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Migrants and Refugees in the Buffer Zone: Asylum Policy in Ukraine

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Abstract:

Ukraine plays an important role within the European migration system. Currently, the country is both a labour reservoir for the formal and especially the informal labour markets of the European Union and Russia and a transit and buffer zone for various migration flows towards the EU. Ukraine has become an involuntary destination country for asylum seekers and migrants, but is not capable of coping with the societal and political consequences or of fulfilling its international obligations. Even though this inability is partly made up for by international donors and local NGOs, the humanitarian situation for migrants remains precarious. The article presents the Ukrainian policy and legislation in this field and points to the shortcomings. It also portrays the relationship between international and national actors as well as NGOs. The main argument is that asylum and refugee policies are largely pushed by external actors while the Ukrainian government seems indifferent.

Ukraine as a transit country for migrants

Ukraine plays an important role in the European migration system. It has become a transit country for migrants because of its strategic geographic location, largely unsecured border with Russia, visa-free travelling for citizens of CIS states, and lack of effective readmission agreements as well as insufficient law enforcement. Various routes for irregular migrants run through Ukraine to the European Union (EU). The most important ones lead from South Asia and Africa through the Post Soviet space to Europe. In addition, there are routes for migrants from the former Soviet Union itself. Many transit migrants originate from states whose citizens may enter Ukraine without a visa. By doing

so they only violate the law when they attempt to cross Ukraine's western border. For others, the very stay in Ukraine is "illegal".

Most transit migrants pass through the Russian-Ukrainian border. During the last few years the routes for transit migrants within Ukraine have changed. In the past, the main route led from Russia via Belarus or Ukraine to Poland. Currently, it leads from Russia through Ukraine (Transcarpathia) to Slovakia. In particular, Chinese, Vietnamese, Indians, Iranians, Pakistani, Tamils, Iraqis, Afghans, Kurds and Palestinians, as well as Somalis, West Africans and Egyptians, but also Belarussians, Georgians, Moldavians and other citizens from CIS states use Ukraine as a transit country. For most migrants, not only the access to EU-territory is blocked, but often also the way back to their countries of origin. Consequently, Ukraine involuntarily becomes a destination country for migrants. Most of them stay in the country without legal residence permit.

In the early 1990s the Ukrainian state accepted refugees who had fled ethnic conflicts in the former Soviet Union rather generously. During the following years, more refugees from states beyond the Post Soviet space arrived, especially from Afghanistan, many of whom have been granted asylum. Over time, the structure of the migrant flows changed. Many new arrivals are not refugees according to the definition by UNHCR, but they remained in Ukraine without applying for refugee status because they could not cross the border to the European Union. In addition, more people from the former Soviet Union entered Ukraine on a visa-free basis but became "illegal" by over-staying. In 2000 the Ukrainian Ministry of the Interior estimated that between 20,000 and 30,000 people resided illegally in Ukraine; other institutions assumed numbers of 500,000 to one million. Three years later the figures were still as contradictory. In 2003, the United Nations even estimated that up to six million people were illegally residing in Ukraine. Most of them do not regard Ukraine as a destination but as a transit country. From 1991 to 2003 the Ukrainian Border Guards arrested more than 91,000 irregular migrants. The Ministry of the Interior arrested about 10,000 persons between 2001 and 2003. Since 2000 the number of people who have been arrested for illegally crossing the border, has decreased, while the number of those irregular migrants who have been arrested in the inland - mainly in Kyiv and Transcarpathia has increased. In 2006 the Border Guards arrested 26,000 persons, marking an increase of more than 50 percent in comparison to the year before. Presumably, the number of people who successfully cross the EU border is two to ten times higher.

Ukraine's role in European migration system

In December, 2003 the European Council enacted the "Wider Europe" plan which was intended to regulate the relation of the EU to its future neighbours without a perspective

for membership, including that with Ukraine. In 2004 the European Neighbourhood Policy (ENP) was implemented, signifying an “expansion without enlargement” (Vobruba 2007). The ENP strengthens those agencies which are responsible for justice and internal security and deal with questions of legal and “illegal” migration, smuggling and terrorism. The fact that justice and home affairs are the centre-piece of the ENP also highlights the increasing relevance of these policy fields within the EU.

The current basis for collaboration between the EU and Ukraine in the sphere of migration and asylum policy is the EU Action Plan on Justice and Home Affairs in Ukraine of 2001, which was integrated into the general EU Ukraine Action Plan within the ENP in February 2005. The Thematic Programme for the Cooperation with Third Countries in the Areas of Migration and Asylum, which the EU Commission enacted in January 2006, defines migration questions as a strategic priority in the external relations of the EU and links questions of migration with security issues.

Vobruba (2007) defines the relation between the well-to-do core of the EU and its periphery – including Ukraine – as a “political deal” which serves to preserve a politically stable prosperous zone. Moreover, the core considers the periphery a source of economic and political conflicts as well as a protective zone. This results in a specific combination of exclusion and calculated inclusion policies. The EU assigns the states on its periphery tasks of exclusion, which becomes remarkably apparent in questions of migration and border protection.

In conjunction with its western neighbouring states, Ukraine protects the EU’s eastern border, monitors its own state territory and takes back irregular migrants or prevents them from passing the EU border. In return, the EU rewards the Ukrainian elite with a simplified visa regime and additional concessions concerning the support of political and economic reforms. The EU has introduced a conditionality clause: further bilateral visa facilitations are only granted in exchange for the conclusion of a general readmission agreement. The readmission agreement between the EU and Ukraine was initialled in 2006 and ratified in 2007. Ukraine and other EU neighbours are only prepared to protect the Schengen regime if the EU states reciprocate financially and politically.

An example for the mentioned exclusion tasks is the measures taken for the expansion of so called “humanitarian protection zones”. The protection zones envisage regional accommodations for refugees and migrants. In addition, Ukraine should be enabled to accept refugees according to the specifications of the Geneva Convention Relating to the Status of Refugees (1951) – and thus no longer function as a transit state only.

Ukrainian refugee policy

The Ukrainian government enacted its first refugee¹ law in 1993, but only started to implement it in 1996. In the second half of the 1990s reforms in the field of migration policy stalled. After legal and institutional changes Ukraine was able to join the Geneva Refugee Convention and become a member of the International Organization for Migration (IOM) in 2002. A new refugee law was passed in 2003 and reformed in 2005; however, the legal framework is not entirely consistent with international norms and standards. The Ukrainian asylum legislation envisages only the refugee's status, but no subsidiary or humanitarian protection. The parliament was supposed to pass a new law containing the necessary changes in 2007. Due to the acute political crisis the project was put on the back-burner. The implementation of the effective laws is absolutely inadequate.

Refugee and asylum policy are characterised by unsettled, overlapping and lacking responsibilities as well as perpetual reforms and a lack of funds. The State Committee responsible for migration and refugee questions has been reorganised eight times since 1996. It coordinates its activities with the ministries of Foreign Affairs, the Interior, Labour and Social Policy, Health Policy as well as with the State Border Guards. While the State Committee deals with questions of legal migration, including the recognition of refugees, the Ministry of the Interior and the State Border Guards are concerned with the regulation and prevention of irregular migration. The Ministry of the Interior is responsible for searching irregular migrants on Ukrainian territory, for arresting and investigating them. The State Border Guards are responsible for detaining illegal border crossers and deciding on the expulsion of foreigners and stateless persons (Pribytkova 2007).

According to international and Ukrainian law no action may be brought against people who enter Ukraine illegally or live there, as long as they intend to apply for asylum. During the asylum procedure no expulsions may take place. People who apply for asylum are normally released from custody and obtain identity cards. However, the access to the asylum procedures is not secured because not all migrants have the possibility to file an application, often due to a lack of information, insufficient funding at the regional level etc. Irregular immigrants can be detained on the border for up to ten days and for up to 30 days if they are arrested in the inland. After their identity is ascertained, CIS citizens are

¹ According to Ukrainian law, a refugee is defined as a person who is not a citizen of Ukraine and due to reasonable fear of persecution on the basis of race, religion, nationality, membership in a particular social group or a political opinion resides outside his country of origin and cannot return there. The same applies to stateless persons.

released under the condition that they leave the country voluntarily. All the others are detained for up to six months to ascertain their identity and to prepare their deportation.

Those who have the chance to apply for asylum are faced with the following legal procedure. The granting of refugee status is a government affair that consists of several stages. The responsible State Committee for Nationalities and Religion is a central-state authority with its headquarters in Kyiv, which decides on granting refugee status. Two years ago migration services were established in the Ukrainian regions, carrying out a first questioning of the applicants and accepting asylum applications. On the basis of documents and questioning the local migration service decides whether the application is passed on to the State Committee. First, the employees clarify whether the applicant is likely to remain in Ukraine; the second question is whether he qualifies as a refugee according to the Geneva Convention or corresponds to the Ukrainian definition of a refugee. If the application is forwarded, the State Committee in Kyiv decides on granting refugee status – and it must give reasons for rejections.

If their applications are rejected, the applicants have possibilities for appeal, namely with the State Committee (within one month) or in court (within one year). If the State Committee rejects the application once more, the applicants can take legal action. In Ukraine there is only general jurisdiction, specified courts are missing and administrative jurisdiction is underdeveloped. The knowledge of most judges in the area of asylum law is insufficient and their familiarity with the countries of origin is inadequate. After a final rejection in all instances deportation is pending. However, the Ukrainian state lacks resources for deportations and many rejected asylum-seekers go into hiding.

The insufficient funding and staffing of the competent authorities is detrimental to an adequate asylum procedure. The migration service in Transcarpathia lacks, for example, elementary equipment such as paper, a computer or a camera for taking pictures of the asylum-seekers. Because of low salaries, qualified employees tend to leave the civil service. The high turnover of staff renders the continuous cooperation with other organisations difficult. Due to staff shortages, the Ukrainian authorities can often not provide asylum seekers with identity cards. The migration service in Kyiv employs only three persons who accept documents and carry out preliminary questionings. Hence, at the beginning of June, 2007 the waiting period for an appointment was three months. In 2002 and again in 2006 the State Committee stopped working temporarily, so that no applications were processed. Without valid documents the refugees break Ukrainian law and can be stopped on the street any time.

In addition to the state authorities, international organisations and Ukrainian non-governmental organisations (NGOs) deal with questions of migration. Ukrainian NGOs

take over genuine state tasks such as the legally required humanitarian support and legal advice for detainees and applicants. But without the financial support of international and supranational organisations the NGOs would not exist. In the sense of the above mentioned political exchange international donors compensate partly for the financial weakness and the lacking political will of the Ukrainian state. The most important international organisations are the UNHCR, the IOM and the Delegation of the EU Commission. The IOM has been active in Ukraine since 1996. One of its central mandates is to support Ukrainian authorities with the development of a functioning migration management system. The IOM seeks to harmonize national law with EU law. Furthermore it deals with the control of irregular migration movements and the support of the State Border Guards. The UNHCR supports and consults the Ukrainian government with regard to legislation and supervises the implementation of the Geneva Refugee Convention. The so-called Söderköping process was initiated in 2001 by the Swedish government, the IOM and the UNHCR to deal with questions of international cooperation anticipated for the period after EU enlargement. Its purpose is to adapt the legislation and policy in the fields of border management, asylum and migration of Belarus, Moldova and Ukraine to the EU-acquis.

The EU, the UNHCR and the IOM finance with their projects practically all activities directed at asylum-seekers and refugees in Ukraine and take over numerous coordination tasks. In the case of the UNHCR the link between NGOs and international organisations is strongly evident. The UNHCR itself carries out only few projects. Instead, it cooperates with several local implementing partners, among others NEEKA and Caritas in Mukachevo, the South Ukrainian Centre of Young Lawyers (SUCYL) in Odessa and HIAS (Hebrew Immigrant Aid Society) in Kyiv whose activities it finances in the form of projects. While NEEKA mainly offers social support for refugees and asylum-seekers, Caritas as well as HIAS and SUCYL consult asylum-seekers regarding the application for the refugee's status and they represent them at authorities and in court. The activities of the Ukrainian NGOs are indispensable to creating the social and organisational preconditions for the initiation of asylum procedures.

Refugees' problems in Ukraine

Asylum-seekers who would like to remain in Ukraine mostly live in cities, where they can find work more easily. Those who want to cross the EU border typically stay in the Carpathian Mountains, where approximately half of all asylum applications are filed. Most applicants are arrested while attempting to cross the border illegally and are brought to the detention camps of the region. The situation in the detention camps which are subordinate to the State Border Guards is characterised by overcrowding and decay, bad hygienic conditions as well as a lack of food. The camp for men in Pavshino close to

Mukachevo near the Hungarian and Slovak border has a capacity of 200 persons; nevertheless, in summer up to 700 men are detained there, who mostly originate from Asia and Africa. In 2005 a report by Human Rights Watch disclosed the conditions in the camp. Increasing pressure from foreign NGOs and governments led to partial improvement of the situation. In addition, there is a special accommodation for women and children with 50 places, which is mostly overcrowded. In the city of Chop at the Hungarian border, migrants from the former Soviet Union are detained in a detention centre. Deportations from the centre concern primarily Chechens who are sent back to Russia. On occasion, the local NGOs do not gain access to the camps to fulfil their tasks of social and legal protection.

The outcome of Ukrainian refugee and asylum policy is ambivalent as it has some positive outcomes, but is also flawed with regard to both law-making and implementation. In addition, there is a growing tendency of securitization of migration policy. Since 1996 more than 5,000 asylum-seekers, of whom 2,275 were still living in Ukraine in early 2007, have been granted protection. In addition, there are 800 to 900 persons who have attained Ukrainian citizenship in the meantime. In early 2007 3,000 asylum-seekers were registered. Every year 1,000 to 1,500 new asylum applications are filed. Most refugees were recognised from 1997 to 2001, while from 2002 to 2006, only 263 persons were recognised. Until 2001, the recognition rate was about 50 percent; presently it is 2.5 to 3 percent². In 2006, 60 persons were recognised, i.e. applicants and their family members. In the first half of 2007 only two persons were recognised as refugees. Since 1996, 50 percent of the applicants have come from Afghanistan, 30 to 35 percent from CIS states and about 10 percent from Africa. The structure of accepted refugees looks similar. About half of the recognised refugees originate from Afghanistan, another quarter from the former Soviet Union and approximately 13 percent from Africa. In addition, there are refugees from Iraq, Syria and Iran (Söderköping 2007).

About half of the approved refugees are registered in Kyiv, a quarter in Odessa, the rest lives in other urban centres. According to the law recognised refugees enjoy to a great extent the same rights as Ukrainian citizens, including the freedom of movement and residence, the right to education, medical care, family reunification, marriage, work, business activity and social and legal support. The refugee's status must be extended every year. However, the actual integration of recognised refugees is problematic for several reasons. First, the Ukrainian state does not fulfil its legal obligations. Numerous legally guaranteed services and benefits for asylum seekers and refugees are not granted.

² There are several possible explanations for this sharp decline in recognition rates. The events of September 11, 2001 and the subsequent war on terror as well as the scheduling of the EU enlargement 2004 entailed an increasing securitization of migration and refugee policy. The perceived intensifying complex of problems led to a more restrictive policy.

The Ukrainian state supports refugees neither financially nor with language courses or special integration programmes. There is merely one non-recurring payment of about two Euros per person. In Ukraine there is only a single state-run accommodation for asylum seekers (in a suburb of Odessa) the construction of which was financed by the EU to a large extent. Second, the Ukrainian society does not seem prepared to integrate non-Slavic people. Surveys show that the social distance towards other nationalities has been growing since the end of the Soviet Union (Panina 2005). A recent increase in hate crimes has alarmed international organisations and human rights activists.

Conclusion

The human rights situation for migrants and refugees in Ukraine is critical because of the dire conditions in the detention camps, limited access to the asylum procedure, and the lack of social protection for asylum-seekers as well as recognised refugees. Migration policy is not a priority of the Ukrainian government. On the contrary, external actors play a central role. They influence Ukrainian policy and finance measures - as an offer for political exchange. The EU pursues a contradictory policy, because it demands democracy and the protection of human rights in its neighbouring states. At the same time, however, it creates migration buffers which do not fulfil these requirements.

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Resources

Most of the information used in this article was gathered during a research trip of the author to Ukraine (Mukachevo, Odessa, Kyiv, L'viv) from June 1 to June 10, 2007. The statistics used in this article were provided by Ukrainian authorities (State Border Guards, Ministry of the Interior, State Committee for Nationalities and Religion) or acquired from the website of the Söderköping Process: <http://soderkoping.org.ua>

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