

**ICF (Information and Cooperation Forum) – Cross-border Asylum Network
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**Newsletter # 1
March 2004**

This first ICF Newsletter has been delayed for a couple of weeks now for a number of reasons. From now on, we plan to send out a newsletter once every month. The number and volume of news messages will vary, depending on the frequency and contributions from ICF partners.

The newsletter will be our means of communication inbetween our assemblies and conferences. Yet, in opposition to the ICF mailing list, it will reach out not only to ICF partners and associated partners but to whomever is interested in asylum-related news from our seven partner countries. We will send out a message to a wide net of people and organizations next week to inform them of how to get the newsletter.

We want to share information on what we as NGOs are dealing with at a certain moment in time. That may be individual cases, EU developments, experience with the implementation of the reception directive, as well as statistics or news on the national legislative level.

The newsletter is a first result of our Network. Thus, the messages are written by partners or associated partners. They are then edited by the ICF coordinator at Pro Asyl in Frankfurt, Germany.

The first news we would like to share is that ICF has two new members: Jozef Kruppa for Slovak Helsinki Committee in Bratislava and Doris Sattler for Foundation Gea 2000 in Ljubljana.

The second news is that ICF has a new name, or a subtitle if you will. Due to the relative rush the inventors of "ICF" were in when they created this name, it is true and applicable but it does not say it all. "Cross-border Asylum Network" expresses what we – 13 human rights organizations from seven countries – are really up to. So welcome to the first ICF – Cross-border Asylum Network Newsletter.

In the attachment, you will find documents that we consider relevant contributions to ICF research. Today, this is the UNHCR Background Notes on the Protection of Asylum Seekers and Refugees in the five new EU member countries, as well as a report by OPU on the situation at the German-Czech border and in the detention center Bálková.

Lastly, we would like to encourage all of you to share with us any written statement, analysis, or press release that your organization has produced within the last months and from now on, and that you consider of interest to our Network. Our partners in Germany and Austria are starting to do research on the seven countries and therefore need whatever information is available. We would highly appreciate it if you assisted them in doing so by sending them material and talking to them about what they need to know. Speaking of which – we will send out our ICF research map next week so that you know what exactly ICF aims at researching.

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1. ICF – Cross-border Asylum Network: Upcoming events

The European Union is growing larger – its borders are shifting. For five long years, the EU member states have been struggling for common asylum standards. So far, the results have shattered our hopes for a better refugee protection system. The Europe of 25 moves towards closed gates...

13 human rights organizations from Germany, Austria, Poland, Czech Republic, Slovakia, Hungary, and Slovenia form a "Cross-border Asylum Network" within the EU project *Information and Cooperation Forum*(ICF). Throughout the year 2004, we analyze social reception conditions for asylum seekers. United, we work for a humane asylum politics based on the human rights principles.

Today, reception standards in this particular European region differ greatly. The respective EU council directive – to be implemented by 6 February 2005 – shall bring them in alignment. ICF accompanies the implementation with crucial questions: Do persons in need of protection still have access to the European territory and a fair asylum procedure and how? What are dignified reception conditions? How can we prevent that asylum seekers are still deprived of their basic rights?

Strong bonds are our answer to the EU member states' attempt to shift their responsibility for refugees further East or to regions of origin. Cross-border cooperation is our way to take responsibility for people in need of protection.

Dates for the Network's joint events:

April 26-28: Research trip to reception / detention centers in Brandenburg and Poland
May 24-27: Research trip to reception / detention centers in Vienna, Hungary, Slovakia
Aug. 16-18: Research trip to reception / detention centers in Sachsen and the Czech Republic

June 21-22: Participation in UNHCR Symposium in Berlin
Sep. 17-19: Final Conference in Bad Boll

2. Press Release of 18 February 2004: Large Coalition warns of passing the EU asylum procedure directive

Once again, a large coalition insistently asks the Government Coalition to cease attempting to export the German "safe third country" rule to the future EU asylum procedure directive. In a collective statement, Neue Richtervereinigung, Deutsche Anwaltverein, Caritas, Arbeiterwohlfahrt, Paritätischer Wohlfahrtsverband, amnesty international and PRO ASYL warn of passing the directive. Just ahead of the meeting of EU Justice and Home Affairs Ministers on 19/20 February 2004 in Brussels, the seven organisations declare: "For refugee protection in Europe, the draft as it stands now would mean a big step back. It does not comply with international standards."

"Safe Third Country" rule

Most alarming is the Federal Government's proposal within the asylum procedure directive to reject refugees at the border without carrying out a regular asylum procedure. This rule is to be applied to every refugee who travels through neighbouring countries of the EU that are qualified as "safe third countries". That would include problematic states such as Russia, Belarus, Ukraine, Rumania, Bulgaria, Serbia, Croatia, Macedonia, and Turkey as potential "safe third countries". Eleven years after the amendment of the constitution, the German "safe third country" model would undermine the individual right to asylum in the wider Europe.

Further, the coalition wonders whether an association of currently 15 and soon to be 25 states needs to fall back on such a concept. A future European asylum legislation should at least warrant a fair and efficient asylum procedure in the European Union's member states. Thus, the seven organisations advocate the abandonment of the "safe third country" concept.

Examples: Future neighbouring states as „safe third countries“?

Belarus is called the last dictatorship in the middle of Europe. The year 2003 showed a clear toughening of repressions against human rights advocates, human rights organisations and other civil society organisations. Amnesty international is in possession of indications for an involvement of the government in the “disappearance” of three oppositional politicians and a journalist. In Ukraine, according to amnesty international, torture and abuse are widespread. Although Russia has ratified the Geneva Refugee Convention (1992) and the European Human Rights Convention (1998), and has been member of the Council of Europe, it has still not signed the Protocol 13 (Human Rights Convention) which prohibits the death penalty in all circumstances. As of today, torture is not a punishable act, and ethnically motivated violent acts are reported of on a regular basis. In police custody, abuse and torture take place. The brutal conflict in Chechnya has not ceased: systematic torture, rape, homicide through state actors and “disappearances” are seldom prosecuted. Captured Chechens are kept under inhuman conditions. Thousands of civilians have been killed. The armed conflict has spread to neighbouring regions such as Ingushetia. In view of the signatories, it can not be assumed that these states will treat refugees rightful and grant them the international rights that they are entitled to.

The consequences for the protection of refugees

Should the German Federal Republic export its unlawful standard via asylum procedure directive to the EU level, the new member countries will use German legislation as their role model to immediately toughen their national provisions. Instead of supporting the new member states in further developing their (partly precarious) reception systems, the old EU member states in fact provide them with a number of legal instruments to undermine the right of asylum. Rejection to a new circle of “safe third countries” endangers fundamental principals of the international protection of asylum and human rights. In addition, Europe’s neighbouring regions will follow this example. This means a dangerous domino effect for the existing international refugee protection system.

Accelerated Procedures

From the viewpoint of the signatories, a fair asylum procedure has to grant the right to file an appeal against a negative decision which has a suspensive effect. Filing an appeals shall be possible in cases of both “inadmissible” and “unfounded” applications. The directive draft specifies more than 20 cases in which appeals do not have a suspensive effect. The high number of negative decisions that were revoked in the appeal procedure in many countries, including Germany, shows the importance of an effective legal protection.

Personal Hearing

The personal hearing is the core of the asylum procedure. It is of great importance in the procedure which is designed to examine individual claims of persecution. Some member states demand to exclude a personal hearing _ for example in cases with “manifestly unfounded” applications. The undersigned organisations urgently ask the Federal Government to decidedly oppose this. Deciding on an asylum application without personal hearing is not part of a considered decision-making process.

(Karl Kopp, Pro Asyl)

3. Austria: “European Homecare” employees accused of rape and torture

A former employee of “European Homecare” has been accused of having raped a female asylum seeker in the refugee accommodation in Traiskirchen. The 35-year-old woman from Cameroon says the uniformed man had asked her into his office during the night from 14 to 15 January 2004 and raped her there. The accused admits to have had sexual intercourse with her but claims it to have been “on voluntary basis”. The 47-year-old is kept under arrest. According to a statement by Home Minister Ernst Strasser, the asylum seeker is in psychological care.

On January 14, an anonymous e-mail had stated that European Homecare employees had sexually assaulted asylum seekers. These claims are currently being investigated by the Criminal Department in Niederösterreich.

(Source: „ORF“, 03 Feb. 04)

Only days after this scandal became public through the media, another one shattered Traiskirchen: a European Homecare employee was accused of having abused an asylum seeker from Georgia with a glowing cigarette butt. The case is currently investigated.

In the meantime, there are doubts being raised as to the decision to put European Homecare in charge of the camp. The company is € 1,10 cheaper per refugee than a company from the realm of charity that also wanted to do the job.

UNHCR now asked for a general investigation of the accommodation, saying that it was obviously too risky for the 100 females to live there. They were not able to lock their rooms at night nor the bathrooms at any time.

(Source: Migration News Sheet, March 04)

4. Austria: Refugees from Chechnya at Austrian-Czech border

At the Austrian-Czech border by Gmünd, a divided town of about 7000 inhabitants, more and more asylum seekers who try to cross the border clandestinely, are found. Since the beginning of this year, 1194 "illegal" refugees were stopped by border guards (as of 22 March 04). On Saturday, 22 March 2004, three Germans and one Senegalese were detained under the accusation of having brought 19 asylum seekers from Russia into Austria. (Source: "Kurier", 23 March 04)

Over the weekend of February 7/8, a total of 156 asylum seekers who are said to have tried to cross the border between the Czech Republic and Austria clandestinely were gathered by Austrian police forces. A police officer reports that some of the refugees blocked railroad tracks in fear to be sent back to the Czech Republic.

Most of the asylum seekers are from Chechnya. After having had their fingerprints taken and their personal data registered, they were brought to emergency accommodations in a garage run by the Red Cross. They now reside in the refugee accommodation centre in Traiskirchen.

(Source: "Die Presse", 10 Feb. 04)

The Sicherheitsdirektion (Highest Police Agency) reports claims that Chechen "illegals become more and more aggressive". It says they made their children walk in front of them as living shields. The police forces has been afraid of the "foreigners" throwing stones so they did not arrest them until the early morning hours. Only due to the "especially considerate behavior" of the police, an escalation had been avoided. The Sicherheitsdirektion says that according to their investigation, a large part of the group had already filed asylum applications in Poland and the Czech Republic. Further, it says it was not the first time this group was rejected at the Austrian border and sent back to the Czech Republic. According to the article, the "group leader" had stated that members of a human rights organization had encouraged the refugees to "this behavior". A Czech camp authority had further told the Chechen refugees, the borders to Austria were "completely open" until mid-February 2004.

(Sources: Sicherheitsdirektion, 08 Feb. 2004 ; „Die Presse“, 10 Feb. 04)

5. Czech Republic: Asylum Statistics presented

The Czech Ministry of Interior organized a press conference on 30 January 2003 in order to present the asylum statistics and inform public about the situation in asylum centers (refugee camps) in 2003. The Czech Ministry of Interior, Department for Asylum and Migration Policy, granted asylum a total of 208 asylum seekers in 2003. The figure was the highest since 1993. In 2002, 103 asylum seekers were granted asylum, in 2001 a total of 83 asylum seekers were granted asylum in the Czech Republic. The nationals from Russia, majority of them originating in Chechnya, were the most successful national group in 2003 (62 persons), followed by refugees from Afghanistan (30 persons), Armenia (26 persons) and Belarus (20 persons). A total number of 11.396 new applications for asylum were submitted in the Czech Republic in 2003, more than in 2002 (8.484) but less than in 2001 (18.094 new applicants for asylum)

Approximately 50 per cent of asylum seekers' cases were terminated by the Ministry of Interior due to the unknown presence of the refugees. The Organization for Aid to Refugees, OPU, believes that the low recognition rate and under-developed integration system for recognized refugees contribute to the fact that the Czech Republic discourage refugees sometimes with strong protection claims to seek asylum in the country.

(Martin Rozumek, OPU, Prague)

6. Czech Republic: Palestinian asylum seeker in transit zone of Prague International Airport for more than 180 days

Mr. Z.I.M, a rejected Palestinian asylum seeker was released in February after more than 180 days of his stay in the transit zone of the international airport Prague-Ruzyně. Mr. Z.I.M, who was sent back from Prague to Turkey, before he could appeal the decision rejecting his asylum claim in the Czech Republic, but not readmitted by the Turkish authorities, was placed in the transit zone. There is no appropriate facility to accommodate foreigners in the transit zone. Therefore, Mr. Z.I.M slept on the floor, could not access any legal aid and his access to medical care was severely restricted. Mr. Z.I.M was not able to exhaust legal remedies available to him because in fact no one could reach him in the transit zone and prepare the appeals with a suspensive effect.

Due to the poor health state of Mr. Z.I.M., the Organization for Aid to Refugees, OPU, helped the Palestinian refugee to apply for a toleration visa. However, the application has not even been accepted into consideration by the Aliens Police. An attorney at law took over the case and submitted legal actions against the expulsion decisions and the decision rejecting the asylum claim. Further steps in the case would include a claim to the Czech Constitutional Court and later an application to the European Court for Human Rights. Mr. Z.I.M.'s lawyer was going to invoke article 3 of the ECHR and the article 8 of the ECHR claiming that the treatment of Czech authorities amounts to a degrading treatment and interferes with his right to private life. The intervention and mass media campaign resulted in his release. Unfortunately, the asylum application of his wife who applied for asylum in Chemnitz, Germany, was rejected by the German authorities also in February 2004. OPU interviewed his wife in Chemnitz and prepared her appeal against the negative decision.

(Martin Rozumek, OPU, Prague)

7. Germany: Trial against Federal Border Police officers taken to court of higher instance – Aamir Ageeb died during forced expulsion

On 28 May 1999, Aamir Ageeb, an asylum seeker from Sudan, died during his forced expulsion aboard a Lufthansa airplane just after take-off from Frankfurt. The trial against three officers from the federal border police (Bundesgrenzschutz) who accompanied Ageeb was carried out from 2 February 2004 to 23 March 2004 in Frankfurt. It came as a surprise when the judge ruled that the trial had to be re-opened before a jury court, in this case the regional (or district) court (*Landgericht*), because there was probable cause that the accused were not guilty of involuntary manslaughter but of bodily harm with fatal consequences. At this court, the minimum sentence that can be given is three years in prison; sentences are generally higher than the ones a municipal court could give. The trial had taken place before a municipal court (*Amtsgericht*) in Frankfurt that can only give sentences up to four years imprisonment.

The officers had placed a helmet over 30-year-old Ageeb's head, bound his arms and legs, and pressed down his head on his chest to keep him silent. The judge now ruled that had not been necessary: in Ageeb's position, there was no danger whatsoever of him being resistant. Shortly after the "fasten seatbelt" sign went off, the officers noticed Ageeb had suffocated.

Almost five years after the death of Aamir Ageeb, the witnesses' memory has faded and details are left unclear. However, two things became very apparent during this first, unresolved trial: First, the overwhelming impression of how unorganised the federal border police is or was at that point, not giving its officers definite orders on how to carry out a forced expulsion (use of methods and material), let alone a specific training for forced expulsions. Knowledge of methods is shared more or less through "learning by doing". Further, a regulation of 18 April 1997, prohibiting the use of

plastic cuffs on board of passenger flights, had apparently either been ignored or was unknown to the officers. Secondly, the shocking passivity of Lufthansa staff (including the pilot who did not intervene in the presumably illegal actions taking place aboard his plane) and witnessing passengers.

The death of Aamir Ageeb is not the only one that makes common EU charter flights for expulsions such a fearful prospect. In Frankfurt, doubts are raised that after the death of Kola Bankole in 1994 during an expulsion from Frankfurt, measures were effectively altered to avoid suffocation. In Belgium, the officers who caused Semira Adamu's death in September 1998 were given mild sentences on parole in December 2003. However, in this case, a political statement was made: the court declared the Belgium government jointly guilty because the orders given to the officers were "insufficient and extremely dangerous". Also, in Austria, three (former) ministers of the interior were brought to the witness stand in the trial of the death of Marcus Omofuma who died during his expulsion in May 1999. The trials in the cases of two deaths that occurred during expulsions on airplanes in Paris (end of 2002 and beginning of 2003) are yet to be on their way.

Charter planes make it impossible for civil passengers to observe expulsions and interfere in violent actions (see Cimade-petition: www.cimade.org/petitions/index.html). PRO ASYL demands for an independent monitoring system that prevents the use of excessive and life-threatening violence during expulsions on airplanes. In Great Britain, an "Independent Police Complaints Commission" will take up its work in April.

Pro Asyl welcomes the decision the judge made in the trial in Frankfurt. The trial finally goes where it should have been from the beginning. The decision gives a clear signal as to the relevance of this crime. However, the reasoning that dominated the trial might not have less flaws by the time the trial is reopened, and the witnesses memory will surely not become fresher.

(Agnes-Lisa Wegner, Pro Asyl, Frankfurt)

8. Slovak Republic: Amendments to asylum law and current situation in SR

Legal frame-work within the field of asylum and corresponding laws

With the effect of 1 January 2003, the asylum law in Slovakia has changed and the old act on refugees was replaced by the new asylum act, n. 480/2002 that was adopted by the Slovak National Council in 2002. Apart from the new terminology set out in the new act, the legal provisions regarding RSD procedure has changed in a very positive way. It changed the law in two main areas:

Firstly, an independent court review system was established. Effective since 1 January 2003 instead of the previous administrative appeal body, the Regional Court in Bratislava and Košice is the appropriate authority to review the decision of the Migration Office as the second instance body.

Under the provisions of the Code of Civil Procedure, the court decides about the legality of the decisions and procedures in the asylum procedure (Section 244 § 1 of the Code of Civil Procedure). The court can either affirm or abolish the decision of the Migration Office (Section 250q § 2 of CCP); it is not allowed to grant asylum. If the court abolishes the decision reviewed, the Migration Office is bound by the legal opinion of the court (Section 250r of CCP). The court may develop the evidence, which is necessary for review of the decision challenged (Section 250q § 1 of CCP). The applicant can express his/her own statements and provide evidence to support his/her case. There is no time limit in the Code of Civil Procedure for the court to decide.

If the regional court affirms the decision of the Migration Office, the applicant can file the appeal with the Supreme Court (Section 250s of CCP). This rule is based on the principle that all first court decisions are reviewable. If the conditions for affirmation or amendment of the decision are not satisfied, the Supreme Court abolishes the decision of the regional court (Section 221 of CCP).

The second positive change of the new asylum act is that it obliges the Migration Office to deal with the nonrefoulement principle while making an individual decision. In case the Migration Office rejects an application as manifestly unfounded or it decides not to grant asylum or to withdraw

asylum, it shall state in terms of the decision whether the ban on expulsion or refoulement applies (Section 20 § 3 of Asylum Act).

This provision removed the gap in the expulsion procedure as principle of nonrefoulement could be now fully adopted within the RSD procedure. The Migration Office as the most eligible authority should consider the asylum seekers' claims in all circumstances. When deciding on the ban on expulsion or refoulement, the Migration Office takes into consideration the country of origin. Where the Migration Office decides that the ban on expulsion or refoulement applies, the applicant is not automatically granted any kind of permission to stay in the territory of the Slovak Republic. He/she has to apply for a tolerated stay according to Section 43 of the Aliens Act. The decision of the Migration Office, which states that the ban on expulsion or refoulement applies, is taken into consideration.

Where the Migration Office decides that the ban on expulsion or refoulement does not apply, or where there is no statement on expulsion in the decision, the Alien Police has the duty to consider again, irrespective of the Migration Office decision, whether there is an obstacle for an administrative expulsion (Section 58 of the Aliens Act). The aggrieved rejected asylum seeker could appeal against the decision to the court.

According to the Alien law, / an act n. 48/2002 / which regulates the condition for territory access and form of residence in Slovakia including a tolerated residence in Slovakia, detention and expulsion procedure, all asylum seekers who will apply for asylum in Slovakia while in detention will be continually kept in detention under the provisions of alien act despite existence of certain rights for asylum seekers. That provision was adopted as a result of an abuse of asylum benefits in order to avoid the detention majority of detained foreigners who applied for asylum and afterwards, they disappeared from a refugee camp.

It is expected that most of these cases will be preceded in an accelerated RSD procedure. This new rule is in force since 1 January 2004.

Current situation and expected changes with the enlargement of the EU

The Slovak Republic will join EU in May 2004. As to the legislative that will be affected by EU regulations, the changes have already been done and EU requirements were satisfied by the adoption of the new alien and asylum acts. The asylum act provides procedural base for the implementation of the Dublin II regulation. It stated that the application shall be decided as inadmissible in case another state is competent to act under an international treaty or when the applicant comes from a state considered by the Slovak Republic a "safe third country"; this shall not be applicable when in his/her case this country cannot be considered such country or when the applicant cannot be effectively returned to a safe third country.

While in previous years, Slovakia was considered mainly a transit country, it is expected that after joining the EU and the enforcement of the Dublin II regulation, there will be many more individual cases that will be decided by Slovak authorities and that more asylum seekers will undergo the RSD procedure.

Therefore, at the end of 2003, UNHCR together with the Slovak Ministry of Interior, in particular with the Migration Office and the Office of the Slovak Alien and Border police, the delegation of the European Union of the Slovak Republic, established a Task Force that consists of 4 working groups to present a report with the recommendations in relation to the entry into the European Union. According to these findings it is clear that in procedural matters the actual processing system is extremely slow and bureaucratic and it produces very few decisions on the merit. It is necessary to streamline the registration and the first interview should take place earlier. For doing this it is necessary to increase the number of eligible officers. The caseload from 1992 to 2003 has increased 112 times. The number of eligible officers only tripled. With the assumption that the Dublin II regulation will reduce the number of terminated cases and applicants will remain in the centres for longer period, it will be a must to speed up the process of cases and therefore it will be necessary to increase the number of adjudicators.

(Jozef Kruppa, Slovak Helsinki Committee)

At the moment, more than 2000 asylum seekers live in six camps plus two detention centres in Slovakia. The situation in the reception and accommodation camps is critical at the moment. The camps are overfilled and not enough Migration Office employees (social workers, decision-makers) are working in these camps at the moment. Accommodation, food and medical treatment is paid for by the government.

Example: In the reception/accommodation camp in Gabíkovo, there are more than 700 asylum seekers present. There are only two social workers working in the camp (on a regular basis) and the Migration Office does not hire more staff.

Migration Office representatives asked for co-operation with the Slovak Humanitarian Council (SHC). Together, they created a project of employing social workers who will work in the camp full-time. Two social workers were hired – one starts to work in the accommodation/reception camp in Gabíkovo, the second one starts to work in the reception camp Rohovce – this is the centre for unaccompanied minors and for mothers with children. The project started on 1st of February and lasts one year – thereafter, it could be prolonged. Thus, SHC has two new social workers working directly with asylum seekers in two camps.

(Barbora Kohutikova, Slovak Humanitarian Council)