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International Protection Considerations related to developments in Ukraine

Introduction

1. Following the escalating unrest and violence in Kyiv and other locations in Ukraine throughout the last part of 2013 and in January and February 2014, there have been some reports¹ of people leaving the country to seek international protection for reasons related to the current situation.

Recent Developments in Ukraine

2. Protests broke out in Ukraine after President Yanukovich's government rejected a far-reaching accord with the European Union (EU) in November 2013, in favour of closer cooperation with the Russian Federation. In response, thousands of people engaged in peaceful protests in Kyiv, events which have subsequently been referred to as the Maidan Revolution (Maidan being the name given to Independence Square). Whereas the protests had been strongest in the Kyiv area and in western Ukraine, there have also been protests in eastern Ukraine.² The situation escalated in February,³ resulting, according to reports,⁴ in 82 persons having been killed and several hundreds injured. The Parliament voted to remove the President from office, appointed an interim president, Olexander Turchynov and a warrant for Yanukovich's arrest was reportedly issued.⁵
3. Recent developments are reported to have left Ukraine internally divided. The overall situation remains volatile, in particular in the eastern part of Ukraine, where demonstrations continue,⁶ and in the Autonomous Republic of Crimea. In response to the tensions in the Autonomous

¹ See e.g.: Kyiv Post, *More Ukrainians fleeing political strife at home*, 7 February 2014, <http://www.kyivpost.com/content/ukraine/more-ukrainians-fleeing-political-strife-at-home-336406.html> (subscription only, full text of article available at <http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD8QFjAC&url=http%3A%2F%2Fwww.pressdisplay.com%2Fpressdisplay%2Fviewer.aspx%3Fissue%3D0226201402070000000001001%26page%3D8%26article%3D41ac7166-2136-463a-9954-eba771876b59%26key%3DaeQiDneWym9WZwozkDIhNw%253D%253D%26feed%3Drss&ei=cYkUU6yAOKjJygOk4YDYCw&usq=AfQjCNHwaxPCQyCEFRq4dGECcb6-Ar6AFw&bvm=bv.61965928,d.bGQ&cad=rja>).

² BBC News, *Ukraine crisis: Is the east deserting President Yanukovich?*, 28 January 2014, <http://www.bbc.co.uk/news/world-europe-25925372>

³ OHCHR, *Ukraine crisis: Pillay sends urgent call for restraint after deadly clashes in Kiev*, 18 February 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14261&LangID=E>.

⁴ As reported on the website of the Ukraine health ministry, *Інформація про постраждалих у сутичках в центрі Києва станом на 06.00 год. 23 лютого 2014 року* / 23 February 2014, http://www.moz.gov.ua/ua/portal/pre_20140223_b.html.

⁵ BBC News, *Ukraine arrest warrant for fugitive ex-leader Yanukovich*, 24 February 2014, <http://www.bbc.co.uk/news/world-europe-26320004>.

⁶ The Washington Post, *In northeast Ukraine, pro-Maidan occupiers are routed by counter-demonstrators*, 1 March 2014, http://www.washingtonpost.com/world/europe/in-northeast-ukraine-pro-maidan-occupiers-are-routed-by-counter-demonstrators/2014/03/01/6fb057e0-a162-11e3-9ba6-800d1192d08b_story.html.

Republic of the Crimea, the U.N. Security Council met in closed session, at the request of the new government. Support was expressed for the unity, territorial integrity and sovereignty of Ukraine, and the Security Council emphasized the importance of all political actors in Ukraine exercising maximum restraint. The Security Council furthermore called for an inclusive dialogue recognizing the diversity of the Ukrainian society.⁷

Nationals and Habitual Residents of Ukraine - Individual Asylum and Refugee Status Determination Procedures

4. While the developments in Ukraine have, so far, not led to major internal displacement or large numbers of people fleeing abroad, some individuals or families have reportedly left Ukraine to neighbouring countries and countries further afield.⁸ Some of those persons have presented or may present claims for international protection. In addition, persons may flee Ukraine in anticipation of a further escalation of the situation and present claims for international protection for that reason. All claims of persons having fled Ukraine should be processed in fair and efficient procedures in accordance with existing asylum or refugee status determination (RSD) frameworks. For some individuals whose claim had been rejected previous to the current events, the situation now may give rise to changed circumstances, which need to be considered if a new asylum claim is submitted.
5. The profile of some of the people fleeing or having fled Ukraine may bring them within the framework of the 1951 Convention relating to the Status of Refugees⁹ and its 1967 Protocol¹⁰ (hereafter 1951 Convention) or they may fall within the scope the EU Qualification Directive.¹¹ Claims for international protection of persons having been directly or indirectly involved in or affected by the recent unrest and the current situation may need to be given particular attention. Persons with such profiles may be in need of international protection in accordance with the 1951 Convention, for reason of (imputed) political opinion or for reasons related to other 1951 Convention grounds. UNHCR considers that all claims should be considered on an individual basis, carefully taking into account the particular circumstances of each case. Among individuals leaving Ukraine, there may be persons who have been associated with excludable acts in the sense of Article 1F of the 1951 Convention.¹² In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection.

Designation of Ukraine as Safe Country of Origin

6. Several European countries have designated Ukraine as a so-called “safe country of origin”. This means that applications for international protection of Ukrainian nationals or habitual residents of Ukraine may be dealt with in an accelerated procedure with reduced procedural

⁷ UN News Centre, *Security Council holds 'urgent' meeting on situation in Ukraine*, 28 February 2014, <http://www.un.org/apps/news/story.asp?NewsID=47253&Cr=ukraine&Cr1#.UxRQrYUhlA0>.

⁸ See footnote 1.

⁹ *Convention Relating to the Status of Refugees* (“1951 Convention”), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>.

¹⁰ *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

¹¹ European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)* (“Qualification Directive”), 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>. In the more unlikely situation that asylum-seekers from Ukraine would seek international protection in other parts of the world, other regional frameworks would apply; *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Unlike the OAU Convention, the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation.

¹² UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, <http://www.unhcr.org/refworld/docid/3f5857684.html>.

safeguards. In particular, the asylum-seeker may not be allowed to file or await the outcome of an appeal in the country where (s)he is seeking asylum (non-suspensive appeal). The safe country of origin designation may also negatively impact the reception conditions for asylum-seekers originating from such a country. In the current circumstances, UNHCR considers a designation of Ukraine as a “safe country of origin” not appropriate, and recommends States to remove Ukraine from “safe country of origin” lists.

Refugees and Asylum-Seekers (Third Country Nationals)

7. Depending on how the situation develops, third country nationals may also choose or be compelled to leave Ukraine, as a result of recent developments or in anticipation of a further escalation of the situation. Among these persons, there may be those who were recognized as refugees in Ukraine or registered as asylum-seekers. Afghan and Syrian nationals are heavily represented amongst asylum-seekers and refugees in Ukraine.¹³ Ukraine has been and remains a transit and destination country for refugees and people otherwise in need of international protection from third countries. If travelling onwards, these persons should be referred to national asylum procedures for consideration of their applications for international protection. In addition, there may be third country nationals or stateless persons who resided in Ukraine before seeking international protection elsewhere and who had not or not yet applied for international protection in Ukraine. UNHCR recommends that these persons also be referred to the national asylum procedure in the country where they seek international protection.

Designation of Ukraine as Safe Third Country

8. UNHCR does not consider it appropriate for States to designate or maintain a designation of Ukraine as a so-called “safe third country”. The designation of a country as a “safe third country” may result in a request for international protection not being considered on its merits but declared inadmissible, or processed in an accelerated procedure with reduced procedural safeguards. Even before the current unrest, UNHCR considered that Ukraine should not be considered as a safe third country, on account of identified shortcomings in the national asylum system.¹⁴ UNHCR requests States to consider asylum requests from third country nationals who previously resided in or transited through Ukraine in fair and efficient procedures with the full range of procedural guarantees in place.

Third Country Nationals and the Use of Readmission agreements

9. UNHCR would, in the current circumstances, advise caution as regards the return of third-country nationals to Ukraine in accordance with the terms of bilateral or regional readmission agreements. Readmission agreements usually exclude, in principle, asylum-seekers or persons in need of international protection from their scope. However, where such agreements are applied to third country nationals in combination with a “safe third country” designation, their application can result in individuals being sent back to Ukraine who have not had an opportunity to submit a claim for international protection or who have not had such a claim reviewed on its merits in a fair procedure.

Updating and review

10. UNHCR’s position will be reviewed as the situation evolves and will be updated as necessary.

UNHCR
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¹³ See UN High Commissioner for Refugees (UNHCR), *UNHCR Mid-Year Trends 2013*, <http://www.unhcr.org/52af08d26.html>, and its annexes (Excel tables) at <http://www.unhcr.org/statistics/mid2013stats.zip>. Detailed statistics available to UNHCR.

¹⁴ UN High Commissioner for Refugees (UNHCR), *Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine*, July 2013, <http://www.refworld.org/docid/51ee97344.html>.