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Re: Norway in breach of right to seek asylum

Pia Prytz Phiri, Regional Representative, UN High Commissioner for Refugees,

With this letter, we want to express concerns that Norway now fails to uphold its international obligations to respect the rights of everyone to seek asylum. We ask that you forward the letter also to Mr. Filippo Grandi, UN High Commissioner for Refugees.

Due to increased influx of refugees, in particular at the border between Russia and Norway, the Norwegian Parliament on 16 November 2015 adopted amendments to the 2008 Immigration Act, Section 32. The section regulates cases in which Norwegian authorities can refuse the right to seek asylum. The amendments entered into force on 20 November 2015.

In its previous version, Section 32, "International cooperation etc. on examination of applications for residence on grounds of protection", reads:

"An application for a residence permit under section 28 may be refused examination on its merits if ..., (d) the applicant has travelled to the realm after having stayed in a state or an area where the foreign national was not persecuted, and where the foreign national's application for protection will be examined".

The 16 November amendments deleted the last part of Section 32(d). Consequently, Norwegian authorities may now refuse an asylum seeker entering Norway from Russia (or any other state) merely on the ground that the person travelled to Norway "after having stayed in a state or an area where the foreign national was not persecuted."

The Parliament adopted the amendments in a rapid procedure with little consultation with civil society. Nevertheless, the large majority of MPs supporting the amendments underlined that Norway still “shall fulfil its obligations under international conventions. A general rationalization and simplification of regulations and practice in dealing with asylum applications must not undermine the legal safeguards of asylum seekers.” (Our translation)

Current practice

However, the way in which the government has instructed the immigration authorities and the police to implement the amendments, and the way the provision is now applied, represents in our view serious problems.

In effect, the immigration authorities now deny persons the right to seek asylum if they enter Norway from Russia with a Russian “residence permit” or “visa of lengthy duration” or “multi-entry visa”. Returning someone to Russia on these grounds will in general not represent a breach of the European Convention on Human Rights, according to a government circular letter (Ministry of Justice and Public Security Circular (“Rundskriv”), GI-13/2015, 24.11.2015).

If an asylum seeker has only “short-term visa” or a residence permit that is no longer valid, or if the person has stayed in Russia illegally, Norwegian authorities must consider whether there are “concrete evidence” indicating that the applicant will be returned to their country of origin by the Russian authorities. If so, his or her nationality should be taken into account, according to the circular letter.

If the person is a national of a “country of origin, which Norwegian authorities consider complies with international human rights on an acceptable level”, and the asylum application thus might be considered “manifestly unfounded” he or she shall as a general rule be returned to Russia, without any individual assessment of the application.

Examples of such acceptable countries of origin are, according to the circular letter, “Bangladesh, Egypt, India, Nepal, Pakistan and Turkey”, as well as the Kurdish region of Iraq (KRI) and Kabul in Afghanistan.

If the asylum seeker’s country of origin is deemed to be “somewhat more unsafe”, Norwegian authorities must, according to the circular letter, assess whether the person would, if returned to Russia, risk being returned to the country of origin by the Russian authorities in breach of Article 3 of the European Convention on Human Rights (*refoulement*). If there is such risk, the asylum application must be considered admissible.

However, this safeguard is rendered largely ineffective. The circular letter is explicit in that the safeguard should only apply where there is concrete evidence indicating that the specific individual will be subjected to *refoulement*. This approach assumes, wrongly in our view, that the Russian asylum system and practice are in line with basic principles of rule of law. Consequently, it fails to recognise that any person forced to seek asylum in Russia may face a

risk of *refoulement* – without there being any special individual circumstances indicating such risk.

Confining the focus of the examination to the individual circumstances of an asylum seeker renders the safeguard largely ineffective, since the main issue is the general reliability of the Russian asylum system. The circular does not make a single note regarding the Russian asylum system and ignores a critical report on this issue by Landinfo (Landinfo, *Russland: Asylsystemet og rettigheter for asylsøkere*, 16. november 2015).¹

If the asylum seeker has refugee status in Russia or a “temporary asylum”, the person should according to the circular letter, not have her or his application of asylum assessed in Norway.

The government instructs the migration authorities to treat cases that fall within the scope of the circular letter immediately. Any application from persons, who enter Norway after having stayed in Russia, should be refused access to the asylum procedure and unsuccessful applicants must leave Norway immediately. There can be no postponement, unless based on weighty considerations.

Asylum seekers entering Norway from Russia (or any other state where the foreign national was not persecuted) do not have the right to free legal assistance, with the exception of unaccompanied minors.

Norway risks denying unprotected persons access to asylum procedure

A range of Norwegian NGOs active in the areas of human rights, refugee rights and humanitarian assistance have criticised the new regime. We fear that Norway may deny access to asylum procedure to persons who will not receive protection in Russia.

Very few persons are granted refugee status by Russian authorities, and there are many examples of persons being extradited or expelled from Russia to countries where the risk of torture or other inhuman treatment is imminent. There are examples of persons being returned to war-torn Syria by the Russian authorities.²

The government’s examples of countries with an acceptable level of respect for human rights are not reassuring. To establish a blanket rejection of applications of asylum seekers from these countries and regions – refusing any examination of the merits – represents a radical shift in the Norwegian asylum policy.

Among the arguments used by the government to justify the new rules is that Russia is a member of the Council of Europe, a party to the European Convention of Human Rights, as

¹ Landinfo (“Country information”) is an independent body within the Norwegian Immigration Authorities responsible for collecting, analysing and presenting objective and updated country of origin information. Report title in English: *Russia: The Asylum System and Rights for Asylum Seekers*.

² UNHCR is aware of 12 cases of *refoulement* of asylum-seekers to Syria from the Russian Federation, see: UN High Commissioner for Refugees (UNHCR), *Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity*, 11 July 2014, p. 30, available at: <http://www.refworld.org/docid/53b69f574.html>

well as to the Refugee Convention and its protocols, the UN Covenant on Civil and Political Rights, and the UN Convention against Torture.

We agree that if Russia complied with its international treaty obligations, returning applicants would represent less of a problem. That is, however, not the case. As the Norwegian government has stated in a recent white paper on human rights, *Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation*, Meld. St. 10 (2014–2015),³ compliance with international obligations cannot be taken for granted. Russia is characterized by “developments ... towards more authoritarian rule. These developments have brought human rights increasingly under pressure.” (page 95)

Arguing that Russia is safe is also contrary to experiences from a range of cases. Just to mention one example, Russia was recently found by the European Court of Human Rights to deny three applicants from Syria the right to seek asylum.⁴ Instead of having their application examined, the applicants were detained and efforts were made to return them to Syria.

The judgment i.a. reiterated previous findings that “conditions of detention at some Russian facilities for foreign nationals are in breach of Article 3 guarantees” (Section 131); forced return of the applicants to Syria would give rise to a violation of Articles 2 and/or 3 of the Convention; and that there had been a violation of Article 5 § 4 and Article 5 § 1 (f of the Convention) in the case.

It should also be mentioned that Russia remains a country of origin of asylum seekers. In cooperation with Russian human rights organizations, the Norwegian Helsinki Committee has recently documented that Russian asylum seekers of Chechen origin who were denied protection and returned from Norway to Russia suffered torture and were killed after return (cases of Aпти Nazjujev and Umar Bilemchanov). These and other cases illustrate that Russian authorities are not able even to protect Russian citizens.

New package of measures to handle refugee situation

Norwegian authorities have a strong focus on efficiency in handling the influx of refugees to Norway. On 29 December 2015, the government presented a comprehensive package of new measures “to meet the refugee crises”. The package includes about 40 draft amendments of legislation and regulations. The government has organized a public hearing on the draft amendments with a deadline on 9 February 2016.

Since these measures currently only have the status of “government proposals”, we will not comment extensively on them in this letter. They might be substantially modified before adoption; due to input from the public hearing as well as debates in the Parliament.

³ <https://www.regjeringen.no/contentassets/261f255d028b42cab91ad099ee3f99fc/engb/pdfs/stm201420150010000engpdfs.pdf>

⁴ CASE OF L.M. AND OTHERS v. RUSSIA, 15 October 2015: [http://hudoc.echr.coe.int/eng?i=001-157709#{"itemid":\["001-157709"\]}](http://hudoc.echr.coe.int/eng?i=001-157709#{).

However, in particular the proposed temporary protection scheme for unaccompanied minors is of concern to us. According to the proposal, unaccompanied minors will only get temporary protection. When they reach 18 years, their need for further (permanent) protection will then be re-assessed.

There are also other proposals that might create prolonged periods of uncertainty for applicants. However, children should, in our view, never be placed in such uncertainty. The proposal can hardly be seen to be in compliance with “the best interest of the child”-requirement of the UN Convention on the Rights of the Child.

Importance of respect for international standards

The main success criterion of handling the current refugee crisis seems for most European governments, including Norway’s government, to be reduction of the number of arrivals.

Our concern now is that this comes at the expense of ensuring that everyone can exercise their right to seek asylum. We therefore ask you, as the international guardian of this right, to raise this issue with Norway’s government.

Norway is a strong, declared supporter of the UNHCR, and is among the largest financial contributors to international relief work. On this background, and on the background of a deeply divided Europe on the handling of the current refugee situation, it is of paramount importance that Norway upholds international standards.

Sincerely yours,

Ann-Magrit Austenå
Secretary General
Norwegian Organization for Asylum Seekers

John Peder Egenæs
Secretary General
Amnesty International Norway

Bjørn Engesland
Secretary General
The Norwegian Helsinki Committee