

## Refugee Review Tribunal

### AUSTRALIA

#### RRT RESEARCH RESPONSE

**Research Response Number:** RUS30229  
**Country:** Russia  
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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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#### Questions

1. Provide a brief overview of asylum procedures for this country (mentioning whether or not the country is a signatory to the UN Convention and Protocol).
2. Is there a second tier of review (i.e. comparable to the RRT)?
3. What processes are applied by the body/agency at the second tier review level (i.e. inquisitorial process similar to the RRT, or adversarial process applied at the AAT)?
4. Is there judicial review?
5. Is the judicial review process confined to points of law or can facts of cases be re-examined at this level?

#### RESPONSE

1. Provide a brief overview of asylum procedures for this country (mentioning whether or not the country is a signatory to the UN Convention and Protocol).

Russia acceded to both the UN Convention and the Protocol on 2 February 1993, according to a recent report by the *Refugee Survey Quarterly* ('State Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol' 2006, *Refugee Survey Quarterly*, Vol. 25, Issue 1, p.165 <http://rsq.oxfordjournals.org/cgi/reprint/25/1/163> – Accessed 14 June 2006 – Attachment 1).

The *World Refugee Survey 2006* by the US Committee for Refugees and Immigrants was released on 14 July 2006 and provides an overview of current asylum procedures in the Russian Federation. Notable points include:

- The refugee determination process is covered in Russia by the 1993 Law on Refugees, which was revised in 1997.

- During 2005 the Federal Migration Service (FMS) granted refugee status to “fewer than 500 persons from former Soviet republics...and to only 21 persons from other countries”, which is a marked reduction over previous years.
- “Applicants for refugee status in Moscow received a note with only the date and time of the interview, often three or four years in the future, and no information on the migration body or the person issuing it. The documents did not affirm the legality of the applicant’s presence, but they were an improvement on the earlier practice of no registration at all”. Applicants with pending applications were suppose to be issued with a certificate acknowledging their status according to the Law on Refugees, but the waiting period before actual registration left them undocumented.
- Asylum seekers were therefore sometimes prosecuted for lack of residential registration, but those with lawyers were always able to overturn such orders in the courts. Police tend to target persons who do not look Slavic.
- UNHCR provided legal assistance to asylum seekers in Moscow and St Petersburg, although government administrative obstacles sometimes prevented them from accessing it.
- The Constitution “provided for asylum and, in law, there were three types of protection: ‘political asylum’, refugee status, and ‘temporary asylum’. The 1997 Decree on Political Asylum provided a procedure for granting political asylum to a narrow class of political figures and, since 1995, the authorities had granted it to no more than ten people”.
- The Law on Refugees “used the definition of refugee from the 1951 Convention Relating to the Status of Refugees. FMS received and decided claims with the right of appeal. Refugee status was granted for three years and was annually renewable thereafter, if grounds remained. Persons who entered illegally had to apply within 24 hours and, under the concept of ‘safe third country’ authorities could reject Afghan asylum seekers for passing through Central Asia”.
- Persons claiming asylum when arriving at airports have no formal right of appeal when rejected, but are referred to UNHCR.
- In some regions, migration bodies “orally refused to accept claims from foreigners at all, making their decisions impossible to appeal”.
- Many people who had been granted refugee status in earlier years were removed from the register in 1997-8 as they had not re-applied under the Law of Refugees. About 100,000 former Soviet citizens were rendered illegal immigrants.
- The 2001 Decree on Granting Temporary Asylum defines the procedures for granting temporary asylum to persons who cannot be deported for health reasons.
- The Law on Refugees “obliged asylum seekers, refugees and bearers of temporary asylum to inform the respective migration service of any change in their places of residence. The penalty for failure to do so was an administrative fine although, in at least one case, the migration service stripped temporary asylum status from an Afghan for not reporting his change of address”. Asylum seekers and refugees also had to

surrender their travel and identity documents before they received certificates acknowledging their status.

- While the Constitution and the Law on Refugees “allowed documented refugees and asylum seekers with residential registration to accept wage labour on par with nationals, and refugees to run business enterprises, most were unable to do so legally because such documentation was nearly impossible to obtain”.
- The Law on Refugees “guaranteed refugee children access to state and municipal schools on par with residents, but regional authorities sometimes denied access to asylum seekers lacking residential registration” (US Committee for Refugees and Immigrants 2006, ‘Russian Federation’, *World Refugee Survey 2006: Risks and Rights*, 14 July, <http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=1598> – Accessed 19 June 2006 – Attachment 2).

The UNHCR Global Appeal report on Russia for 2006 makes the following points about the Russian system:

- UNHCR regards the Russian system as having numerous problems, and considers that the situation of asylum seekers in the country has not improved in recent months.
- Problems include long waiting periods and large backlogs of cases “caused by administrative delays and insufficient human and financial resources at the Federal Migration Service of the Russian Federation”.
- Asylum seekers cannot legally work or access public services, and are dependent on UNCHR for assistance.
- Refugee recognition rates are very low.
- UNHCR is working with the Russian authorities to establish a workable system for dealing with asylum seekers, including refinement of the Law on Refugees; stronger legal and country information support; and access to health and other services by asylum seekers and recognised refugees (UNHCR 2006, *UNHCR Global Appeal: Russian Federation*, <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=PUBL&id=4371d1a20&page=home> – Accessed 2 June 2006 – Attachment 3).

The UNHCR Country Operations Plan for the Russian Federation in 2006 states:

The Russian Federation ratified the 1951 Convention on Refugees and its Optional Protocol in 1993. The RF Law on Refugees was adopted in 1993 and amended in 1997. This law is currently being revised. Although the law largely meets international standards, the quality of its implementation is very low. The main problems encountered by asylum seekers remain 1) access to the refugee status determination procedure and lack of proper documentation during the “pre-registration” phase and throughout the appeal procedure and 2) the high rejection rate on both formal grounds and on the merits... During the pre-registration period, asylum-seekers remain without any official document attesting their status. Consequently, they may be subject to action by law enforcement agencies, including fines, administrative detention, threats of eviction from apartments and risk of deportation. While all asylum-seeker children now have access to local schools, without residence registration asylum-seekers are unable to use local medical facilities

and cannot work legally (although the Law on Refugees stipulates access to medical, social and shelter assistance for recognized refugees and asylum-seekers accepted into the national RSD procedure). There are three government-run accommodation centres for asylum-seekers and refugees in the regions with a capacity for 320 persons, but they are under-used due to their distance from main cities and lack of integration opportunities. No such facility exists in Moscow and its region nor St. Petersburg where the majority of asylum-seekers and recognized refugees reside.

Asylum seekers continue to a large extent to depend on the individual assistance programme, given the difficult legal environment for self-reliance. No progress could be made with the authorities for provision of medical assistance through local clinics and UNHCR has to continue providing basic health care through NGO partners. The problem of xenophobia and the overall criminal situation in Russia are very serious, with a tendency of becoming worse. Decisions on the rights of asylum seekers and refugees have to be sought through courts with the assistance of private and implementing partners' lawyers...

...The situation is further complicated by constant changes in the structure of the migration authorities and rotation of their staff. In the most recent example, at the end of 2004, it became apparent that the management of the Points of Immigration Control would be handed over from the Federal Migration Service to the Border Guards Service (reporting to the Federal Security Service). This may lead to an even more limited access of asylum seekers to the territory of the Russian Federation and more restricted access of UNHCR staff to asylum seekers in the airport. In addition, it is yet unclear how asylum seekers will be interviewed, as under the current law the responsibility for this remains with the FMS (UNHCR 2006, 'Country: Russian Federation; Planning Year: 2006', *Country operations Plan: Overview*, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=43439a4a2&page=home> – Accessed 1 June 2006 – Attachment 4).

A recent and comprehensive paper on the Russian asylum system was published by Ahoura Afshar in the *Journal of Refugee Studies* in 2005. It analyses the defects in the 1997 Law on Refugees which he says contradict Russia's obligations under the 1951 convention; and also comments that features of the Law that might improve the situation for refugees are often not implemented (Afshar, Ahoura 2005, 'Refugees in Russia: the Law on Refugees and its Implementation', *Journal of Refugee Studies Vol.18, No.4*, Oxford University Press – Attachment 5).

## **2. Is there a second tier of review (i.e. comparable to the RRT)?**

Sources indicate that there was a second tier of review up to the year 2000, called the FMS Appeals Commission, but that its activities were suspended. No references have been found to indicate that this suspension was ever lifted. The only appeal mechanism mentioned in recent material (such as Afshar's 2005 paper above) is through the courts.

An Amnesty International report from 2003 states:

Those appealing against a negative decision by the FMS also face delays and discrimination. In law, the appeal has a suspensive effect; that is, asylum-seekers cannot be deported until an appeal has been heard. However, in practice, this is often ignored so that the asylum-seeker is at risk of deportation. **Until October 2000, appeals by asylum-seekers were heard by an FMS appeals commission. This commission would take around 18 months to hear appeals during which time the asylumseeker was without recognized legal documentation attesting to their status. In October 2000 the appeals commission's activities were suspended, giving rise to yet further delays.** Appeals to the courts against a negative decision by the commission should be heard within six months. However, the FMS is required to be represented in court and its failure to

attend in many instances again gives rise to further delays during which the asylumseeker has no recognized legal documentation. In several cases where the FMS's decision was overturned, the FMS appealed the case, again resulting in more delays and extending the period of time during which the asylum-seeker is without legal documentation (Amnesty International 2003, 'Dokumenty!': *Discrimination on grounds of race in the Russian Federation*, EUR46/001/2003, p.63, [http://www.amnesty.org/russia/pdfs/racism\\_report.pdf](http://www.amnesty.org/russia/pdfs/racism_report.pdf) – Attachment 6).

A 2000 paper by UNHCR states of the appeal procedures at that time:

33. According to article 10 of the refugee law, an appeal against a negative first instance decisions by the territorial body of the FMS can be lodged with a higher authority of the FMS or with a court of law. The appeal should be launched within one month following notification of the first instance negative decision. While de jure the appeal has suspensive effect, in practice it is often not the case. The reason is that, not being in possession of proper documentation, the asylum seekers are in the eyes of law enforcement bodies not legally staying on the territory of the Russian Federation, and may be subject to refoulement before being able to exhaust all procedural remedies.

34. Further to Article 10 of the refugee law, the FMS created an Appeals Commission by Order No. 141 of 3 October 1995 to deal with administrative reviews. **Due to the liquidation of the FMS by the Ministry of Nationality, at the moment of writing this document, the review activities of the Appeals Commission have been suspended.**

35. The appeal procedure before the Appeals Commission lasted up to one year and a half. In the overwhelming majority of cases, the Appeals Commission confirmed the first instance negative decisions. If the applicant did not opt to appeal directly to the Court against the first instance decision (which article 10 allows), he/she can appeal against the Appeals Commission's negative decision before the Court. Should the FMS Appeal Commission not render its decision within one month, this silence can, according to the law, also be considered a negative decision, appealable before the court (UNHCR Geneva 2000, *Background information on the situation in the Russian Federation in the context of the return of asylum seekers*, October, <http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=RSDLEGAL&id=3ae6b3380&page=publ> – Accessed 19 June 2006 – Attachment 7).

A 2002 paper by UNHCR examines court practices related to refugee status determination, and includes a reference to a pre-2000 case where an applicant appealed to the court against a decision by the FMS Appeals Commission:

The applicant filed an appeal with the court in January 1999. The Moscow Migration Service (MMS) argued before the court that, because the applicant missed the deadline for filing a complaint, the appeal should be dismissed. The court found that the applicant did not present to the court any probing element justifying her missing the deadline. Reference to the fact that the applicant filed an appeal against the MMS decision before the **FMS Appeals Commission (second administrative instance)**, in the court's opinion, is not a ground for restoring this period for this is not provided by the law. Besides, the applicant received **the letter of denial from the FMS Appeals Commission** on 3 December 1998 but the complaint with the court was filed only on 10 January 1999. Therefore, the court found that the appeal was not to be satisfied on its merits because of the missing the one-month deadline.

This court decision is exceptional in many respects. First of all, it can be argued whether the appeal against the first negative administrative decision before the **FMS Appeals Commission does not preserve the legal one-month delay to further appeal against the FMS Appeals Commission** negative decision before the court of law, for this seems to be the letter and spirit of article 10.3 of the refugee law (UNHCR RO Moscow 2002, *Analysis of the court practice in the*

*Russian Federation as pertaining to refugee status determination*, June, p.15,  
<http://www.asyl.net/Magazin/Docs/2002/M-2/2177.doc> – Accessed 13 June – Attachment 8).

**3. What processes are applied by the body/agency at the second tier review level (i.e. inquisitorial process similar to the RRT, or adversarial process applied at the AAT)?**

As is mentioned in the previous question, the second tier review level called the FMS Appeals Commission was apparently suspended in 2000. It is not clear whether adversarial or inquisitorial processes were applied when it was in operation.

**4. Is there judicial review?**

**5. Is the judicial review process confined to points of law or can facts of cases be re-examined at this level?**

UNHCR and other material indicates that there is judicial review of refugee determination in the Russian Federation, and that the judicial review process does not always confine itself to points of law, but can also re-examine the facts of the case.

The 2002 paper by the UNHCR states:

Article 120 para.2 of the RF Constitution of 1993 stipulates that “A court of law, having established the illegality of an act of government or any other body, shall pass a ruling in accordance with the law”. The courts of law, being judge of the legality of administrative decisions, do not, in the field of refugee status determination, always decide themselves upon refugee status recognition. However, in the exercise of their controlling power, they proceed to a broad analysis of the work of the administration. **Not only do they examine the procedural aspects of the case but, when assessing the application by the refugee authorities of Article 1 of the law, on the definition of refugee, the courts are led to review the circumstances of the case.** In this respect, the courts contribute to refine the interpretation of the Russian refugee law (UNHCR RO Moscow 2002, *Analysis of the court practice in the Russian Federation as pertaining to refugee status determination*, June, p.1, <http://www.asyl.net/Magazin/Docs/2002/M-2/2177.doc> – Accessed 13 June – Attachment 8).

The same paper contains a number of refugee cases which have come before the Russian courts. Some of these cases examine only the procedures of the Russian regional migration services or the FMS; but there are cases included where the court has made a decision on the substance of the refugee claims. Examples are *Muhamad Sadiq Zarguna v. Rostov RMS*, considered by the Pervomaiski District Court of Rostov-on-Don (22 November 1999) (p.2); *Mohammad Shoab Abdul Hakim v. Perm RMS*, considered by the Leninsky District Court of the Perm (19 November 1996) (p.9); and *Hazim Baker Hussayin v. Moscow Region migration service*, considered by the Zamoskvoretsky District Court of Moscow (15 February 2002) (p.10) (UNHCR RO Moscow 2002, *Analysis of the court practice in the Russian Federation as pertaining to refugee status determination*, June, <http://www.asyl.net/Magazin/Docs/2002/M-2/2177.doc> – Accessed 13 June – Attachment 8).

Afshar comments briefly in his 2005 paper that “the judicial system provides a positive basis for asylum seekers’ and refugees’ appeals. However, court decisions are not always carried out...” (Afshar, Ahoura 2005, ‘Refugees in Russia: the Law on Refugees and its Implementation’, *Journal of Refugee Studies Vol.18, No.4*, Oxford University Press – Attachment 5).



## List of Sources Consulted

### Internet Sources:

#### Search Engines

Google search engine <http://www.google.com.au/>

#### Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

## List of Attachments

1. 'State Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol' 2006, *Refugee Survey Quarterly*, Vol. 25, Issue 1, p.165.  
(<http://rsq.oxfordjournals.org/cgi/reprint/25/1/163> – Accessed 14 June 2006)
2. US Committee for Refugees and Immigrants 2006, 'Russian Federation', *World Refugee Survey 2006: Risks and Rights*, 14 July.  
(<http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=1598> – Accessed 19 June 2006)
3. UNHCR 2006, *UNHCR Global Appeal: Russian Federation*, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PUBL&id=4371d1a20&page=home> – Accessed 2 June 2006.
4. UNHCR 2006, 'Country: Russian Federation; Planning Year: 2006', *Country operations Plan: Overview*, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=43439a4a2&page=home> – Accessed 1 June 2006.
5. Afshar, Ahoura 2005, 'Refugees in Russia: the Law on Refugees and its Implementation', *Journal of Refugee Studies Vol.18, No.4*, Oxford University Press.
6. Amnesty International 2003, 'Dokumenty!': *Discrimination on grounds of race in the Russian Federation*, EUR46/001/2003.  
([http://www.amnesty.org/russia/pdfs/racism\\_report.pdf](http://www.amnesty.org/russia/pdfs/racism_report.pdf))
7. UNHCR Geneva 2000, *Background information on the situation in the Russian Federation in the context of the return of asylum seekers*, October.  
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8. UNHCR RO Moscow 2002, *Analysis of the court practice in the Russian Federation as pertaining to refugee status determination*, June,  
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