

THE COOPERATION OF UNHCR REGIONAL REPRESENTATION FOR CENTRAL EUROPE WITH LAW ENFORCEMENT AGENCIES IN THE REGION

1. Introduction

1.1. UNHCR's mandate

The United Nations High Commissioner for Refugees (UNHCR) is mandated by the United Nations to lead and coordinate international action for the world-wide protection of refugees and asylum seekers and the resolution of refugee problems. UNHCR's primary purpose is to safeguard the rights and well-being of refugees and asylum seekers, by supervising the implementation of the 1951 Convention related to the Status of Refugees, and by making sure that everyone can exercise the right to seek asylum, find refuge in another state and return home voluntarily. By assisting refugees to return to their home country or to settle in the host country, UNHCR also seeks lasting solutions to their plight. Although not specifically covered by UNHCR's original mandate, the organization also takes responsibility for stateless people and internally displaced persons (IDPs) upon request by the General Assembly of the United Nations.

1.2. The region of Central Europe

UNHCR's Regional Representation for Central Europe is in Budapest, Hungary and it covers 7 countries: Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia. The main responsibility of the Regional Representation is to provide protection and durable solutions to refugees, asylum seekers and stateless persons within the territory of the countries of the region.

1.3. UNHCR's four goals in the Central Europe region

More specifically, the Regional Representation works along four goals:

1. Promote and ensure effective access to the territory and asylum procedures;
2. Promote and support reception conditions in line with international standards;
3. Promote and support fair and efficient asylum procedures;
4. Promote and support the implementation of durable solutions (integration, resettlement and repatriation)

1.4. Border Monitoring activities in cooperation with partners

One of the main regional operational goals of UNHCR in Central Europe is access of asylum-seekers to the territories of state parties to the 1951 Geneva Convention and to

the asylum procedure. In order to achieve this goal, UNHCR has established border monitoring projects across the region. These projects are based on tripartite cooperation between government authorities, non-governmental organizations (NGOs) and UNHCR. The first tripartite agreement was concluded in Hungary. Thereafter, similar agreements were signed in Slovakia, Slovenia and Romania, and agreements in Bulgaria and Poland will follow soon. The border monitoring projects, based on the tripartite agreements and the related practice have been welcome by the international community at both the global and the regional level (including the European Union). The UK and Angola are working on similar arrangements and requests to share the agreement have been received from a number of countries in Europe, Africa and the Middle East.

1.5. A model of good practice

The aim of this note is to provide an insight to the history, conclusion and operation of the tripartite cooperation on border monitoring in the countries of the region and to raise awareness of its being considered good practice by UNHCR in Europe and beyond.

2. Bulgaria

2.1. Border monitoring

In 2005, the Bulgarian Helsinki Committee (BHC) signed an agreement with the Border Police to perform border monitoring activities. (The BHC has been an Implementing Partner of UNHCR since 1994). The monitoring is performed at the land and sea borders as well as at the Sofia international airport.

2.2. Easy acces, good cooperation

The BHC lawyers have an easy access to the borders and to the detention facilities (as most asylum seekers enter the country illegally, they are detained for 24 hours) run by the Boder Police in order to collect the necessary information, meet with the asylum-seekers and provide legal counseling. As per the current agreement, the lawyers are not required to give notice to the Border Police of their visits. The level of cooperation between the BHC and the border police locally and at the airport is very good.

2.3. Lawyers visit entry points

As a result of the tight budget and the fact that the project was funded exclusively by UNHCR, the number of lawyers monitoring the land and sea borders was reduced two years ago. There is currently only one jurist employed by the BHC who monitors mainly the Turkish border which is the main entry point of asylum seekers coming to Bulgaria. Recently the BHC developed an initial registration form to be used by the Border Police in order to capture basic data on the individuals seeking asylum at the border and facilitate the necessary follow-up. The Sofia international airport is visited by a BHC lawyer once a week. The BHC provides regular information relating to the border monitoring activities in its monthly report.

2.4. Information dispensers

The dispensers, providing information on the asylum procedure and the rights of asylum seekers, issued by the State Agency for Refugees and the BHC were launched at the end of March 2009 at the Sofia airport. One dispenser was mounted at one of the terminals, the other dispensers (about 40) are to be given to partners and to the Border Police to ensure that the main entry points and detention facilities are equipped with relevant information.

2.5. Cross border cooperation

With the support of UNHCR, BHC is organizing a cross border meeting in June 2009 with NGOs from Turkey and Greece with the aim of establishing a joint mechanism for border monitoring.

2.6. Tripartite Memorandum of Understanding

Two years ago, the idea of signing a tripartite memorandum of understanding (MoU) on border monitoring between UNHCR, the BHC and the Border Police was introduced by UNHCR to the Ministry of Interior (MoI). As a result of staff changes at all levels and serious turmoil within the MoI (including the resignation of the Minister of Interior due to a corruption scandal in 2008), the matter did not progress much. Thanks to recent internal reforms that have enabled the Border Police to sign agreements, the draft MoU, very much inspired by existing MoUs in Central Europe, was finalized in February 2009 by the three parties and was sent to the legal section of the MoI. However, recent discussions with the Deputy Minister of MoI showed that the matter was not still well understood and not given the attention it requires. The accession to the Schengen space by the end of 2011 is being used as the reason for postponing the signature of the MoU. Nevertheless, UNHCR is working with MoI experts to clarify the issues that might be problematic and advocate for the signature of the MoU that would provide a legal and operational framework for border monitoring activities.

3. Czech Republik

3.1. Airport Monitoring

As the Czech Republic does not have any external EU land borders, UNHCR Prague focuses on the monitoring of the asylum procedure at the Prague international airport through its NGO Implementing Partner, Organization for Aid to Refugees (OPU). The joint project, however, does not represent a direct assistance to, or cooperation with the authorities but rather serves to make sure that issues of primary concern receive appropriate attention.

3.2. Monitoring activities

Under the airport monitoring project, OPU carries out regular visits to the reception facility at the Prague international airport, monitoring whether the international standards of protection are met for all persons of concern, including the access to procedure and the

quality of interviews. OPU is examining all aspects of the asylum interviews, including the atmosphere during the interview and the presence of an independent interpreter, as well as procedural rights of applicants and the quality of decisions.

3.3. Main areas covered by monitoring

The main practical areas covered by monitoring and research include:

- *Government practice concerning admission to the asylum procedure:*
Admission practice and quality of refugee status determination (RSD) decisions taken in the airport procedure have not been satisfying, the use of Section 16 of the Asylum Act, which allows for the rejection of international protection applications as manifestly unfounded, is excessive and often not in accordance with either international standards or the Procedural and Qualification Directives.
- *Procedural rights of asylum-seekers*
There seem to be many difficulties with the application of the procedural rights guaranteed by the Czech Administrative Code / Asylum Act, especially for asylum seekers. These include the right for an interpreter, the right to be informed about the course of the procedure and the right for legal representation.
- *Government practice towards vulnerable groups*
There seem to be shortages within the system of identification of vulnerable applicants, which need to be closely monitored and appropriate solutions need to be offered.
- *Quality of decisions*
The quality of some first instance decisions in the asylum procedure is insufficient, often due to a special accelerated procedure (airport, detention centre). The usage of the country of origin information also requires special attention.
- *Monitoring the restrictions to freedom of movement*
Restrictions to the freedom of movement of asylum seekers need to be monitored and analysed as per compliance with Article 5 of the European Convention on Human Rights, and the access to effective remedies.

3.4. Study on vulnerable groups

Partly as a result of the monitoring, UNHCR Prague has recently considered commissioning a study on the timely and adequate identification of vulnerable groups during the asylum procedure.

4. Hungary

4.1. Ensure access to territory

As Hungary maintains and guards external EU borders, it is of utmost importance to ensure in an institutionalised and systemic manner that the state's legitimate interest in migration management does not hinder asylum-seekers in exercising their rights. In that context, UNHCR was specifically concerned with the extremely small number of asylum

applications registered at the international airport in Budapest in 2000-2005 (an airport with 8 million passengers per year).

4.2. Tripartite Memorandum of Understanding

A tripartite Memorandum of Understanding (MoU) was concluded by the Hungarian Border Police, the Hungarian Helsinki Committee (an implementing partner of UNHCR in Hungary) and UNHCR on 28 December 2006. It had grown out of a pilot border monitoring project between the three parties and formalized the cooperation, roles and responsibilities as well as working methodologies of each Party. Under the MoU, monitors of HHC regularly visit short term detention facilities along the Ukrainian and Serbian borders, as well as at the international airport in Budapest and talk to the foreigners found there. They also look into case files which have been rendered anonymous to comply with data protection laws of those who were sent back to a third country. A Working Group composed of the senior representatives of the parties reviews the implementation of the project and discusses the problems that need to be addressed. The Working Group also conducts ad hoc field visits and proposes training activities for the Border Police. Training activities are designed and undertaken both at the senior/managerial and the field/expert level on intercultural awareness, the principle of non-refoulement, protection sensitive entry systems and communication with asylum-seekers with special needs.

4.3. Establishing a spirit of partnership and cooperation

The tripartite cooperation has contributed significantly to enhancing human rights-friendly, protection-sensitive border management in Hungary. The manner of dealing with asylum applications at the airport has improved. The parties have become familiar with the working methods of each stakeholder, which also improves mutual understanding and cooperation. The agreement, by specifying the exact roles and responsibilities of each party has brought clarity and greater efficiency to the process of identifying persons in need of international protection. By introducing the working group mechanism, information flows smoothly, issues are addressed quickly and efficiently, and in a non-confrontational manner. The parties work in a spirit of partnership, cooperation and understanding.

5. Poland

5.1. Securing access to asylum

Access Management and Support (AMAS) Project secures the access to the territory and refugee status determination (RSD) procedures for persons in need of international protection. The project has been implemented by UNHCR in cooperation with its Implementing Partner, Halina Niec Legal Aid Center and the Polish Border Guard since 2006. The international standards of protection including rights of the child and the rights of victims of smuggling and trafficking are enhanced through different activities. The Border Guard are being trained to deal with vulnerable groups of people as well as conflict resolution and crisis management. Monthly visits to selected border crossing points raise the visibility of actions taken in cooperation with the Border Guard and NGOs. Legal assistance provided at detention facilities secures efficient access to asylum and distribution of

information. AMAS also provides necessary data and enables the agencies concerned to prepare relevant remedies to the identified problems.

5.2. Training for the Border Guard

The Border Guard is a law enforcement agency that ought to be especially sensitive to protection issues and prepared to serve their duties in enabling access to RSD procedures. The Border Guard officers are persons of first contact for the asylum seekers in the territory of Poland. The officer on duty fills in the application form and receives the initial statements from the asylum seeker. The Qualification Directive, implemented into Polish law, extends the duties of Border Guard officers, particularly concerning the obligation to provide the foreigners with information concerning their legal status, rights and obligations. Thus, the competence and knowledge of the Border Guard affect further asylum procedures.

5.3. Focus on non-refoulement

The AMAS Border Guard training focuses on the problems of protection, refugee definition, understanding of the principle of *non-refoulement*, exclusion clauses and concepts of *a particular social group*, gender-based persecution, sexual abuse and violence, human trafficking, unaccompanied minors, victims of violence and trauma; psychosocial treatment of and communication with asylum seekers and refugees.

5.4. Monitoring activities

In the course of the project, monitoring activities are implemented through visits to border crossings, the Warsaw Okęcie airport and detention arrests and guarded centers for foreigners in Poland. The monitoring visits help to identify protection gaps at the initial stage of the refugee status determination procedure. In order to gradually eliminate such gaps, the implementing agency undertakes training activities tailored for the needs of the Border Guard and engages in individual legal aid, especially for those in detention.

5.5. Legal assistance

The lawyers of the Halina Niec Legal Aid Center provide assistance and individual consultations throughout the implementation of the AMAS project. As access to legal counseling and information in detention is insufficient, there is a need to further extend the scope of activities carried out by independent and specialized NGOs. In practice, access to RSD procedures means that asylum seekers have the right to enter the territory of the host country and the possibility to submit the asylum application; and also that they are fully informed and properly instructed. Therefore, Halina Niec provides legal aid directly during monitoring visits. Special attention is paid to vulnerable persons.

5.6. Agreement between Border Guard and UNHCR

The implementation of monitoring activities at the border is based on inter-agency arrangements, initiated in 2006, which consequently led to the drafting of a formal agreement between the Border Guard and UNHCR. At present, the agreement is at its final

stage of conclusion. It provides a framework for UNHCR cooperation with the Border Guard, it regulates the issues of access to border crossings points and detention facilities to monitor the situation, provide information and legal assistance to asylum seekers. The agreement also envisages the possibility to delegate the implementation of these tasks to NGOs cooperating with UNHCR.

6. Romania

6.1. Tripartite Memorandum of Understanding

Romania has the second longest external EU border with Serbia, Ukraine and Moldova, and EU borders with Hungary and Bulgaria. The Tripartite Memorandum of Understanding on modalities of mutual cooperation and coordination to support the access of asylum-seekers to Romanian territory and the asylum procedure in Romania, concluded between UNHCR Representation in Romania, the General Inspectorate of the Border Police (IGPF) and the Romanian National Council for Refugees (CNRR) is a logical result of institutional cooperation of the main actors active in the Romanian asylum system.

6.2. Border monitoring activities

In 2001, CNRR with UNHCR's support and within the UNHCR funded programme concluded the first Protocol of Cooperation with the General Inspectorate of the Border Police. The Protocol aimed at providing legal counselling for asylum seekers in all locations (including border points); organising various training activities on asylum/migration and border control issues; producing and distributing protection information for persons of concern.

6.3. Joint mobile training team

In 2004, at UNHCR's initiative, a joint mobile training team was established comprising representatives of the General Inspectorate of the Border Police, the National Refugee Office, UNHCR, and NGOs active in the field of asylum. This joint mobile training team provided trainings during 2004 and 2005 to border guards across the country on issues related to, *inter alia*, identification of persons in need of international protection among mixed migratory flows, access to the refugee status determination (RSD) procedure, exemptions from penal sanctions, treatment of vulnerable groups (including victims of trafficking), fundamental principles in the field of asylum, etc. The training sessions were combined with border monitoring activities, promoting unhindered access to the RSD procedure and standards of treatment for asylum-seekers kept in transit areas while undergoing border procedures.

6.4. Co-financing by Norway and the United Kingdom

In 2004, CNRR also completed activities related to border monitoring in view of unhindered access to the asylum procedures, specialised legal assistance of persons in need of international protection, advocacy and lobbying to implement unified standards and practices at the national level, financed by the Norwegian Government and the UK through the Opportunity Fund, in addition to the funds received from UNHCR.

6.5. Information material

In view of broadening the channels for disseminating information on asylum-related issues to border guards, CNRR concluded Protocols of cooperation with various educational institutions that provide regular courses (initial and advanced training). As a result of the training sessions organised for the professors of these educational institutions, CNRR drafted and published in 2007-2008 the following materials, endorsed by IGPF, RIO and UNHCR:

- Methodology of receiving asylum applications by the Romanian border police;
- Identification of persons in need of international protection – case studies;
- Competences of the Border Police in the field of asylum;
- Rights and obligations of asylum seekers during the RSD procedure – written/audio version.

The above mentioned materials were distributed to all the border police structures. In 2008, UNHCR organised a Training of Trainers involving representatives from all territorial border structures that act as focal points on asylum-related issues for UNHCR and its partners.

6.6. Cross-border cooperation

CNRR implemented cross border projects financed by the Soros Foundation, with special support from UNHCR, IGPF and RIO, as follows:

- Between 2001 and 2008, six round table discussions were organized on asylum and border control with the participation of the authorities and relevant NGOs from Moldova, Bulgaria, Ukraine, Serbia, Montenegro and Hungary.
- In 2008, a series of seminars was organized with the title “Regional trends and approaches to migration and asylum challenges”. A cross-border seminar took place with the participation of Romania, Ukraine and Moldova, with three seminars in each country.

6.7. Plans

In 2009, border monitoring activities will preserve their cross-border component. UNHCR will also organise a training event for the new management of the border police after its restructuring, in order to ensure that the good practices registered in this field will also be maintained in the future.

7. Slovakia

7.1. Ensuring access to territory

The Slovak Republic maintains and guards 98 kilometers of external EU borders with Ukraine. UNHCR has been concerned with the significant decrease in asylum applications at the borders of Slovakia since the end of 2007: the overall number of asylum

applications in 2008 represented less than 40 per cent of the previous year. This substantial change of migratory flows has been associated with the entering into force of the Schengen treaty in the Slovak Republic and the reinforcement of the guarding of the border by the Slovak Border Police.

7.2. Tripartite Memorandum of Understanding

A Tripartite Memorandum of Understanding (the second of this kind in Central Europe) was signed on 5th September 2007 by the Slovak Office of Alien and Border Police (OABP), the Human Rights League (HRL - implementing partner of UNHCR in the Slovak Republic) and UNHCR. The Memorandum builds on previous cooperation in the framework of a pilot border monitoring project by the three parties, and it regulates the cooperation, roles and responsibilities as well as the working methodologies. OABP informs HRL in an electronic form on all cases of interception of people of concern near or at the border with Ukraine or at the international airport. Since January 2008, OABP also informs on all cases of planned returns according to the Dublin II Regulation. HRL regularly visits Border Police departments along the Ukrainian border as well as at the international airport in Bratislava and interviews foreigners present there. HRL monitors also look into case files administered by OABP in order to monitor the presence of interpreters, the observance of the right to seek international protection and right to receive urgent health care. In 2008, 978 people were intercepted on the Slovak-Ukrainian border. More than 100 monitoring missions were conducted and HRL lawyers interviewed approximately 150 migrants in 45 cases. Case files were inspected during 65 monitoring missions.

7.3. Meetings, trainings, joint missions

Parties to the MoU meet regularly to review project implementation, discuss problems and agree on solutions. In order to improve access to information, protection leaflets will be prepared in the most frequent languages, informing migrants on their right to seek international protection. Director of OABP consented to issue an internal OABP order obliging the police of the first contact to share the leaflets with migrants intercepted. Parties to the MoU conducted a joint mission to the field in May 2008 and cooperate in designing training activities for the Border Police. In October 2008, a training was conducted on intercultural awareness, communication with asylum-seekers and on the principle of *non-refoulement*.

7.4. Lessons learned

After initial misunderstandings causing minor obstacles in the cooperation, the parties have become familiar with the working methods and objectives of each other and improved mutual understanding and cooperation. Through regular meetings and continuous exchange of information by OABP, HRL and UNHCR, issues are addressed quickly and in a spirit of partnership. The parties to the MoU do believe that the distribution of protection information leaflets shall become a useful tool for rendering the procedure even more effective and protection sensitive.

7.5. More effective border management

The tripartite cooperation has enabled the parties to gather information on existing practices of treatment of people of concern at external EU borders and analyze this information for improving border, airport and detention practices in order to guarantee that asylum seekers have full access to the territory of the Slovak Republic and to the asylum procedure. Border management in the Slovak Republic has become more effective and responsive towards human rights. At the international airport in Bratislava, the police often call HRL lawyers to assist with arriving cases.

8. Slovenia

8.1. Ensuring access to territory

The Republic of Slovenia maintains and guards 670 kilometers of external EU borders with Croatia. UNHCR has been extremely concerned with the drop of asylum applications since 2006 at Slovene border crossing points. The overall number of asylum applications in 2008 represented only approximately 15 per cent of the same data in the year 2005. This substantial change of migratory flows has been associated with the reinforcement of the guarding of borders, in conjunction with the entering into force of the Schengen Agreement in Slovenia.

8.2. Tripartite Memorandum of Understanding

A Memorandum of Understanding among The Ministry of Interior, the Police and UNHCR was signed on 1st October 2008. The Memorandum builds on previous cooperation in the framework of a pilot border monitoring project by the three parties (inclusive of UNHCR's Implementing Partner Pravno-informacijski center nevladnih organizacij, PIC) and it regulates the cooperation, roles and responsibilities as well as working methodologies. MOI informs PIC via telephone about all cases of interception of people expressing their intent to seek protection near or at the border with Croatia or at the international airport and the port. PIC visits Border Police departments along the Croatian border as well as at the international airport in Ljubljana and the port in Koper when informed about the interception of persons of concern and interviews the foreigners intercepted. Between January and May 2009, 71 people were intercepted on the Slovene-Croatian border. 7 monitoring missions were conducted.

8.3. Information about people intercepted

So far it has been established that informing PIC only on intercepted persons who have expressed the intent to seek protection is not enough to effectively monitor access to the territory, as these persons have already been allowed to access. Therefore, changes to the memorandum need to be made. Furthermore, the period between the interception and the actual informing of PIC is too long and therefore PIC is often not able to participate in procedures.

8.4. Lessons learned

Parties have not yet met in the framework of the MoU, but it is planned to meet regularly to review the implementation of the memorandum, to discuss problems and to agree on solutions.

8.5. Ensuring smooth flow of information

The project is expected to lead to the establishment of partnership and cooperation through regular meetings and continuous exchange of information among the Police, PIC and UNHCR, in order to ensure smooth information flows, and to address issues in a constructive manner. UNHCR and PIC also believe that the distribution of information on international protection could become a useful tool for rendering the procedure even more effective and protection sensitive.