seekers would escape from authorities without their identities having been established; and that moreover, if they were released,

the authorities would not be able to carry on with asylum procedure. As a result of the HHC's advocacy actions and the active defence counsels, these clients were eventually released from pre-trial detention after 5-6 months on average, and placed in refugee reception centres in accordance with Hungarian asylum law.

In order to better facilitate access to the asylum procedure of potential asylum seekers in pre-trial detention, the HHC turned to the Chief Prosecutor's Office to initiate supervisory measures and an examination of whether the current practice in penitentiary institutions related to lodging asylum claims complies with relevant legal provisions. The Chief Prosecutor's Office confirmed the HHC's previous experience that potential asylum seekers face difficulties when trying to submit an asylum application. This is mostly due to the lack of appropriate information, training and sensitisation of the prison staff. As a result of the supervisory measures of the Chief Prosecutor's Office and good cooperation from the National Prison Service, foreign national detainees are now provided information leaflets on the asylum procedure produced by the HHC, and have to be informed of the right to seek asylum in Hungary immediately upon their reception into the penitentiary institution.

### **Additional remarks**

In 2008 there were 555 asylum applications registered at the Ukrainian-Hungarian border section, while this number decreased remarkably in 2009:



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only 152 asylum claims were registered at the same border section. Two potential interpretations: First, refugees had difficulties in accessing the asylum procedure and were not considered as asylum seekers by Hungarian authorities. Second, intercepted foreigners did not wish to seek asylum in Hungary (for various reasons, no integration, difficulties in family reunification, another destination country in Western Europe etc.).

The overall number of asylum application in Hungary was: 3.118 in 2008 and 4.672 in 2009 (50% increase!)<sup>6</sup> So obviously

migration routes changed in 2009, for example the number of asylum applications submitted at the southern border between Serbia and Hungary increased from 738 in 2008 to 1.762 in 2009.

<sup>6</sup> Source: [www.bmbah.hu/statisztikak.php](http://www.bmbah.hu/statisztikak.php) (website of the Office of Immigration and Nationality).



Video-surveillance at the Slovakian border

*Guest contribution*

## Border monitoring in Slovakia

*by Miroslava Mittelmannová*

Since May 2004, the Slovak Republic has been a member of the European Union and a part of the Schengen area since December 2007. Based on its location at the very East of the European Union, Slovakia plays an important role as an external border of the European Union and significantly controls the movement of third country nationals from Ukraine into the European Union.

The Slovak Republic is a party to human rights instruments such as the Geneva Convention 1951, International Covenant on Civil and Political Rights, the European Convention on Human Rights and other important international agree-

ments or declarations according to which the return of third country nationals to a place where his or her life would be threatened is prohibited. These principles, known as the principle of Non-Refoulement and the right to seek an asylum, constitute the basis for border monitoring in Slovakia.

At the external border of the European Union, UNHCR has established a monitoring mechanism, according to which nongovernmental organisations monitor the access of third country nationals to the territories of respective countries and to asylum procedures. The same monitoring mechanism was established in Slovakia in 2007 when the Tripartite Memorandum of Understanding was signed



between UNHCR, Bureau of Border and Alien Police of the Ministry of Interior of the Slovak Republic and a nongovernmental organisation, The Human Rights League (HRL). Based on this memorandum, lawyers of The Human Rights League have had access to departments of border control where they undertook monitoring visits, and had access to persons of UNHCR concern.

The border monitoring activities take place mainly at ten Departments of the Border Control at the Slovak-Ukrainian border in the following towns: Topol'a (since 2009), Zboj, Ulic, Ubl'a, Podhorod', Vysné Nemecké, Petrovce, Mat'ovské Vojkovce, Veľké Slemence and Cierna nad Tisou as well as at two detention centres in Secovce and Medved'ov and at International Airports in Bratislava and Kosice.

The HRL lawyers visit these monitoring locations based on information sent by the Directorate of the Border Control in Sobrance. UNHCR or HRL lawyers pay ad hoc visits in order to look into the files of intercepted migrants.

The aims of the border monitoring are:

- to monitor if persons of UNHCR concern have access to the territory of the Slovak Republic,
- to monitor if persons of UNHCR concern have access to asylum procedure,
- to monitor the observance of the principle of Non-Refoulement,
- to monitor if persons of UNHCR concern have access to free legal counselling.

Target groups of the border monitoring were persons who:

- ask directly or indirectly for international protection (asylum or subsidiary protection) at the departments of Border Control,
- are placed at the Detention Centres and subsequently asked for international protection,
- are placed at the Detention Centres based on the reason of their readmission to Ukraine.

During the border monitoring, lawyers participate in the following activities:

- to monitor the access of foreigners to the territory of the Slovak Republic,
- to monitor the access of aliens to the asylum procedure,
- to monitor readmission procedures of third country nationals from the territory of the Slovak Republic to Ukraine based on the readmission agreement with Ukraine,
- to monitor the procedure based on the Dublin regulation,
- to monitor the conditions at the Detention centres,
- to conduct an interview with persons of UNHCR concern in order to provide information on their rights and obligations,
- to monitor the presence of information leaflets on international protection at respective locations of the Ministry of Interior of the Slovak Republic,
- inspection of the files,
- collecting statistical data.

Most third country nationals that enter without authorisation to the Slovak republic via the Slovak-Ukrainian border are undocumented and without visa or residence permit. After a foreigner is controlled by the Border Guards, and is unable to show the authorisation of his or her stay in the Schengen area or in Slovakia, he or she is taken by the Border Guards to the Department of Border Control in order to record the statement on clarification, in which the foreigner describes the route used in reaching Slovakia and is then asked about the reasons for unauthorised entrance or residence in Slovakia.

During the recording of the statement for purpose of clarification, a foreigner may ask for international protection (asylum or subsidiary protection). If he or she does so, the Border Guards transfer the foreigner to the Reception Centre in Humenné (a facility of the Migration office of the Ministry of Interior of the Slovak Republic where all migrants that asked for international protection are held). At the Reception centre, he or she may submit an official application for asylum.

If the Border guards find a record in the EURODAC information system that the foreigner has already applied for asylum in another European Union country, such a foreigner is detained and placed at the detention centre for the purpose of transport to the respective country that is responsible for examination of asylum applications according to the Dublin II Regulation.

If the third country national unlawfully crossed the border between Slova-

kia and Ukraine and did not apply for international protection, such a foreigner is returned to Ukraine based on the re-admission agreement between Slovakia and Ukraine.

In cases, when third country nationals did not apply for international protection, and the removal to Ukraine or other European Union country will not take place, the Border Guards issue a decision on administrative expulsion and place the foreigner in one of two detention centres for foreigners in Slovakia (in Medved'ov or in Secovce). The Border Guards may not expel a foreigner to a country, where he or she would be subjected to torture, cruel, inhuman or degrading treatment or punishment and where their life would be threatened because of their race, ethnicity, and religion, membership of a particular social group or political beliefs. Likewise, the foreigner may not be expelled to a country where capital punishment was imposed on him or her, or where there is a precondition that in the ongoing criminal procedure such a sentence would be imposed on him or her. The same conditions apply to a foreigner whose freedom would be threatened based on the above mentioned factors, except in the situation if a foreigner threatens the security of the Slovak Republic or was convicted of very serious criminal offence, and therefore represents a danger for the Slovak Republic. At this point, the respective Department of the Border Control does not contact the Migration office of the Ministry of Interior but decides independently. That means it does not receive any approval concerning non-refoulement from the Migration Office.

The number of asylum applications submitted in Slovakia in 2007 was 2642. Since 2007, this figure has been decreasing, as only 691 asylum applications were submitted in 2008 and 822 in 2009. In the execution of the readmission agreement between Slovakia and Ukraine, Slovakia sent back to Ukraine 1183 third country nationals in 2007. But in 2008 the figure was almost half as much, when 691 were readmitted in 2008. This trend also continued in 2009 with 425 people sent back to Ukraine.

A comparison of statistical data on unauthorised state border crossing of Afghani and Somali nationals with the number of readmission for these two groups shows that 62 unauthorised Afghans crossed the external land border, 47 of which were readmitted to Ukraine. Out of the 15 unauthorised crossing of land external state border by Somali nationals, 11 were readmitted back to Ukraine.

Concerning the Afghani and Somali asylum applications submitted in 2009, 51 Afghani nationals and 13 Somali nationals submitted the asylum applications on the territory of the Slovak Republic. The number does not correspond to the number of unauthorised state border crossing as some of them were repeated applications and some of them crossed the land border otherwise.

The top ten nationalities of aliens that were readmitted to Ukraine are the following: Moldova (243), Georgia (136), Pakistan (79), Afghanistan (66), Bangladesh (36), Russia (35), India (34), China (28), Ukraine (10), and Armenia (7).

During border monitoring, the Human Rights League was informed by an Ukrainian NGO about cases of Somali, Afghani, Armenian and Russian Federation citizens that asked for asylum in Slovakia but were not heard by their respective Border Guards, and were readmitted back to Ukraine. According to a statement of the Border Guards, those third country nationals did not apply for asylum in Slovakia and some of them had an intention to travel further west.

One problematic issue identified is the communication between third country nationals and state authorities. Aliens state that they do not have enough information concerning their legal situation and are not informed on the reasons of their readmission to Ukraine. The Border Guards are of the opinion that the leaflets concerning the information on asylum are available to aliens and all relevant information is provided.

Unfortunately, Slovakia became the first country in the region of central Europe, where the Memorandum of Understanding concerning the border monitoring was denounced in 2009. Based on good cooperation between The Human Rights League and the Department of Border Control at the transit zone at the International airport in Bratislava, HRL lawyers still have access to persons of UNHCR concern at this location, and – if possible – pay ad hoc visits to departments on the Slovak-Ukraine border. Nowadays, UNHCR is negotiating a version of new border monitoring agreement with the Ministry of Interior of the Slovak Republic.

# Situation of refouled refugees and other vulnerable migrants in Transcarpathia (Ukraine)

by Border Monitoring Project Ukraine

## Situation in Detention centres

Migrants who are readmitted to Ukraine from neighbouring EU-countries or who have been arrested by Ukrainian Border Guards while trying to cross into EU territory are usually detained in *Chop Temporary Holding Facility*. This detention centre is operated by the Ukrainian *State Border Guard Service* (SBGS). According to Ukrainian law, detention is limited to 72 hours but may be extended to 10 days. Detention for longer than this period qualifies as administrative detention, requiring a court decision, and is limited to six months. According to law, during this period the deportation of the detained migrants should be arranged. If this is not possible within a period of six months after the initial arrest, detainees have to be released.

Until 2008, most migrants were in Chop for ten days or less and were then transferred to *Pavchino Detention Centre*<sup>7</sup>. Later that year, Pavchino was closed and detainees were kept in Chop. As the *Border Monitoring Project Ukraine*

(BMPU) documented 2010 in its report on the centre in Chop<sup>8</sup>, most migrants who were detained in Chop remained there for up to six months and were kept under inhumane conditions before the renovation of the centre in 2009. The findings of BMPU's report were confirmed by the NGO *Medicines Sans Frontiers*<sup>9</sup>.

Former Chop detainees who were interviewed by BMPU frequently reported that, once in detention, their asylum claims appear not to have been passed on to the responsible authority, the *Regional Migration Office*:

*"I did not receive any legal aid. I did not have the opportunity to write an application for asylum. They only handed out a form on deportation. Detainees do not know their rights, nobody tells them anything."*

(Refugee from Pakistan)

BMPU also conducted interviews with three migrants who were transferred from *Chop Detention Centre* to *Volyn*

7 The conditions in *Pavchino Detention Centre* have been heavily criticized by several NGOs and by the Commissioner for Human Rights, Mr. Thomas Hammarberg (2007).

8 The report, which gives a detailed overview about the conditions in *Chop Detention Centre*, is available on [www.bordermonitoring-ukraine.eu](http://www.bordermonitoring-ukraine.eu).

9 MSF assessments in four detention centres in Ukraine (2009).



Refugees in Uzhgorod, Photo: Dörthe Hagenguth

*Detention Centre.* This detention centre was built in 2008 as part of the *Capacity Building in Migration Management* (CBMM) programme, a project funded by the EU and implemented by the *International Organization for Migration* (IOM). Actually, *Volyn Detention Centre* is one focus of the CBMM follow-up project *GUMIRA*. This IOM-project, cooperating with different Ukrainian NGOs, should also support (potential) asylum-seekers in filing their claims:

*“The NGOs also provide legal counsel on issues related to migrants’ rights, custody and asylum procedures, as well as translation/ interpretation on an ‘as needed’ basis.”*  
(IOM 2009)

Following the statements BMPU was able to collect in the interviews, living conditions in *Volyn Detention Centre* seem to be better than in *Chop Detention Centre*. However, all three former Volyn detainees reported that they were kept in detention, despite their asylum application. As a result, all of them were imprisoned for the maximum period of six months:

*“After I had been in Volyn for three months, I was offered to write a letter to the Regional Migration Office to explain the reasons for my asylum claim. After another 20 days, a staff member of the Regional Migration Office conducted a two-hour interview with me. Another 20 days later, I was notified that my asylum claim had been*

*rejected. I asked about the reasons for this rejection, and in response I was told that 'I am dreaming, because in 2009 only one asylum-claim had been accepted in Volyn Detention Centre'.*" (Refugee from Somalia)

Even if living conditions in the newly established and EU-funded detention centre *Volyn* and elsewhere<sup>10</sup> improve, compared to conditions in the detention centres *Pavchino* or *Chop*, refugees continue to face a lack of protection. Following the reports by former detainees, neither in *Chop Detention Centre* nor in *Volyn Detention Centre* can refugees expect fair treatment and an asylum procedure that complies with international standards. De facto, most of the detained refugees seem to be punished for trying to enter a European country irregularly. Thus, the practice of imprisoning (potential) asylum seekers, as described by the UNHCR in 2007, is still in place:

*"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)."*

Furthermore, BMPU observed that refugees do not have sufficient access to lawyers and translators in *Chop* and *Volyn Detention Centre*. In some cases interviewees reported that they were given court decisions on their detention whilst already in the border guards' car,

implying that these were prefabricated documents. At least there was no hearing and no lawyers were representing them. This constitutes a violation of article 5, section 4 of the European Convention on Human Rights, which stipulates that every detainee has the right to court proceedings determining the lawfulness of his imprisonment, including a personal hearing in court.

BMPU is worried that (potential) asylum seekers in Ukraine do not have access to lawyers and translators to ensure their rights as defined in international conventions. Apart from these issues, accommodation in *Chop Detention Centre* was in conflict with article 3 of the European Convention on Human Rights, which stipulates that it is not allowed to detain prisoners under conditions that can be considered degrading treatment. Most of the refugees interviewed by BMPU were forcibly returned to Ukraine and detained before the centre in *Chop* was renovated. It is therefore unclear, whether conditions in *Chop Detention Centre* have improved as stated by a NGO working within the *GUMIRA* Programme.

#### *Asylum system in Ukraine*

In January 2002, Ukraine signed the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. A law on the status of refugees was introduced in 1993, but it was only implemented in 1996. A new refugee law (Law of Ukraine 'On Refugees') came into force in 2001 and since then has been amended twice, once in 2003 and again in 2005. So far, this law does not include any provisions for temporary or

<sup>10</sup> In addition to *Volyn Detention Centre*, a second long term detention centre was built in *Chernigiv*.



subsidiary protection, which is a serious legal shortcoming.

According to Ukrainian laws, four institutions are involved in the asylum procedures:

- the State Border Guard Service of Ukraine (only involved in cases in which asylum seekers are also clandestine border crossers)
- the Regional Migration Service
- the State Committee for Nationalities and Religion (formerly State Committee for Nationalities and Migration)
- the Security Service of Ukraine

Refugees may file their application with the *State Border Guard Service of Ukraine* (SBGS) if they are arrested on the border; if they do so, the initial interview is conducted by the SBGS. SBGS then passes the file on to an office of the *Regional Migration Service* (RMS) for further review. Alternatively, refugees may file their claim directly with the RMS. RMS offices represent regional branches of the *State Committee for Nationalities and Religion* (SCNR). The RMS offices receive applications, conduct first and second hearings, assess, accept or refuse applications based on *formal* grounds, and pass the files on to the SCNR. The SCNR is responsible for determining the status of the asylum claim and makes the final decision based on *substantial* grounds, either granting or denying asylum to the refugee. As a final step, the *Security Service of Ukraine* (SBU) reviews all applications and files.

SCNR and RMS suffer from frequent staff turnover, and few staff are able to speak or read English. A major flaw in the sys-

tem is a lack of qualified translators and of readily available information on refugees' countries of origin. According to official guidelines, the SCNR is to issue a final decision on asylum claims within eight months. However, the committee is frequently reorganized and on occasion ceases to operate completely, as it happened in 2001 and again in 2006. In 2009, SCNR officials denied responsibility for processing asylum claims, arguing that the Ministry of Internal Affairs is in charge of asylum policy. The Ukrainian president vetoed the transfer of responsibility, and only in July 2010 SCNR leadership announced the committee would resume its work on reviewing claims for asylum again. Hence, again the SCNR was dysfunctional for several months.

The UNHCR observed in 2007 that

*“Over the years, there has been a constant reorganization of asylum authorities in Ukraine. The State Committee, in particular has undergone eight reforms in nine years of its existence.”*  
(UNHCR 2007)

Refugees and other vulnerable migrants can appeal initial decisions upon their claims at local courts, but these courts do not have designated units to resolve questions regarding immigration or asylum status. Also, it may take several years for appeals to be processed:

*“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.”*  
(UNHCR 2007)



Temporary Accommodation Centre Mukachevo

Many refugees are denied access to asylum procedures. For instance, unaccompanied minors require a State Guardian to file their application for asylum, but due to administrative obstacles such as guardians are rarely available. As a consequence, many unaccompanied minors might not have access to asylum procedures.

In conclusion, one can argue that in Ukraine there is no asylum system in place that is in compliance with international conventions. *Amnesty International* confirmed this assessment in a recent report:

*“There is no adequate and fair asylum procedure in Ukraine and its asylum system fails to comply with international law. Migrants, refugees and asylum-seekers are subjected to a range of human rights violations.”*

(Amnesty International, April 2010)

### **Statistics regarding the protection of refugees**

Statistics provided by *Söderköping Process* show that a total of 8.869 asylum claims were recorded during the period 2003-2007 in Ukraine. Persons originating from the civil war zones of Iraq, Afghanistan and Somalia filed 2.113 of these claims. Only 186 asylum claimants from these countries were granted asylum, which corresponds to a recognition rate of 8.8 percent. Hungary, the main destination of migrants for the report, recognized during the same period 65% of asylum claims by refugees from Iraq, 84% by refugees from Afghanistan, and 38% by refugees from Somalia. The discrepancy between recognition rates in Hungary and Ukraine points to major flaws and inefficiencies within the Ukrainian asylum system, especially since the countries in question are widely

recognized as civil war areas. The high number of positive decisions in Hungary further contradicts Hungarian border guards' argument that most of the migrants detained at or near the Ukrainian border do not apply for asylum. Almost all migrants interviewed by BMPU indicated that information about six months long periods of detention in Ukraine after forcible returns from Hungary are circulating among migrant communities. Thus, it is hardly believable that asylum seekers do not file claims in Hungary.

### **Living conditions for refugees in Ukraine**

In Ukraine, asylum-seekers whose claims are under review as well as recognized refugees lack accommodation, medical aid, material assistance, and employment. Article 20 of the Ukrainian Refugee Law stipulates that recognized refugees are eligible for financial aid and accommodation. And yet, these people receive, if any, only minimal state support for daily needs. For instance, recognized refugees are given a one-time payment of 17 UAH (less than 2 Euro) only. The majority of migrants surveyed by BMPU argued that it is impossible to find a regular job in Ukraine, even with a regular work permit. As a result, almost all of them depend on financial support provided by their families, support which can only be minimal and in many cases does not exist at all. Some of the interviewees report that they have trouble obtaining sufficient food supplies. Support by NGOs such as NEEKA or Caritas to provide food is offered irregularly. Cash payments are required for medical

aid, and NGOs are able to offer medical assistance only on a very low level.

Ukraine lacks Temporary Accommodation Centres (TACs) to accommodate asylum-seekers and recognized refugees. In Transcarpathia, only two TACs are operating, one in Mukachevo and another one in Perechyn. Due to limited resources, accommodation in Transcarpathia is provided mostly only for unaccompanied minors and families. For those lucky enough to find housing in one of these facilities, accommodation is granted for any period between three weeks and one year. Thus, most migrants interviewed by BMPU, mostly single men, need to rent private flats for overpriced rates and live in overcrowded conditions. BMPU also received information that landlords were pressured by police not to rent out rooms or flats to migrants.

Finally, migrants face xenophobic attitudes by parts of the population and state authorities such as the police or border guards. Among others, refugees from Somalia who had been detained in Chop described how border guards once entered their cell and insulted them as "pirates" who should leave Ukraine immediately. This incident coincided with the capture of a Ukrainian ship by pirates in the Gulf of Aden. Some parts of the Ukrainian population also seem to be especially wary of black skinned migrants, suggesting they are thieves and spread infectious diseases.



## Additional information

Refugees in detention camp Pavshino (closed 2008), Photo Dörthe Hagenguth

### **Transcarpathia as a hot spot of migration**

For many years, Transcarpathia has been a hot spot of migration, both in terms of emigration and immigration. On one hand, thousands of Ukrainian workers leave the area to find work in the European Union or in Russia, trying to increase their income at least temporarily. Simultaneously, thousands of refugees and migrants from the Global South including South Asia, Arab and African countries, pass through the region on their way to farther destinations. Statistics of the Ukrainian Border Guard Service show that approximately 5.000 persons without valid papers have been arrested while trying to cross the border into neighbour states to the west in 2005 and in 2006. It is assumed that an even higher number of people were successful in crossing the border undetected. We were unable to find statistics for more recent years, but one can take for granted that the number of attempted and successful border crossings decreased considerably. Official data provided by Hungarian and Slovakian state authorities and Frontex are likely to understate the current state of trans-border movements (see the respective reports in

this brochure). In any case, crossing the border in the region has become more difficult, more dangerous and more expensive as a result of technical rearmament, border enforcement and intensified political pressure from EU-authorities. Nevertheless, Transcarpathia remains a problematic area of the European border regime.

### **Implementing migration control in Ukraine – a brief history**

From the late 1990s, Ukraine raised the attention of so-called “risk analysts”. The country was identified as both a country with substantial emigration potential, but also as crucial thoroughfare for a so-called “Eastern Human Trafficking Route”. At that time, Ukraine was not a candidate for EU-membership and, in contrast to its western neighbours Poland, Slovakia, Hungary and Rumania, not obliged to adopt the so-called “Schengen Standards”.

The International Organization for Migration (IOM) therefore assumed the role of an EU-outpost, executing policies that follow specifications of the European migration regime in the most important transit country in the east. As early as

1998, a team of IOM-experts met with high-ranking Ukrainian government officials in Kiev to define a “Migration Management Program” that included the establishment of a first internment-camp in Pavchino (closed at the end of 2008), and training courses and equipment for the Ukrainian border guards. IOM continues to operate in Ukraine until today, most recently helping to set up detention centres in Zhuravychi/Volyn and Rozsdiv/Chernigiv in 2008 – brand-new prisons that are equipped according to EU standards and were funded by EU<sup>11</sup>. Meanwhile, EU-authorities and institutions assumed the main responsibility for outfitting this “perfect buffer state”. The aforementioned prison, for instance, is part of a comprehensive asylum and migration program, which has been implemented since 2004 within the scope of the so-called “European Neighbourhood Policy” (ENP). The ENP was developed in 2004 with the objective to “avoid the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned”, as the European Commission formulated euphemistically. And indeed, for each EU-neighbour state an individual plan is set up, and all such plans include regulations regarding the regulation of migration. While EU does not offer a concrete perspective of accessing to the Union, states that cooperate and fulfil the plans may expect rewards in the form of visa and trade facilitations or special support programs. EU demands efficient border enforcement

and the ratification of readmission treaties for these rewards to be received. For Ukraine, the ENP-Program for 2007–2010 allocated a support of 494 million Euro in total, 30 million Euro of which are reserved for the establishment of five additional detention centres as part of so-called „Readmission-related Assistance”.

In addition to IOM, the International Centre for Migration Policy Development (ICMPD) implements projects on behalf of the EU. One of these projects was the so-called “GDISC ERIT”-project<sup>12</sup>, which was pursued between February 2008 and the beginning of 2010. The aim of this project was to support Ukraine in migration management through a so-called “state-to-state-approach”: Thus, Hungary was responsible for establishing so-called “screening centres” at the eastern border of Ukraine to Russia, Poland for developing the “asylum system” in Ukraine and Slovakia for providing “country-of-origin-information”. Further project modules were aimed at “detention capacity” (Czech Republic), “return capacity” (Great Britain), and “visa capacity” (Netherlands).

Frontex, the European Border Agency, works in Ukraine to develop and strengthen the cooperation between the State Border Services of Ukraine and the neighbouring EU-countries. The “Five Borders Project”, for instance, brought together border guards from Ukraine, staff from Hungary, Slovakia, Romania and Poland to prepare the enlargement of the area covered by the Schengen-Agreement.

11 ICMPD 2008: GDISC ERIT Newsletter No. 2, page 4.

12 GDISC: “General Directors’ Immigration Services Conference”, ERIT: “Effectively Respond to Irregular Transit- Migration”.



Photo: Dörthe Hagenboth

## Conclusions and recommendations

BMPU revealed serious violations of international refugee law that are committed by the border police of several EU member states. Cases of refoulement by Hungarian and Slovakian border patrols at the external borders of the EU are not an exception, but occur on a regular basis. This practice is a clear violation of the principle of non-refoulement as defined in the Geneva Refugee Convention, the European Convention on Human Rights, and laws on asylum adopted by the European Union.

Bureaucratic practices at the border deprive refugees and other persons needing international protection of their

rights and expose them to serious risks. In Ukraine, refugees face the risk of so-called chain deportations, a series of deportations that eventually may bring them back to their home countries. In any case, refugees are detained under unbearable conditions once in the Ukraine. The detention of migrants and refugees in Ukraine does not conform to human rights standards, for instance, because immigrants do not have access to effective legal representation. In the past, living conditions, including access to food and water, have posed serious danger to the health of detained persons, and improvements are being made at a very slow pace.



Through political pressure from the EU and the intervention of, among others, IOM and ICMPD, the Ukrainian government was forced to establish and enlarge a network of detention centres. Facilities in Pavchino and Chop were the first to open; recently, two new centres were opened in Volyn and Chernigiv. In addition, so-called “screening centres”, essentially reconstructed ship-containers, were installed near the Ukrainian-Russian border.

Refugees and migrants experience a chain of injustice in the triangle of Hungary, Slovakia and Ukraine: Arrests, rejected applications for asylum, illegal returns from EU member states, insults and mistreatment at Ukrainian border posts, and months of detention in Chop or Volyn mark a string of abuse and exclusion.

Refugees who try to enter EU member states have a right to access asylum proceedings, and to receive protection and social and legal support. These are basic human rights, both from an ethical perspective and from the standpoint of international law. And yet, all over Europe refugees and other vulnerable migrants experience violations of these rights. They are turned away by national border police, who draw on an increasing level of coordination and support by Frontex, the European border agency. Refugees and migrants are treated like criminals; they become victims of a system that follows the logic of externalization and deterrence. The Dublin II Regulation is a cornerstone of this system and must therefore be suspended. Refugees must have the right to apply for asylum in the country of their choice.

## Recommendations:

The inhuman and unlawful treatment of refugees and migrants at the Eastern external borders of the European Union must stop immediately!

The EU must ensure the following:

- Any individual case of refoulement has to be prohibited and halted.
- If a case of refoulement from EU-territory to Ukraine occurs, the European Commission must initiate an infringement procedure against the respective EU member state immediately to prosecute the unlawful infringement of a treaty.
- In addition to existing border monitoring projects, systematic and independent monitoring mechanisms must be implemented at all borders of the EU.
- Refugees must have round-the-clock access to free legal counselling by independent lawyers, supported by professional translators. The EU is to provide funds for this counsel.



## NGOs in Ukraine

The Ukrainian Refugee Council (URC) is an informal network of Ukrainian non-governmental agencies and charities that work to protect the rights of asylum seekers and refugees.

Members of URC are:

- Amnesty International in Ukraine
- Foundation for Naturalisation and Human Rights Assistance (Simferopil)
- Charity Fund “Caritas Mukachevo” (Uzhgorod, Transcarpathia)
- Donetsk Foundation of the Social Protection and Mercy
- Legal Counselling Centre of the Trade Union “Solidarity” Human Rights Have no Borders
- International Foundation “Carpathian Region”, NEEKA (Mukachevo, Transcarpathia)
- Charitable Foundation “Rokada”
- Social Action (Kyiv)
- Kharkiv Regional Charity Fund “Social Assistance Service”
- Odessa Charity Foundation “Sympathy”
- South-Ukrainian Centre for Young Lawyers (Odessa)
- Vinnitsya Human Rights Group

## NGOs in Transcarpathia

Charity Fund “Caritas Mukachevo” (Uzhgorod, Transcarpathia):

- Supplies food packages (IOM)
- Provides legal aid in TDC in Chop Border Detachment for migrants (IOM)

International Foundation “Carpathian Region” (NEEKA) (Mukachevo, Transcarpathia):

- Provides legal aid in TAC in Mukachevo for women and children of Mukachevo Border Detachment (UNHCR)
- Offers legal aid to refugees in Uzhgorod (UNHCR)
- Supplies food packages in Mukachevo and Uzhgorod (UNHCR)
- Provides guardians for unaccompanied minors-refugees (Danish Refugee Council)
- Distributes food packages in “Latoritsa” (UNHCR)

Charitable Organisation “Medical Aid Committee in Transcarpathia”:

- Offers medical consultation for refugees and asylum seekers
- Provides social accompaniment
- Monitors mass media for so-called “hate speech”
- Organizes anti-xenophobia and anti-racist trainings for institutions of higher education in Transcarpathia

For actual informations visit the website:

www.bordermonitoring-ukraine.eu

