

15 February 2016

Notre/Our code: 019/RRNE/2016

Dear Ms Listhaug,

**Re.: UNHCR observations regarding the processing of asylum claims from persons who have arrived to Norway from the Russian Federation**

In follow up to our constructive meeting on 27 January, and the letter subsequently sent on 10 February containing details about the expulsion of two Syrian asylum-seekers from the Russian Federation to Syria in 2015, I am hereby pleased to share further information about the Russian asylum system, which is of relevance for the determination of whether Russia can be considered as a safe "first country of asylum" or a "safe third country" in an individual case.

The information below is provided in the context of the changes introduced at the end of last year<sup>1</sup> to the Norwegian admissibility procedure and its application to asylum-seekers arriving to Norway from the Russian Federation, and the consequent returns to Russia between October 2015 and January 2016 of applicants whose claims were found inadmissible based on a determination of Russia as a safe "first country of asylum" or "safe third country" in the cases concerned.

At the outset, UNHCR would like to emphasize that there are significant gaps in the protection afforded by the asylum system in the Russian Federation, resulting in a heightened risk of detention and *refoulement* of persons who may be in need of international protection. UNHCR considers that this risk should be taken into account to a greater extent by Norway in the application of expedited admissibility and accelerated procedures when determining whether it is "safe" to return persons who may be in need of international protection to the Russian Federation.

In our letter to the Ministry of Justice and Public Security of 23 December 2015, in which UNHCR provided its views on the above mentioned changes introduced to the national legal framework, UNHCR outlined the criteria and safeguards that need to be in place when assessing whether a country can be considered "safe" in regard to a particular applicant. Further to the guidance set out in that letter, UNHCR has highlighted in its 2001 *Note on Fair and Efficient Asylum Procedures*<sup>2</sup> that

[a]n asylum-seeker may be refused access to the substantive asylum procedure in the country where the application has been made: if the applicant has already found effective protection in another country (a first country of asylum), or if responsibility for assessing the particular asylum application in

<sup>1</sup> The changes were introduced through the law proposal Prop.16 L, Instructions GI-12/2015, GI-13/2015 and 15/7814 – EST, Circular RS 2015-013, and amendment to the Immigration Regulation § 17-18.

<sup>2</sup> UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, <http://www.refworld.org/docid/3b36f2fca.html>.

substance is assumed by a third country, where the asylum-seeker will be protected from *refoulement* and will be able to seek and enjoy asylum in accordance with accepted international standards (a "safe third country").'

UNHCR's Executive Committee, of which Norway has been a member since its inception in 1958, has similarly stressed, in its Conclusion on International Protection No. 85 (XLIX) of 1998 that 'as regards the return to a third country of an asylum-seeker ... it should be established that the third country will treat the asylum-seeker(s) in accordance with accepted international standards, will ensure effective protection against *refoulement*, and will provide the asylum-seeker(s) with the possibility to seek and enjoy asylum'. In its Conclusion No. 87 (L) of 1999 the Executive Committee further reiterated that the notion of "safe third country" 'should be appropriately applied so as not to result in improper denial of access to asylum procedures, or to violations of the principle of *non-refoulement*'.

Multilateral or bilateral agreements on the transfer of asylum-seekers may be concluded as a means to incorporate clear safeguards when applying the notion of "safe third country". UNHCR would in this regard like to refer to the May 2013 *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*.<sup>3</sup>

As outlined in the aforementioned 2001 Note, procedures that qualify as best practice for applying the "safe third country" notion are those 'which provide for an individualized assessment that the third country is "safe" in the case of each asylum-seeker' and whereby the asylum-seeker is given 'the opportunity to rebut a general presumption of safety'. Further, the general question of "safety" cannot be answered

'solely on the basis of formal criteria, such as whether or not the third State is a party to the 1951 Convention and 1967 Protocol and/or relevant international human rights treaties. The third State needs actually to implement appropriate asylum procedures and systems fairly. Any list-based general assessment of safety of the third country needs to be applied flexible, and ensure due consideration of that country's safety for the individual asylum-seeker'.

Also, procedures applying the notion of "safe third country" should 'explicitly provide for return to be effected only if the individual will be readmitted to the country'. Hence, in each individual case, it needs to be guaranteed that

'each asylum-seeker: (i) will be individually assessed as to the appropriateness of the transfer, subject to procedural safeguards prior to transfer. Pre-transfer assessments are particularly important for vulnerable groups, including unaccompanied and separated children. The best interest of the child must be a primary consideration; (ii) will be admitted to the proposed receiving State; (iii) will be protected against *refoulement*; (iv) will have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection; (v) will be treated in accordance with accepted international standards (for example, appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; persons with specific needs are identified and assisted); and, (vi) if recognized as being in need of international protection, will be able to enjoy asylum and/or access a durable solution.'<sup>4</sup>

<sup>3</sup> UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, <http://www.refworld.org/docid/51af82794.html>.

<sup>4</sup> UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, <http://www.refworld.org/docid/51af82794.html>.

Further, according to UNHCR as outlined in its *2005 Provisional Comments on the EU Asylum Procedures Directive*<sup>5</sup>

'[t]he question of whether a particular third country is 'safe' for the purpose of returning an asylum-seeker cannot be answered in a generic fashion, for example by 'national' designation of parliament, for all asylum-seekers in all circumstances. In UNHCR's view, the question of whether asylum-seekers can be sent to a third country for determination of their claim must be answered on an individual basis. If not, the risk of chain refoulement arises. National designation of a 'safe third country' could raise a rebuttable presumption. The individual concerned should, however, be given an effective possibility to rebut such a presumption, including in the first instance, even if on an accelerated basis. Otherwise an essential safeguard for asylum-seekers would be removed. Particularly in view of the lack of procedural standards for appeals in the Directive, and the fact that suspensive effect of such appeals is not required, there is a real risk of return to persecution or serious harm, in contravention of the 1951 Convention and other international human rights instruments.'

Through the amendments adopted at the end of last year, the provision guaranteeing access to a fair and efficient asylum procedure has been removed from the Immigration Act. In addition asylum-seekers who have been rejected, i.e. whose claims have been declared inadmissible on the basis of the "safe third country" or "first country of asylum" concept, will no longer have the right to free legal representation in the appeals procedure. These restrictions, coupled with the proposal in the law package of 29 December 2015 (*Endringer i utlendingslovgivningen (Innstramninger I)*), requiring such applicants to leave Norway immediately, without being given automatic suspensive effect of appeals, hamper, in UNHCR's view, the possibility for applicants to rebut the presumption of safety and have access to an effective remedy. From interviews recently conducted by UNHCR Moscow with a few of the rejected applicants who had been returned to the Russian Federation in December 2015, it appears that they had not been adequately informed about the right to appeal the rejection of admissibility, and been given access to the appeals procedure before their expulsion. UNHCR will soon revert with more details on the information received through these interviews

In the following, UNHCR would like to provide its assessment of Russia as a country of asylum, with a focus on gaps that result in a heightened risk of arrest and *refoulement* for non-Ukrainian asylum-seekers. In contrast, UNHCR recognizes the significant efforts of the Russian Federation in providing Temporary Asylum status, access to services and assistance for over 326,000 Ukrainians fleeing the conflict in Eastern Ukraine.<sup>6</sup> However, according to the lists shared with UNHCR by UDI, all of the persons who have been returned from Norway to the Russian Federation since October 2015 are non-Ukrainians.

The Russian Federation acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol in 1993. The same year, it established the Federal Migration Service (FMS) and adopted its first refugee law, the *Federal Law No. N 4528-1 of 1993 on Refugees* (hereinafter "*Law on Refugees*").<sup>7</sup> An amended version

<sup>5</sup> UNHCR, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, <http://www.refworld.org/docid/42492b302.html>.

<sup>6</sup> UNHCR, *The Situation of Ukrainian Refugees in the Russian Federation*, September 2015 [available from UNHCR].

<sup>7</sup> Russian Federation: *Federal Law No. N 4528-1 of 1993 on Refugees [Russian Federation]*, 19 February 1993, <http://www.refworld.org/docid/527246344.html>. A new *Federal Law on Refugees and Asylum* in which some of UNHCR comments had been incorporated at a drafting stage, has not yet been referred to the parliament (Duma).

of this law was adopted in 1997.<sup>8</sup> Under the current *Law on Refugees*, there are two forms of status available to persons in need of international protection, i.e. refugee status<sup>9</sup> and Temporary Asylum (TA) status.<sup>10</sup> Under the *Law on Refugees*, refugee status provides access to a wider range of rights and a more secure status than TA status; the latter being subject to renewal on an annual basis.<sup>11</sup>

In terms of access to territory, non-Ukrainians asylum-seekers arriving at the Russian Federation's borders are not necessarily referred by the Border Guards to the asylum authorities. UNHCR has, for example, documented cases where Syrian asylum-seekers have been turned away at the border and returned to their previous point of transit or directly to Syria. UNHCR is aware of twelve cases of Syrian asylum-seekers who were returned in 2013 by air to Turkey, Lebanon and Egypt (ten persons), and by land to Georgia (two persons). In 2014, UNHCR became aware of three instances where access to the territory was denied at land borders and three incidents of non-admission to the asylum procedure at international airports, the latter resulting in eventual *refoulement*.<sup>12</sup>

Further, for non-Ukrainians, there are considerable challenges in accessing the Federal Migration Service (FMS) in order to register a claim for asylum; in receiving appointments for interviews;<sup>13</sup> and in receiving the necessary asylum documentation<sup>14</sup> that would protect the holder from arrest and detention. This is particularly the case in large urban centres such as Moscow, St. Petersburg and their respective regions. To register and submit an application, applicants must queue from early in the morning. In practice, the Moscow FMS receives only around five cases per day. Asylum-seekers will often have to make several trips to the FMS before they manage to gain access, with all family members. Moreover, UNHCR has received reports that asylum-seekers in Moscow are told to pay fines for staying in the Russian Federation illegally as a pre-condition for registering and submitting their claims for refugee status and/or TA status, a practice subsequently confirmed by the FMS in correspondence with UNHCR.<sup>15</sup>

<sup>8</sup> Russian Federation: *Federal Law No. 95-FZ of June 28, 1997 on the Introduction of Amendments and Addenda to the Law of the Russian Federation on Refugees (with the Amendments and Additions of July 21 1998, August 7, November 7, 2000)*, Adopted by the State Duma on 23 May 1997, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=527246d34>.

<sup>9</sup> Recognition of refugee status is provided for under Article 4 of the *Law on Refugees*

<sup>10</sup> Temporary Asylum status is provided for under Article 12 of the *Law on Refugees* and is further regulated by Russian Federation, *Resolution No. 274 of 2001 On the Granting of Temporary Asylum in the Territory of the Russian Federation*, 9 April 2001, <http://www.refworld.org/docid/3ed7378b4.html>.

<sup>11</sup> Article 12 of the *Law on Refugees* and is further regulated by Russian Federation, *Resolution No. 274 of 2001 On the Granting of Temporary Asylum in the Territory of the Russian Federation*, 9 April 2001, <http://www.refworld.org/docid/3ed7378b4.html>.

<sup>12</sup> UNHCR Letter to the MFA, dated 06 November 2013, Reference RUSMO/MSC/0529, on meeting of 22 October 2013 related to problems of asylum-seekers at transit zones of airports, informing about situation of Syrian applicant staying in Sheremetyevo Airport for more than a month without possibility to submit his application for asylum in Russia and newly arrived Syrian national with hindered access to asylum procedure; UNHCR Letter to the head of the Border Guards detachment at International Airport Sheremetyevo, dated 7 May 2014, Reference RUSMO/MSC/0246, requesting access to Eritrean and Palestinian refugees in transit zone.

<sup>13</sup> Once an application for refugee status and/or TA status is registered, the *Law on Refugees* proscribes a three-month period for the FMS to make the first instance decision. The applicant should receive an asylum-seeker certificate, valid for three months. Article 4(6-7) of the *Law on Refugees*. In practice, there are significant delays, even after submission of the application, in the formal registration of applications. Instead of issuing the asylum-seeker certificate prescribed by law, some FMS territorial branches issue asylum-seekers unofficial papers. UNHCR interviews with asylum seekers; information provided by partners [confidential], 2015.

<sup>14</sup> UNHCR Letter to FMS N RUSMO/MSC/0485 dated 24 November 2015; UNHCR interviews with asylum seekers; partners providing legal support [confidential] 2015 and 2016. UNHCR letter to FMS N RUSMO/MSC/0485 dated 24 November 2015; FMS reply to UNHCR N HC-1/6-9556uh dated 30.13.2015 letter confirming that asylum-seekers could be subjected to administrative fine for illegal stay prior to application for asylum.

<sup>15</sup> UNHCR letter to FMS N RUSMO/MSC/0485 dated 24 November 2015; FMS reply to UNHCR N HC-1/6-9556 dated 30.12.2015 confirmed that foreigners who had been staying illegally in the territory of the

Even when they succeed in registering and submitting an asylum claim with the FMS, in UNHCR's view not all persons in need of international protection receive the appropriate refugee or subsidiary status, in line with international standards. Refugee status is rarely granted, with only 900 persons holding refugee status as of mid-2015, out of a total of 17,000 applications. Out of 1,955 Syrian applications for refugee status since 2009, only two (0.1 per cent) have received refugee status (one in 2009 and one in 2014). Out of 3,857 Syrians who applied for TA status since 2009, 2,495 (65 per cent) have received TA.<sup>16</sup> In contrast, in EU+ countries in 2015, 97 per cent of decisions on Syrian asylum applications were positive, with 81 per cent granted refugee status and 16 per cent granted subsidiary protection.<sup>17</sup>

UNHCR is also concerned about the security of retaining refugee and TA status. There are documented cases of persons whose TA status was not extended,<sup>18</sup> or whose refugee status was revoked,<sup>19</sup> despite the fact that they continued to be in need of international protection. UNHCR is aware of cases where the TA holders' application for extension was not accepted within the deadline, rendering their application invalid, and where TA extension has been refused for reasons not related to the refugee claim (e.g. lack of registration at the place of stay or lack of official sources of income).<sup>20</sup>

In UNHCR's assessment, asylum-seekers in the Russian Federation are at risk of arrest, detention and expulsion at all stages of the asylum process, including while attempting to apply for refugee and/or TA status or after having applied for refugee and/or TA status in situations where the asylum-seeker has not been issued proper documentation. Moreover, as outlined above, persons who lose their refugee status or TA status due to the review or non-extension are left without legal status and are exposed to the risk of arrest and expulsion.

There have been examples where asylum-seekers were apprehended by Immigration Control at the FMS territorial branches, where they came to seek asylum, and were

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Russian Federation for a long period of time are being subjected to administrative liability. UNHCR interviews with asylum seekers [confidential], 2015.

- <sup>16</sup> 98 per cent of these refugee applications by Syrians were lodged from 2012 onwards. 99 per cent of TA status applications by Syrians were lodged from 2012 onwards. See: FMS statistics as of mid-2015, on file with UNHCR.
- <sup>17</sup> EU+ countries issued a total of 166,746 decisions on Syrian asylum applications in 2015. See: European Asylum Support Office, *Latest asylum trends – 2015 overview*, undated, <https://easo.europa.eu/wp-content/uploads/LatestAsylumTrends2015.pdf>.
- <sup>18</sup> Human Rights Committee, Communication No. 2126/2011, *Kesmatulla Khakdar v. Russian Federation*, decision dated 17 Oct 2014, CCPR/C/112/D/2126/2011, <http://juris.ohchr.org/Search/Details/1932>. This complaint (submitted 7 Dec 2011) concerns an Afghan national in RF whose temporary asylum status had been withdrawn in 2009 when he tried to extend it. The author was left without any status in RF and claimed that he could be deported at any time to Afghanistan, although no deportation order had yet been issued. The Committee requested interim measures, asking that the complainant not be expelled to Afghanistan pending consideration of the communication. The Committee decided that further analysis should have been carried out of the author's claims of risk of torture and that therefore a deportation order issued and enforced against the author would violate his rights under Article 7 of the Covenant. The Committee advised RF to provide an effective remedy, including a full reconsideration of the author's allegations of the risk of torture, and to avoid exposing others to similar risks of violations.
- <sup>19</sup> By law, refugee status is not subject to periodic review. However, in practice, it is reviewed every 18 months. While the FMS's stated purpose of the review is for updating the registration of a person as a refugee status holder, (FMS Administrative Regulation N 352 dated 19 August 2013), in reality such reviews also consider the need for international protection and re-assess the credibility of the applicant by comparing his statement to the testimony provided previously. UNHCR is aware of cases where refugee status was cancelled, despite the fact that the situation in the country of origin had not changed. Two Afghan nationals staying in Russia for over fifteen years and one Uzbek national who lost their refugee status during the process of re-registration in 2013, 2014 and 2015.
- <sup>20</sup> For example, FMS decision on the case of X N 1478 dated 3 March 2014, FMS Territorial Body for Moscow Region of the case of T N 16-r-651 dated 19.03.2014, FMS Territorial Body for Moscow decision on the case of O Nn 1145-12-XXXX dated 12 December 2014.

taken to court for administrative removal procedures.<sup>21</sup> Where a lawyer intervenes, such charges may be dismissed by the court, but for applicants who are not assisted by a qualified lawyer the situation might be different. If an individual is issued with an expulsion order for lack of legal stay in the Russian Federation,<sup>22</sup> administrative detention may be imposed by a judge while the expulsion is being processed.<sup>23</sup>

In recent judgments, the European Court of Human Rights (ECtHR) has found the Russian Federation to be in breach of Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) due to poor conditions and treatment during detention, as well as Article 5 ECHR due to a lack of effective remedy and regular review of the lawfulness of detention.<sup>24</sup>

It is difficult to submit an asylum application while in pre-trial detention for illegal border crossing or while in administration detention pending expulsion.<sup>25</sup> Some detention centre authorities lack sufficient knowledge of asylum procedures, and do not co-ordinate with migration authorities. It may also take many months for FMS representatives to come to a detention centre in order to initiate the asylum procedure with the applicant.<sup>26</sup> UNHCR does not have free access to detention centres and is required to send official requests to the concerned authorities in order to visit persons of concern to UNHCR in detention.<sup>27</sup>

- <sup>21</sup> UNHCR is aware of six cases: 1 Sudanese, 1 Yemen, 3 Syrian and 1 Sierra-Leone; UNHCR letter to the FMS of Russia N RUSMO/MSO/0485 dated 24 November 2015 expressing concern regarding problems with access to the asylum procedure in Moscow invoking arrests at the premises of the FMS Department for Moscow with consequent initiation of administrative procedures foreseeing expulsion from the Russian Federation; FMS letter N HC-1/6-9556 rp dated 30 December 2015 replying that foreigners who had been residing illegally for a long period of time are being brought to the administrative liability, however, are not deprived of possibility to apply for asylum.
- <sup>22</sup> In line with Article 18(8) of the *Code of Administrative Offences of the Russian Federation*, No. 195-Fz Of December 30, 2001, <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru073en.pdf>.
- <sup>23</sup> Article 34(5) of Russian Federation, *Federal Law No. 115-FZ of 2002 On the Legal Position of Foreign Citizens in the Russian Federation* [Russian Federation], 25 July 2002, <http://www.refworld.org/docid/3ed72b274.html>. See also the explanation of legislation relating to the expulsion and detention of foreign nationals provided in European Court of Human Rights, *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015, <http://www.refworld.org/docid/561f770f4.html>, paras 61 - 64: "61. Pursuant to section 34(5) of the Foreigners Act (Law no. 115-FZ of 25 July 2002), foreign nationals subject to administrative removal who have been placed in custody pursuant to a court order are detained in special facilities pending execution of the decision on administrative removal. 62. Article 3.10 § 1 of the Code of Administrative Offences defines administrative removal as the forced and controlled removal of a foreign national or stateless person across the Russian border. Under Article 3.10 § 2, administrative removal is imposed by a judge or, in cases where a foreign national or stateless person has committed an administrative offence upon entry into the Russian Federation, by a competent public official. Under Articles 3.10 § 5, 27.1 § 1 and 27.19 § 2, for the purposes of executing the decision on administrative removal a judge may order that the foreign national or stateless person be placed in a special facility which they are not allowed to leave at will. 63. Under Article 31.9 § 1, a decision imposing an administrative penalty ceases to be enforceable two years after the decision became final. 64. Article 3.9 provides that an administrative offender can only be punished with administrative detention in exceptional circumstances, for a maximum of thirty days."
- <sup>24</sup> European Court of Human Rights, *Kim v. Russia*, Application no. 44260/13, 17 July 2014, <http://www.refworld.org/docid/53c7957e4.html>, paras. 31 – 33. European Court of Human Rights, *R vs Russia*, 11916/15, 26 January 2016, <http://hudoc.echr.coe.int/eng?i=001-160221>. ; European Court of Human Rights, *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015, <http://www.refworld.org/docid/561f770f4.html>, paras 142 and 152.
- <sup>25</sup> For further background information on the obstacles to submitting asylum applications while in detention, see section 2.3 of the Civic Assistance Report, *Russia as a Country of Asylum*, 2015 [on file with UNHCR].
- <sup>26</sup> Council of Europe: European Court of Human Rights, *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015, <http://www.refworld.org/docid/561f770f4.html>.
- <sup>27</sup> UNHCR Letter to the FMS, dated 03 August 2012, Reference RUSMO/MSO/0355, related to non-access to asylum procedure and threat of refoulement from pre-removal detention in Rostov Region; UNHCR Letter to the FMS and MFA, dated 30 May 2014, Reference RUSMO/MSO/0280, regarding non-access to asylum procedure and threat of refoulement for Syrians in pre-removal detention in Kaluga; UNHCR Letter to the FMS, dated 01 July 2015, Reference RUSMO/MSO/0283, regarding access to asylum procedure and threat of refoulement for Afghan applicants in pre-removal detention in Oriol.

On 30 August 2013 the Federal Bailiff Service reportedly issued an internal circular letter to its regional branches, according to which return was not considered possible to Syria because of the ongoing conflict there, and instructed its branches to report any problems arising with the execution of court judgments ordering expulsion to Syria to its head office.<sup>28</sup> According to *L.M and Others vs Russia*, there have been several cases where, on the basis of this circular, Syrians arrested for administrative offenses were subsequently released by the Regional Courts, overturning decisions for removal rendered by District Courts.<sup>29</sup> However, there have also been cases where Russian Federation domestic courts continued with expulsion orders, implying that this circular did not prevent cases of deportation of Syrians.<sup>30</sup>

As shared in our letter of 10 February to the Ministry of Justice and Public Security, UNHCR is aware of two cases of *refoulement* to Syria in early 2015 from pre-removal detention centres in Vladikavkaz, despite UNHCR's interventions and their application for asylum. UNHCR learned about these cases when both applicants were already in a pre-removal detention centre in Vladikavkaz, Republic of North Ossetia-Alania, and awaiting expulsion for illegal stay, following a court ruling. Fearing being returned to Syria, the applicants applied for asylum from detention. UNHCR submitted letters in support of their asylum claims to the Federal Migration Service in November 2014. However, on 21 January 2015, UNHCR was informed that both applicants had been expelled to Syria before their applications for refugee status were duly considered. UNHCR expressed its concerns about the *refoulement* to FMS in writing on the same day. In May 2015, the FMS replied to UNHCR in writing, stating that the applications for refugee status by the two Syrian asylum-seekers was rejected on 27 January 2015 (i.e. at least six days after they were expelled) and that they had not applied for temporary asylum.<sup>31</sup>

In contrast, there have also been instances where UNHCR and its partner organizations have been successful in preventing deportation. In 2014, UNHCR and its partners intervened in 77 cases of potential forced return of asylum-seekers, resulting in these individuals gaining access to the asylum procedure, including from international airports.<sup>32</sup> In 2015, 117 cases of forced return were prevented by

<sup>28</sup> European Court of Human Rights, *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015, <http://www.refworld.org/docid/561f770f4.html>, paras 12, 68, 71.

<sup>29</sup> European Court of Human Rights, *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015, <http://www.refworld.org/docid/561f770f4.html>, para. 68.

<sup>30</sup> European Court of Human Rights, *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015, <http://www.refworld.org/docid/561f770f4.html>, para. 118. The ECtHR was "not persuaded that the applicants' allegations have been duly examined by the domestic authorities in any of the proceedings employed... and noted that forced return of the applicants to Syria would give rise to a violation of Articles 2 and/or 3 of the Convention."

<sup>31</sup> UNHCR letter to the FMS Department in the Republic of North Ossetia-Alania N RUSMO/MS/0569 dated 13 November 2014 in support of applicants' asylum applications and advocating for non-refoulement. UNHCR letter to the Head of the FMS of Russia cc: the Head of the FMS Department for the Republic of North Ossetia-Alania and the MFA N RUSMO/MS/0014 dated 21 January 2015 expressing concern over risk of refoulement of the two Syrian asylum-seekers while their applications for refugee status were under consideration and urging to undertake measures to guarantee non-refoulement and right to seek asylum; UNHCR letter to the FMS Department for the Republic of North Ossetia-Alania requesting information on the decision taken on asylum application submitted by concerned Syrian nationals N RUSMO/MS/0143 dated 30 March 2015; Letter from the FMS Department for the Republic of North Ossetia-Alania N1/8/2175 dated 14 May 2015 informing that the two concerned Syrians were rejected in granting refugee status on 27 January 2015, had not applied for temporary asylum and left the territory of the Russian Federation under the judicial rulings. In an additional case of forcible return from Belgorod pre-removal detention centre, UNHCR was informed about the case at the stage when the applicant was already in a plane departing to Damascus, the applicant did not apply for asylum and did not appeal the expulsion order. The circumstances of the case were difficult to confirm, therefore, no official intervention by UNHCR undertaken.

<sup>32</sup> UNHCR Letter N RUSMO/MS/0068 dated 13 February 2014 addressed to the Leningradsky Regional Court in support of appeal of Syrian asylum-seeker expressing UNHCR's position on non-return to Syria and stating that passing an expulsion order would constitute a violation of non-refoulement principle stipulation in the 1951 Convention and the RF Law on Refugees; UNHCR Letters N RUSMO/MS/0191, N RUSMO/MS/0190 dated 01 April 2014 addressed to the Supreme Court of the Republic of Kalmykia

UNHCR and its partners – including cases at risk of expulsion, extradition and removal from transit zones of international airports.<sup>33</sup>

However, it is important to note that for many of these cases UNHCR was only alerted to the need to intervene by partners or by the refugee community. UNHCR is concerned that there may have been other persons who were unable to apply for asylum, and who have already been removed from the territory.

There have also been recorded cases of extrajudicial removals, or abductions, involving persons of concern to UNHCR. Indeed, the ECtHR has found the Russian Federation in breach of the ECHR in several cases involving abductions and irregular transfers of persons who were seeking asylum.<sup>34</sup>

UNHCR is aware of eleven Uzbek and Tajik nationals who were abducted and have since re-appeared in detention outside of the Russian Federation, between September 2011 and November 2015. Of these, ten were protected under Rule 39 interim measures of the ECtHR at the time of abduction.<sup>35</sup> Eight were asylum-seekers in various stages of the procedure/appeal and three had received TA status. One person was abducted near the Refugee Reception Centre in Moscow, where he was supposed to have a resettlement interview with UNHCR.<sup>36</sup> Two have been sentenced to 26 and 28 years in prison in Tajikistan following their abduction.<sup>37</sup> In addition, one Uzbek national, who was an asylum-seeker, was deported to Uzbekistan under formal procedures in 2011, despite Rule 39 interim measures.<sup>38</sup> There are a number of other

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in support of appeals of Syrian asylum-seekers presenting UNHCR's position on non-return to Syria and advocating for non-refoulement; UNHCR Letter N RUSMO/MS/0532 dated 28 October 2014 addressed to the FMS of Russia requesting to provide accommodation at a Temporary Accommodation Centre of the FMS for a family of Uzbek Temporary Asylum holders at risk of abduction; UNHCR Letter N RUSMO/MS/0280 dated 14 May 2014 addressed to the FMS and MFA urging the authorities to prevent refoulement of Syrian asylum-seekers kept in pre-removal detention in Kaluga.

- <sup>33</sup> UNHCR NV N RUSMO/NV/009 dated 28 January 2015 requesting Ministry of Foreign Affairs' support in implementing all necessary measures to ensure that the rights of a Syrian refugee are fully respected and the principle of non-refoulement is upheld in the spirit of the 1951 Convention; UNHCR NV N RUSMO/NV/048 dated 19 August 2015 and UNHCR letters N RUSMO/MS/0241 dated 03 June 2015, N RUSMO/MS/0285 dated 03 July 2015 requesting the authorities to undertake all necessary measures to guarantee non-refoulement and to ensure the right to seek asylum for Syrian applicants in pre-removal detention in the Republic of Dagestan.
- <sup>34</sup> European Court of Human Rights, *Savridin Dzhurayev v. Russia*, 25 April 2013, <http://www.refworld.org/docid/517fd6104.html>. The ECtHR found a violation of Article 3 of ECHR on account of the authorities' failure to protect the applicant against the real and imminent risk of torture and ill-treatment by preventing his forcible transfer from Moscow to Tajikistan, the lack of an effective investigation into the incident, and the involvement of State agents in that operation. The ECtHR also found a violation of Article 34 ECHR on account of the respondent State's failure to comply with the interim measures indicated by the Court.
- <sup>35</sup> European Court of Human Rights, *Abdulkhakov v. Russia*, Application no. 14743/11, 2 October 2012, <http://hudoc.echr.coe.int/eng?i=001-113287>; European Court of Human Rights, *Koziyev v. Russia*, Application no. 58221/10, [Case communicated on 2 May 2013], <http://hudoc.echr.coe.int/eng?i=001-120075>; European Court of Human Rights, *Savridin Dzhurayev v. Russia*, Application No. 71386/10, 25 April 2013, <http://hudoc.echr.coe.int/eng?i=001-119416>; European Court of Human Rights, *Nizomkhon Dzhurayev v. Russia*, Application No. 31890/11, 3 October 2013, <http://hudoc.echr.coe.int/eng?i=001-126550>; European Court of Human Rights, *Ermakov v. Russia*, Application no. 43165/10, 7 November 2013, <http://hudoc.echr.coe.int/eng?i=001-127816>; European Court of Human Rights, *Mamazhonov v. Russia*, Application no. 17239/13, 23 October 2014, <http://hudoc.echr.coe.int/eng?i=001-147333>; European Court of Human Rights, *Kasymakhunov v. Russia*, Application no. 29604/12, 14 November 2013, <http://hudoc.echr.coe.int/eng?i=001-128055>; European Court of Human Rights, *Yakubov v. Russia*, Application no. 7165/10, 8 November 2011, <http://hudoc.echr.coe.int/eng?i=001-107329>.
- <sup>36</sup> European Court of Human Rights, *Yakubov v. Russia*, Application no. 7165/10, 8 November 2011, <http://hudoc.echr.coe.int/eng?i=001-107329>.
- <sup>37</sup> European Court of Human Rights, *Koziyev v. Russia*, Application no. 58221/10, [Case communicated on 2 May 2013], <http://hudoc.echr.coe.int/eng?i=001-120075> and European Court of Human Rights, *Savridin Dzhurayev v. Russia*, Application No. 71386/10, 25 April 2013, <http://hudoc.echr.coe.int/eng?i=001-119416>.
- <sup>38</sup> European Court of Human Rights, *Zokhidov v. Russia*, Application No. 67286/10, 5 February 2013, <http://hudoc.echr.coe.int/eng?i=001-116330>.



disappearances of TA status holders and asylum seekers, where evidence of abduction has not been confirmed<sup>39</sup>, or where the abducted cases have not reappeared.<sup>40</sup>

The above analysis reinforces UNHCR's concerns about the fact that persons in need of international protection are subjected to expedited admissibility and accelerated procedures in Norway and returned to the Russian Federation as being a "safe third country" for them. As already stated, UNHCR considers that the absence of adequate safeguards in these procedures can put individuals at risk of chain-*refoulement* in violation of *inter alia*, Article 33 in the 1951 Convention relating to the Status of Refugees and Article 3 ECHR.

In particular, UNHCR is concerned that asylum-seekers who have arrived in Norway from the Russian Federation, and who hold residence permits or multi-entry visas in the Russian Federation, may not be given an adequate possibility in Norway to explain why they, personally, may not be able to avail themselves of protection in Russia. While the "safe third country" and "first country of asylum" concepts presume that an asylum-seeker is able to find and enjoy protection in a third country, the applicant must always be given a possibility to rebut the presumption of safety.

In assessing whether the Russian Federation is "safe" for a particular individual, a distinction should be made between persons holding a longer-term permit – such as a permanent residence permit – and persons holding multi-entry visas in the Russian Federation. A permanent residence permit affords greater protection against removal from the Russian Federation, although even residence permits are subject to revocation in a number of specified circumstances.<sup>41</sup>

Holding a multi-entry visa should not be considered sufficient evidence that the holder will not be subsequently removed from the Russian Federation. Given the limitations in access to asylum procedures in the Russian Federation, including the fact that it can take a non-Ukrainian several months to register an asylum application in key urban centres, even individuals with a valid visa may not succeed in registering and submitting an asylum application before the expiration of their visa.

In summary, UNHCR calls on the Government of Norway to:

- 1) Review the changes adopted at the end of 2015 to the Norwegian Immigration Act and Regulation, as well as the content of Instructions GI-12/2015, GI-13/2015 and 15/7814 – EST, and Circular RS 2015-013 in light of UNHCR's observations and recommendations set out above, in our letter of 23 December 2015, and in UNHCR's comments on the law proposal of 29 December 2015 (Endringer i utlendingslovgivningen (Innstramminger II), with the aim of ensuring that sufficient safeguards are in place when applying the "safe third country" and "first country of asylum" notions to asylum-seekers arriving from the Russian Federation.
- 2) Ensure that, when the "safe third country" or "first country of asylum" notion is applied to asylum-seekers arriving from the Russian Federation, the individual

<sup>39</sup> European Court of Human Rights, *Sultanov v. Russia*, Application No. 15303/09, 4 November 2010, <http://hudoc.echr.coe.int/eng?i=001-101586>.

<sup>40</sup> European Court of Human Rights, *Latipov v. Russia*, Application No. 77658/11, 12 December 2013, <http://hudoc.echr.coe.int/eng?i=001-139399>; European Court of Human Rights, *Azimov v. Russia*, Application No. 67474/11, 18 April 2013, <http://hudoc.echr.coe.int/eng?i=001-118605>; European Court of Human Rights, *Abdulazhon Izakov v. Russia*, Application no. 14049/08, 8 July 2010, <http://hudoc.echr.coe.int/eng?i=001-99798>; European Court of Human Rights, *Mukhitdinov v. Russia*, Application no. 20999/14, 21 May 2015, <http://hudoc.echr.coe.int/eng?i=001-155007>.

<sup>41</sup> Russian Federation, *Federal Law No. 115-FZ of 2002 On the Legal Position of Foreign Citizens in the Russian Federation*, 25 July 2002, <http://www.refworld.org/docid/3ed72b274.html>

asylum-seeker is provided the opportunity to rebut the presumption that the Russian Federation can be regarded as a "safe" country in her or his case.

- 3) Initiate a re-assessment of the designation of the Russian Federation as a safe third country by Norway.

I would like to take this opportunity to reiterate UNHCR's appreciation for Norway's commitment to finding solutions to the problems of refugees and the role Norway has played in developing the international protection regime, and look forward to a continuous dialogue and cooperation.

Yours sincerely,



Pia Prytz Phiri  
Regional Representative