



SHELTER FROM THE STORM?

THE ASYLUM, REFUGE AND EXTRADITION
SITUATION FACING ACTIVISTS FROM THE FORMER
SOVIET UNION IN THE CIS AND EUROPE

Edited by Adam Hug

The Foreign Policy Centre



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The asylum, refuge and extradition situation facing activists from the former Soviet Union in the CIS and Europe

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Introduction: Shelter from the storm?

Adam Hug

Shelter from the Storm? brings together a group of international experts to explore some of the critical challenges faced by those fleeing the risk of persecution in their countries of origin within the former Soviet Union. This publication primarily focuses on the experiences of Central Asians, who face some of the worst human rights conditions in the region, but also examines issues faced by those from Russia and the South Caucasus looking for shelter. It looks at the experiences of the many at risk of persecution who remain within the wider region, whether in neighbouring countries or the two largest countries – Russia and Ukraine. *Shelter from the Storm?* also examines the role Europe has to play in providing a more secure place of sanctuary for citizens of the countries of the former Soviet Union.

The individual experiences of people fleeing persecution differ dramatically depending on their country of origin, host country and the activities that put them at risk. *Shelter from the Storm?* looks at the experiences of human rights activists, dissident journalists and opposition politicians who have had to move to another country in the region or make the transition to the West. Some of these individuals will have applied for asylum while others will have used their networks to take advantage of work or study opportunities to temporarily remove themselves (and sometimes their immediate families) from harm. It also examines the situation facing members of religious communities that fall outside of the strict structures of state control in Central Asian regimes, from unorthodox Muslim and protestant sects to more controversial extremist groups, who often seek to pass under the radar in other countries in the region or in Russia rather than drawing the attention of the authorities.

Precarious shelter in the former Soviet Union

The first port of call for many seeking refuge from persecution in their country of origin is another country within the former Soviet Union. While a common language (Russian), relative ease of travel and the presence of sizable diaspora groups are all clear advantages, the primary reason for this is the ability to move to another country without requiring a visa¹, with Russia the most popular destination within the Commonwealth of Independent States (CIS). As a result, many exist under the official radar without attempting to access formal mechanisms for claiming asylum and a secure refugee status, which could risk alerting the security services in their home nation who could instigate extradition proceedings. Officially seeking asylum in Russia is currently a challenging process, as noted by Daria Trenina and others in this publication, with three categories that can be applied for: ‘political asylum’, a status rarely ever granted; a three year ‘refugee status’; and a one year ‘temporary asylum’ status.² In fact, the only country in the region to ‘send’ over 100 asylum seekers to Russia in the most recent published data was to Russia is Georgia with 450 primarily ethnic Ossetians and Russians claiming asylum in 2012 (182 received some form of positive decision within 2012, of which 176 were ‘temporary asylum’),³ in part due to the advent of visa restrictions for Georgian nationals entering Russia in the wake of the 2008 conflict.⁴

¹ Work permits are still required except for members of the Customs Union (Russia, Belarus and Kazakhstan) that is in the process of becoming the Eurasian Union (with Kyrgyzstan and Armenia due to join in 2015)

² Tom Balmforth, Explainer: How Do You Get Asylum In Russia?, RFE/RL, July 2013, <http://www.rferl.org/content/explainer-russia-asylum/25057895.html>

³ The UNHCR 2012 Statistical Annex <http://www.unhcr.org/52a723f89.html>. The only other intraregional flow of formal asylum seekers over 100 at that point was the 258 applications of primarily ethnic Uzbek Kyrgyz nationals arriving in Ukraine in the aftermath of the 2010 violence in the country to join Ukraine’s sizable Uzbek diaspora community.

⁴ Georgia formally withdrew from the CIS in August 2009 but maintained visa-free travel with its members except for Russia see RFE/RL Georgia Finalizes Withdrawal From CIS, August 2009, http://www.rferl.org/content/Georgia_Finalizes-Withdrawal-From-CIS/1802284.html The peak of Georgian nationals seeking Russian asylum was in late 2008- early 2009, with those from ethnic communities linked to Russia in the conflict most likely to apply in that country. Early UNHCR indications suggest a spike in 2014 of Ukrainian nationals applying for asylum in Russia due to the current tensions, at time for writing, between Russia and Ukraine.

A number of authors in this publication highlight the very real risks of remaining in a neighbouring state. Collaboration between the security services within the Commonwealth of Independent States is extensive and underpinned in the area of extradition by the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, the CIS agreement known as the Minsk convention.⁵ Article 58 (1b) of this convention states that an extradition demand must contain a 'description of the actual circumstances of the action and the text of the law of the requesting contracting party, after which the action is considered a crime'. However, as a number of this collection's contributors make clear, the security services in the country of origin and those of the host country can often play fast and loose with their, often vague, definitions of what constitutes a crime and what passes for evidence to facilitate extraditions. Across the region rule of law is weak and legal processes are both open to political pressure or to being circumvented altogether, with the operating presumption being to positively facilitate the return of wanted individuals.⁶ There have been a number of documented cases of security services colluding to facilitate either the kidnapping⁷ or extra-legal rendition to circumvent legal processes as highlighted by Daria Trenina and David Lewis in this collection. The risk of torture and other mistreatment on return, in particular, to Central Asian countries has been well documented.⁸

Extradition is allowed from and to many states in the region for being a member of a banned organisation, even if there is no evidence of participation in violent activity. Membership of groups such as the notionally non-violent but categorically extremist Hizb ut-Tahrir are illegal across the region, and accusations of membership extend well beyond the group's likely followers, with Uzbekistan and other regimes using the accusation to cover everyone from fellow travellers to entirely unaligned people who happen to be practising Islam outside the auspices of state sanctioned structures. Russia, Uzbekistan, Kazakhstan, Kyrgyzstan and Tajikistan are also members of the Shanghai Cooperation Organisation (SCO) whose Shanghai Convention on Combating Terrorism, Separatism and Extremism⁹ further strengthens the operating presumptions in favour of extraditing those declared as extremist by their home state. SCO states are committed to 'reciprocal recognition of a terrorist, separatist or extremist act regardless of whether the legislation of SCO member states includes a corresponding act in the same category of crimes' and 'non-provision of asylum to individuals associated with terrorist, separatist and extremist activity' as defined by the country of origin.¹⁰ Within Central Asia the protections provided by the European Convention on Human Rights do not apply, with unenforceable UN obligations on non-refoulement¹¹ the sole check

⁵ CIS, Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, January 1993, <http://www.unhcr.org/4de4edc69.html>

⁶ It should be noted that while operating in a different human rights and legal context it is important to note, that the presumption under the EU's 'Spanish' Protocol on Asylum for Nationals of Member States (EURLEX, Protocol on Asylum for Nationals of Member States, December 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:0362:0363:EN:PDF>) is that countries operate on the basis that an asylum claim made by a national from another member state is 'manifestly unfounded', a presumption of guilt.

⁷ An example of an attempted kidnapping is shown by the case of Murod Yuldashev⁷ as detailed by Elena Ryabinina, (Refugees in Russia: Is there a light at the end of the tunnel? Rights in Russia, <http://hro.rightsinrussia.info/archive/refugees-idps/asylum/expedite>). Mr Yuldashev is a national of Uzbekistan whose extradition was halted by a full ECHR case (ECHR, CASE OF YULDASHEV v. RUSSIA Application no. 1248/09 <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99796>)

⁸ See numerous ECtHR judgements but also Eurasia: Return to torture: Extradition, forcible returns and removals to Central Asia, July 2013, <http://www.amnesty.org/en/library/info/EUR04/001/2013/en>; and FIDH, Kazakhstan/ Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees, October 2009, <http://www.fidh.org/en/eastern-europe-central-asia/Kazakhstan.756/Kazakhstan-Kyrgyzstan-Exploitation>

⁹ Regional Treaties, Agreements, Declarations and Related, Shanghai Convention on Combating Terrorism, Separatism and Extremism, 15 June 2001, available at: <http://www.refworld.org/docid/49f5d9f92.html>

¹⁰ SCO, Concept of Cooperation Between SCO Member States in Combating Terrorism, Separatism, and Extremism, June 2005, FIDH, <http://www.fidh.org/en/Terrorism/Concept-of-Cooperation-Between-SCO>

¹¹ Non-refoulement is the principle that an individual should not be returned to a country where they may face persecution. It has its roots in Article 33 (1) of the 1951 Convention relating to the Status of Refugees, which states that: '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.' For more see UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement, November 1997, <http://www.refworld.org/docid/438c6d972.html>

on the actions of states.¹² However, even in Russia, CIS and SCO commitments are regularly seen to trump the commitment respecting the judgements of the European Court of Human Rights. For example, Rustam Zokhidov, an Uzbek national accused of being active in Hizb ut-Tahrir whilst in Uzbekistan¹³ was deported from Russia despite the European Court of Human Rights (ECtHR) granting his request for an interim measure preventing his extradition¹⁴ and a Russian appeals process that was uncompleted. The €44,000 awarded by the ECtHR from the Russian government will be little comfort during his 8 year incarceration in Uzbekistan's penal system.¹⁵

Kazakhstan also takes a hard line on suspected extremists.¹⁶ Article 12, 5 of the 2009 Refugee Law allows for the removal of those who are believed to have been members of 'terrorist, extremist or banned religious organisations functioning in the country of origin or country from which he/she has arrived'.¹⁷ Given that alleged membership of Hizb ut-Tahrir or similar groups is the reason that many Uzbeks flee to Kazakhstan to escape crackdowns, this position makes it very difficult for them to receive assistance through Government channels. While Uzbeks in Kazakhstan have the possibility of applying for political asylum status, in most cases they are reliant on the office of the United Nations High Commissioner for Refugees (UNHCR) being able to relocate them to a safe third country.¹⁸

As explained by Daria Trenina, there are some positive noises being made in reforming Russia's law on asylum. However, as with other legal reforms in the post-Soviet space, any legal change would need to be matched by a fundamental change in attitudes within the Russian security establishment and a commitment to resist political pressure from neighbours if progress on paper is to be translated into practice. Pushing in the other direction however is Russian public opinion where anti-immigrant sentiment¹⁹ has been steadily rising in recent years, marked by a series of riots targeting migrant workers.²⁰ This is creating some domestic pressure to restrict migrant access to Russian labour markets and explore the introduction of a visa regime for migrants coming from elsewhere in the former Soviet Union.²¹ So far the Russian government has resisted such calls on both practical grounds, including the long and porous nature of its borders, as well as its strategic desire to further deepen ties between countries in the region, including by encouraging membership of the nascent 'Eurasian Union'. Were Russia to ever introduce a visa regime however, this would create serious problems for those seeking shelter from other regimes in Central Asia. It would not only cause a spike in asylum claims in Russia and diversion to other post-Soviet states, but would also be likely to encourage a greater flow into the European Union and other 'safe' countries.

¹² UN High Commissioner for Refugees (UNHCR), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, available at: <http://www.refworld.org/docid/45f17a1a4.html>

¹³ Hizb ut-Tahrir is also illegal in Russia though the allegations relate only to alleged activity in Uzbekistan

¹⁴ ECHR, Zokhidov v. Russia, February 2013 <http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx?i=003-4246873-5054671>

¹⁵ Uzbekistan's treatment of religious groups and its widespread use of torture in its penal system causes some of the greatest challenges to asylum systems in the region as highlighted by authors in this publication.

¹⁶ FIDH, Kazakhstan/ Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees, October 2009 http://www2.ohchr.org/english/bodies/cerd/docs/ngos/FIDH_Kazakhstan_76.pdf

¹⁷ UNHCR The Law of the Republic of Kazakhstan on Refugees, December 2009, <http://www.unhcr.kz/eng/resources/refugee-laws/kazakhstan/>

¹⁸ Prior to the implementation of the 2009 law FIDH found that of the 580 people granted refugee status in Kazakhstan, all but 3 of them were from Afghanistan and no one from the CIS had attempted to claim asylum or refugee status in the country, in part for fear of coming to official notice.

¹⁹ Particularly focused towards Central Asians, mingled with antipathy to those from Russia's own citizens from the republics of the North Caucasus

²⁰ Tom Balmforth, Moscow police arrest 1,200 migrants after riots, The Guardian, October 2013, <http://www.theguardian.com/world/2013/oct/14/moscow-police-arrest-migrants-riots>

²¹ Oleg Sukov, Top Officials Reject Idea of Visa Regime for Ex-Soviet Countries, The Moscow Times, October 2013, <http://www.themoscowtimes.com/news/article/top-officials-reject-idea-of-visa-regime-for-ex-soviet-countries/488393.html>

Anti-ECTHR rhetoric has also been on the rise in Russia in recent years²², with the country by far the greatest source of cases coming to Strasbourg. However, the deepening schism between Russia and the West over events in Ukraine, including, at the time of writing, the suspension of voting rights for the Russian delegation at the Parliamentary Assembly of the Council of Europe (PACE)²³, may pose a potential threat to its continuing participation in such European structures. While Russia may not always fully comply with ECTHR judgements, particularly interim orders, the Strasbourg court provides a vital lifeline for those at risk of extradition from Russia to the even more precarious legal and penal systems in Central Asia.

The situation in the South Caucasus

It is worth briefly examining the situation facing nationals from the South Caucasus whose situations are not addressed in as much detail as those from Central Asia and Russia later in this collection. Georgia is the second highest country of origin for those from the former Soviet Union who seek asylum within the EU and in their contribution Claire Rimmer Quaid and Kris Pollet briefly examine some of the reasons behind the high number of Georgian applications for asylum within the EU, looking at the high proportion of these who hail from the country's ethnic minorities.²⁴

Armenia has the third highest number of asylum seekers coming into the EU and the UNHCR's 2012 data makes clear that, unsurprisingly, France remains the primary European destination.²⁵ While significant rule of law and governance problems in Armenia remain, the general situation relating to personal security of activists (at least in Yerevan) and the risk of political imprisonment has significantly improved. Therefore, a number of Armenian asylum applications in recent years have focused on the threat posed to individuals, who often claim to have participated in the March 1st 2008 protests²⁶, by local government figures and criminal networks who have since targeted them. Such claims, by the very nature of alleged local conspiracies, are difficult to verify.

Despite being perceived to have the worst human rights record of the three South Caucasus states²⁷, the annual number of Azerbaijanis claiming asylum within the EU is lower than its two neighbours. This is in part due to the lower number of speculative, immigration-led applications due to smaller diaspora communities, in some cases better domestic economic opportunities and visa access to other CIS states (albeit something it has in common with Armenia). Germany, Berlin in particular, has become a focal point for Azerbaijani political activists seeking asylum, with the presence of a large Turkish community, strong German Government support for human rights in Azerbaijan and membership of Schengen²⁸, encouraging a clustering of well networked recent exiles who have sought asylum.²⁹ Despite the presence of a notable Azerbaijani community working in the British energy sector and a clutch of British-Azeri activists, the children of a previous generation of exiles, the UK is not seen as particularly welcoming for political activists as some well known individuals have had problems making claims in the country.

²² ECHR Blog, Russian Constitutional Court President Very Critical of Strasbourg Court, November 2010, <http://echrblog.blogspot.co.uk/2010/11/russian-constitutional-court-president.html> ; See also RT Duma considers law to limit influence of European Court on Russia's legal system, June 2011, <http://rt.com/politics/torshin-european-court-russia/>

²³ EurActive, Council of Europe assembly suspends Russia's voting rights, April 2014, <http://www.euractiv.com/sections/europes-east/council-europe-assembly-suspends-russias-voting-rights-301506>

²⁴ Alexandros Bitoulas, Asylum applicants and first instance decisions on asylum applications: 2013, Eurostat, March 2014, (Table 11) http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF

²⁵ The UNHCR 2012 Statistical Annex <http://www.unhcr.org/52a723f89.html>

²⁶ BBC News, Eight killed in Armenia protests, March 2008, <http://news.bbc.co.uk/1/hi/world/europe/7273497.stm> . See also Adam Hug (ed.), Spotlight on Armenia, Foreign Policy Centre, February 2011, <http://fpc.org.uk/publications/spotlightonarmenia>

²⁷ For more see Adam Hug (ed.), Spotlight on Azerbaijan, Foreign Policy Centre, May 2012, <http://fpc.org.uk/publications/spotlight-on-azerbaijan>

²⁸ The common travel area covering 22 EU members and 4 Associated States that have abolished internal border controls and share a common visa.

²⁹ The UNHCR 2012 Statistical Annex, <http://www.unhcr.org/52a723f89.html>

Challenging cases and the Qatada Conundrum

In this collection Julia Hall and Maisy Weicherding of Amnesty International present a strong, principled case against the use of diplomatic assurances between states to facilitate extradition, highlighting some of their fundamental failings. However, there are circumstances where governments face real challenges balancing their responsibilities to protect their own publics and on non-refoulement. The UK perspective is perhaps best crystallised in a case of a national from beyond the remit of this publication – the prolonged legal wrangling over finding a safe way to extradite the extremist cleric known as Abu Qatada to Jordan. This case has been seen to have damaged the UK public's support for the European Court of Human Rights through media criticism of its continued insistence on non-refoulement. Perhaps the one silver lining of the affair was that through its protracted deliberations the European Court eventually generated an important set of criteria (known as the Othman test – Abu Qatada's actual surname) that set out the 11 factors to be considered when³⁰ examining the validity of diplomatic assurances. It argues that governments and courts should 'have regard to:

- whether the terms of the assurances have been disclosed to the Court
- whether the assurances are specific or are general and vague
- who has given the assurances and whether that person can bind the receiving State
- if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them
- whether the assurances concerns treatment which is legal or illegal in the receiving State
- whether they have been given by a Contracting State
- the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances
- whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers
- whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible
- whether the applicant has previously been ill-treated in the receiving State; and
- whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State'

In the Abu Qatada case, the UK and Jordanian governments were eventually able to satisfy the ECtHR to facilitate extradition. However, where there is no realistic prospect of a potential receiving state being able to meet these criteria, as would be the case for most Central Asian states, then it seems incumbent on the host state to pick up and prosecute any breach of domestic legislation by such persons, where the alternative is a clear risk of a return to torture. For example, if continued active participation in a banned group, such as Hiz-ut Tahirih, had taken place within Russia, there would be scope for domestic prosecution rather than extradition to the severe risk of torture in Uzbekistan or other similar jurisdictions. How best to maintain domestic security and meet the legal commitments on non-refoulement remains an extremely challenging question even for more developed legal systems than those within the CIS.

Diplomatic assurances also rely on safeguards (nominally) in place when the request was made staying the same, a grave risk particularly in the countries of Central Asia. For example, Kazakhstan was known for a number of years to accept the monitoring of prisons in Uzbekistan by the Red Cross as a condition of post-return monitoring of those Uzbeks it had extradited. However, in April 2013

³⁰ The test is set out within the ECtHR Judgement CASE OF OTHMAN (ABU QATADA) v. THE UNITED KINGDOM, January 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108629>

the Red Cross threw in the towel in the face of the Uzbekistan Government's unconstructive attitude in preventing the RC from interviewing detainees in private, rendering their visits 'pointless'.³¹ Unsurprisingly, this has not led to the return to Kazakhstan of those extradited on the condition that the Red Cross would be able to monitor their conditions. It is also worth noting that Uzbekistan is not a signatory to the 1951 Refugee Convention and that the UNHCR has not had a presence in Uzbekistan since 2006.³²

Fortress Europe

Europe provides a significantly more secure place for citizens of former Soviet Union countries to seek sanctuary from their governments.³³ However, despite the EU's stated aim of developing a 'common asylum' policy there is little prospect of the EU asylum policy developing beyond coordination and collaboration to become a truly 'common' system. Kris Pollet from ECRE gives an important overview of the basket of tools available across the EU that attempt to give some coherence to the system, while his colleague Claire Rimmer Quaid looks at how the procedures apply to those arriving into Europe from the former Soviet Union. Elisabeth Dyvick highlights the ways in which her organisation (ICORN) works with cities across Europe to provide refuge for dissident journalists and writers at risk of persecution by providing work not asylum. As mentioned above and in other contributions, while Russians and those from the South Caucasus are among those who apply for asylum in Europe, it is not an opportunity that is taken up in large numbers by Central Asians. Sweden, a country that takes the highest proportional number of asylum seekers in Europe, is the primary European destination for Uzbek asylum claimants, receiving 366 in 2012, followed by Norway with a total of 298.³⁴

An application for asylum may have an impact on the individual's wider family and friends who remain in country and often it is an activist's aim to return to their country of origin once short-term threats to their safety have receded. For many human rights activists, an asylum application is seen as closing the door on a return home, with a risk of a perception of having abandoned their country. However, with European publics increasingly concerned about immigration and past abuses, both real and perceived, of student and other short-term visa regimes, many European immigration systems are becoming more stringent in their application. As an (unintended) consequence, this is making it more difficult for human rights activists and other at-risk individuals to find ways to seek refuge in Europe outside the formal asylum system through accessing working and student visas.

In the UK, there could perhaps be scope for a more systemic approach to information sharing between the UK Home Office and the Foreign Office, to take advantage of the latter's knowledge of individual human rights activists, political and religious movements. Such interactions tend to be on an ad hoc case by case basis, often requiring prompting from the applicant. While the UK does not see itself as having a responsibility to give protection to foreign nationals outside of the asylum system through the provision of refuge as discussed in Elisabeth Dyvick's essay its embassies are known to have assisted particular at-risk activists to flee their country of origin.

³¹ BBC News, Red Cross halts 'pointless' Uzbekistan prison visits, April 2013, <http://www.bbc.co.uk/news/world-asia-22128663>

³² Jennifer Pagonis, Uzbekistan: UNHCR regrets office closure, alternative arrangements in place for care of refugee caseload, UNHCR, April 2006, <http://www.unhcr.org/4444cb6516.html>

³³ David Lewis and Alex Tinsley draw attention to some examples where Spain and Italy have been somewhat more accommodating to requests from Kazakhstan than human rights activists would advocate, while ECRE note some of the problems in the asylum systems, particularly in South East Europe where safeguards could be strengthened.

³⁴ The UNHCR 2012 Statistical Annex <http://www.unhcr.org/52a723f89.html>

What the authors say

Dr David Lewis (University of Exeter) writes that authoritarian states view diaspora communities and political exiles as potentially dangerous threats. Faced with activism among dissidents in exile, Lewis argues that they seek to expand their domestic modes of repression beyond their own borders. Post-Soviet authoritarian states in Central Asia have been particularly active in this regard, using a range of mechanisms to try to control dissidents and political opponents in exile. These activities include covert intelligence gathering and surveillance, use of instruments such as INTERPOL to target opponents and attempts to extradite or forcibly return dissidents to face persecution at home. His essay argues such measures pose a serious threat to the security of political exiles, but also undermine the rule of law in other jurisdictions, both in other former Soviet states and the EU.

Daria Trenina (MGIMO-University) writes about the risks refugees from countries of Central Asia face in Russia. It analyses the provisions of Russian law relevant to extradition and expulsion proceedings and describes the short-comings of the Russian legal system, criticized by the European Court of Human Rights, as well the practices of law-enforcement authorities that lead to the violation of obligations to protect human rights.

Julia Hall and Maisy Weicherding (Amnesty International) focus their attention on the growing use of diplomatic assurances – promises by the receiving state that a person extradited or otherwise forcibly returned will not be tortured or ill-treated on return – by key countries in the Commonwealth of Independent States (CIS). Russia, Ukraine and Kazakhstan have relied on such unreliable promises to forcibly return or attempt to forcibly return people to places where they have been at risk of torture, including to Tajikistan and Uzbekistan. Kazakhstan and Uzbekistan, for example, have offered such assurances to other countries in an attempt to rein in people suspected of terrorism or business-related crimes. While the practice of issuing diplomatic assurances began in the UK and USA, the governments of the CIS have eagerly capitalised on it to justify the return of their own nationals, often in circumstances where charges of criminal activity are politically motivated.

Felix Corley (Forum 18 News Service) looks in detail at the way Uzbekistan seeks to extradite back those who have fled the country to escape criminal punishment for exercising the right to freedom of religion or belief. He notes that the United Nations has recognised that torture is ‘widespread’ in Uzbekistan and looks at the cases of 30 such individuals Kazakhstan extradited in defiance of the UN, many of whom received long prison terms. Amid widespread international publicity of their cases, Kazakhstan and Kyrgyzstan eventually refrained from extraditing two others.

Alex Tinsley (Fair Trials International) discusses the problem of political abuse of INTERPOL and presents the legal and practical issues underlying the current perception that it is vulnerable to abuse and in need of reform. He suggests that reform is becoming urgent in view of the broader problem relating to extraditions and unlawful refoulement practices between the authorities of former Soviet Union and Shanghai Cooperation Organisation countries, it being essential that INTERPOL maintains a firm line excluding any use of its systems for such purposes. His essay suggests that INTERPOL should make progress consulting relevant stakeholders, updating its rules relating to recognised refugees and reforming the Commission for the Control of INTERPOL’s Files (CCIF).

Kris Pollet and Claire Rimmer Quaid’s (European Council on Refugees and Exiles – ECRE) first contribution sets out the measures the EU has been taking since 1999 to create a Common European Asylum System (CEAS). They argue that the key objective of the CEAS is to establish high standards of protection and ensure that similar cases are treated alike and result in the same outcome, regardless of the member state in which the asylum application is lodged. However, there

is still a long way to go in the establishment of a fair and efficient CEAS despite the adoption of the 'asylum package' in 2013. While some measures within the instruments of the CEAS are clearly aimed at improving standards, many others, such as the Dublin Regulation, unfortunately allow the lowest possible standards to prevail.

Claire Rimmer Quaid and Kris Pollet's second essay deals briefly with those seeking protection from the former Soviet Union before focusing on applications from citizens from the Russian Federation in the EU in 2013 and how the Common European Asylum System has affected them. Europe can be an asylum lottery for people from Russia, with different treatment in different EU countries, and hardships compounded by the Dublin Regulation.

Elisabeth Dyvik (ICORN-The International Cities of Refuge Network) uses her essay to discuss the procedures and challenges in obtaining entry visas and temporary residency permits for persecuted writers invited to ICORN cities of refuge. Most enter on a three month Schengen visa and then apply for longer term residencies on a national level. ICORN has established special schemes or regulations in some countries. The general impression is still that the entry procedures are too time consuming, and that exposing the writers' need for shelter could jeopardize the result of the applications. The situation in the UK is discussed as a particular example of where it is very difficult to negotiate refuge for activists.

Exporting repression: Extraterritorial practices and Central Asian authoritarianism

Dr David Lewis

Post-Soviet authoritarian states view diaspora communities and political exiles as dangerous threats to their political dominance at home. Faced with political activism among their citizens abroad, they seek to expand their domestic modes of repression beyond their own borders. Central Asian states, such as Uzbekistan, have been particularly active in this regard, using a wide range of mechanisms to maintain political influence over citizens who have moved abroad. These activities pose a serious threat to the security of dissidents in exile, but also serve to export the dynamics of political repression around the world. EU states should resist unwarranted extradition requests and Interpol 'Red Notices' against political exiles, ensure that those seeking political asylum are fully protected and constrain foreign intelligence activities targeting activists, journalists and dissidents under their jurisdiction.

Central Asia's authoritarian states

Western attempts to support the emergence of liberal-democratic political systems in the post-Soviet world have largely failed. Nowhere is this more obvious than among the five states of Central Asia, where authoritarian rule has become the default political order. Uzbekistan and Turkmenistan have become two of the most repressive states in the world, scoring the lowest possible scores on Freedom House's annual rankings of political and civic freedoms. Tajikistan and Kazakhstan offer slightly more liberal environments, allowing some limited space for NGOs and independent media to operate. Only Kyrgyzstan has held recent competitive elections, but its relatively pluralistic system has been marred by instability and an outbreak of inter-ethnic violence in 2010 that claimed hundreds of lives.

Authoritarian regimes in Central Asia rely on a complex mixture of formal and informal mechanisms of control, but a major role is played by repressive security and law enforcement agencies. Inside the borders of Uzbekistan, Tajikistan and Turkmenistan, security forces have clamped down on any popular protest or political opposition. But repression at home has forced many political opponents and religious activists to flee abroad. Some have reached relative safety in Russia or other former Soviet republics, but others have sought political asylum much further afield, including in the US and in EU member states.

At the same time, the lack of economic opportunities has stimulated mass labour migration to Russia and Kazakhstan from the poorer states in the region. Millions of Uzbek, Tajik and Kyrgyz citizens now live and work abroad. Their home governments welcome the money they send home, but they also view these communities as posing potential political challenges to regimes at home.

To counter these perceived threats from abroad, Central Asian governments have expanded their activities outside state borders. They mount extensive propaganda exercises to discredit political exiles, creating a discourse in which diasporas and citizens based abroad are seen as potential security threats. Intelligence agencies conduct widespread surveillance and intelligence-gathering activities, and extradite or forcibly return individuals to face prosecution at home. There have even been physical attacks and assassination attempts against political exiles.

These authoritarian regimes have been successful at exporting their domestic mechanisms of repression, not just within the former Soviet republics, but more widely to EU states and further afield. Other non-democratic regimes, such as China and Iran, have also been accused of similar activities against dissidents abroad, posing a growing challenge to traditional principles of political asylum and protection. Understanding the extent and nature of these extraterritorial repressive mechanisms is therefore becoming increasingly important.

Surveillance and intelligence activities

At the heart of this wide range of extraterritorial controls is a network of intelligence and security activities that crosses borders and targets activists, journalists and political opponents of authoritarian states in foreign jurisdictions. Reliable information on the extent of these operations is understandably limited, but there is sufficient evidence to suggest a growing problem of 'refugee espionage' against dissidents abroad by a number of states, including Uzbekistan. In Sweden, for example, asylum seekers have claimed that they are under surveillance by Uzbek intelligence or informers.³⁵ An Uzbek refugee in Sweden claimed in a media interview to have acted as a spy on his fellow exiles, under pressure from Uzbek intelligence officials.³⁶ Sweden has responded to these and similar allegations by tightening legislation against such cases of refugee espionage.³⁷ Similar allegations have been reported in other EU states by human rights activists.

Alongside intelligence-gathering, exiles face harassment and attempts to persuade them to give up political or journalistic activity or to inform on other dissidents. An informal but highly effective mechanism to limit political activities abroad involves pressurising individuals through their families and relatives. Many members of the family of exiled Turkmen dissident Annadurdy Khajiev have been harassed, sent into internal exile or imprisoned.³⁸ There have also been cases in Uzbekistan where family members of dissidents in exile have faced either criminal charges or other types of persecution or harassment in business or everyday life.³⁹ In 2013 Hasan Choriyev, the father of Bahodir Choriyev, a US-based leader of the opposition party Birdamlik, was arrested on charges of rape, which were widely viewed as politically-motivated.⁴⁰

Intelligence and security activities in EU states are largely covert, but in Russia and some other CIS states, there is both official and unofficial cooperation between Central Asian and Russian law enforcement agencies. Joint detentions and interrogations are commonplace, and Uzbek and Tajik security forces seem to have particular freedom of activity in Russia.⁴¹ A typical incident of interrogation ended in tragedy in November 2012, when three Uzbek SNB officers interrogated a group of Uzbek migrant workers, detained at Vnukovo airport, near Moscow. The officers reportedly showed them photographs portraying the results of beatings and torture on some of their neighbours back in Uzbekistan, who had been arrested. Apparently fearing a return to such abuse, one of the detainees, Abdusamat Fazletidinov, hanged himself in detention.⁴²

Political activists who flee abroad are often charged – usually on flimsy evidence – with economic crimes or a vague connection to 'terrorist activity' or 'extremism'. Such charges enable states to seek their detention through international policing mechanisms, such as Interpol. In principle, Interpol does not permit politically-motivated cases to be listed, but many cases where there is a clear political motivation nevertheless remain in its database.⁴³ National police forces are often able to

³⁵ European Court of Human Rights (ECtHR), 'Case of F.N. and others v Sweden' (Application No. 28774/09), Strasbourg, 18 December 2012, §26, 27

³⁶ 'Uzbek Citizen Claims to have Spied in Sweden', *Uznews.net*, 27 May 2010,

http://www.uznews.net/news_single.php?lng=en&cid=4&nid=13940

³⁷ 'Sweden set for tougher laws against spying', *The Local*, 10 October 2013, <http://www.thelocal.se/20131010/50704>.

³⁸ See Human Rights Watch, 'Bulgaria: Do Not Extradite Turkmen Dissident', 12 April 2007,

<http://www.hrw.org/news/2007/04/11/bulgaria-do-not-extradite-turkmen-dissident>

³⁹ Three brothers of Uzbek opposition leader Mohammed Solih have been imprisoned. Merhat Sharipzhanov, 'Uzbek Opposition Leader's Brother Sentenced to Five More Years', RFE/RL, 26 January 2012,

http://www.rferl.org/content/uzbek_opposition_leaders_brother_sentenced_to_five_more_years/24464415.html

⁴⁰ Sarah Kendzior, 'An American dream, an exile's nightmare', *Al-Jazeera*, 30 June 2013,

<http://www.aljazeera.com/indepth/opinion/2013/06/201363010349895850.html>

⁴¹ Institute for War and Peace Reporting, 'Uzbek Secret Police Roam Russian Prisons', News Briefing Central Asia, 9 January 2013,

<http://iwpr.net/report-news/uzbek-secret-police-roam-russian-prisons>

⁴² Hro.org, 'Самоубийство в московском СИЗО', 11 December 2012, <http://hro.org/node/1529>; Vitaly Ponomarev, 'Сотрудники СНБ Узбекистана продолжают незаконные действия на территории России', Memorial Human Rights Centre, 27 December 2012,

<http://hro.org/node/15415>

⁴³ See Fair Trials International, 'Strengthening Respect for Human Rights, Strengthening INTERPOL', November 2013,

<http://www.fairtrials.org/publications/policy-report-interpol-and-human-rights/>

circumvent even these limitations, by uploading their own draft Red Notices. Moreover, a more informal system of emails – termed ‘Diffusions’ – is largely unfiltered by the Interpol General Secretariat, but reportedly results in high numbers of international detentions.⁴⁴ Uzbekistan is known to have issued such Diffusions in relation to refugees from Andijan granted resettlement in the Czech Republic in 2005; US diplomats argued that these ‘Diffusions’ were politically motivated.⁴⁵

For many exiles, these Interpol Notices effectively constrain their ability to travel internationally; for others, it has affected their ability to gain employment or to open a bank account. While EU states will not normally act on a Red Notice which targets somebody who has been granted political asylum, political and religious activists in exile are nervous about travelling to many non-EU countries, for fear of being detained and possibly extradited. In February 2013 former Tajik prime minister Abdumalik Abdullojonov was arrested when he arrived in Ukraine, on the basis of a long-standing Red Notice issued by the Tajik authorities, although he had lived in the US for more than a decade after receiving political asylum there.⁴⁶ Ultimately, international pressure contributed to his release in April 2013, but in such cases political refugees often become pawns in high-level negotiations over commercial and geopolitical issues.

Extradition and forced returns

Bringing exiles back home to face prosecution is a powerful mechanism not only to target particular individuals but to spread fear among other political activists and dissidents abroad. In theory, international law – notably the principle of *non-refoulement* – prohibits the return of refugees and asylum-seekers to jurisdictions where they are likely to face torture or other persecution. However, conventions that govern extradition among CIS states, such as the Minsk Convention, offer little protection for refugees and asylum seekers against abuse of the *non-refoulement* principle. Authoritarian states in Central Asia are thus able to ensure that most former Soviet republics are spaces of severe vulnerability for their citizens.⁴⁷ However, these initiatives have also spread beyond the CIS, targeting exiles in EU and other states.

In recent years, legal extradition to countries such as Uzbekistan and Turkmenistan, even from countries such as Russia, has become much more difficult in Europe, because of constraints imposed by the European Court of Human Rights (ECtHR). The ECtHR has become a lifeline for many asylum-seekers within the jurisdiction of Council of Europe members, and the Strasbourg court has played a critical role in influencing domestic court decisions, not only in the EU but also in Ukraine and Russia. The ECtHR has the right to demand a suspension of extradition proceedings under Court Rule 39, which is often invoked in such proceedings in Russia. In an important case, in December 2010 the Supreme Court of Tatarstan annulled an extradition order given against Shokirjon Soliyev, an Uzbek citizen, specifically citing the possibility of ill-treatment of the defendant if he were to be returned to Uzbekistan.⁴⁸ In a separate case challenging an extradition order against an Uzbek citizen, a court in Irkutsk concluded in 2011 ‘that a general problem of ill-treatment of detainees in Uzbekistan still persisted in the country and diplomatic assurances could not offer a reliable guarantee against it.’⁴⁹ This ruling was upheld by the Russian Supreme Court in July 2012.

⁴⁴ Libby Lewis, ‘Interpol’s Red Notices Used by Some to Pursue Political Dissenters, Opponents’, *The Cutting Edge*, 25 July 2011, <http://www.thecuttingedgenews.com/index.php?article=52447>

⁴⁵ In this case, the US diplomat noted that ‘UNHCR, PRM, and U.S. law enforcement authorities believe the issuance of the notices was politically motivated (possibly to disrupt resettlement of the refugees), and therefore these authorities view the notices as invalid and unenforceable’. See US Dept of State, ‘Notwithstanding INTERPOL notices, Uzbek refugees arrive in Czech Republic’, 12 December 2005, published by Wikileaks, at: <http://www.cablegatesearch.net/cable.php?id=05PRAGUE1732>

⁴⁶ Avesta.tj, Представитель украинского Интерпола считает законным арест Абдумалика Абдуллоджонова 29 March 2013, <http://www.avesta.tj/security/17562-predstavitel-ukrainskogo-interpola-schitaet-zakonnym-arrest-abdumalika-abdullodzhonova.html>

⁴⁷ For a detailed account, see Amnesty International, ‘Return to Torture: Extradition, Forcible Returns and Removals to Central Asia’, 3 July 2013, <http://www.amnesty.org/en/library/info/EUR04/001/2013/en>

⁴⁸ ECtHR, ‘Soliyev v Russia’, Application no. 62400/10, 5 June 2012, §27.

⁴⁹ ECtHR, ‘Niyazov v Russia’, Application No. 27843/11, 16 October 2012, §34.

Often these legal victories in Russian courts are short-lived. In cases where migrants at risk of extradition have won court cases, they have subsequently been abducted in Russia and returned to their home country by force. In August 2011 Murodzhon Abdulkhakov was abducted in central Moscow in the middle of the day by men in plain clothes, and taken to Tajikistan. He was finally released after three months' detention. Tajik citizen Savriddin Juraev was abducted in Moscow in October 2011, despite receiving temporary asylum in Russia. He was subsequently sentenced to 26 years in prison back in Tajikistan.⁵⁰ Abdulvosi Latipov, a former member of the United Tajik Opposition (UTO) during the Tajik civil war in the 1990s, was reportedly abducted in October 2012 in Russia, although the ECtHR had requested a suspension of his extradition until the case was considered in full by the court in Strasbourg.⁵¹

For the most part, EU states have resisted attempts to extradite political opponents of Central Asian regimes. This has largely held for Uzbek, Tajik and Turkmen citizens. In relation to Kazakhstan, however, EU states have sometimes agreed to the extradition of individuals, who have asserted that their cases are politically-motivated.

Most notably, the Kazakh government has conducted a concerted campaign for the extradition of Kazakh oligarch Mukhtar Ablyazov and his associates. Ablyazov received political asylum in the UK in 2011, and has supported democratic initiatives and independent media inside Kazakhstan, but has been accused of a multi-billion dollar fraud stemming from his period as chairman of BTA bank before 2009.⁵² Ablyazov was finally arrested in France in July 2013, and he awaits the outcome of court hearings on extradition requests by Russia and Ukraine.⁵³ The Kazakh authorities have also sought to extradite a number of Ablyazov's associates, including Alexander Pavlov, a former bodyguard of Ablyazov, who was arrested in Spain in 2011. A Spanish court agreed to his extradition to Kazakhstan in November 2013, but the decision remains suspended, and has faced criticism by international human rights groups.⁵⁴

In June 2013 the Italian authorities deported Ablyazov's wife, Alma Shalabaeva, and the couple's 6-year-old daughter, to Kazakhstan, in a particularly egregious abuse of due process. They were given no chance to appeal, and were deported on a private jet two days after being detained. The Italian government subsequently overturned the extradition, after admitting that it involved serious violations.⁵⁵ The case demonstrates how even in EU member states, the extraterritorial activities of Central Asian states have contributed to undermining the rule of law.

Assassinations and physical attacks

Most of these extraterritorial controls exerted on diaspora communities take place without the use of direct violence. On occasion, however, the security services of Uzbekistan in particular, have been accused of involvement in physical attacks and even assassination attempts on opponents outside their borders.

⁵⁰ 'Documented: Five Cases of Abduction', RFE/RL, 6 November 2013, <http://www.rferl.org/content/central-asia-russia-five-cases-of-abduction/24770771.html>; Daisy Sindelar, Tom Bainforth, 'In Russia, Fears of Central Asians Being Abducted to Face Rough Justice at Home', RFE/RL, 14 November 2012, <http://www.rferl.org/content/russia-central-asia-abductions-kidnappings-rights/24770623.html>

⁵¹ Amnesty International, 'Tajikistan urged to disclose whereabouts of suspect held Incommunicado', Public Statement, 5 November 2012

⁵² Rupert Neate, 'Arrest warrant for Kazakh billionaire accused of one of world's biggest frauds', *The Guardian*, 16 February 2012.

⁵³ Ablyazov fled the UK in 2012 after being sentenced to 22 months' imprisonment for contempt of court, after he failed to declare his assets fully. David Connett, 'Trojan horse' raid ends 18-month hunt for Kazakh banker Mukhtar Ablyazov', *The Independent*, 7 November 2013, <http://www.independent.co.uk/news/world/europe/trojan-horse-raid-ends-18month-hunt-for-kazakh-banker-mukhtar-ablyazov-8744984.html>; Kirstin Ridley and Matthias Galante, 'Kazakh oligarch Ablyazov arrested in France: sources', Reuters, 31 July 2013;

⁵⁴ Amnesty International, 'Spain to extradite asylum seeker to risk of torture in Kazakhstan', <https://www.amnesty.org/en/news/spain-extradite-asylum-seeker-risk-torture-kazakhstan-2014-02-19>

⁵⁵ 'How far will Nazarbayev go to take down Muhtar Ablyazov?', RFE/RL, 10 June 2013 <http://www.rferl.org/content/kazakhstan-nazarbaev-ablyazov/25010488.html>; Reuters, 'Kazakhstan won't let oligarch's wife return to Italy', 13 July 2013, <http://www.reuters.com/article/2013/07/13/kazakhstan-italy-ablyazov-idUSL6N0FJOAM20130713>

In October 2007 an unknown gunman shot dead 26-year-old journalist Alisher Saipov in Osh, in southern Kyrgyzstan.⁵⁶ Saipov was a well-known journalist who had written extensively and critically about Uzbek politics. He published a regular blog and newspaper, *Siyosat*, which reported political news about Uzbekistan that was censored inside the country. The Uzbek authorities denied any involvement in Saipov's murder, but independent reports have suggested that the Uzbek security services were most likely involved in the killing.⁵⁷

There were also allegations that security agents were involved in the killing of opposition activist and part-time imam Fuad Rustamkhojaev in September 2011 in Russia. Rustamkhojaev was a leading member of the People's Movement of Uzbekistan, an umbrella opposition group, founded in Berlin in May 2011. According to media reports, Uzbek SNB officers had visited his family home in Andijan and threatened reprisals if he continued his opposition activity.⁵⁸

The most widely publicised attack was an assassination attempt against Obid-khon Nazarov, a well-known Uzbek cleric who had received political asylum in Sweden, and lived in the remote northern town of Strömsund. On 22 February 2012 a gunman shot him in the doorway to his block of flats.⁵⁹ He survived the shooting, but has remained in a coma ever since. Human rights activists claimed that the shooting was the work of the Uzbek security services, and linked it to the Saipov and Rustamkhojaev killings.⁶⁰ Swedish prosecutors suspected that the assassination attempt was an attempted contract killing, probably ordered by the Uzbek security services.⁶¹

Conclusion

EU states face an increasing challenge to maintain traditions of political asylum in the face of concerted efforts by many post-Soviet states – and other authoritarian regimes – to expand their political controls beyond their borders. Political exiles need to feel secure and to be able to continue political activism and journalism in exile without suffering reprisals. Silencing voices abroad further deepens authoritarian consolidation at home and makes political reform and modernisation more difficult to achieve.

Extraterritorial repression also has an impact on the rule of law in other states. In Russia, the actions of Uzbek and Tajik security forces in abducting activists have threatened to undermine some limited progress on legal protections against extradition. In Europe, concerted campaigns by Central Asian governments for the extradition of political opponents have undermined due process and legal defence of asylum-seekers. The persecution of many political opponents by these regimes has led to the misuse of the Interpol system and other international policing and extradition mechanisms. Inevitably, some of these cases pose real challenges. Many political opponents of authoritarian regimes are enmeshed in endemic systems of corruption. Charges related to economic crimes may therefore have a strong evidential basis, but can also be viewed as politically-motivated. Religious

⁵⁶ See International Crisis Group, 'Political Murder in Central Asia: No Time to End Uzbekistan's Isolation', Brussels/Bishkek, 14 February, 2008, http://www.crisisgroup.org/~media/Files/asia/central-asia/uzbekistan/b76_political_murder_in_ca_no_time_to_end_uzbekistan_isolation.pdf; see also Sarah Kendzior, 'A Reporter without Borders: Internet Politics and State Violence in Uzbekistan', *Problems of Post-Communism*, 57(1), January/February 2010, pp. 40–50.

⁵⁷ International Crisis Group, 'Political Murder', p. 3.

⁵⁸ 'Россия: В Иваново убит активист оппозиционного «Народного движения Узбекистана» Фуад Рустамходжаев', *Fergana.ru*, 26 September 2011, <http://www.fergananews.com/news.php?id=17344>

⁵⁹ Prominent Uzbek Cleric In Critical Condition After Sweden Shooting, 22 February 2012, *RFE/RL*, http://www.rferl.org/content/exiled_uzbek_cleric_survives_attack/24493065.html

⁶⁰ 'Was Obid-kori Nazarov's shooting ordered by Tashkent?', *Uznews.net*, 24 February 2012, http://www.uznews.net/news_single.php?lng=en&sub=top&cid=30&nid=19200

⁶¹ Tulkin Karayev, 'Obidkhon Nazarov, imam shot in Sweden, is recovering and Uzbeks leave Strömsund', *Fergananews*, 19 October 2012, <http://enews.fergananews.com/articles/2789>. For further details on the case, see 'Swedish Court Acquits Suspects in Attempted Murder of Uzbek Imam', *Uznews*, 27 July 2012; The acquittal was confirmed in an appeal hearing in July 2013. 'Swedish court rules "innocent" suspects in attempt on Uzbek imam's life', *Fergananews*, 2 July 2013; <http://enews.fergananews.com/news.php?id=2651> See also the documentary film by Michael Anderson: <http://www.aljazeera.com/programmes/peopleandpower/2014/03/long-arm-dictator-2014312192834234937.html>

activists may challenge the secular constitutions of these states or pose a more profound political or social challenge. Yet in each case, the threat of possible mistreatment of such individuals seeking protection should remain paramount. A gradual decline in the protections afforded to asylum-seekers is likely to result in a negative impact on a wider range of civil liberties in the long run. EU states need to reassert their commitment to the principles of protection for political refugees and the norms of refugee protection, notably that of *non-refoulement*. They should also consider adopting tighter legislation to tackle espionage and intelligence activities that target activists from authoritarian states. International policing mechanisms such as Interpol need to be reformed to limit the number of politically-inspired Red Notices being issued against regime opponents. Council of Europe states should resist populist criticism of the ECtHR and instead support its efforts to protect migrants and asylum-seekers seeking to avoid torture and imprisonment in countries such as Uzbekistan and Turkmenistan.

Above all, authoritarian states in the former Soviet Union need to find ways to accommodate political opposition and religious dissent within their own borders. A reliance on repressive security mechanisms at home will only produce further waves of political and religious dissidents who seek to flee abroad, prompting increased efforts to develop these damaging extraterritorial mechanisms to police and control these exile communities. In the long term such transnational networks of repressive practices are not sustainable, and Central Asian states need to allow ideological differences to be expressed freely and peacefully within their own domestic political systems.

Extradition and expulsion of persons from Russia to the countries of Central Asia

Daria Trenina

On many occasions the European Court of Human Rights (ECtHR) has found violations by the Russian authorities of Article 3 of the European Convention on Human Rights (prohibition of torture, inhuman and degrading treatment) in cases where the suspects had links to banned religious groups who were extradited or expelled from Russia to countries in Central Asia. In some of these cases, and in cases still pending before the Court, the applicants were apprehended and illegally transferred to the countries which had requested their extradition or to other countries in Central Asia. The Court found that the personal situation of the applicants, who were accused in Uzbekistan or Tajikistan⁶² of involvement in the activities of prohibited religious organisations, indicated that they were members of a group systemically exposed to ill treatment in these countries.

Most of the extradition/expulsion cases against Russia considered by the ECtHR so far concern persons coming from the countries of Central Asia to Russia to find jobs or flee persecution for their religious or political beliefs. This pressure does not always take the form of criminal prosecution at the initial stage and many *de facto* refugees do not understand that they need to obtain refugee status in Russia and legal protection to prevent them being returned to their country of origin until they are arrested. This happens when the persons concerned are not aware of criminal investigations that are under way in their home countries. Sometimes an application for refugee status in Russia may even be dangerous for such people, since once they come to the attention of the public authorities, extradition proceedings often start.

Many applicants in ECtHR cases worked in Russia (with or without a permit) to support their families at home and travelled back and forth for many months or years before they were detained in Russia as internationally wanted persons. Most of them were intimidated by local police or security service officers at home for being 'too religious' i.e. practicing their religion openly, celebrating Muslim marriages etc.,⁶³ for their links with members of opposition groups⁶⁴, or practicing religion outside the official framework⁶⁵, but were not prosecuted until they left for Russia and decided not to come back or refused to come back. Some were prosecuted and tortured in the past and fled when danger reappeared.⁶⁶

The situation of persons who were returned to the countries concerned is described in reports of international NGOs as follows⁶⁷:

'Over the past two decades thousands of people across the [Central Asian] region have alleged that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a forced confession or money from relatives. <...>

In all five republics [Uzbekistan, Tajikistan, Turkmenistan, Kyrgyzstan and Kazakhstan], detainees are often tortured and ill-treated while being held incommunicado for initial

⁶²The most recent judgments concerning Uzbekistan are *Yakubov v. Russia*, no. 7265/10, 08.11.2011, *Ergashev v. Russia*, no. 12106/09, 20.12.2011, *Rustamov v. Russia*, no. 11209/10, 03.07.2012, *Umirov v. Russia*, no. 17455/11, 18.09.12, *Abdulkhakov v. Russia*, no. 14743/11, 02.10.2012, *Zokhidov v. Russia*, no. 67286/10, 05.02.2013, *Ermakov v. Russia*, no. 43165/10, 07.11.2013, *Kasymakhunov v. Russia*, no. 29604/12, 14.11.2013; for illustration of case-law concerning Tajikistan see *Khaidarov v. Russia*, no. 21055/09, 20.05.2010, *Khodjaev v. Russia*, no. 52466/08, 12.05.2010, *Gaforov v. Russia*, no. 25404/09, 21.10.2010, *Azimov v. Russia*, no. 67474/11, 18.04.2013, *Iskandarov v. Russia*, no. 17185/05, 12.05.2010, *Savridin Dzhurayev v. Russia*, no. 71386/10, 25.04.2013, *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, 03.10.2013, *Sidikov v. Russia*, 73455/11, 20.06.2013

⁶³ *Abdulkhakov v. Russia*, no. 14743/11, 02.10.2012

⁶⁴ *Azimov v. Russia*, referred above

⁶⁵ *Ermakov v. Russia*, referred above

⁶⁶ See for instance, *Gaforov v. Russia* referred above

⁶⁷ Amnesty International, Eurasia: Return to torture: Extradition, forcible returns and removals to Central Asia, July 2013, <http://www.amnesty.org/en/library/info/EUR04/001/2013/en>

interrogations. Those detained in closed detention facilities run by National Security Services on charges related to national security or 'religious extremism' are at particular risk of torture and other ill-treatment'.

Thus, it can be noted, that extradition requests for extremist crimes are well within the pattern of repression and persecution on the grounds of religion and political opinion in the countries of Central Asia.⁶⁸

Extradition

The rules governing extradition are contained in the Russian Criminal Procedure Code (Part 5 on International Cooperation in criminal procedure, Chapter 54).⁶⁹ The CPC does not expressly provide for the prohibition of extradition due to the risk of torture or other cruel treatment. According to the CPC, the extradition is not allowed where the person concerned is a Russian citizen or has been granted asylum in Russia in relation to the risk of his or her persecution in the requesting country on grounds of race, religion, citizenship, ethnicity, affiliation with social group or political beliefs.⁷⁰

So the obligations not to return persons to countries where they risk being tortured stem directly from Article 3 of the ECtHR as interpreted by the European Court. The corresponding legal provision can be found in the Articles of the Federal Law on Ratification of the European Convention of Human Rights and Fundamental Freedoms. It reads as follows: 'The Russian Federation has the right to refuse one's extradition in case... there are serious grounds to believe that a person whose extradition is wanted, was or will be subject to torture, ill-treatment, or inhuman and degrading treatment or punishment in the requesting country'. Taking into account that according to the Constitution, international treaties to which Russia is a signatory form part of its legal system, provisions of the Convention are directly effective. This was recently reiterated by the Plenum of the Supreme Court in the Ruling⁷¹ which reads:

'It follows from the meaning of paragraphs 3 and 4 of Article 15 of the Constitution of the Russian Federation, paragraph 3 of Article 5 of the Federal Law On International Treaties of the Russian Federation, the courts may directly apply those international agreements that have been officially published in the Collection of the legislation of the Russian Federation, in the Journal of international agreements ...'

In June 2012 the Plenum of the Supreme Court adopted long-awaited guidelines for courts when dealing with extradition cases (Ruling no. 11 of 14 June 2012). The Ruling stresses that the grounds to deny extradition requests are provided for not only in the CPC, but also in other pieces of legislation and international agreements. It states that the provisions of the International Covenant of Political and Civil Rights, UN Convention Against Torture and the ECtHR prevent extradition if there is risk of torture and in assessing the alleged risk, courts are to take into account relevant information from different sources, such as Ministry of Foreign Affairs and international bodies (it is worth remarking that NGOs are not mentioned).

The judgment in *Savridin Dzhrayev v. Russia* is the first judgment in an extradition case where the Court invoked Article 46 of the Convention calling for general measures with regard to the violation of Article 3 and Article 34 (the right of individual application). The Court noted that Ruling no. 11 constitutes a '*significant development of the domestic jurisprudence*' which is '*in line with the Court's*

⁶⁸ For many illustrations see above report of Amnesty International, which covers the situation with extradition, expulsion and forcible return from Ukraine and Russia of persons to the countries of Central Asia where they face treatment contrary to Article 3

⁶⁹ OSCE/ODIHR, Criminal Procedure Code of the Russian Federation, Legislation online, <http://legislationline.org/documents/section/criminal-codes/country/7>

⁷⁰ Other grounds mentioned in the Code have nothing to do with human rights.

⁷¹ Supreme Court of the Russian Federation, <http://www.supcourt.ru/>

case-law and perfectly supports the idea of improving domestic remedies in extradition and expulsion cases’ (paragraph 259). It expressed confidence that *‘the meticulous application [thereof] by all Russian courts would allow the judiciary to avoid such failings as those criticised in the present judgment ... and further develop emerging domestic case-law that directly applies the Convention requirements through judicial practice’*.

It should be noted that the Supreme Court Plenum Ruling resulted in sufficient progress in terms of legal regulation of arrest and detention pending extradition. It finally provided the courts and other law enforcement agencies with clear and exhaustive guidelines on how CPC provisions should be implemented. The approach suggested by the Supreme Court is in full compliance with the standards of the ECtHR. A wanted person may be put into custody only on the basis of a court decision (not the prosecutor’s) and further detention should be subject to regular judicial review. This order is strictly followed nowadays in Russian administrative and judicial practice.

Unfortunately, no meticulous application of the Supreme Court Ruling or the ECtHR has occurred so far in terms of promoting Article 3 guarantees. Apart from a few exceptions, the guidelines embodied in the decision of the Plenum are not followed by the courts, even the Supreme Court itself as an appellate court. The recent domestic procedures as well as the above jurisprudence of the ECtHR shows that the Russian legal system does not provide for effective remedy against violation of Article 3 in cases of extradition requests from CIS countries. Despite the ruling of the Supreme Court (and the semi-pilot judgment in *Savridin Dzhurayev* which became final on 09.09.2013), it seems that the authorities continue to accord priority to the obligations under the Minsk Convention on legal assistance over their obligations to protect and guarantee human rights under the ECtHR and other international instruments. The extradition orders routinely refer to bold diplomatic assurances given by the authorities of the country requesting extradition that a person would not be subject to prohibited treatment and the courts for their part deny the arguments of alleged risk of torture on the basis of these assurances. The Court has expressed on numerous occasions its approach to the reliance on diplomatic assurances, and concluded that this is only possible when there are real and enforceable control mechanisms (free and public) which would allow those assurances to be checked.⁷²

Russian tribunals are not that inventive in their grounds for the refusal of the applicants’ allegations of the risk of torture. The ECtHR judgments and information from independent sources which support the allegations of serious and individual risk are in most cases not taken into account as they ‘do not concern the particular person’ whose extradition is requested and do not provide ‘objective proof’ of the possibility that this person will be tortured if he or she is returned. (The latter duty to ‘objectively prove’ a future event was criticised by the ECtHR in *Yakubov v. Russia* as placing upon the applicant a clearly disproportionate burden).⁷³

Asylum proceedings and the realisation of the non-refoulement principle

Though the decision of the Plenum mentions ‘other laws’ as providing reasons for preventing extradition and names the Refugee Law, it confirms the *non-refoulement* principle as it is stated in the CPC – the extradition is to be refused if asylum *has been granted* and the grounds therefore remain. However, according to the Refugee Law, the *non-refoulement* principle covers asylum seekers, i.e. persons *who applied* for refugee status and who are complaining against their refusal (to superior migration authorities and courts). As a result, the level of protection provided by the Refugee Law is lowered. The General Prosecutor’s office and courts tend to take into account the application for refugee status until it was denied by the migration authorities and ignore the court

⁷² Compare the findings in the case of *Abdulkhakov* (referred above) and ones in *Othman (Abu-Qatada) v. the UK*, 8139/09, 17.01.2012

⁷³ Referred above, paragraph 99.

proceedings initiated by the asylum seekers against decisions of the migration authorities provided for in the legislation.

It should be noted, however, that asylum proceedings do not provide for effective remedy against violation of Article 3 of the Convention in extradition cases of CIS country nationals. In fact, these proceedings can only postpone the delivery of an extradition order or the rendering by court decision whereby the extradition order would be upheld. In practice, they do not provide for an effective remedy. The potential positive effect of asylum proceedings – to prevent the extradition of a person, persecuted on grounds mentioned in the Refugee Law and CPC – is spoiled by the exceptionally formalistic approach of the migration authorities and courts. The statistics illustrate the situation brightly. Refugee status has never been granted to an asylum seeker from Central Asia where he/she was suspected of extremist activities, and temporary asylum can be granted only in cases where the extradition had been refused by the General Prosecutor's Office or the ECtHR had protected a person against extradition by interim measures pursuant to Rule 39 of the Rules of the Court.

Numerous cases show that the competent authorities in Russia have proceeded from the assumption that the person in question has been lawfully prosecuted in their country of origin for the commitment of crimes charged. Thus, the bodies in question have pointed out that asylum seekers were not willing to go back there because of their fear of being held accountable. To the knowledge of lawyers working with extradition cases, neither migration authorities nor the courts have attempted to analyse the nature and character of the charges, having stated that this is outside of their competence. Meanwhile, without such analysis it is impossible to identify the nature and grounds of persecution.

The current Refugee Law is obviously outdated and is now undergoing a major reconstruction exercise – a new version of the Law on Asylum is still in draft form and has considerably mutated throughout the process of development. The draft law is definitely a step forward compared to current legislation, however, it is still under elaboration. Among the most significant improvements are the introduction of clear criteria for granting temporary asylum status providing that it is 'granted to an asylum seeker due to there being serious reasons to believe that the person will become the victim of the extrajudicial death penalty, torture or will face a real threat to his/her life due to mass violation of human rights, generalised violence, or other events seriously disturbing public order in the country of his/her nationality or former habitual residence'. This would mean that the non-refoulement principle governs all asylum seekers, no matter whether their applications are considered for refugee status or temporary asylum throughout the whole procedure, including the judicial review - until the decision is final. All organisations and officials would be bound by confidentiality obligations and, last but not least, the family unity principle is applied to both refugee status and temporary asylum holders. Among the more alarming elements, independent experts have noted the introduction of accelerated procedures for the consideration of asylum applications as well as the detention of asylum seekers staying illegally in Russia. With all the innovations however the issue of implementation will be the most critical.

Substituting expulsion for extradition

According to the Russian Code of Administrative Offences⁷⁴, the violation of migration regulations is punishable by fine *with/without* expulsion for all regions except Moscow, Moscow Region, Saint-Petersburg and Leningradskaya Region, and a fine *plus* expulsion for those cities and Regions (Article 18.3). The expulsion case file is prepared by the police or the migration authority and is considered by the court. According to the Code, persons ordered with expulsion can be held pending execution

⁷⁴ Russian Federation, Code of Administrative Offenses of the Russian Federation, December 2001, <http://www.russian-offences-code.com/>

of the court's decision in special detention centres (in conditions similar to those of detention centres for criminally prosecuted persons). The two-year limit for the execution of the decision is set.

De-facto the administrative expulsion case is initiated (formally or informally) by the prosecutor's office.⁷⁵ Taking into account that the offenders are expelled to their countries of origin, it is not surprising that the procedure has been used by prosecutor's office to secure the rendition of a person to a country requesting extradition, if the latter is barred for procedural reasons or when the extradition order has not been delivered prior to the expiration of the extradition arrest. Thus, the administrative expulsion procedure helps to achieve two goals – the rendition itself and detention for a maximum of two years to secure rendition. In such cases, a person is normally arrested by police, acting upon instruction from the prosecutor's office in charge of the extradition check, immediately after his or her release from the extradition arrest.⁷⁶

This practice is based upon regulatory documents governing prosecutors' work. Thus, according to the Order of Moscow Region Prosecutor of 03.07.2009 no. 86/81: *'In every case of release of a detained person due to the impossibility of his extradition to the authority he is wanted by, it is obligatory to settle the issue of his administrative expulsion from the territory of the Russian Federation'*.

It must be noted in this regard, that the court's proceedings in administrative expulsion cases are far from being a remedy against violation of Article 3 of the ECtHR, thus they cannot protect against prohibited treatment in the country of origin. The courts do not even reflect the arguments of alleged risk of torture in their decisions, as they clearly consider these arguments as falling out of the scope of the proceedings. At the same time, expulsion does not provide those minimal guarantees provided in the extradition procedure that a person would not be prosecuted for crimes for which his extradition was not requested or denied.

Kidnappings

Kidnappings seem to be the 'last resort' for those forces that cannot take a loss on the legal terrain. Apprehension and transfer to countries requesting extradition has taken place in cases where extradition/expulsion of applicants through legal procedures proved impossible due to the application by the Court of Rule 39 of its Rules (an interim measure) or a final decision of the Court establishing violation of Article 3. These incidents cause great concern of the Convention bodies as they undermine the whole system and effectiveness of rights.⁷⁷

The judgment in *Savridin Dzhrayev v. Russia* where the Court called repeated kidnappings of the applicants before it *'a flagrant disregard for the rule of law'* became final on 09.09.2013. The Court found violations of Article 3 of the Convention including positive obligation to protect Mr. Dzhrayev from illegal transfer and prohibited violation and of Article 34 due to his removal from the territory of the Convention and jurisdiction of the Court. Taking into account that kidnappings have continued after its judgment in *Iskandarov*⁷⁸ the Court called for the creation of a mechanism for the prevention of illegal transfer, the ineffectiveness of which, however, was proved very fast.

⁷⁵ See the Judgment in the case of *Ismailov v. Russia*, 20110/13, 17.04.2014

⁷⁶ See for example *Rakhimov v. Russia* no. 50552/13

⁷⁷ See Doc. 13435 of 28 February 2014 of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the CoE, 'Urgent need to deal with new failures to co-operate with the European Court of Human Rights'

⁷⁸ After case of *Iskandarov v. Russia*, no. 17185/05, 23.09.2010 at least 8 more applicants of the ECtHR in whose cases the Court applied Rule 39 were kidnapped and transferred: *Muminov v. Russia*, no. 42502/06, 11.12. 2008, *Ermakov v. Russia*, *Kasymakhunov v. Russia* (2), *Zokhidov v. Russia*, *Abdulkhakov v. Russia*, *Nizomkhon Dzhrayev v. Russia*, *Kamaliyevy v. Russia*, no. 52812/07, 03.10.2010, *Koziyev v. Russia*, no. 58221/10. Destiny of 2 more applicants in cases *Mamazhonov v. Russia*, no. 17239/13 and *Azimov* remain unknown after their kidnappings.

On 03.12.2013 another ECtHR applicant, Mr. Ismon Azimov, was kidnapped. After the judgment of 18.04.2013, whereby extradition and expulsion orders were held to be in violation of Article 3 of the Convention, he was granted temporary asylum and placed in the special facility of the migration authorities for vulnerable persons, from where he was violently taken away by unidentified persons wearing uniform. Since then his whereabouts remain unknown. Most likely, shortly after his abduction he was secretly, and circumventing the formalities, transferred to Tajikistan and is currently detained there, though there is no official or unofficial information to confirm this.

The 'broken word': Central Asia's unreliable diplomatic assurances

Julia Hall and Maisy Weicherding

'The promise given was a necessity of the past: the word broken is a necessity of the present.'

Niccolo Machiavelli

The fact that human rights have suffered a mighty blow in the course of the so-called 'war on terror' is by now self-evident. The international community is still grappling with the corrosive effects of some of the more flagrant rights-abusing counter-terrorism measures like torture, illegal detention and enforced disappearance. But some tools alleged to help combat terrorism have embedded themselves in the international and national systems in ways barely perceptible to the public. Such is the case with the growing – some would say now routine – use of 'diplomatic assurances': promises from one government to another that persons forcibly returned via deportation or extradition will not be tortured or ill-treated upon their return.

While governments in North America and Europe started the trend toward these non-binding, bilateral 'gentlemen's agreements', often invoking national security concerns, authorities in more authoritarian states have eagerly capitalised on it. Thus, Russia, Ukraine and key Central Asian republics including Tajikistan, Kazakhstan and Uzbekistan have followed suit and incorporated agreements for diplomatic assurances into their efforts to reel in their own nationals or 'wanted' others, who have sought refuge in neighbouring countries and other parts of Europe. These include political opponents, members of banned Islamist groups and Islamic movements, human rights defenders and wealthy individuals who have fallen out of favour with the regimes. Kazakhstan, Russia and others play it both ways by not only providing assurances to rein in their own nationals, but also by accepting - uncritically - such assurances from other governments.

Taking full advantage of the 'opportunity effect', former Soviet republics have embraced the use of diplomatic assurances, secure in the knowledge that the US, UK, Canada and EU member states – the traditional standard-bearers for human rights protection – regularly employ them as well.⁷⁹

Human rights organisations and the vast majority of international experts have taken an absolutist position against diplomatic assurances. That opposition involves both principled and pragmatic dimensions and was developed and refined in a context where it was obvious that some governments would happily exploit the West's post-9/11 appetite for an easy way to get around the absolute legal obligation not to send a person to any place where he or she would be at risk of torture. The adoption of diplomatic assurances by countries in the Commonwealth of Independent States (CIS) is a case in point. In recent years, Russia and Kazakhstan have repeatedly relied on diplomatic assurances to justify extraditing or attempting to extradite people to Uzbekistan, where torture is systematic even if the authorities routinely deny it. Authorities in Tajikistan have also offered their counterparts in Moscow such assurances in attempts to get their nationals back. Likewise, Kazakhstani President Nursultan Nazarbaev's relentless pursuit of political and business foes seeking refuge in EU member states has been underpinned by promises that, if returned, none of them will be ill-treated in Kazakhstan.

Principled opposition to diplomatic assurances points to the dangers of seeking additional 'guarantees' when states' legally binding treaty obligations and other international legal commitments already oblige them to ensure that torture does not occur. The effect of such individualised assurances is inevitably to undermine the integrity of the absolute prohibition of

⁷⁹ All the analysis on diplomatic assurances in this article first appeared in the Amnesty International report, *Dangerous Deals: Europe's reliance on 'diplomatic assurances' against torture*, Amnesty International, EUR 01/012/2010.

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201101/20110124_705dangerousdeals_en.pdf

torture as they seek to shore up an island of legality amidst a sea of abuse that can continue to go unchallenged.

If all states respected the existing, legally-binding international machinery of human rights protection, diplomatic assurances would be redundant. As it stands however, such assurances allow governments to sidestep international mechanisms and obligations and thus represent erosion – not progress – in human rights protection.

A more pragmatic approach to the problem of diplomatic assurances focuses on the particular and unique dynamics of torture, which preclude diplomatic assurances from providing an effective safeguard against ill-treatment. Torture is usually practiced in secret, with the collusion of law enforcement, medical and other government personnel, and often in an environment of impunity, as states, particularly where torture is widespread, routinely fail to investigate allegations of torture and bring those responsible to account.

Crucially, governments that practice torture and similar abuse routinely deny it; create administrative structures to support plausible deniability; develop techniques of abuse designed to avoid detection; and conceal evidence of it. Such deniability was on full display during Uzbekistan's October 2013 reporting to the UN Committee Against Torture in Geneva. Despite credible reports of widespread torture and ill-treatment from Amnesty International and Human Rights Watch, Dr. Akmal Saidov, Director of Uzbekistan's State National Human Rights Centre, pounded the table more than once to emphasise his repeated denial that no one, absolutely no one, had been subjected to torture in Uzbekistan.⁸⁰

Post-return monitoring mechanisms that are sometimes agreed between states to add some form of additional safeguard to diplomatic assurances in fact provide no such thing. As George Orwell might have said of them: 'they give the appearance of solidity to pure wind'. Those subjected to torture and other ill-treatment are often afraid to recount their abuse to lawyers and family members let alone any person attempting to conduct post-return monitoring because victims fear reprisals against them or their families. Monitoring mechanisms that are not part of an established framework with a proven track record, not only in detecting cases of abuse, but also in consistently bringing all perpetrators to justice, cannot seriously be considered as having any significant preventive or deterrent effect. On top of all this, there lies the brute political reality that neither the sending, nor the receiving party has any interest at all in the exposure of torture and the breach of any assurance.

The negative 'knock on' effect of the use of diplomatic assurances has been abundantly clear in cases involving extraditions or other transfers from Russia and Ukraine to Uzbekistan, Tajikistan or Kazakhstan – and even from countries like Spain, France and Italy to Kazakhstan. Diplomatic assurances have become a substitute for rigorous risk analysis and the imperative to halt any transfer where a person is at such risk.

Take the case of Abdurazok Gaforov, a Tajikistani national who was arrested in Moscow in August 2008.⁸¹ He had escaped from custody and fled Tajikistan in 2006 after having been tortured over a three-month period in the basement of a building used by the Tajikistani security services.

⁸⁰ See, for example, Amnesty International, Uzbekistan: Submission to the United Nations Committee Against Torture, 51st Session (28 October – 22 November 2013), Index: EUR 62/011/2013. <http://www.amnesty.org/en/library/asset/EUR62/011/2013/en/0156a699-cf33-4d16-b330-c202a90b03a1/eur620112013en.pdf>; and Human Rights Watch, Submission to the United Nations Committee Against Torture on Uzbekistan, 28 October 2013. http://www.hrw.org/sites/default/files/related_material/UZB%20-%20CAT%20submission%20Oct2013.pdf

⁸¹ Amnesty International, *Return to Torture: Extraditions, forcible returns and removals to Central Asia*, Amnesty International EUR 04/001/2013, pp. 24-25. <http://www.amnesty.org/en/library/info/EUR04/001/2013/en>

Systematically beaten and abused, including by electric shock, Gaforov was suspected of membership in the banned Hizb-ut-Tahrir movement and also charged with incitement to religious hatred and publicly advocating for the overthrow of the constitutional order, accusations he denied. In response to a Tajikistani request, the Russian government ordered Gaforov's extradition in December 2008. On appeal, the Russian Prosecutor General claimed that the authorities in Dushanbe had provided diplomatic assurances that Gaforov would not be tortured if returned.

A Moscow court, ignoring credible independent information that the Tajikistani security services persecuted people on religious grounds and subjected them to physical and psychological abuse, not to mention Gaforov's past history of having been tortured, dismissed his claim that he would be at further risk of torture if extradited. The Russian authorities honoured a request from the European Court of Human Rights to stay the extradition pending its review of Gaforov's case. In October 2010, the Court rightly ruled against Russia and opined that 'diplomatic assurances from the Tajikistani Prosecutor General's office...are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment while reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention [ECHR]'.⁸²

The European Court of Human Rights has repeatedly questioned Russia's reliance on diplomatic assurances in respect of extradition requests from both Tajikistan and Uzbekistan. In an April 2008 judgment in the case of *Ismoilov and Others v Russia*, the Court stated that it was '*not persuaded that the assurances from the Uzbekistani authorities offered a reliable guarantee against the risk of ill-treatment*'.⁸³ The group of men threatened with extradition to Uzbekistan were not returned and were subsequently resettled outside Russia. Others may not be so lucky.

In June 2012 the UN Committee against Torture concluded that the decision of the Kazakhstani authorities to extradite 28 Uzbek citizens to Uzbekistan violated article 3 of the Convention of against Torture.⁸⁴ The Committee commented that diplomatic assurances '*cannot be used as an instrument to avoid the application of the principle of non-refoulement*'.⁸⁵ The 28 Uzbeks did not benefit in any meaningful way from this decision: they were extradited from Kazakhstan to Uzbekistan in 2011, before the judgment was issued.⁸⁶

In November 2012 the Kazakhstani General Prosecutor's office informed the Committee that Kazakhstani diplomatic representatives had been able to visit 18 of the extradited men in prison between 3 and 14 August 2012, but only after they had spent more than one year in detention in Uzbekistan. The information submitted by Kazakhstan, that 'none of the visited convicts indicated to have been subjected to torture, unlawful measures of physical and moral pressure or other impermissible methods of investigation. All of them were assigned ex officio lawyers and could retain lawyers privately. None of them complained about the conditions of detention, the food or the medical care provided', must be viewed in the light of reports of human rights organisations and relatives of the detainees that most of the men had spent most of the 14 months in incommunicado detention and that they had been tortured but were too frightened to report this to the representatives of Kazakhstan for fear of reprisals.⁸⁷

⁸² *Gaforov v Russia*, European Court of Human Rights (Application no. 25404/09), judgment of 21 October 2010.

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101283>

⁸³ *Ismoilov and Others v. Russia*, European Court of Human Rights (Application no. 2947/06), judgement of 24 April 2008, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-86086>. The Uzbekistani authorities had provided the Russian Federation with assurances of humane treatment of Ismoilov and the others.

⁸⁴ CAT/C/48/D/444/2010, para 13.9 and 13.10.

⁸⁵ CAT/C/48/D/444/2010, para 13.9 and 13.10.

⁸⁶ Report, *Return to Torture: Extraditions, forcible returns and removals to Central Asia*, Amnesty International EUR 04/001/2013, p. 41.

<http://www.amnesty.org/en/library/info/EUR04/001/2013/en>

⁸⁷ See, for example, reports by the Committee for the Protection of Refugees in Kazakhstan in conjunction with ACAT France:

In the last year, Amnesty International has monitored a number of cases against relatives and associates of Kazakhstani political opposition figure and businessman Mukhtar Ablyazov in which criminal prosecution in Kazakhstan was linked to their association with Ablyazov and his dissenting views. These cases have been marked by violations of the principles of fair trial and it is widely believed that final judgments resulting in convictions of these persons have been subject to political influence. Ablyazov, who fled Kazakhstan in 2009, is currently detained in France awaiting a decision on his own extradition to Ukraine or Russia. The governments of both Ukraine and Russia have offered the French authorities assurances that if extradited, Ablyazov's human rights will be respected. But a key concern is that if he is extradited to either country, he would be in danger of onward transfer to Kazakhstan, where he would be at risk of torture and other ill-treatment. Assurances of humane treatment or fair trial from Russia and Ukraine are meaningless where the threat of onward transfer to Kazakhstan is real and pressing.⁸⁸

Returns to Central Asian countries which rely on diplomatic assurances – or to other countries, such as Russia and Ukraine, where there is also a possibility of torture or ill-treatment but also of onward transfer to a risk of torture – are an attempt to evade a state's legally binding obligation not to send a person to a place where he or she is at risk of such abuse. Such assurances fundamentally undermine the multi-lateral treaty system which has taken years to develop and refine and are inherently unreliable. They cannot – and in many cases, have not – provided an effective safeguard against the very real risk of torture and other ill-treatment. Governments should stop employing them to justify extraditing or otherwise transferring a person to a place where he or she is at risk of torture – and they should stop accepting them from governments in states that carry out torture.

<http://www.jarayon.com/en/index.php/human-rights/item/60-representative-of-kazakhstan-visited-29-uzbek-refugees-in-prison-of-uzbekistan>; and <http://www.jarayon.com/en/index.php/human-rights/item/74-new-details-about-29-uzbek-refugees-deported-to-uzbekistan-by-kazakh-authorities>

⁸⁸ On 31 May 2013, Mukhtar Ablyazov's wife, Alma Shalabayeva, and young daughter were illegally expelled from Italy and forcibly transferred to Kazakhstan in violation of Italian and international law. The Italian government has since rescinded the deportation order in recognition of its illegality and welcomed Shalabayeva and the girl back. See Amnesty International, Italian government must ensure accountability for illegal expulsion to Kazakhstan, 16 July 2013. <https://www.amnesty.org/en/news/italian-government-must-ensure-accountability-illegal-expulsion-kazakhstan-2013-07-16>

The long arm of the Uzbek state

Felix Corley

Fleeing Uzbekistan is often not enough to protect yourself from arbitrary punishment. Among those the Uzbek state has succeeded in having extradited back for criminal punishment are a disturbing number of individuals who were simply exercising their right to freedom of religion or belief. Only in rare cases has international publicity – sparked by determined local campaigners – helped to prevent other governments of the region send individuals back to almost inevitable long prison terms.

The Uzbek leadership – like those of the other four Central Asian republics – hold several fundamental approaches towards religion or belief: all independent activity in the area of religion or belief (as in all other areas) is dangerous and must be controlled; exercising freedom of religion or belief must therefore be restricted to state-approved forms; those who violate these state-imposed norms must be punished; international human rights commitments to freedom of religion or belief mean nothing if they clash with the leaderships' interpretation of state interests.

All five Central Asian states ban the unregistered exercise of freedom of religion or belief – such as meeting for worship without permission – and to varying degrees impose state censorship on religious literature and materials. Sharing one's faith is illegal or at best highly dangerous. In most of the states police, secret police and other officials conduct regular punitive raids on religious communities – whether registered or not – and impose criminal and administrative penalties. Among the Central Asian states, Uzbekistan is by far the worst offender, although Turkmenistan, Kazakhstan and Tajikistan retain tight state controls and frequent punishments.⁸⁹

In Uzbekistan many Muslims are imprisoned for exercising their right to freedom of religion or belief, and in recent years a number of Protestants and Jehovah's Witnesses have also served prison terms. Because many criminal charges are vague – individuals are imprisoned for 'attempts to change the constitutional order' or 'creation, leadership or participation in religious extremist, separatist, fundamentalist or other banned organisations' – it remains unclear how many of the thousands of Uzbeks imprisoned on such charges have been punished simply for exercising the right to freedom of religion or belief. Given the closed nature of many politically sensitive trials, the widespread use of torture to extract confessions and the judiciary's lack of independence from the executive, fair trials are almost impossible.

All this means that those under threat of punishment for exercising the right to freedom of religion or belief often flee Uzbekistan. Some seek refuge via the United Nations High Commissioner for Refugees (UNHCR), hoping for resettlement far from Central Asia, where they hope they will be safe.

Others fleeing Uzbekistan have settled in neighbouring Central Asian states or Russia, where they remain vulnerable. Their new host governments almost always reject any asylum requests, so many do not even apply, seeking to live unobtrusively in a bid to avoid scrutiny. Even those that attain UNHCR refugee status (something no longer possible for new refugees in Kazakhstan) remain insecure. In recent years, Uzbekistan is known to have requested its nationals from Kazakhstan, Kyrgyzstan and Russia, and many have been forcibly returned. Most are then imprisoned. (In political cases, the Uzbeks often simply kidnap those they have been seeking.)⁹⁰

⁸⁹ For details see Forum 18's religious freedom surveys at <http://www.forum18.org/analyses.php>

⁹⁰ See, for example Uzbek Secret Police Roam Russian Prisons, IWPR, 9 January 2013 <http://iwpr.net/report-news/uzbek-secret-police-roam-russian-prisons>

The reach of the Uzbek government has extended beyond the bounds of the former Soviet Union, to Europe. Refuge there did not help former Tashkent-based imam Obidkhon Nazarov, who fled Uzbekistan in June 1998. He gained asylum in Sweden in 2006. In February 2012 he was shot in the Swedish town of Strömsund in what some think was an assassination attempt initiated by the Uzbek authorities. He remains in a coma. Meanwhile, the criminal case against him opened in Tashkent in March 1998 on various criminal charges remains open. The authorities accuse him of leading an Islamic extremist organisation, being the mastermind behind the February 1999 explosions in Tashkent (after he had fled the country) and maintaining contact with the militant group, the Islamic Movement of Uzbekistan. By granting him refugee status, the UNHCR appears to have given no credence to the Uzbek government's accusations.

Again, the leaderships of the five Central Asian republics share several fundamental approaches when dealing with each other which also affect the way they handle extradition requests. Firstly, they try to avoid embarrassing each other (unless it serves a high-level political imperative). Secondly, they rarely question each others' internal policies. Thirdly, they meet extradition requests (except in a few very rare examples, and only then highly reluctantly) and expect reciprocation. Fourthly, they ignore any interventions by international bodies unless they are absolutely forced to (though Russia is slowly changing).

These approaches are formalised in Commonwealth of Independent States (CIS) and Shanghai Co-operation Organisation (SCO) agreements. Two of these have particular bearing on refugees and are frequently cited to justify extradition with little regard for the merits of any charges: the 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the Minsk Convention)⁹¹ and the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism.

Two recent examples of extraditions from Kazakhstan to Uzbekistan – of a group of 29 Muslims in 2011 and of Khayrullo Tursunov in 2013 – clearly illustrate the repeated failure to protect individuals facing unjust punishment in Uzbekistan for exercising the right to freedom of religion or belief.

Victim – Khayrullo Tursunov

Among recent victims of both Uzbekistan's and Kazakhstan's policies is Uzbek national Khayrullo Tursunov. "The Uzbeks wanted him back as part of their campaign against Muslims who read the Koran and pray," his Kazakh lawyer Kenes Zhusupov commented immediately after his client's March 2013 extradition. Tursunov "peacefully practiced his faith outside state-controlled Islam", exiled Uzbek human rights defender Mutabar Tadjibayeva of the Fiery Hearts Club told Forum 18.

Tursunov fled Uzbekistan for neighbouring Kazakhstan in September 2009, settling in Almaty. The Almaty Department of Kazakhstan's Migration Committee rejected his application for asylum in Kazakhstan in October 2010. In February 2012, Uzbek criminal charges were brought against Tursunov and his arrest was ordered. After learning of the arrest order from Uzbekistan, the Kazakh authorities arrested him in Aktobe in April 2012 while he was travelling by train from Kazakhstan to Russia.

That same month, Uzbekistan's Deputy General Prosecutor Khakimbay Khalimov formally asked the Kazakh General Prosecutor's Office to hand over Tursunov for prosecution. In October 2012, Kazakh Deputy General Prosecutor Iogan Merkel approved the extradition order. Successive court hearings failed to overturn the decision. Tursunov's lawyer presented a motion to court to get further information on the alleged criminal organisation which Uzbekistan accused Tursunov of organising and leading, but this was ignored.

⁹¹ For English texts, see respectively <http://www.unhcr.org/4de4edc69.html> and <http://www.sectesco.org/EN123/show.asp?id=68>

One November 2012 court decision upholding the extradition reads that the court will ‘examine not whether or not Tursunov is guilty of the crimes, since that is not its duty, but the legality of the extradition’. The judge also indicated in her decision that according to Article 532 of Kazakhstan's Criminal Procedure Code, the authorities ‘must not extradite persons if there are grounds to suppose that the same persons may be subjected to torture in the requesting country’. Torture in Uzbekistan continues to be ‘routine’ and ‘widespread’, according to the United Nations (UN) Committee Against Torture.⁹² Yet the judge did not seem to consider whether Tursunov might be subjected to torture if returned to Uzbekistan, concluding instead that ‘the Court, on the basis of Kazakhstan's international obligations and law, did not establish any obstacles to the extradition of Tursunov’.

The Kazakhstan International Bureau for Human Rights and the Rule of Law, in a February 2013 appeal,⁹³ noted that under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ‘the Kazakh authorities are obliged to desist from extraditing individuals to countries where torture is practised’. The Bureau notes that ‘Uzbekistan is one of those countries where torture is a way of life’. It called on the Kazakh government to respect its international commitments by not extraditing Tursunov.

Also in February 2013, human rights defender Mutabar Tadjibayeva lodged an individual complaint to the UN Committee Against Torture on Tursunov's behalf. The complaint was forwarded to the Kazakh government on 28 February 2013, according to the UN Human Rights Treaties Division reply to Tadjibayeva the same day, seen by Forum 18. Kazakhstan was asked for its response to the complaint within six months. ‘Please note that the [Committee against Torture's] Special Rapporteur on New Complaints and Interim Measures has decided to request the State party [Kazakhstan] to refrain from extraditing Mr. Tursunov Khairullo Turdiyevich to Uzbekistan, while his complaint is under consideration by the Committee’, the UN letter stated.⁹⁴

Despite this, in March 2013, after eleven months' detention, Tursunov was put on a flight from Almaty to the Uzbek capital Tashkent, where he was immediately arrested. Three months later a court in Karshi gave him a 16-year prison term.⁹⁵

Human rights defenders point out that Tursunov's return violated the UN Convention Against Torture. Kazakhstan acceded to the Convention in 1998, and Article 3 states: ‘1. 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. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.’⁹⁶

Tadjibayeva, head of the Paris-based Fiery Hearts Club human rights organisation, condemned the Kazakh authorities' decision to extradite Tursunov while the UN was considering his complaint. “This is not the first case when the Kazakh authorities violated their international human rights obligations and handed over refugees to Uzbekistan,” she told Forum 18. “In Uzbekistan the authorities

⁹² See reports CAT/C/UZB/CO/3, adopted 22 November 2007, and CAT/C/UZB/CO/4, adopted 14 November 2013, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=UZB&Lang=EN

⁹³ Russian-language appeal available at http://www.bureau.kz/data.php?n_id=5544&l=ru

⁹⁴ Kazakhstan: Why was Muslim prisoner of conscience extradited to Uzbekistan?, Forum 18, 8 May 2013, http://www.forum18.org/archive.php?article_id=1833

⁹⁵ Uzbekistan: Concern over health of prisoners of conscience, Forum 18, 18 February 2014, http://www.forum18.org/archive.php?article_id=1930

⁹⁶ Text of the Convention at <http://www.un.org/documents/ga/res/39/a39r046.htm>

systematically torture and humiliate peaceful religious believers in prisons.” She pointed to the 2011 extradition of 29 Muslim men to Uzbekistan.

Victims – the group of 29

In June 2011, the Kazakh authorities extradited to Uzbekistan 29 Muslim men – 27 Uzbek and two Tajik nationals. All had asylum applications rejected by the Kazakh authorities, even though at least 12 of them had been recognised as refugees by the UNHCR before the transfer of such responsibility to the Kazakh authorities. In December 2010, some six months after the Kazakh authorities had detained them at Uzbekistan’s request, the 29 filed a complaint - Abdussamatov et al. v. Kazakhstan - with the UN Committee Against Torture (CAT) with the help of Action des Chrétiens pour l'Abolition de la Torture (ACAT). As the Kazakh authorities were considering the extradition requests, the Committee repeatedly asked them not to extradite the men while it considered their complaint. Instead, the Kazakh authorities told the UN the men ‘were wanted on charges of terrorism, establishment and membership of religious, extremist, separatist, fundamentalist and other prohibited organizations, murder, membership of criminal organizations and other crimes’. They insisted they had been right to extradite them, given the gravity of the charges, and made a ‘conscious decision’ to ignore the UN request to wait until the Committee reached its judgment. They also insisted that Uzbekistan abides by its international human rights commitments not to inflict torture, citing ‘written guarantees’ in the cases from Uzbekistan’s General Prosecutor’s Office.

As in other cases, the Kazakh authorities pointed to the rejection of refugee applications for the 29. They also cited Article 12, Part 5 of Kazakhstan’s 2009 Refugee Law, which requires refugee applications to be rejected ‘if there is a significant basis to suppose that the individual participates or has participated in the activity of terrorist, extremist and banned religious organisations, functioning in the country of which the individual is a citizen or in the country from which they have arrived’. Similarly, Article 13, Part 5 requires refugee status to be removed if an individual ‘has been sentenced for participating in the activity of terrorist, extremist and banned religious organisations’. Given that any unregistered religious community in Uzbekistan is illegal, this allows the Kazakh authorities to deny or remove refugee status from a wide range of individuals who have simply exercised their right to freedom of religion or belief, freedom of assembly or freedom of speech and extradite them.

In June 2012, after their extradition, the Committee found that Kazakhstan had violated the 29 men’s human rights, noting that they were detained as soon as they arrived back in Uzbekistan and that some at least had received prison terms of more than 10 years. It gave Kazakhstan 90 days to respond.⁹⁷ The November 2012 Kazakh government response – with information prepared by Kazakhstan’s General Prosecutor’s Office – claimed that in August 2012, Kazakh diplomats had interviewed 18 of those extradited back to Uzbekistan, all of them now in prison. ‘None of the visited convicts indicated that they had been subjected to torture, unlawful measures of physical and moral pressure or other unlawful methods of investigation,’ the UN summarised the Kazakh response as claiming.⁹⁸

Christine Laroque of ACAT called for a mission to be set up with “members of the [UN Committee Against Torture] or independent experts to visit the complainants still detained and who are alleged to have been tortured in Uzbek jails”. No such mission has taken place.⁹⁹

⁹⁷ For the UN Committee Against Torture decision (CAT/C/48/D/444/2010) see http://www2.ohchr.org/english/bodies/cat/docs/jurisprudence/CAT-C-48-D-444-2010_en.pdf

⁹⁸ Report of the UN Committee against Torture (A/68/44), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=27

⁹⁹ Kazakhstan: Why was Muslim prisoner of conscience extradited to Uzbekistan?, Forum 18, 8 May 2013, http://www.forum18.org/archive.php?article_id=1833

Future victim?

Russian human rights defenders and friends of Bobirjon Tukhtamurodov are concerned that as a Muslim who reads the work of the late Turkish theologian Said Nursi, he is likely to receive a long prison term if extradited to his native Uzbekistan. He was arrested in Novosibirsk in August 2010 after the Russian authorities received an extradition request from the Uzbek authorities. The General Prosecutor's Office in Moscow ruled in November 2010 that Tukhtamurodov should be extradited. Despite his request for refugee status in Russia, a court in Novosibirsk ordered his extradition. In March 2011, a regional court overturned the ruling, and Tukhtamurodov narrowly avoided summary deportation by FSB security service and Migration Service officials waiting outside the courtroom after the hearing. In May 2011, Russia's Supreme Court upheld the lower court's decision to cancel the extradition order.¹⁰⁰

However, in 2013 the Federal Migration Service refused to extend Tukhtamurodov's temporary refugee status, a decision he tried to challenge in court. In March 2014 a Moscow district court rejected his appeal. Tukhtamurodov immediately lodged a case to the European Court of Human Rights in Strasbourg, which asked the Russian authorities not to deport him while the case is being considered.¹⁰¹ However, his friends fear that he might still be forced back to Uzbekistan. In Russia itself, many translations of Nursi's works have controversially been banned and those who read them have faced criminal punishment on 'extremism' charges, potentially adding to Tukhtamurodov's difficulties in Russia.¹⁰²

The two who got away

In stark contrast to the cases of Tursunov and the 29 Muslims, Kazakhstan did not extradite Uzbek Protestant Pastor Makset Djabbarbergenov. Djabbarbergenov fled Uzbekistan after police raided his home in August 2007, claiming he was holding an 'illegal' religious meeting. They confiscated Christian literature, money and a computer. Uzbekistan then started a nationwide manhunt for him, and he crossed into Kazakhstan in September 2007.

In February 2008, the UNHCR's Almaty office recognised in writing Djabbarbergenov's and his family's status as refugees. They chose to remain in Kazakhstan, rejecting offers of asylum in the United States. However in 2011, after responsibility for granting refugee status was transferred from the UNHCR to the Kazakh authorities, the Kazakh authorities denied them refugee status, a finding they tried to challenge through the courts. Uzbekistan continued to hunt him. The Uzbek authorities' charge sheet said Djabbarbergenov was charged under Uzbek Criminal Code Article 229-2 and Article 244-2, Part 1. Article 229-2 bans 'teaching religious beliefs without specialised religious education and without permission from the central organ of a [registered] religious organisation, as well as teaching religious beliefs privately', and carries a maximum term of three years' imprisonment. Article 244-2, Part 1 bans 'creation, leadership or participation in religious extremist, separatist, fundamentalist or other banned organisations', which is punishable by five to 15 years' imprisonment. The Kazakh authorities detained Djabbarbergenov in September 2012 and sought to extradite him. After worldwide publicity about his case, the Kazakh authorities released him in December 2012 and, with UNHCR assistance, he and his family immediately flew from Kazakhstan to Europe, where they were given asylum.¹⁰³

¹⁰⁰ Russia: New sentences, raids, criminal cases, Forum 18, 14 October 2011, http://www.forum18.org/archive.php?article_id=1625

¹⁰¹ Russia: European Court request enough to protect Uzbek asylum seeker?, Forum 18, 15 April 2014, http://www.forum18.org/archive.php?article_id=1947

¹⁰² Russia: "Tired of the unjust treatment of the books, ourselves, and our loved ones", Forum 18, 10 April 2014, http://www.forum18.org/archive.php?article_id=1946

¹⁰³ Kazakhstan: Government "did the right thing" in allowing wanted Uzbek pastor to leave, Forum 18, 5 December 2012, http://www.forum18.org/archive.php?article_id=1777

Similarly, after widespread international coverage, the Kyrgyz authorities refrained from extraditing Uzbek former imam Khabibullo Sulaimanov, a UNHCR-recognised refugee, back to his homeland to face criminal trial. He is wanted there on criminal charges which his family and human rights defenders insist were brought to punish him for leading mosques in the 1990s, before he fled Uzbekistan. The Bishkek office of the UNHCR, which observed appeal hearings in his case, told Forum 18 it welcomed the overturning of the extradition decision. They and others feared that were Sulaimanov to undergo refoulement (return to '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') and that he would be at risk of torture. The UNHCR had previously pointed out that Sulaimanov 'is protected from refoulement in accordance with Article 33 of the 1951 Convention Relating to the Status of Refugees which the Kyrgyz Republic acceded to'.¹⁰⁴

Faint hope?

The cases of Tukhtamurodov in Russia, Djabbarbergenov in Kazakhstan and Sulaimanov in Kyrgyzstan show that with determination by the individuals and a strong support network of international organisations and human rights defenders both locally and internationally, strong legal support and high profile publicity on the cases, Uzbek extradition requests can be countered. However, Djabbarbergenov's case also shows that his escape from near-certain imprisonment back in his homeland came at the price of abandoning the new country he had come to regard as home, where he wished to continue living with wider family members, his religious community and his friends. Sulaimanov and Tukhtamurodov, on the other hand, remain at risk of kidnap by Uzbek security agents, who operate with relative impunity (or at least state acquiescence) in many former Soviet republics. Neither can regard their status in their new homes as secure.

¹⁰⁴ Kyrgyzstan: Extradition overturned, but new charges and transfer to prison close to Uzbekistan, Forum 18, 11 March 2013, http://www.forum18.org/archive.php?article_id=1812

Clawing back the dissident? Political abuse of INTERPOL Red Notices and Diffusions

Alex Tinsley

Introduction

The misuse of law enforcement powers to suppress political freedom is well documented. At the time of writing, Alexey Navalny, chief critic of Vladimir Putin, is on house arrest, prevented by court order from talking to the media and using the internet.¹⁰⁵ In Belarus, human rights defender Ales Bialatsky sits in jail, as does opposition politician Mikalai Statkevich.¹⁰⁶ The international community has only a limited set of responses, which may depend on political consensus: diplomatic pressure and rebukes; trade and individual sanctions; declaring violations of human rights. On a more consistent basis, international law offers 'shelter from the storm' to those escaping such persecution through political asylum and the refusal of extradition.

Advocates have, in recent years, documented how the practices of countries in the former Soviet Union including Central Asia undermine this protection, with particular concern over regional police and judicial cooperation arrangements resulting in extraditions and forcible returns to face torture¹⁰⁷ and extra-judicial harassment and intimidation of exiled dissidents.¹⁰⁸ This contribution explores the related issue of the use of the International Criminal Police Organisation – INTERPOL – to seek the arrest of such persons abroad on the basis of politically-motivated prosecutions. Even within a tightly-knit bloc such as the EU, this leaves exiles and refugees at risk of serial arrest and detention in different countries and facing restrictions upon their freedom of movement, family life and political activities.

Only recently have national and international actors begun to respond to this pressing issue. Cases such as those described in this essay have led to the beginnings of an international consensus that INTERPOL needs to change its ways to protect itself against such abuse. This contribution, which builds upon Fair Trials International's recent report *Strengthening respect for human rights, Strengthening INTERPOL*,¹⁰⁹ summarises the main issues presently undermining confidence in INTERPOL and discusses the key action needed in the coming year to ensure promising expressions of intent translate into concrete reforms.

INTERPOL, Red Notices and political abuse

Based in Lyon, France, INTERPOL links the national police forces of 190 member countries worldwide which each have a contact point called a National Central Bureau. INTERPOL's mandate, defined by Article 2 of its 1956 Constitution, is to facilitate police cooperation in fighting 'ordinary-law' crime. One of its key functions is to assist in the location and arrest of suspects abroad through the circulation of international 'wanted person' alerts including 'Red Notices' and 'Diffusions'.

These alerts, issued by the National Central Bureau and approved by INTERPOL, identify a specific person as being 'wanted' and request their arrest with a view to extradition. It is estimated that about 30% of INTERPOL's membership consider a Red Notice to be a valid request for provisional arrest.¹¹⁰ Others, such as the UK¹¹¹ and US¹¹² exercise some discretion at the point of arrest.

¹⁰⁵ 'Alexey Navalny placed under house arrest in Russia', The Guardian, 28 February 2014

<http://www.theguardian.com/world/2014/feb/28/alexei-navalny-russia-opposition-leader-house-arrest>.

¹⁰⁶ In respect of both cases, see Report of the United Nations Special Rapporteur on the situation of human rights in Belarus (A/HRC/25/32), 18 April 2013 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-52_en.pdf.

¹⁰⁷ Amnesty International, *Return to Torture: Extradition, forcible returns and removals to Central Asia*, 2013, <http://www.amnesty.org/en/library/asset/EUR04/001/2013/en/6c3910ea-30bb-4b67-a7f2-b2ffc5780a09/eur040012013en.pdf>. See also

Katalin Szarvas 'Sent Home to Torture: Extradition in Central Asia', Open Society Foundations Voices, March 2014,

<http://www.opensocietyfoundations.org/voices/sent-home-torture-extradition-central-asia>.

¹⁰⁸ See David Lewis, Open Society Foundation, *Extraterritorial Repression by Central Asian States*, to be published in 2014.

¹⁰⁹ <http://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf> (referred to hereafter as 'Strengthening INTERPOL').

¹¹⁰ US National Central Bureau of INTERPOL, Audit Report 09-35, 2009, <http://www.justice.gov/oig/reports/plus/a0935/final.pdf>, page 11.

Typically, arrests happen at border points or after hotels share guests' details with local police. Even where there is no arrest, Red Notices can lead to loss of employment, family life and reputation, and the risk of arrest inhibits freedom of movement.

INTERPOL's activities are regulated by its Constitution.¹¹³ Article 2 requires it to act 'within the spirit of the Universal Declaration of Human Rights' and Article 3 provides that 'it is strictly prohibited for the Organization to undertake any intervention or activities of a political, religious, racial or military character'. Together, these provisions set limits upon INTERPOL's work. If INTERPOL facilitates the arrest of those legitimately wanted for prosecution or punishment, its work poses no problem. If, however, it becomes involved in cases of politically-motivated prosecutions, it steps outside its remit. The cases show, however, that INTERPOL is being dragged onto the wrong side of the line.

Political abuse

To examine the issue of political abuse of INTERPOL, it is helpful to consider the case of Petr Silaev. A theology graduate and author from Moscow, he took part in a protest against a controversial motorway development through the protected Khimki forest, during which some damage was done to a government building. When police began arresting activists all over the city, Silaev fled and was recognised as a refugee in Finland on the basis of the 1951 Convention Relating to the Status of Refugees (the 'Convention'). Four months later, he was arrested in Spain: a Moscow investigator had issued an alert requesting his arrest on a charge of 'hooliganism'.¹¹⁴ Silaev was detained for eight days in Soto del Real prison, Madrid, and subsequently placed under strict bail conditions preventing him from leaving Spain for six months until a Spanish court firmly dismissed Russia's extradition request. The allegation, it noted, involved no suggestion Silaev had done anything wrong; it was plain that the request had in fact been made in order to prosecute Silaev on account of his political opinions.¹¹⁵ The case, in brief, sets out the chief concern about political abuse: two national authorities consider the person to be at risk of political persecution, but INTERPOL nevertheless considers itself able to facilitate his arrest. Fair Trials' research provides some elucidation as to why this is so.

INTERPOL's review and control of alerts

The system for the publication of Red Notices has, since 2009, operated on the basis that national authorities directly record information on INTERPOL's files, at which point it becomes visible to other police forces with the mention 'request being processed'. INTERPOL then reviews the information for compliance with its rules and validates it.¹¹⁶ The process is based upon faith in the good intentions of the requesting country, an assumption made in the interests of cooperation but difficult to reconcile with the fact of politicisation of justice and corruption worldwide.¹¹⁷ INTERPOL does check the information promptly, but there are question marks surrounding its review process.

First, it is unclear precisely what test INTERPOL applies. International law provides a simple rule – in essence, 'are there reasonable grounds to believe the prosecution is politically-motivated?'¹¹⁸ – but,

¹¹¹ See Chatham House, Meeting summary: 'Policing INTERPOL', <http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/051212summary.pdf>, page 4.

¹¹² See above note 6, page 11, footnote 42.

¹¹³ Interpol, The Constitution, June 1956, <http://www.interpol.int/About-INTERPOL/Legal-materials/The-Constitution>

¹¹⁴ Article 213(2) of the Russian Criminal Code; this provision was the legal basis for the convictions handed down against Nadezhda Tolokonnikova and Maria Alyokhina of the group Pussy Riot in the same year.

¹¹⁵ The judgment is publicly available on the Facebook page of Silaev's alter ego, 'DJ Stalingrad': https://www.facebook.com/DJStalingradEksodus/photos_stream.

¹¹⁶ The process is described in more detail in *Strengthening INTERPOL*, paragraphs 30-41.

¹¹⁷ In her 2011 and 2012 reports to the United Nations General Assembly, for instance, Margaret Sekeggya, the Special Rapporteur on Human Rights Defenders ('HRDs'), noted how HRDs', particularly those exercising rights to freedom of assembly and expression, were at risk of prosecution under the guise of anti-terrorism and security legislation. See documents A/68/262 and A/67/292, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>.

¹¹⁸ The test is simplified for the sake of fluency. For a fuller analysis, see *Strengthening INTERPOL*, paragraphs 97-110.

although INTERPOL informed Fair Trials that it considers the issue of political motivation, the test is absent from INTERPOL's rules or published materials. This is important because INTERPOL's approach appears not to correspond to that applied by national authorities (it clearly seems to have reached a different view of Silaev's case from the Finnish government and Spanish extradition court).

Secondly, the practicalities and evidential aspects of the review are uncertain. INTERPOL's General Secretariat may suspend information from its databases or ask for further information from the issuing country,¹¹⁹ but it did not do so initially in Silaev's case despite the alarming gaps in the allegation. The General Secretariat is able to take into account the 'general context of the case',¹²⁰ which it says includes background materials such as UN Special Rapporteurs' reports,¹²¹ but combined with the lack of a clear evidentiary threshold, it is difficult to pin down the precise approach.

Thirdly, there appear to be problems in the ongoing treatment given to cases already recorded in INTERPOL's files. Fair Trials' report documented the case of Dmitry Radkovich (a pseudonym), a Belarusian refugee who was arrested in Italy, where the court refused to entertain extradition proceedings because Lithuania, the country of asylum, confirmed that he had been granted protection as someone at risk of politically-motivated prosecution.¹²² INTERPOL was passed his refugee document and was in a position to know about this outcome, but seems not to have removed the alert, with the result that Radkovich was arrested again in Bulgaria six months later.

In this regard, INTERPOL's policy is again in need of review. The standard approach appears to be for INTERPOL to reflect the fact that someone has refugee status in an 'addendum' – additional information appended to the notice – without deleting the file itself.¹²³ This is unsatisfactory for the person concerned, who still faces a risk of arrest (if an addendum was used in Radkovich's case, it did not prevent his second arrest in Bulgaria). This, as a United Nations High Commissioner for Refugees consultant has said, is 'particularly worrying'.¹²⁴ Members of the European Parliament concerned about the plight of EU refugees have also expressed their concerns.¹²⁵

The justice gap

In some circumstances, INTERPOL's General Secretariat may not be aware of circumstances raising doubt as to the compatibility of the Red Notice with INTERPOL's rules. This leaves the individual with the task of seeking to bring to an end the restrictions upon their rights. Since courts generally will not hear complaints against INTERPOL,¹²⁶ the main avenue of recourse is to make an application to the Commission for the Control of INTERPOL's Files (CCF).

Recent years have seen courts develop doctrines according to which, when international organisations outside the jurisdiction of ordinary courts impact upon the human rights of individuals, they should provide effective alternative remedies,¹²⁷ with recent cases suggesting these should offer the ability to comment upon evidence on which a decision is founded and procedural

¹¹⁹ See Chatham House, above note 7, page 7.

¹²⁰ Article 34(3) of the Rules on the Processing of Data.

¹²¹ See *Strengthening INTERPOL*, paragraph 119.

¹²² See *Strengthening INTERPOL*, paragraph 164.

¹²³ See *Strengthening INTERPOL*, paragraphs 150 et seq.

¹²⁴ Sybille Kapferer, UNHCR, *The Interface between Extradition and Asylum*, November 2003, <http://www.refworld.org/pdfid/3fe846da4.pdf>, paragraph 311.

¹²⁵ Written question of Judith Sargentini and Barbara Lochbihler of 7 October 2013, 'INTERPOL Red Notices and diffusions concerning EU-recognised refugees', available via www.europarl.europa.eu.

¹²⁶ Rutsel Martha, 'Challenging Acts of INTERPOL in Domestic Courts', in *Challenging Acts of International Organizations Before National Courts*, Oxford University Press, 2010.

¹²⁷ See, inter alia, Bardo Fassbender, *Targeted Sanctions and Due Process*, Study commissioned by the United Nations Office of Legal Affairs, http://www.un.org/law/counsel/Fassbender_study.pdf.

guarantees amounting to judicial protection.¹²⁸ CCF procedures currently fall well short of these requirements.

Silaev, for instance, wrote a 28-page application to the CCF specifying why he considered his case to be politically-motivated. In response, the CCF initially disclosed a copy of the arrest warrant it had on file; the latter bore the same lack of precise allegations which had convinced the Spanish court political motivation was at play. The CCF asked the Russian authorities to clarify the allegations, and was apparently provided with additional material in response. Silaev was never shown this material, and was never able to comment upon it. The CCF eventually sent a letter containing no reasoning, leaving it wholly unclear how it had interpreted INTERPOL's rules or applied them to the facts.¹²⁹

The emerging consensus: reform is needed

It is increasingly recognised that INTERPOL needs to adjust its practices. The Organization for Security and Cooperation in Europe (OSCE), having originally called upon its Participating States not to abuse INTERPOL's systems,¹³⁰ has now shifted to demanding INTERPOL develop better safeguards against abuse.¹³¹ The European Union, in response to concerns raised by Members of the European Parliament regarding the plight of EU-recognised refugees subject to Red Notices, agreed in December 2013 to discuss with INTERPOL the possible need for reforms to combat political abuse.¹³²

For the time being, there appears to be growing doubt over the reliability of Red Notices. The United Nations High Commissioner for Refugees had already remarked in 2008 that information in a Red Notice should be given the same value as if it were received directly from the issuing country.¹³³ The Government of the Netherlands recently had to reassure the Chair of the elected Lower House that it applied a 'filter system', not reflecting all Red Notices in its national records, in order to minimise the risk of abuse.¹³⁴ Most recently, the Parliamentary Assembly of the Council of Europe (PACE), in a report of January 2014 noting concerns about political abuse of INTERPOL, suggested that Council of Europe states should exercise caution prior to arresting someone on a Red Notice in the manner of the UK.¹³⁵ The latter recommendation is particularly significant in that the Council of Europe, which includes Turkey and Russia and whose institutions follow the issue of political abuse of justice closely,¹³⁶ is particularly well placed to speak to the reality of the risks involved.

INTERPOL has responded moderately but encouragingly to these issues. Upon publication of Fair Trials' report, the CCF confirmed that it, too, would like the power to issue binding decisions to replace its current advisory powers,¹³⁷ which weaken its independence, real¹³⁸ or perceived.¹³⁹ This

¹²⁸ See, in this regard, the case-law reviewed in Erika De Wet 'From Kadi to Nada: Judicial Techniques Favoring Human Rights Over United Nations Security Council Sanctions', *Chinese Journal of International Law* (2013) 12, not yet published, available in draft at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2348010.

¹²⁹ The procedure followed in this case is described in full in *Strengthening INTERPOL*, paragraph 222.

¹³⁰ 2010 Oslo Declaration of the OSCE Parliamentary Assembly (<http://www.oscepa.org/meetings/annual-sessions/2010-oslo>), point 16; 2012 Monaco Declaration of the OSCE Parliamentary Assembly (<http://www.oscepa.org/meetings/annual-sessions/1374-monaco-dec-html>), point 93.

¹³¹ 2013 Istanbul Declaration of the OSCE Parliamentary Assembly (<http://www.oscepa.org/meetings/annual-sessions/2013-istanbul-annual-session>), points 146 and 147.

¹³² Answer of 17 December given by Ms Malmström on behalf of the Commission to the question of 17 December 2013, above note 20.

¹³³ Guidance Note on Extradition and International Refugee Protection, April 2008, page 28, footnote 100.

¹³⁴ Letter of 20 January 2014 of the Minister for Security and Justice responding to the question of the Member of the Dutch Parliament, Ms Gesthuizen, who had asked for the Dutch Government's response to *Strengthening INTERPOL*. Not publicly available.

¹³⁵ PACE, *Accountability of International Organizations for Human Rights Violations*, 17 December 2013, Doc. 13370, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20310&lang=en>, paragraph 57.

¹³⁶ See, for example, PACE, *Allegations of politically-motivated abuse of criminal justice*, 7 August 2009, Doc 11993, <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12276&Language=EN>.

¹³⁷ Fair Trials International report on INTERPOL – Comments of the Chairman of the CCF, Billy Hawkes, <http://www.interpol.int/en/Media/Files/News-Media-releases/2013/Fair-Trials-International-report-on-INTERPOL-%E2%80%93-Comments-of-the-Chairman-of-the-Commission-for-the-Control-of-INTERPOL%E2%80%93Files-CCF-,Billy-Hawkes>.

¹³⁸ Fair Trials takes the view that the possibility for the General Secretariat to object to a recommendation of the CCF means it may approach its task mindful of the possibility of conflict, with the use of addenda increasing the chances of a compromise solution being adopted: see *Strengthening INTERPOL*, paragraphs 226-228.

would be useful, but somewhat cosmetic in view of the procedural flaws in the CCF's operation. Recent reports that INTERPOL will establish a working group to review the CCF's work¹⁴⁰ are encouraging, but its work will do little to allay concerns if, like the CCF, it does not draw upon the right range of expertise, operates behind closed doors and does not publish its findings. It must, above all, produce concrete results.

The General Secretariat has also signalled its willingness to explore discussions relating to individual rights,¹⁴¹ though without any concrete outputs to date. In this regard, the issue of asylum seems particularly amenable to improvement. INTERPOL, in consultation with the UNHCR, should develop specific rules catering for those recognised as refugees under the Convention, and those protected from extradition on the basis of rules in extradition treaties closely related to the Convention. This would ensure that law enforcement authorities expend fewer resources needlessly arresting and processing people who cannot be extradited, and combat the unfortunate situation which sees refugees continuing to live in fear of persecution despite their escape.

INTERPOL and the broader context of 'exported repression'

Until such reforms are adopted, INTERPOL will be faced with the problem of being associated with the broader problem of exported repression. In this regard, it is helpful to consider the case of Nadejda Ataeva, President of the Association for Human Rights in Central Asia in Le Mans, France. Nadejda was recognised as a refugee after the French asylum court found that she was at risk of politically-motivated prosecution in Uzbekistan on account of her father being a politician who had become involved in a dispute with the authorities. Nadejda approached Fair Trials because she had been told upon applying for a visa that her name appeared in INTERPOL's databases. Nadejda is understandably hesitant to travel, and, pending clarification of the situation, does so in the face of uncertain risks – with a chilling effect on her activism.

Nadejda sees her case as part of a broader phenomenon. She told us that she was in touch with over 50 other Uzbeks living in Europe as refugees and exiles, many of whom keep their identities secret for fear of extraterritorial reprisals from Uzbekistan.¹⁴² Many also suspect they may be on INTERPOL's databases, it being assumed that these are open to political abuse. For the same reason, in January 2014, a delegation of 15 Turkish exiles from Germany, along with a staff member of Fair Trials, travelled to Strasbourg to meet with Barbara Lochbihler MEP, Chair of the European Parliament's Subcommittee on Human Rights, in order to expose their concerns about former political prisoners living under the threat of INTERPOL alerts.¹⁴³ INTERPOL is thus increasingly becoming seen as one of the tools employed to export repression of dissidents and threaten exile communities.

This is a problem for INTERPOL. There is great concern about cooperation between the authorities of Central Asian and other former Soviet Union countries, particularly within the framework of the Minsk Convention¹⁴⁴ and Shanghai Cooperation Organization,¹⁴⁵ resulting in unlawful restrictions of

¹³⁹ Bill Hawkes, the Chairman of the CCF, recognised that the CCF's lack of binding decisions contributed to 'negative perception' that it did not adopt a 'more challenging approach' in cases where political issues are involved: see Speech delivered by Mr Billy Hawkes to the General Assembly 2013, pages 3-4.

¹⁴⁰ This was reported in 'Interpol accused of undermining justice', Al Jazeera (English), 20 March 2014, <http://www.aljazeera.com/humanrights/2014/03/interpol-accused-undermining-justice-201432010467639126.html>.

¹⁴¹ 'Individual rights and police information sharing focus of INTERPOL and Fair Trials International meeting', INTERPOL Press Release, 20 September 2013, <http://www.interpol.int/News-and-media/News/2013/N20130920>.

¹⁴² See, in this connection, 'Prominent Uzbek Cleric in Critical Condition After Sweden Shooting', Radio Free Europe, 22 February 2012, http://www.rferl.org/content/exiled_uzbek_cleric_survives_attack/24493065.html, relating to the attempted assassination of Bidkhon Nazarov in Sweden, which has been linked to the Uzbek security services.

¹⁴³ See <http://www.demokrathaber.net/guncel/interpol-turkiye-ittifaki-magduriyet-yaratiyor-h27161.html>.

¹⁴⁴ Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 signed between certain members of the Commonwealth of Independent States.

access to asylum, summary extraditions and forcible returns of alleged separatists and extremists.¹⁴⁶ INTERPOL's firm commitment to the rule of law ensures international confidence that its systems are not employed for such practices. However, Kazakhstan's use of INTERPOL's networks to secure the expulsion from Italy of Alma Shalabayeva, the wife of a controversial opposition politician, in 2013¹⁴⁷ highlights the challenge of preserving that distinction. If it does not meet it, public confidence is liable to wane. In 2013, the U.S. House of Congress Appropriations Committee expressed concern about abuse of Red Notices on fabricated, politically-motivated charges against political dissidents¹⁴⁸ – a potentially serious issue for INTERPOL given that, by the US National Central Bureau's estimate, 20.8% of INTERPOL's funding will come from the US in 2014.¹⁴⁹ The pressure is on to tackle the issue of political abuse.

Conclusion

When representatives of East and West met in 1975 to sign the Helsinki Final Act,¹⁵⁰ which now forms the backbone of the work of the transatlantic OSCE, they managed, despite their radical political differences, to agree upon a common commitment to uphold 'respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief'.

Threats to freedom of thought, likewise, transcend borders. The practices, individual or associative, of governments of the countries of the former Soviet Union and Central Asia may provide specific challenges, but abuse of INTERPOL's systems is an international phenomenon which calls for a single, centralised solution in the form of indiscriminate rules applied without distinction to all requests to eliminate political abuse.

It is, accordingly, essential that INTERPOL draws upon the expertise of all regional associations, including the OSCE, PACE and the Organisation of American States as well as international bodies such as the UNHCR to establish such a working solution. When INTERPOL convenes in Monaco to celebrate its 100th birthday in November 2014,¹⁵¹ it must be in a position to answer the growing international consensus and adopt robust reforms to preserve confidence going forward.

¹⁴⁵ The Shanghai Cooperation Organisation includes China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan; within the framework of the organisation, the Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001 is particularly relevant.

¹⁴⁶ The U.N. Special Rapporteur on Torture, for instance, noted expressed concerns in this regard following a visit to Tajikistan in 2012: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12166&LangID=E>. See, more generally, Fédération internationale des droits de l'homme, *Shanghai Cooperation Organisation: A vehicle for human rights violations*, September 2012, http://www.fidh.org/IMG/pdf/sco_report.pdf.

¹⁴⁷ See Open Dialog, *Report on misuse of the INTERPOL system*, 2013, http://odfoundation.eu/files/pdf/Report_Interpol_fin_Eng.pdf, at page 17 (description of the case) and page 39 (extracts of communications through INTERPOL channels between Kazakh and Italian authorities in the organisation of Ms Shalabayeva's expulsion).

¹⁴⁸ Committee Reports, 113th Congress, House Report 113-171 on the Commerce, Justice, Science, And Related Agencies Appropriations Bill, 2014.

¹⁴⁹ United States National Central Bureau, Financial Year 2012 Performance Budget, <http://www.justice.gov/jmd/2012justification/pdf/fy12-usncb-justification.pdf>, page 5.

¹⁵⁰ Conference on Security and Cooperation in Europe Final Act, Helsinki 1975, <http://www.osce.org/mc/39501?download=true>.

¹⁵¹ The Annual General Assembly of INTERPOL will take place on 4 to 7 November in Monaco, which also hosted the initial congress in 1914 which eventually gave rise to International Criminal Police Commission, the precursor to the current organisation.

The Common European Asylum System

Kris Pollet and Claire Rimmer Quaid

Since 1999 the EU has been working to create a Common European Asylum System (CEAS) and improve its legislative framework in this regard. The final adoption of the asylum package¹⁵², a set of legislative instruments revising and completing the first generation European Union (EU) asylum legislation, by the EU institutions in June 2013 marks the beginning of a new important phase in the establishment of the Common European Asylum System (CEAS). As defined in the Stockholm Programme¹⁵³, the key objective of the CEAS is to establish high standards of protection and ensure that similar cases are treated alike and result in the same outcome, regardless of the member state in which the asylum application is lodged. However, the CEAS as defined in the Stockholm Programme remains a theoretical concept, in particular for the men, women and children seeking international protection in the EU.

An ECRE report published in September 2013, 'Not There Yet, An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System'¹⁵⁴, shows that there is still a long way to go in the establishment of a fair and efficient Common European Asylum System despite more than 12 years harmonising national asylum policies and the adoption of the 'asylum package' in 2013. The report looks at asylum systems in 14 EU member states¹⁵⁵ and illustrates huge differences in procedural rules and safeguards for asylum seekers, their access to shelter and employment, and the use of detention.

Persons seeking to exercise the right to asylum laid down in Article 18 of the EU Charter of Fundamental Rights today are confronted with a number of challenges throughout the various stages of the process. Reaching the EU has become increasingly difficult due to a number of administrative and external border control measures that EU governments have put in place to prevent asylum seekers from entering the territory. Restrictive visa policies, carrier sanctions and the lack of legal channels to come to the EU for protection reasons force migrants and refugees alike to make use of smugglers, often at risk of being subjected to serious human rights violations and at times putting their lives in grave danger.

Those asylum seekers who manage to enter the territory of one of the member states face additional obstacles to having their asylum claim fully examined. Access to a fair and efficient asylum procedure may be hampered by the operation of the Dublin Regulation. This system allocates responsibility for examining asylum applications among EU member states and four Schengen Associated States¹⁵⁶ on the basis of a hierarchy of objective criteria. However, as it is based on the flawed assumption that protection standards are equal or equivalent in the states applying the Dublin Regulation, it continues to cause hardship for asylum seekers and breaches their fundamental rights. Depending on the member state responsible for examining their asylum application, asylum seekers may face difficulties in having their claim registered and accessing free legal assistance, in particular where it is most needed, such as in accelerated or border procedures. They may be

¹⁵² The recast Asylum Procedures and Reception directives, and the Dublin and Eurodac Regulations, as well as the [recast Qualification Directive](#) already adopted in 2011, that are explained below. See also ECRE, EU adopts asylum package: all eyes turned on implementation, June 2013, <http://ecre.org/component/content/article/70-weekly-bulletin-articles/381-eu-adopts-asylum-package-all-eyes-turned-on-implementation.html>

¹⁵³ The EU's 2010-14 priorities in the area of justice, freedom and security, see

http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/jl0034_en.htm

¹⁵⁴ ECRE, Not There Yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System, AIDA Annual Report, ECRE 2013, September 2013, http://www.asylumineurope.org/files/shadow-reports/not_there_yet_02102013.pdf

¹⁵⁵ AUS, BE, BG, FR, DE, EL, HU, IE, IT, MT, NL, PL, SE, UK.

¹⁵⁶ Iceland, Liechtenstein, Norway, and Switzerland.

detained in unacceptable conditions during the examination of their application or faced with lack of reception capacity while access to the labour market remains restricted.¹⁵⁷

The EU asylum legislation: a bird's eye view of core instruments

Before discussing the treatment of asylum applications in EU member states from persons fleeing countries of the former Soviet Union, it is useful to briefly discuss the main EU legal instruments on asylum. While member states remain responsible for processing individual asylum applications, they have to do so in compliance with standards set in EU directives and regulations dealing with procedural guarantees, reception conditions, eligibility criteria and a system for allocating responsibility among EU member states and Schengen Associated States (Iceland, Norway, Switzerland and Liechtenstein). They also need to act in accordance with the EU Charter of Fundamental Rights and comply with their international obligations.

The recast Asylum Procedures Directive¹⁵⁸ sets out common procedures on the process of seeking international protection including how to apply, how the application will be examined, what help the asylum seeker can expect, how to appeal and how states can deal with asylum seekers who submit repeat applications. The recast Asylum Procedures Directive does not include, however, an obligation for member states to provide free legal assistance and representation at the first instance of the asylum procedure. At the appeal stage this can be made conditional on the appeal having a tangible prospect of success. Furthermore, the directive includes provisions on the application of the concepts of safe country of origin¹⁵⁹, safe third country¹⁶⁰, first country of asylum¹⁶¹ and European safe third country.¹⁶² Basic guarantees include the right to a personal interview, access to interpretation and legal assistance, although the latter is only guaranteed under the directive free of charge at the appeal stage. The Directive now guarantees access to an effective remedy with suspensive effect¹⁶³, although member states may opt for a system whereby suspensive effect must be requested by the applicant by way of an interim measure in a considerable number of cases. The recast of the directive is applicable to all the EU member states, except for Denmark, Ireland and the UK.¹⁶⁴

The recast Reception Conditions Directive looks at access to reception conditions for those seeking international protection while they await the examination of their claim including their entitlement to housing, health care, employment, medical and psychological care. It also includes common rules on the detention of asylum seekers including a list of very broadly defined detention grounds, which risks encouraging systematic detention of asylum seekers in EU member states. Under the previous Directive, asylum seekers were not provided with an adequate standard of living in many countries,

¹⁵⁷ ECRE, Not There Yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System, AIDA Annual Report, ECRE 2013, September 2013, http://www.asylumineurope.org/files/shadow-reports/not_there_yet_02102013.pdf

¹⁵⁸ EU, Directive 2013/32/EU of the European Parliament and of the Council, June 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>

¹⁵⁹ See Article 36 for when a country can be considered a safe country of origin, Article 37 for rules on Member States designating a country as a safe country of origin.

¹⁶⁰ Article 38 looks at the concept of a safe third country (a country that it is not your country of origin that may have been able to provide you with protection), and the safeguards regulations concerning this concept.

¹⁶¹ Article 35: A country can be considered to be a first country of asylum for a particular applicant if: a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or (b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement, provided that he or she will be readmitted to that country.

¹⁶² Article 39 looks at European safe third countries. Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant in his or her particular circumstances shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant is seeking to enter or has entered illegally into its territory from a safe third country that has ratified the Geneva Convention, has an asylum system in place and is party to the European Convention on Human Rights and Fundamental Freedoms.

¹⁶³ The right to remain on the territory of the member state pending the outcome of the appeals procedure. This is regulated by Article 46.

¹⁶⁴ The UK and Ireland remain bound by the first-phase APD (2005/85/EC). The UK has a complex history of involvement in EU justice and home affairs. The British Institute of Comparative and International law has an interesting working paper and article on the effects of the UK's 'pick and choose' policy towards the CEAS. http://www.biicl.org/binghamcentre/eu_asylum/

in terms of acceptable housing or funds to cover their basic needs. They also faced significant legal and practical obstacles to access employment, education and health care. The recast Directive now obliges member states to ensure access to the labour market for asylum seekers no later than 9 months (instead of 1 year under the 2003 Reception Conditions Directive) after the asylum application was lodged and no decision on their application was taken at first instance before that time. However, member states may still impose conditions for accessing the labour market in their national legislation at their discretion as long as they ensure effective access to the labour market. Finally, the Directive still allows member states to withdraw or reduce reception conditions, including in the case of a subsequent application, which is worrying in view of the considerable number of subsequent asylum applications in many EU member states. The recast Reception Conditions Directive will be applicable in all EU member states, except the United Kingdom, Ireland and Denmark.¹⁶⁵

The Qualification Directive looks at the grounds for granting international protection and a series of rights attached to that, including protection from non-refoulement, travel documents, residence permits, etc. The recast Directive constitutes an important step forward in harmonising eligibility criteria and the content of protection at EU level, however, it may still allow for protection gaps¹⁶⁶. The recast Qualification Directive will apply to all EU member states except the UK, Ireland and Denmark.¹⁶⁷

The aim of the Dublin Regulation¹⁶⁸ is to ensure that one member state is responsible for the examination of an asylum application, to deter multiple asylum claims and to determine the responsible member state as quickly as possible to ensure effective access to an asylum procedure. EURODAC¹⁶⁹ establishes the comparison of fingerprints for the effective application of the Dublin Regulation. The agreement to provide police and other law enforcement agencies access to EURODAC raises important questions relating to the possible stigmatisation of an already vulnerable group. Both regulations apply to all EU member states and the four Schengen Associated States.

The recast Dublin Regulation entered into force in July 2013 and is aimed at increasing the system's efficiency and ensuring higher standards of protection for asylum seekers falling under the Dublin procedure. It contains improved procedural safeguards such as the right to information, personal interview and access to remedies. It applies to applications for international protection lodged from 1st January 2014. It remains to be seen how the recast Dublin Regulation will be applied in practice, however recent publications¹⁷⁰ show that the operation of the Dublin Regulation often acts to the detriment of refugees. It can cause serious delays in the examination of asylum claims, can mean the excessive use of detention, the separation of families and can also impede the integration of refugees by forcing them to have their claims determined in member states where they have no particular connection.

Moreover, it remains based on the flawed presumption that all EU member states provide the same high level of protection as required under EU law, which is not the case in practice. In a landmark judgement of the European Court of Human Rights in 2011, the Court found that the transfer of an Afghan asylum seeker to Greece amounted to inhuman and degrading treatment because of the lack

¹⁶⁵ The UK remains bound by the first-phase RCD (2003/9/EC).

¹⁶⁶ For more information, see ECRE Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 <http://www.ecre.org/topics/areas-of-work/protection-in-europe/92-qualification-directive.html>

¹⁶⁷ The UK and Ireland will continue to be bound by Directive 2004/83/EC.

¹⁶⁸ EU, Regulation (EU) No 604/2013 of the European Parliament and of the Council, June 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

¹⁶⁹ EU, Regulation (EU) No 603/2013 of the European Parliament and of the Council, June 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>

¹⁷⁰ ECRE, Dublin II Regulation: Lives on Hold, February 2013, <http://www.ecre.org/component/content/article/56-ecre-actions/317-dublin-ii-regulation-lives-on-hold.html>

of access to a fair and effective asylum procedure and adequate reception conditions in Greece.¹⁷¹ This was confirmed in a judgement of the Court of Justice of the European Union (CJEU) in December of the same year. The asylum crisis in Bulgaria provoked a call by the UNHCR for suspension of all Dublin transfers at the beginning of 2014, which was fully supported by NGOs including ECRE and Amnesty International.

Opt-ins and outs

Both the United Kingdom and Ireland have made selective use of their possibility to opt out of the adoption of new EU legislation in the area of freedom, security and justice as laid down in Protocol No 21 on the position of the United Kingdom and Ireland annexed to the Treaty of European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Both countries are not bound by the new recast Reception Conditions Directive, the recast Asylum Procedures Directive and the recast Qualification Directive. Although the recast legislation repeals the first generation asylum Directives and Regulations, both member states remain bound by those instruments. However, Ireland already opted out from the 2003 Reception Conditions Directive as well. They have, however, opted in to the recast Dublin and EURODAC Regulations, which also apply to the Schengen Associated States (Norway, Iceland, Lichtenstein and Switzerland). In accordance with Protocol No. 22 on the position of Denmark, annexed to the TEU and TFEU, the recast legislation will not apply to Denmark, except the recast Dublin and EURODAC Regulation. This further adds to the complexity of the legal framework underpinning the CEAS and in particular the operation of the Dublin Regulation as lower standards may apply in the countries opting out which will have to be taken into account when effecting Dublin transfers. It also raises a range of legal questions as to the potential impact of CJEU judgments interpreting the recast asylum legislation on the countries opting out of such legislation. Although as a general rule, such jurisprudence would not be binding on those member states¹⁷², it is less clear where a provision of the recast legislation is merely giving effect to pre-existing general principles of Union law.

Implementation and transposition

Overall, NGO assessment of the asylum package is mixed. While some measures within the instruments outlined above are clearly aimed at improving standards, many others unfortunately allow the lowest possible standards to prevail. States must now transpose the recast Asylum Procedures Directive and the recast Reception Conditions Directive into national legislation before 20 July 2015 with some exceptions for certain provisions where they have more time to do so, while the recast Qualification Directive had to be transposed by 21 December 2013. The enormous complexity of the legislation and the lack of clarity of certain provisions will no doubt further complicate transposition into national legislation, while the considerable margin for manoeuvre that is still left to member states on certain aspects limits the level of harmonisation that can be achieved. Effective monitoring by the Commission and other stakeholders of the impact of the new legislation on the fundamental rights of asylum seekers and the role of the Courts will be key in the coming years.

The role of EASO

In addition to the adoption of substantive asylum legislation, an EU Agency with a specific mandate on asylum was established in May 2010.¹⁷³ The European Asylum Support Office (EASO), located in Malta, has three core tasks: assist to improve the implementation of the CEAS, strengthen practical cooperation among member states on asylum and provide and coordinate the provision of

¹⁷¹ EctHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011 and CJEU, *Joined Cases C-411/10 and C-493/10, N.S. v. Secretary of State for the Home Department and M.E. and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, Judgment of 21 December 2011.

¹⁷² Article 2 Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

¹⁷³ Regulation(EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ 2010 L 132/11.

operational support to member states coping with particular pressure on their asylum and reception systems. Operational support is provided inter alia through the deployment of Asylum Support Teams, consisting of national experts of member states. These may be Country of Origin Information (COI) experts, trainers, interpreters, etc. Asylum support teams have been deployed in Greece, Bulgaria and Italy recently.

EASO's management structure consists of a management board, composed of representatives of each EU member state, two representatives of the European Commission and UNHCR as a non-voting member and an Executive Director, responsible for the daily management of the agency. EASO's budget for 2014 is about €14 million and it currently has around 80 staff members. Its founding Regulation explicitly states that EASO should have no direct or indirect powers in relation to the taking of individual applications for international protection, which remains the exclusive competence of member states. Nevertheless, it is entrusted with important tasks in areas that are directly relevant to individual decision-making, such as country of origin information and the training of asylum administrations, courts and tribunals in the member states. Moreover, EASO is expected to develop a pilot project on so-called supported processing of individual asylum applications, most likely in one of the Southern EU member states, which would include the use of national experts from other member states in the assessment of asylum applications lodged in one of the countries concerned.

It is generally accepted that Country of Origin Information (COI) is central to the assessment of international protection needs in order to give decision makers the information they need on conditions in the countries of origin of asylum seekers and help them to decide if a claim is well-founded. In the EU, although there is a Common European Asylum System, applications for asylum are still processed at national level by decision makers in member states. COI has to rely on a wide variety of different types of sources, bearing in mind the political and ideological context in which each source operates, as well as its mandate, reporting methodology and the intention behind its publication. There are guidelines on standards and methodology for using COI, including by UNHCR and EASO.¹⁷⁴

Access and approaches to COI can vary across member states, as can levels of support to those who need to use it, such as decision makers. At national level, different EU member states can issue their own operational guidance notes on a particular country, COI reports and even undertake fact-finding missions to assess the situation when there is a particularly high number of applications from certain countries. COI is widely considered as determinant evidence in most asylum cases, but national courts' practices relating to access to COI and its judicial interpretation are also divergent. A 2011 report by the Hungarian Helsinki Committee¹⁷⁵ highlighted a lack of practical cooperation and dialogue about existing judicial criteria and common qualitative standards.¹⁷⁶

EASO's competences in the field of COI include the organisation and coordination of gathering of information, the drafting of reports on countries of origin, the management of a common portal on COI and the development of a common methodology for presenting, verifying and using COI.

¹⁷⁴ EASO, Country of Origin Information, <http://easo.europa.eu/about-us/tasks-of-easo/country-of-origin/>; UN High Commissioner for Refugees (UNHCR), Country of Origin Information: Towards Enhanced International Cooperation, February 2004, <http://www.refworld.org/docid/403b2522a.html>; European Union, *Common EU Guidelines for Processing Country of Origin Information (COI)*, April 2008, <http://www.refworld.org/docid/48493f72.html>; ACCORD, *Researching Country of Origin Information*, July 2013, <http://www.coi-training.net/handbook/Researching-Country-of-Origin-Information-2013-edition-ACCORD-COI-Training-manual.pdf>; Hungarian Helsinki Commission, *Country Information in Asylum Procedures – Quality as a legal requirement in the EU*, August 2011, <http://helsinki.hu/en/coi-in-judicial-practice>

¹⁷⁵ Hungarian Helsinki Commission, *Country Information in Asylum Procedures – Quality as a legal requirement in the EU*, August 2011, <http://helsinki.hu/en/coi-in-judicial-practice>

¹⁷⁶ Hungarian Helsinki Commission, *Country Information in Asylum Procedures – Quality as a legal requirement in the EU*, August 2011, <http://helsinki.hu/en/coi-in-judicial-practice>

Whereas EASO can engage in the analysis of COI, Article 4(e) of the EASO Regulation explicitly states that EASO's analysis 'shall not purport to give instructions to member states about the granting or refusal of applications for international protection'. As a result, whereas EASO's mandate provides it with far-reaching powers in the field of COI, it cannot issue binding instructions on how COI should be interpreted and used on specific caseloads. However, it is clear that the promotion of a common approach between EU member states in this area and the fostering of a common understanding of COI, including through the establishment of COI networks and the organisation of specific workshops on relevant specific countries of origin is a key priority for the Agency and may eventually increasingly influence the outcome of individual asylum applications across the EU.

Detention

A growing number of refugees and asylum seekers who enter Europe without travel documents are being detained across Europe as governments try to show that they are tough on irregular immigration. Over the course of the period that the CEAS has been developed there has been a significant increase in the use of detention at every stage of the asylum procedure. There is limited evidence on the actual number of asylum seekers currently detained in Europe but it is thought to be considerable. Some reports such as the JRS DEVAS report 'Becoming Vulnerable in Detention' indicates that asylum seekers are detained on average 1 month longer than irregular migrants and of those detained for 5-6 months, 78% are asylum seekers. The detention of asylum seekers is inherently undesirable and concerns the deprivation of individuals who have committed no crime. Seeking asylum is not an unlawful act, and in line with Article 31 of the 1951 Refugee Convention, asylum seekers should not be penalised for irregular entry in seeking protection.¹⁷⁷

Some member states automatically detain all asylum seekers, while often failing to grant the right to a dignified standard of living during the reception phase for people in detention. Detention is used too often in attempts to enforce returns or transfers. The maximum period for which people can be detained prior to removal has now been set at 18 months. The detention of vulnerable groups such as children and victims of torture is as a cause of particular concern. The practice of detaining asylum seekers significantly impedes their access to the full range of rights during the asylum procedure. ECRE promotes the use of alternative non-custodial measures such as supervision systems and reporting arrangements, and the promotion of voluntary return through counselling work for all asylum seekers whose applications have been rejected.

Returns

Return is usually the process of being sent back to a country of origin or habitual residence. The EU Returns Directive¹⁷⁸ entered into force at the end of 2010. It provides common rules for the return and removal, use of coercive measures, detention and re-entry of irregular migrants, including those whose application for asylum has been rejected. ECRE does not dispute the fact that governments have the right to return those who sought protection but whose applications were correctly rejected. However, people should only be returned after a fair and efficient examination of their claims for international protection. Where return is not possible because it would be inhumane or for technical or other reasons, people should be granted legal status to remain in the country of residence.¹⁷⁹ Priority should always be given to voluntary return and returns should be carried out in a safe, dignified and sustainable manner. It is often also unknown if a person returned to a country has arrived safely or been able to successfully reintegrate back into the community.

¹⁷⁷ See European Database of Asylum Law, Detention in the EU, can the Charter of Fundamental Rights of the EU provide additional safeguards?, January 2014, <http://www.asylumlawdatabase.eu/en/journal/detention-eu-can-charter-fundamental-rights-eu-provide-additional-safeguards>

¹⁷⁸ European Council, Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-Country nationals, June 2008, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010737%202008%20INIT>

¹⁷⁹ A recent report, www.pointofnoreturn.eu, highlights 39 stories of unreturnable migrants who have experienced detention in Belgium, France, Hungary and the United Kingdom. <http://www.epim.info/flemish-refugee-action-vluchtelingenwerk-vlaanderen/>

The Common European Asylum System and citizens from countries of the former Soviet Union

Case study: the Russian Federation

Claire Rimmer Quaid and Kris Pollet

According to the UN High Commissioner for Refugees (UNHCR), in 2013, the Russian Federation¹⁸⁰ was the second highest source country for asylum seekers in the 44 industrialised countries¹⁸¹ and the EU¹⁸². 39,800 new asylum applications were registered, 76 per cent more than in 2012 and the highest number since 2003. Germany and Poland were the main destinations, accounting for two thirds of all asylum requests from the Russian Federation. Russia was the top country of origin of asylum seekers that year in Germany, Austria and Poland. France received the third largest number of applications from asylum seekers from the Russian Federation, with 4,600 applications (down on 2012). Other important countries of destination were Sweden and Denmark. Overall, asylum claims from the Russian Federation accounted for 7 per cent of all applications recorded among the 44 industrialised countries and 9.5 per cent of applications in the EU.¹⁸³

This case study looks in more detail at the situation for those Russians seeking protection in the EU, however it is also worth briefly noting some of the other major source countries from the former Soviet Union. Georgia was placed 13th out of the top 40 countries of origin in the EU in 2013. The main countries of asylum for Georgians in 2013 were France (2,456), Germany (2,336) and Poland (1,057) with over 500 applications also received in Sweden, Switzerland and Greece.¹⁸⁴ In 2009 there was a large influx of Georgians seeking protection in Poland and research concluded that many were Yezidi-Kurds who had applied for asylum due to discrimination in Georgia and rumours that Poland was 'open' to Georgians, especially Yezidi-Kurds.¹⁸⁵ A report from a visit to Georgia in September 2012 by the French Office for Refugees and Stateless Persons (OFPRA) stated that the majority of problems faced by Georgian citizens seeking protection emanated from ethnic tensions particularly for ethnic Yezidi-Kurds, Armenians, Ossetians and Abkhazians. However, there were also a certain number of people seeking protection due to the conflict in South Ossetia in 2008, political events and being part of the opposition.¹⁸⁶ In late 2013 however, OFPRA included Georgia in a list of countries it considered 'safe',¹⁸⁷ the only country in the EU to do so. Out of 6,280 decisions taken on Georgian cases in the EU in 2013, 265 received a positive decision at first instance.¹⁸⁸

In 2013 Armenia was 25th out of 40 source countries of those seeking protection in the EU with a drop of 1 per cent (4,520 in 2012 down to 4,492 in 2013) and Azerbaijan was 33rd/40 with an increase of 16 per cent, from 2,030 in 2012 to 2,360 in 2013.¹⁸⁹ Although not high in numbers, in 2013 asylum seekers from Ukraine were in the top ten applicants by country of origin in the Czech Republic (68) and Poland (32), as well as a small number (between 1 and 4 applications) received in Lithuania. The Czech Republic hosted asylum seekers from Armenia, Kazakhstan and Belarus; Poland received applications for asylum from nationals of Kazakhstan and Kyrgyzstan; and Lithuania

¹⁸⁰ This refers to citizens of the Russian Federation only and not those who came via the Russian Federation from other countries.

¹⁸¹ For UNHCR purposes for the annual report: the 28 member states of the EU, plus Albania, Bosnia and Herzegovina, Iceland, Lichtenstein, Montenegro, Norway, Serbia (and Kosovo), Switzerland, FYR Macedonia, Turkey, Australia, Canada, Japan, New Zealand, Republic of Korea and the USA. See *UNHCR Asylum Trends 2013*, page 5 <http://www.unhcr.org/5329b15a9.html>

¹⁸² *UNHCR Asylum Trends 2013*

¹⁸³ *UNHCR Asylum Trends 2013*, Pages 18, 27, 39 and 40.

¹⁸⁴ *UNHCR Asylum Trends 2013*

¹⁸⁵ The Recent Flow of Asylum-Seekers from Georgia to Poland, Jenny Thomsen, *ECMI Issue Brief* #22. December 2009.

<http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=110955>

¹⁸⁶ French Office for Refugees and Stateless Persons, Report of the Mission to Georgia, September 2012,

http://www.ofpra.gouv.fr/documents/Rapport_de_mission_Georgie_modif_2013_web.pdf

¹⁸⁷ Forum Refugees, List of safe countries of origin: a suitable tool,, December 2013,

<http://www.forumrefugies.org/fr/Presse/communiqués/liste-des-pays-d-origine-surs-un-outil-inadapte>

¹⁸⁸ Asylum applicants and first instance decisions on asylum applications 2013, *Eurostat Data in Focus* 3/2014, Page 13,

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF

¹⁸⁹ *UNHCR Asylum Trends 2013*

received applications from Belarus, Armenia and Azerbaijan. Turkey had the highest listed number of applications for asylum from Uzbekistan at 181.¹⁹⁰

Case study: Fleeing persecution and the impact of the CEAS – the Russian example

As previously stated, there was a large rise in asylum applications from citizens of the Russian Federation in 2013, meaning that asylum seekers from Russia were the second highest group seeking protection in the EU in 2013. This was a dramatic rise compared to 2012 and the highest number of people seeking asylum from Russia since 2006.

Who is seeking asylum from Russia?

Asylum statistics generally do not distinguish between ethnic groups within populations in different countries. However, in its Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers and Refugees in Europe from 2011,¹⁹¹ the European Council on Refugees and Exiles (ECRE) was able to conclude that the majority of asylum seekers from the Russian Federation were still from the Chechen Republic. The European Asylum Support Office (EASO) stated recently in its third quarterly report from 2013 that information provided by member states showed that most new Russian applications were from the North Caucasus region¹⁹² and a workshop by EASO in 2013 attended by fourteen member states confirmed that the recent influx of Russian asylum seekers was primarily Chechen families.¹⁹³ Svetlana Gannushkina from Memorial Human Rights Centre Migrants Rights Network in a recent article on TVRain¹⁹⁴ has said that she had information that thousands of people from the Chechen Republic had applied for asylum in Germany up to November 2013. She explained the rise in applications to Germany was due to a rumour that had spread in Chechnya that Germany welcomed Chechens, but also that people were still fleeing because 'you can compare the situation in Chechnya today with the situation in the Soviet Union in 1937. In Chechnya fear reigns, Federal Law is completely absent, there is only one law there – "Ramzan's command".'

There has also been news of high profile cases of human rights defenders and others leaving the Russian Federation after the Bolotnaya Square protests and the introduction of several laws restricting protest, the work of NGOs and the promotion of homosexuality.¹⁹⁵ Aleksei Kiselyov, a Russian gay rights activist, was granted asylum in Spain in early 2013.¹⁹⁶ He is believed to be the first person to be granted asylum in connection with the Bolotnaya Square protests in May 2012 against President Putin's re-election.

Russian human rights activists, however, have expressed concerns that at first not all EU states understood the danger of returning those who took part in the May 2012 protests. A petition to the UN High Commissioner for Refugees, António Guterres, signed by nine prominent human rights defenders from Russia¹⁹⁷ last year, asked him to draw the attention of UNHCR representatives and

¹⁹⁰ UNHCR Asylum Trends 2013

¹⁹¹ ECRE, Guidelines on the treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers, and Refugees in Europe, March 2011, (Pages 13 – 14), <http://www.ecre.org/topics/areas-of-work/returns/174.html>

¹⁹² EASO Quarterly Report – Q3 2013, Page 7.

¹⁹³ EASO, Newsletter July/August 2013, July 2013, <http://easo.europa.eu/wp-content/uploads/EASO-Newsletter-July-August-2013.pdf>

¹⁹⁴ Article from TVRain republished on "Civic Assistance" website (in Russian)

http://refugee.ru/publ/rossija_na_vtorom_meste_po_chislu_bezhencev_iz_za_zhitelej_chechni/8-1-0-77 Original interview on TV Rain (in Russian and by subscription only)

http://m.tvrain.ru/articles/svetlana_gannushkina_rossija_na_vtorom_meste_po_chislu_bezhencev_iz_za_zhitelej_chechni-365

¹⁹⁵ See Human Rights Watch for a list of recent articles on human rights in Russia http://www.hrw.org/search/apachesolr_search/Russia and their report from 2013, "Laws of Attrition, Crackdown on Russia's Civil Society after Putin's Return to the Presidency".

<http://www.hrw.org/node/115059>

¹⁹⁶ RFE/RL, Report: Russian Gay-Rights Activist Granted Spanish Asylum, April 2013, <http://www.rferl.org/content/russia-gay-rights-asylum-spain/24969164.html>

¹⁹⁷ Human Rights Council of Russia including Ludmila Alekseeva (Moscow Helsinki Group), Sergei Kovalev (Sakharov Centre), Oleg Orlov (Memorial Human Rights Centre), Svetlana Gannushkina (Civic Assistance), Lev Ponamarev (the Movement 'For Human Rights'), Aleksei Simonov (Foundation for the Defence of Openness), Yurii Vdovin (Civic Control), Valerii Borshchev ('Social Partnership' Foundation), Liliya Shibanova (the 'Golos' Association).

migration officials in state signatories to the 1951 Geneva Convention to those who had participated in the May 6th protests and the fact that they were at risk of long prison sentences upon return. They argued that those fleeing the 'Bolotnoe case' and other victims of political oppression in Russia qualify as refugees under the 1951 Geneva Convention and that the UNHCR should pay careful attention to the case of anyone seeking asylum linked to accusations of taking part in 'mass disorder' that day.¹⁹⁸

In part in response to this rise in applications, EASO ran a Practical Cooperation Workshop on the Russian Federation in 2013.¹⁹⁹ There were breakouts during the workshop for member states to discuss specific challenges relating to country of origin information and refugee status determination (RSD) for the Russian caseload, such as the availability of protection, internal protection alternatives, origin verification and the availability of reliable sources of information. During the workshop participants from 14 member states, the European Commission, Frontex and the UNHCR analysed pull and push factors to clarify this recent trend. They thought that the sudden surge in numbers was the result of specific pull factors in member states rather than of changes in the situation in the country of origin, citing information on the financial benefits of asylum procedures in their report, but also the existence of a large diaspora, geographical proximity and access to the EU. The participants concluded that although the security and human rights situation in the Northern Caucasus has not deteriorated to such an extent that it can explain a mass exodus, and the majority of applicants seem to have left in search of a better future, some human rights concerns continue to exist, as demonstrated by the 22 per cent acceptance rate of claims for asylum by Russian citizens overall in 2012.

Access to the EU and the Dublin Regulation

For Chechens, the easiest route for the majority of people to enter the EU is via Belarus into Poland. This explains the high number of applications in Poland from Russian asylum seekers. Many Chechen asylum seekers do not wish to stay in Poland. When ECRE studied this question in detail in 2011, reasons included the lack of long term solutions and integration possibilities in Poland but also security concerns within the Chechen community itself. However, because Poland is their first country of arrival into the EU, many are forced to stay there. If they move on, they risk being transferred back under the Dublin Regulation as although the criteria are broader, the majority of people sent back to another country under Dublin are returned to the first state of irregular entry into the EU.

It is difficult to show a direct correlation between the number of asylum applications in one member state and requests for Dublin transfers from that member state to another, as the increase in Dublin transfers can apply to many different nationalities, routes and applications and transfer data can refer to different years. However, it would seem to be more than coincidental that in the year asylum applications from Russian nationals in Germany rose so steeply, take back requests based on

¹⁹⁸ Julia Bashinova, Draw attention to the situation of UNHCR defendants' case Swamp, Change.org, May 2012, <https://www.change.org/ru/%D0%BF%D0%B5%D1%82%D0%B8%D1%86%D0%B8%D0%B8/%D0%B2%D0%B5%D1%80%D1%85%D0%BE%D0%B2%D0%BD%D0%BE%D0%BC%D1%83-%D0%BA%D0%BE%D0%BC%D0%B8%D1%81%D1%81%D0%B0%D1%80%D1%83-%D0%BE%D0%BE%D0%BD-%D0%BF%D0%BE-%D0%B4%D0%B5%D0%BB%D0%B0%D0%BC-%D0%B1%D0%B5%D0%B6%D0%B5%D0%BD%D1%86%D0%B5%D0%B2-%D0%B3%D0%BE%D1%81%D0%BF%D0%BE%D0%B4%D0%B8%D0%BD%D1%83-%D0%B0%D0%BD%D1%82%D0%BE%D0%BD%D0%B8%D1%83-%D0%B3%D1%83%D1%82%D0%B5%D1%80%D1%80%D0%B8%D1%88%D1%83-%D0%BF%D1%80%D0%B8%D0%B2%D0%BB%D0%B5%D1%87%D1%8C-%D0%B2%D0%BD%D0%B8%D0%BC%D0%B0%D0%BD%D0%B8%D0%B5-%D1%83%D0%B2%D0%BA%D0%B1-%D0%BE%D0%BE%D0%BD-%D0%BA-%D0%BF%D0%BE%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D1%8E-%D1%84%D0%B8%D0%B3%D1%83%D1%80%D0%B0%D0%BD%D1%82%D0%BE%D0%B2-%D0%B1%D0%BE%D0%BB%D0%BE%D1%82%D0%BD%D0%BE%D0%B3%D0%BE-%D0%B4%D0%B5%D0%BB%D0%B0-2>

¹⁹⁹ EASO, Newsletter July/August 2013, July 2013, <http://easo.europa.eu/wp-content/uploads/EASO-Newsletter-July-August-2013.pdf>

EURODAC²⁰⁰ from Germany to Poland rose dramatically from 857 in 2012 to 6,740 in 2013.²⁰¹ Poland was the country that Germany sent the most take back requests to and Russian nationals were the biggest group of take back requests in Germany by nationality.²⁰² One example of the suffering to families caused by the Dublin system is the case of a Chechen father separated from his new-born child by the Austrian authorities. While the baby had refugee status in Austria, his father was sent to Poland under the Dublin system. The father's request to apply for family reunification once he was in Poland was refused by the Austrian authorities and so the father remained separated from his wife and child because of the mechanical application of this system.²⁰³

Detention

The petition by Russian human rights activists referred to earlier relates to the sad case of Alexander Dolmatov. This highlights the traumatic effect that immigration detention can have. It was reported that Alexander fled Russia after being threatened due to his involvement in a non-registered opposition party and being arrested during protests against Vladimir Putin on 6th May 2012.²⁰⁴ He applied for asylum in the Netherlands in 2012 was later detained pending return. He committed suicide in immigration detention. After his death and reports by human rights defenders and judges, there were plans to change detention practices for removal purposes in the Netherlands and for detention to be used only in particular cases, for example where people had a previous criminal conviction or there had been aggressive behaviour.²⁰⁵

Recognition rates

The EU is an asylum lottery for refugees from the Russian Federation. The overall recognition rate for Russian citizens seeking international protection in the EU in 2013 was 15 per cent at first instance²⁰⁶ with 11 per cent being granted refugee status, 2 per cent being granted subsidiary status²⁰⁷ and 2 per cent being awarded authorisation to stay for humanitarian reasons.²⁰⁸ First instance decisions include those subject to the Dublin Regulation.²⁰⁹ For the EU recognition rate to be a true reflection of protection needs, all EU states (including Austria and Poland) would need to treat cases from the Russian Federation in the same way to the same standard and we know that this is not true currently.

Recognition rates do differ widely across the EU. This may be due to the different routes taken, different caseloads in different countries and the capacity of different asylum systems. However, if we take two countries – France and Germany – both of whom have relatively high numbers of asylum seekers, including from the Russian Federation, and both of whom have relatively similar

²⁰⁰ The EU database of asylum seekers and illegal immigrants fingerprint details,

<https://secure.edps.europa.eu/EDPSWEB/edps/Home/Supervision/Eurodac>

²⁰¹ Outgoing 'Dublin' requests based on EURODAC by receiving country and type of request, Partner: Poland, Request: Taking back requests based on EURODAC, <http://epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database>, accessed on 9th April 2014.

²⁰² Page 25. http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2013-asy.pdf?__blob=publicationFile

²⁰³ <http://www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold>

²⁰⁴ http://www.expatica.com/nl/news/dutch-news/russian-activist-seeks-asylum-in-the-netherlands_235787.html

²⁰⁵ See <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/3461165/2013/06/19/Alleen-nog-cel-voor-criminele-en-agressieve-asielzoekers.dhtml> (in Dutch). The official report of the investigation into his death can be found here: <http://www.iveni.nl/actueel/inspectierapporten/rapport-het-overlijden-van-alexander-dolmatov.aspx?cp=131&cs=64448>

²⁰⁶ This refers to a decision made at the first instance level of an asylum procedure.

²⁰⁷ The status awarded is governed by the recast Qualification Directive (see previous article on the Common European Asylum System). The rights for beneficiaries of refugee status and subsidiary protection have been approximated with the exception of the duration of residence permits and access to social welfare. See ECRE Information Note on the Qualification Directive for a more detailed analysis. <http://www.ecre.org/topics/areas-of-work/protection-in-europe/92-qualification-directive.html>. Some but not all EU member states may also be able to award a type of humanitarian status giving leave to remain and other rights, regulated in national legislation.

²⁰⁸ Alexandros Bitoulas, Asylum applicants and first instance decisions on asylum applications: 2013, Eurostat, (See Page 11)

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF

²⁰⁹ Eurostat, Decisions on applications and resettlement, January 2011,

http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/EN/migr_asydec_esms.htm#meta_update1392278623789

recognition rates for refugees overall²¹⁰, the treatment of what would seem to be a relatively homogenous group of 'primarily Chechen families' seems quite different.

In 2013 France received 5,010 applications from Russian nationals, and at first instance granted refugee status in 1,195 cases, subsidiary protection in 110 cases and rejected 3,935 cases.²¹¹ 2,075 final decisions were taken on cases from Russian nationals in 2013, of which nearly 30 per cent or 620 decisions were positive.²¹²

In 2013 Germany received 15,475 applications from Russian nationals.²¹³ According to government figures, 12,301 decisions were made in 2013 in all instances and the recognition rate was 2.2 per cent, with 155 decisions or 1.3 per cent being awarded asylum or refugee status and 116 decisions or 0.9 per cent being granted a deportation ban. 319 decisions or 10.7 per cent of cases were found to be unfounded or manifestly unfounded. 10,711 decisions or 87.1 per cent of cases had a formal decision made (includes 'Dublin' decisions).²¹⁴ Eurostat gives information on 740 final decisions in 2013, of which 110 or 15 per cent were positive.²¹⁵

The type of protection and status awarded also differs. In the third quarter of 2013, in France 94 per cent of Russian applicants who received a positive decision were given refugee status. In Austria the figure was 79 per cent. In Poland 70 per cent of Russians given a positive decision were given humanitarian or another status.²¹⁶

The internal protection alternative has also been an issue for refugees from the Chechen Republic in particular with some governments claiming that although a person may be at risk of persecution in one area of the Russian Federation, they can be safely returned to another place within the country.²¹⁷

Returns

It is mainly international organisations that assist Russians in voluntary return and integration. Russia has been among the first of nations in terms of the number of people who benefited from assisted return from European countries: according to IOM data in 2010, such assistance was provided to 2,400 persons.²¹⁸

It is unclear to what extent asylum seekers and refugees from the Russian Federation have been able to make informed decisions to return 'voluntarily' to the Russian Federation given the extent of state pressure both at the level of the Federal government and that of the Chechen Republic to represent the situation in Chechnya as normalised. UNHCR closed its office in Vladikavkaz and NGOs have voiced concerns about reporting the situation in the Republic as being too dangerous so there is little information on the situation on the ground. Figures from Eurostat show that over 2,000 Russian

²¹⁰ 14 per cent in Germany were awarded refugee status and 15 per cent in France. see page 11, Asylum applicants and first instance decisions on asylum applications@ 2013. Eurostat 3/14.

²¹¹ Alexandros Bitoulas, Asylum applicants and first instance decisions on asylum applications: 2013, Eurostat, (See Page 11)

²¹² http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF

²¹³ See Eurostat table, Final decisions on applications by citizenship, age and sex Annual data (rounded), 2013. Citizen: Russia. Decisions: Total number of Decisions and Total Positive Decisions.

²¹⁴ http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfina&lang=en

²¹⁵ Alexandros Bitoulas, Asylum applicants and first instance decisions on asylum applications: 2013, Eurostat, See Page 11

²¹⁶ http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF

²¹⁷ Federal Office For Migration and Refugees, The Federal Office in Figures, February 2014, Page 38

²¹⁸ http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2013-asyd.pdf?__blob=publicationFile

²¹⁹ <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

²²⁰ EASO Quarterly Report – Q3 2013, Pages 14 and 16.

²²¹ <http://www.enaro.eu/download/18.7c00d8e6143101d166d21c8/1392201234317/Quarterly+Asylum+Report+Q3+2013.pdf>

²²² See ECRE Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers and Refugees in Europe, 2011.

²²³ Vladimir Mukomel, Readmission, Return and Reintegration: the Russian Federation, Carim East- Consortium for applied research on international migration, February 2013, Page 2 http://www.carim-east.eu/media/exno/Explanatory%20Notes_2013-02.pdf

nationals were ordered to leave Poland, Finland and Belgium in 2013, although it is not possible to say how many of these may have applied for asylum.

There is a readmission agreement between the EU and the Russian Federation that entered into force on 1st June 2007 and applies to Russian and third country nationals. Figures from 2012 show that from January to November 2012, the Federal Migration Service received 1,910 applications for readmission of Russian citizens. Of these, 1,204 applications were approved and 366 citizens of the Russian Federation released by foreign states were accepted on the border in compliance with readmission agreements.²¹⁹

For Russians in Europe, there can also be requests for their extradition to the Russian Federation. The purpose of extradition law is to prevent people escaping legitimate prosecution for a common criminal offence. States must remember that any extradition request concerning a refugee or asylum seeker must comply with the principle of non-refoulement in Article 33 (1) of the Refugee Convention and Article 18 of the EU Charter of Fundamental Rights. For those not protected by the Refugee Convention (in cases of exclusion or national security concerns), Article 3 of the European Court of Human Rights (ECtHR), Article 3 of the Convention Against Torture, Articles 6 and 7 of the ICCPR, or Article 19 of the Charter of Fundamental Rights may apply. There should also be effective remedy in relation to extradition and return and detention pending return.²²⁰

In the recent case of *M.G. v. Bulgaria* (59297/12), the ECtHR blocked the extradition of a Chechen man from Bulgaria to the North Caucasus due to the real risk of ill treatment in detention²²¹, based on reports of frequent torture of detainees suspected of belonging to armed groups operating in the North Caucasus. The ECtHR ruled that, despite diplomatic assurances to the contrary, the extradition of a Chechen man from Bulgaria to Russia would violate his rights under Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. The Court also relied on the common failure of the Russian authorities to conduct an effective investigation into allegations of abuse in pre-trial detention facilities in the North Caucasus. The applicant, who was intercepted by the Bulgarian authorities at the Bulgarian-Romanian border, had obtained refugee status with his wife and children in Poland and Germany in 2004 and 2005. In an earlier case, *I.K. v. Austria*, the Court also ruled that extradition to the Russian Federation would be a violation of Article 3²²² based on the applicant's individual circumstances and the situation in the North Caucasus at that time. In a deportation case, *I. v. Sweden*²²³, the Court ruled that the general unsafe situation in Chechnya was not sufficiently serious to conclude that the return of the applicants to Russia would amount to a violation of Article 3 of the Convention, however, individual circumstances (recent scarring and the known interrogation of returnees) could give rise to a violation of Article 3 of the Convention in this case. In the case of *Zarmayev v. Belgium*, the Court ruled again that the situation in Chechnya was not serious enough to warrant a general prohibition of returns on Article 3 grounds and in this case that the applicant's personal circumstances did not justify finding a violation if extradited due to inconsistencies in evidence and relying on diplomatic assurances.²²⁴

²¹⁹ Vladimir Mukomel, Readmission, Return and Reintegration: the Russian Federation, Carim East- Consortium for applied research on international migration, February 2013, http://www.carim-east.eu/media/exno/Explanatory%20Notes_2013-02.pdf

²²⁰ For more information see the FRA handbook: http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf

²²¹ ECtHR, *M.G. v. Bulgaria* Application No. 59297/12 (not final). March 2013,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-142265&>

²²² ECtHR, *I.K. v. Austria*, Application No. 2964/12, March 2013, [http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx#{"itemid":\["001-117684"\]}](http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx#{). For a summary of the case see:

<http://www.asylumlawdatabase.eu/en/content/ecthr-decision-ik-v-austria-no-296412-articles-2-3-and-8-echr>

²²³ ECtHR, *I. v. Sweden*, Application No. 61204/09 (Final). 5 September 2013.

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126025#{"itemid":\["001-126025"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126025#{)

²²⁴ *Zarmayev v. Belgium*, Application No. 35/10, 27 February 2014. A summary of the case can be found here:

<http://www.asylumlawdatabase.eu/en/content/ecthr-decision-zarmayev-v-belgium-application-no-3510-27-february-2014>

Providing residencies for persecuted writers and artists in Europe – Immigration issues

Elisabeth Dyvik

ICORN (The International Cities of Refuge Network)²²⁵ is an international membership organisation for cities and regions committed to freedom of expression. Each member provides temporary shelter, through the provision of residencies, for persecuted writers and artists. The residency is typically for two years, but some cities are only able to offer shelter for one year. These are all considered as long-term residencies. Our experience of applying for visas for our writers provides an example of the challenges faced by NGOs who are looking to provide refuge outside the asylum system for activists from the former Soviet Union and beyond.

ICORN receives applications directly from people in distress, and researches and assesses each application individually with the assistance of PEN International.²²⁶ Any persecuted writer can apply to become an ICORN guest writer.²²⁷ Once an application has been approved, ICORN's administration centre contacts member cities that are ready and willing to invite a writer for a residency.²²⁸ When the city has made a decision and invited a writer and the writer has accepted the offer, it is time to start the process of gaining access to the territory, i.e. getting a visa or a residency permit for the writer and family members, if relevant.

Most of the ICORN member cities are within the Schengen area, and the first step is usually to apply for a so-called Schengen visa.²²⁹ Many of our writers report that they have already tried to get such a visa before getting in touch with ICORN, often applying at a number of different countries' embassies, but with no luck. Local ICORN coordinators in the receiving cities use different strategies to assist the writers obtaining the visa, and often enter into direct contact with the issuing embassies, sometimes with the help of local authorities, NGOs or individuals with some leveraging power (like a Mayor or an MP). The applicant usually has to show proof of financial support, health insurance and no criminal record, in addition to an official invitation. The process can take from a few weeks to several months, depending on bureaucracy in both the receiving country and in the country where the writer is based. It is a time consuming process, and seems unnecessarily long as the cities all guarantee responsibility for living costs, etc. The long handling time could also be dangerous, as the writer becomes particularly vulnerable once invited to an ICORN city. In some instances, even preparations to leave a country can provoke reprisals. Persecution or threats are not grounds for obtaining a Schengen visa, quite the contrary, and the writers are often invited as part of a 'cultural exchange'. As one city coordinator states: 'Otherwise we may get in trouble, because the administration may guess, [that] he or she will ask for asylum, which [...] is something absolutely different...' Several of the cities report that it is more difficult, even with an invitation from the ICORN city, to obtain a visa if the writer comes from certain countries.²³⁰ It seems that if the visa issuing authority suspect (or fears!) that the person asking for a Schengen visa is persecuted, under threat or has fled his country, the authority is reluctant to let the person enter, even with all other documentation of economic responsibility, identity and so on provided.

²²⁵ ICORN www.icorn.org

²²⁶ Pen International <http://www.pen-international.org/>

²²⁷ ICORN's definition of writer includes, but is not limited to, fiction writers, poets, playwrights, journalists, bloggers, cartoonists, singer song-writers and academic writers. In addition, some of the ICORN member cities are now (spring 2014) getting ready to receive persecuted visual artists and/or musicians. The criteria of persecution and silencing are outlined in the ICORN Charter: http://www.icorn.org/editor/filemanager/files/founding_documents/Charter%20Nov2010.pdf

²²⁸ The process takes into account both the writer's needs, and the city's capabilities. The aim is to find the best match between writer and city, in order to make the residency useful and productive for both parties. Practicalities like family/flat size and medical needs are taken into account, as well as more intangible resources like useful networks and relevant peer communities in the city, and urgency/duration of need for protection. Both the city's resources (typically size of grant, access to schools/kindergarten, literary environment) and the writer's resources (typically literary genre, language, and passport/travel documents) also play a role when placing a writer.

²²⁹ The common travel area covering 22 EU members and 4 Associated States that have abolished internal border controls and share a common visa. See DG Home Affairs, Visa Policy, April 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm

²³⁰ They mention Iraq and Iran especially.

Another serious limitation to obtaining a Schengen visa is that you have to have a valid travel document (such as a passport) to be able to apply for it. Many of the writers approved by ICORN do not hold a valid passport, either because they have fled without it, the passport has run out, and/or it could be dangerous for them to approach the authorities in their own country to get hold of, or renew it. There have also been cases where the home country has refused to issue a new passport. This considerably limits where and how we can offer residencies to these writers.

Once arrived in the receiving country, the writer, together with the ICORN city coordinator, prepares an application for a longer term (one year or more) residency permit. This is issued based on national laws and regulations, and most cities report that they have both some leverage and fairly good communication with their national authorities about this. Some have held meetings with immigration and other authorities to inform them about the programme and gain trust. Some still do not mention refuge, persecution or threats, but ask for residencies based on cultural (literary) or academic exchange and residency programmes. The only country in Schengen where a local coordinator has reported serious problems obtaining a residency permit is Belgium. Here, the writer never received an answer from the national immigration authorities in response to his application for a limited (one year) residency permit once his Schengen visa had run out. There was not even a reply after a second request for a reply was sent from the local Mayor's office.

In some countries ICORN has, often together with national PEN centres, also been able to negotiate distinct national entry regulations for writers going to ICORN member cities in some countries. These are all in Scandinavia: Norway, Sweden and Denmark.

Denmark

There were no cities of refuge or ICORN members in Denmark when Danish PEN started working to find parties who could be interested in this work. The Danish Arts Council had, however, been positive towards supporting such an initiative. There were at least two serious obstacles to inviting persecuted writers to take up residencies in Danish municipalities. One was whether or not Danish municipalities were allowed to pay an individual foreign national to stay in the city. The other was that there was no opening in the immigration act to grant a two year residency permit to persecuted writers. Both these issues were solved by political lobbying and, finally, the passing of amendments to the national laws of immigration and of literature. The amendment to the immigration act now states that writers invited to cities that are members of an international organisation (like ICORN), can be granted a two year residency permit.²³¹ The permit can be extended, but does not give grounds for permanent residency. Close family members (partners/children) can also be given a residency permit, and the right to work, for the same time period. The writer is not given a work permit, but is free to work, and receive remuneration, if the work is related to the writer's profession. Before entry, the writer has to sign a declaration that s/he recognises fundamental Danish values and will leave the country after the residency. Creating and demanding the signing of such a document was a condition from Dansk Folkeparti (DF, or Danish People's Party) in order to agree to vote in favour of amending the laws in the Danish Parliament. DF is a right wing party. Both amendments came into force in the summer of 2008.

As soon as the laws were in place, the cities could plan to invite writers. The first ICORN writer came to Denmark in 2010. ICORN has until now (April 2014) placed six persecuted writers in five Danish cities of refuge. The law secures a residency permit, but it takes at least two months for the immigration authorities to process the application. This is of course a challenge for the individual writer in distress. ICORN is concerned about the processing time. So far, no writer has been denied entry. A positive experience with the Danish scheme is that writers without valid travel documents can also be granted residency. This has happened once and the writer was given a temporary travel

²³¹ An outline of the laws and regulation is given (in Danish only) at https://www.nyidanmark.dk/da-dk/ophold/friby_ordningen.htm

document from the Danish immigration authorities. Because the permit does not give grounds for permanent residency, the writer has to plan for what to do after the guest writer period is up. So far, one writer has asked for asylum in Denmark, one has returned home and one has had the residency prolonged. The remaining three are still within their two year residencies. So far, the applications for this type of residency permit have only come from writers living outside Denmark. A writer already in Denmark may also apply as long as he holds a legal status/residency permit in the country (and all other criteria are met).

Sweden

Sweden has had two cities of refuge since the end of the 1990's: Stockholm and Gothenburg. For many years they managed to secure residency permits to their guest writers much along the same way as will be described later for cities outside Scandinavia. However, over the last five years many new cities and regions in Sweden have joined ICORN and declared themselves cities of refuge. ICORN now has 10 members in Sweden. The Swedish Arts Council has actively supported the establishing of cities of refuge in Sweden, and has also suggested that the programme should be extended to include visual artists and musicians. Together with the cities' representatives and Swedish PEN, and with the support of the Swedish Arts Council, ICORN contacted the Swedish immigration authorities (Migrationsverket) to discuss solutions to the visa/residency challenges. Migrationsverket found that as long as the writer was provided for financially, s/he could enter on a residency permit for 'liberal professions' grounded on 'other means of income than employment'. They published their position in March 2011. It stated that Sweden could grant a temporary residence permit for two years to guest writers. Swedish immigration has developed an application form specifically for this type of residency permit.²³²

The writer can be granted a permit for another two years (after the initial two years) if s/he can show that s/he will be able to financially support him- or herself through her continued writing (13 000 SEK per month). This can in turn lead to a right to permanent residency. The practice is rather new, and the Swedish cities of refuge are lobbying for the writers to be able to stay on (get permanent residency) earlier, and without the financial demand. So far, only one writer has taken advantage of the possibility to stay on based on this regulation, but we expect many more to do so in the months and years to come. Migrationsverket points out that the residency permit is not granted based on protection needs. ICORN see this model as a best practice, and will work to see if it is possible to apply in other countries. In addition, Swedish immigration authorities need two months to grant the residency permit, and ICORN would like to work to speed the process up. The residency permit may be issued to writers who are already in the country, as long as all other criteria are met.

Norway

The first persecuted writer came to Norway (Stavanger) in 1996. At the time the pressure on immigration services and the general political climate was more favourable for finding practical solutions to immigration issues than it is now. The Norwegian Authors' Union, together with Norwegian PEN, initiated the persecuted writers' residency programme together with the cities. Norwegian PEN lobbied for and was later granted the right to suggest writers to the Norwegian Directorate of Immigration (UDI) – writers who could then enter the country as refugees under the Norwegian resettlement quota. Each year the Norwegian Parliament decides how many refugees can be resettled in Norway. The quota has been around 1,200 people in recent years. The yearly quota letter from the Parliament also states where the refugees can be resettled from. There are also some spaces not tied to a special country of origin, and some for emergency cases (handled in 48 hours). Norwegian PEN can suggest refugees to be resettled under the two latter categories.

²³² Swedish immigration authorities' page on residencies in Swedish cities of refuge: <http://www.migrationsverket.se/Andra-aktorer/Kommuner/Fristad-at-forfattare.html>

Since ICORN was established (2006) the selection and preparation of writer cases has been done by ICORN staff. In addition to the time spent preparing the case before submission, the handling time at UDI is generally less than three weeks. In addition, we can, with urgent cases, ask for emergency handling. If entry under the quota is granted, UDI organises and pays for the writer's travel to Norway. ICORN monitors this process, mainly handled by IOM (International Organisation for Migration). If the writer has his family with him at the time the suggestion is sent to UDI, they can enter the country together. If not, the family can apply for reunification, which is usually granted under Norwegian law. ICORN appreciates this opportunity to suggest writers for refugee status through Norwegian PEN. It adds flexibility to our programme and also makes us able to offer residencies to writers who need longer-term protection. We have a good working relationship with the section that handles resettlements at UDI. A limitation to the scheme is that PEN cannot suggest individuals who are already in Norway for refugee status. Another limitation is that the writer has to have an invitation from a Norwegian city of refuge to be eligible.

The UK

ICORN has two member cities outside Schengen, one in Mexico and one in the UK. Mexico falls outside this paper's scope. The entry, visa and residency regulations in the UK have made it exceptionally difficult to receive ICORN writers in the country, and consequently to recruit new member cities. Although there was a deregulatory change in 2012²³³ in the visa regulations for short-term entry for what was called 'permitted paid engagements' (including artists and authors), this did not benefit ICORN writers as they had to demonstrate they intended to leave the UK after one month, and otherwise had to prove 'exceptional talent' (not a criteria for ICORN). The inviting organisation has to register with the UK Home Office, and should a writer for one reason or another overstay his visa, or be rejected at the border, the inviting ICORN member fears their status as permitted to host artists and writers, would be revoked. This is too much of a chance to take as it would ruin their ability to run any other cultural programme with guests from third countries. The result is that our UK ICORN member is only able to invite guests who already hold legal entry to the UK, like a residency permit in Schengen or the US. So far, only two writers have been invited to the UK with ICORN, and then only for less than 6 months each.

ICORN is worried about the widespread reluctance authorities are showing when discussing inviting persecuted writers and artists to Europe for temporary shelter. We get the impression that this is built on some sort of fear, but it is not clear of what. Our experience is that the writers and artists are genuinely interested in only temporary residency, and would return to their home countries as soon as they could. Maybe because we invite only a small number of people, and they can all show proof of financial security through the programme, some concessions have been made to accommodate entry through ICORN in some national immigration schemes. We still find the entry processes far too time consuming. ICORN members also find it unsatisfying that they cannot be open about the fact that the writers and artists they invite are under threat when they apply for visa and residency permits.

²³³ Home Office, Immigration (Employment-related settlement, Overseas Domestic Workers, Tier 5 of the Points Based System and Visitors), February 2012, http://www.parliament.uk/documents/commons-vote-office/February_2012/29-02-12/6.Home-Immigration.pdf

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Shelter from the storm? The asylum, refuge and extradition situation facing activists from the former Soviet Union in the CIS and Europe looks at some of the key issues around asylum, extradition and the provision of refuge for human rights defenders, political and religious activists and other controversial figures from the former Soviet Union. It examines the extent to which Russia and other CIS countries abide by their obligations under European and international law when facing extradition requests from fellow signatories to the Minsk Convention. It also explores European asylum and immigration policies and how they impact on activists from the former Soviet Union.

Shelter from the storm? contains contributions from: Felix Corley (Forum I8); Elisabeth Dyvik (ICORN The International Cities of Refuge Network); Julia Hall and Maisy Weicherding (Amnesty International); Adam Hug (ed., Foreign Policy Centre); Dr David Lewis (University of Exeter); Kris Pollett and Claire Rimmer Quaid (European Council on Refugees and Exiles – ECRE); Alex Tinsley (Fair Trials International); and Daria Trenina (MGIMO-University).

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