Republic of Belarus Country report 2009: Situation for refugees and asylum seekers





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Statistics

In 2009 8 people were recognised as refugees. 2 people were given subsidiary protection.

Country of origin	Number of asylum applications registered			Number of people recognised as refugees			Number of people given subsidiary protection
	2008	2009	Total	2008	2009	Total	2009
Afghanistan	22	77	99	_	6	6	
Armenia	1		1	—			_
Azerbaijan	4	2	6	—	—	—	—
Bangladesh	2	—	2	—		—	—
Egypt		1	1	—			_
Georgia	13	18	31	—			1
Iraq	3	1	4	—	—		—
Iran	9	9	18	—	2	2	1
Kazakhstan	_	1	1	—	_	_	—
Congo	—	2	2	—	—	—	—
Kyrgyzstan	—	1	1	—	—	_	—
Latvia	1	—	1	—			—
Lebanon	—	2	2	—	—		—
Madagascar	—	1	1	—	—		—
Moldova		1	1			_	—
Palestine	1	—	1	—		_	—
Pakistan	—	6	6	—	_		—
Pakistan	1	1	2	—		—	—
Russia	1	7	8	—		_	—
Syria	_	1	1	—	_		—
Sudan	1	1	2	—	_	—	_
Tajikistan		1	1				—
Ukraine	1	9	10			—	_
Uzbekistan		1	1			_	
Sri—Lanka	1	—	1	—	—	—	—
Estonia	—	—	_	—	—	—	
TOTAL	61	143	204	0	8	8	2

Legal and procedural changes:

The law of the Belarusian Republic "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus" came into force on 3rd July 2009. The law defines grounds and procedures for granting refugee, subsidiary and temporary protection in Belarus as well as for the loss or revocation of refugee

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status and subsidiary protection. It establishes legal, economic and social guarantees for the protection of the rights and interests of foreign citizens and stateless persons applying for protection in Belarus, and for people who have been granted refugee status or subsidiary or temporary asylum, within the terms of Belarusian and international human rights legislation.

The new law introduces two new protection statuses into the Belarusian protection regime: subsidiary protection and temporary protection.

Article 21 of the Law stipulates that subsidiary protection is given to a foreign citizen, present on the territory of Belarus who does not have grounds to be recognised as a refugee, but who has well-founded grounds for fearing threats of the death penalty, torture or other forms of cruel or degrading treatment or punishment from the state of his country or origin; or a threat to life in connection with violence due to armed conflict, and who is not willing or not able to benefit from the protection of his or her country of origin. It also stipulates that protection can be given to a stateless person, in Belarus, who does not meet the grounds for refugee status, but who has concerns and who is unable or unwilling to return to the State of former habitual residence because of such fears. Subsidiary protection is granted for one year with possible extension of the status.

It is important to note that applications for refugee status or subsidiary protection are examined in a unified procedure.

Temporary asylum is given to groups of foreign citizens, where the individual consideration of their applications is not possible due to situations of mass arrival and therefore there is a need to address the question of their admissibility and stay in Belarus on the admissibility grounds provided for refugee status and subsidiary protection (Article 24).

The adoption of the new Law "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus" has led to an overall review of nearly all the legislation, affected by the provisions in the new law, relating to asylum seekers. Amendments have been made to 12 Presidential Orders, 5 Codes, 9 laws, 25 Governmental orders and over 20 normative acts. The main changes are summarised below:

1. Civil Procedural Code of the Republic of Belarus.

Paragraph 8 added outlining procedures for examining appeals against decisions to curtail consideration of applications for refugee status or temporary asylum, against refusals of refugee status and/or subsidiary protection, appeals against refusals to extend subsidiary status and decisions to cancel refugee status and subsidiary protection status.

2. Code of Republic of Belarus on Marriage and Family

According to part 5, Article 235 of the Code of the Republic of Belarus on Marriage and Family, due to the newly introduced Law "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus", Chapter 14 of the Code (Custody and Guardianship) applies to the custody /guardianship of citizens of the Republic of Belarus, foreign citizens and stateless persons of foreign or stateless minors who arrived in the territory of the Republic of Belarus unaccompanied by legal representatives,

and who seek status refugee or subsidiary protection or asylum in the Republic of Belarus, as well as to underage foreign nationals and stateless persons who have refugee status or subsidiary or temporary protection or asylum in the Republic of Belarus.

3. Situation for the granting of asylum to foreign citizens and stateless persons in the Republic of Belarus, the loss and withdrawal of this status, and other issues related to the stay of foreign citizens and stateless persons in the Republic of Belarus, stated by Presidential Decree No. 204 on April 5, 2006.

The terminology of this legal normative act was made to confirm with the Law of Belarus "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus". In addition, p.6 of the regulation was amended to include the rules for determining the procedures for minor foreign citizens, who are not married, and arrive in Belarus to seek asylum unaccompanied by legal representatives.

4. Resolution No. 461 of the Council of Ministers of Belarus of 14 April 2009 "Questions of granting refugee status, subsidiary protection and temporary asylum to foreign citizens and stateless persons in the Republic of Belarus".

This Resolution reinforces point 3 of the **Regulations on procedures for providing financial assistance** to foreign nationals and stateless persons applying for refugee status or subsidiary protection in the Republic of Belarus, and foreign nationals and stateless persons who are granted refugee status in the Republic of Belarus; **the regulations on the procedure for granting temporary protection** to foreign citizens and stateless persons in the Republic of Belarus; **the rules of stay** in Belarus of foreign citizens and stateless persons applying for refugee status or subsidiary protection in the Republic of Belarus, and foreign nationals and stateless persons who are granted refugee status or subsidiary protection in the Republic of Belarus.

Previous legislation contained provisions which stipulated that foreign citizens, applying for refugee status, were provided with support to pay for their accommodation in temporary asylum centres, to a maximum of one bed at the minimum hotel rate in the area of the accommodation centres. Now, however, according to p 1.1 of the Resolution of the Council of Ministers foreign citizens and stateless persons applying for protection in the Republic of Belarus may be given additional financial assistance to pay for accommodation in temporary accommodation centres or temporary shelter to cover the actual expenses for accommodation, and for independent accommodation – to cover the actual expenses for the accommodation provided that they do not exceed ten basic units per month¹.

5. Instructions on the procedural organization of refugee status or subsidiary protection to foreign citizens and stateless persons in the Republic of Belarus, the loss and cancellation of such status, confirmed by Decree of the Ministry of Internal Affairs of the Republic of Belarus of 11.05.2009.

These instructions were developed in accordance with the Law of the Republic of Belarus "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus". They contain detailed instructions

^{1 35,000} roubles from 01.12.2007

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on the procedures for foreign nationals and stateless persons who submitted applications for refugee status or subsidiary protection in the Republic of Belarus, for the consideration of applications for protection; of applications for extension of subsidiary protection in the Republic of Belarus; applications for family reunification by foreigners who have refugee status or subsidiary protection in the Republic of Belarus; as well as decisions on the loss, cancellation of refugee status or subsidiary protection in the Republic of Belarus.

6. Instructions on the identification of foreign nationals and stateless persons applying for refugee status for subsidiary protection in the Republic of Belarus approved by Decree of the Ministry of Internal Affairs of the Republic of Belarus of 02.06.2009 № 178.

These instructions outline the procedure of identity identification for foreign citizens and stateless persons applying for refugee status or subsidiary protection in the Republic of Belarus, who do not have valid passports or other documents, valid for travel abroad issued by the relevant State authorities of the State of nationality or former habitual residence or international organizations; or those who produce false or forged documents to travel abroad. In addition, the Regulations establish the procedure for forensic tests to establish the age of foreign minors seeking protection without documents proving their age; or who present false or forged documents to prove their age, when there is doubt about their age.

Procedures for granting refugee status or subsidiary protection

Access to state procedure for granting refugee status or subsidiary protection

Access to the procedure for granting refugee status or subsidiary protection in the Republic of Belarus is free, without exception. Previously, applications for refugee status from Russian Federation citizens were not accepted. Now, however, applications from Russian citizens shall be accepted and examined in the same way as citizens of other states.

A foreigner who wishes to apply for refugee status or subsidiary protection in the Republic of Belarus, and family members over eighteen, apply in person or through an authorized representative with a written request for asylum to the Citizenship and Migration branch of the main Department of Internal Affairs of Minsk City Executive Committee, or to the Departments of Internal Affairs of the regional executive committees, or to the Border Services of the Republic of Belarus, or to authorities of internal affairs of the Republic of Belarus.

An application for protection from a foreigner, detained by border police for illegally crossing the state border of the Republic of Belarus, or for illegal stay in the territory of the Republic of Belarus, is accepted by the border guard who are responsible for detaining the foreigner.

If a foreigner who expressed a wish to apply for protection, does not speak any of the official languages of Belarus sufficiently, and there are no staff of the authorities who receive the asylum request who speak a language understood by the foreigner, then the authorities provide an interpreter. In many cases, the services of an interpreter are provided free of charge by the public association "Belarusian movement of health workers" working on the project to provide advice services to refugees (financed by UNHCR). As a general rule the procedure for granting refugee status or subsidiary protection takes 6 months. Exceptions to this are in the case of fast-track applications (the procedure lasts for one month). Cases are treated under the fast-track procedures if, following an interview with the foreigner applying for protection, it becomes apparent that his application for protection is frivolous or that the system is being abused.

Changes in government decision makers:

In 2009 there were no changes to the structures of state bodies responsible for considering asylum applications and granting refugee status and subsidiary protection.

Decisions on the suspension, termination, renewal of time limits for consideration of asylum applications, the granting or refusal of refugee status and (or) subsidiary protection are taken by the Department of Citizenship and Migration of the Ministry of Internal Affairs of the Republic of Belarus. When making a decision the Department of Citizenship and Migration Board takes the following points into account:

- Case materials provided in the asylum application;
- Documents and materials submitted by the foreigner who seeks protection;

• Information on the results of checks as to whether the foreigner has grounds for the provision of refugee status or subsidiary protection or temporary asylum;

• Information received from the Directorate of the KGB, legal and physical actors;

• Information about the country, used when considering an application;

• Conclusions of the Citizenship and Migration department after consideration of the appeal for asylum.

In total there are 7 citizenship and migration offices, under the control of the Department of Citizenship and Migration: The Office of Citizenship and Migration Board of the Main Department of Internal Affairs of Minsk City Executive Committee, and six Citizenship and Migration Regional Executive Committees of Brest, Vitebsk, Gomel, Grodno, Minsk and Mogilev regions.

• Appeals procedures

Under the new law "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus" the time limit for lodging an appeal against a refusal by the Department of Citizenship and Migration Ministry of Internal Affairs to grant refugee status or temporary protection has been significantly reduced.

Denial of refugee status and subsidiary protection for cases reviewed through <u>a fast-track</u> procedure must be appealed in court within **seven days** of the decision. The courts deci-

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sion on appeals against this kind of denial comes into force immediately after its promulgation and is not subject to further cassation appeals.

In other cases, an appeal against the refusal to grant refugee status and/or subsidiary protection must be filed in court within **fifteen days** of the day the applicant is informed of the decision.

This deadline for the preparation of grounded and substantiated complaints against the decision of the Department of Citizenship and Migration Ministry of Internal Affairs is insufficient. In addition, deprivation of the right to a cassation appeal in the case of petitions for protection in reviewed under fast-track procedures is illegal.

The Minsk District court reviews appeals of Department of Citizen ship and Migration decisions.

Furthermore, in accordance with Belarusian legislation it is possible to appeal decisions of other state bodies (and officials) which are not associated with status determination procedure. Appeals procedures are consistent with the basic principles of civil procedural legislation of the Republic of Belarus.

• Main reasons for the denial of applications in first and subsequent instances

Practice shows that the main reasons for the refusal to grant refugee status or subsidiary protection are:

• Manifestly unfounded applications

In considering the reasonable grounds for a foreigner applying for protection to fear becoming the victim of persecution, the biographical details are considered, as is the situation of his private and family life, participation in political, religious, cultural, civil and ethnic organisations, religious views, sex and age, as well as other information, statements by the foreigner which provide evidence of fear as grounds for the application, and also how these statements correspond to information about the country of origin.

An application can be considered as manifestly unfounded in cases where an applicant indicates other grounds than the reasons provided for the granting of refugee status or subsidiary protection, does not provide any information on the grounds provided for the granting of refugee status or subsidiary protection; provides unlikely or contradictory information of relevance to the decision on the application for protection, arrived from a safe country, has previously been refused refugee status and/or subsidiary protection, left the Republic of Belarus and submitted a new application for protection, unless there is reason for granting him refugee status or subsidiary protection.

• Abusive asylum claims

This relates to cases of deliberate misrepresentation of identity, the country of origin or former place of residence, circumstances of arrival in the Republic of Belarus, circumstances that led to the departure from country of nationality or former habitual residence; cases where a person does not respond or evades answering questions; presents forged

or fraudulent documents, without convincing explanations for their use; deliberately destroys documents relevant to the asylum claim. In addition the claim can be ruled abusive if a foreigner had the opportunity to apply for protection but only submitted an application after being detained by border guard services in Belarus for the illegal crossing of a boundary or by border guards or Ministry of Internal Affairs officials for illegal stay in Belarus.

• Foreigners arriving in Belarus from a safe third country:

According to the Law of the Republic of Belarus "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus" a safe third country is a state where the foreigner was before arriving in Belarus, excluding cases of transit through the territory of a State, and could have applied for refugee status or subsidiary protection or asylum, as this state complies with international human rights standards set by international and regional instruments including rules on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment Punishment; compliance with international principles of refugee protection, including the Convention on the Status of Refugees of 28 July 1951 and the Protocol Relating to the Status of Refugees of 31 January 1967, and especially the principle of non-refoulement; has national legislation regulating forced migration; and relevant government authorities grant refugee status, subsidiary protection or asylum.

Acquiring Belarusian Citizenship:

In accordance with Point 15 of the Regulation on the procedure for considering issues of citizenship of Belarus, approved by Presidential Decree No. 209 on November 17 1994, foreign nationals and stateless persons who are recognised as refugees in Belarus are allowed to apply for Belarusian citizenship seven years after being granted refugee status

In addition to seven years passing from the date of refugee recognition, the Law of the Republic of Belarus "On Citizenship" from 01.08.2002 Nº 136-3 contains the following requirements to persons who apply for admission to citizenship:

• They should be 18 years of age;

they should honour and respect the provisions of the Constitution of the Republic of Belarus and other legislative acts of the Republic of Belarus;
they should know one of the official languages of the Republic of Belarus (well enough to communicate);

• they should have a legitimate source of livelihood;

• the person has no nationality, or will lose the nationality of the foreign state if Belarusian citizen is acquired, or has applied to the authority of a foreign state with a request to terminate their original citizenship, except in cases where the termination of citizenship of a foreign state is not possible for reasons beyond the persons control.

In practice, in most cases, refugees who have filed an application for citizenship are refused. No explanation is given on the reasons for refusal.

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Changes in border control management:

In accordance with the Law of the Republic of Belarus of June 3, 1993 "On the Legal Status of Foreign Citizens and Stateless Persons in Belarus" foreigners enter the Republic of Belarus and leave it through the check points at the State Border of the Republic of Belarus on presentation of a valid passport or other suitable document for travel abroad issued by the appropriate authority of the State of nationality or habitual residence or an international organization, together with a visa of the Republic of Belarus, unless otherwise specified in international treaties of the Republic of Belarus.

In 2008, a Memorandum of Understanding was signed on the issue of monitoring the borders of the Republic of Belarus and access to asylum procedures in the territory of the Republic of Belarus. The State Border Committee of Belarus, the UNHCR representatives in Belarus, the International Organization for Migration in Belarus, and the Director of the NGO "Belarusian movement of Medical Workers" and the NGO Belarusian Red Cross were signatories to the Memorandum.

The main objectives of the border monitoring are as follows:

- To receive timely and relevant information about the situation on the border;
- For officers of the parties of the Memorandum to be admitted to monitor foreign citizens and stateless persons detained by units of the border service;
- To ensure that the parties can provide information to detainees on refugee status procedures, their legal status in the territory of the Republic of Belarus, emergency assistance for those in need (food, clothing, medicine), medical consultation, the possibility of voluntary repatriation, and other possible help;
- To identify persons seeking asylum from the general flow of illegal migrants;
- To identifying, within the general flow of illegal migrants, persons wishing to use the program of voluntary repatriation;
- To explain to asylum seekers and illegal migrants their rights and responsibilities;
- To register asylum seekers;
- To provide advice on state procedures for determining refugee status;
- To provide interpretation services ;
- To monitor the conditions of detention of illegal migrants;
- To provide emergency assistance to those in need (food, clothing, medicine), medical consultation.

Officers of the Refugee Counselling Service "Belarusian Movement of Medical Workers" receive information daily through the Central Office of the State Frontier Committee about migrants detained at the border over the past day. In addition, regional offices of the Refugee Counselling Service (RCS) regularly communicate with local units of the State Border Committee to monitor the situation and to obtain information about the detainees at the border.

There are different types of aid available to detainees: RCS provides legal advice, the Belarusian Red Cross Society - social and humanitarian aid, and IOM - support for voluntary return home. In cases where a detainee expresses the wish to apply for refugee status in Belarus, an RCS lawyer assists them with filing an application for either refugee status or subsidiary protection. The lawyer then informs the subdivision of the State Border Committee or the Ministry of Internal Affairs about the application.

In addition, RCS is able to provide interpreters for Dari, Farsi, and has the resources to hire an interpreter if necessary to help carry out interviews with asylum seekers or for mixed migration flows. In 2009 RCS solicitors conducted 40 monitoring visits and provided advice to 131 persons.

Detention

In 2009 there were no cases of illegal detention of asylum seekers.

Foreigners enter the Republic of Belarus and leave it through the check points at the State Border of the Republic of Belarus on presentation of a valid passport or other suitable document for travel abroad issued by the appropriate authority of the State of nationality or habitual residence or an international organization, together with a visa of the Republic of Belarus, unless otherwise specified in international treaties of the Republic of Belarus². Those who violate the procedures for entry and exit from Belarus are intercepted by territorial border guards and placed in a temporary detention facility.

A person who violates the regime of the State Border of the Republic of Belarus or checkpoints at State borders, or who intentionally crosses the state border illegally can be intercepted and detained until their identity can be established (for a period not exceeding 72 hours). If their identity cannot be established within 72 hours, detention may be extended for up to 10 days with the approval of a prosecutor.

Article 27 of the new law "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus" states that a foreigner who is forced to cross the border of Belarus illegally and who applies for asylum without delay on arrival in Belarus to one of the relevant migration bodies, exempt from liability for illegally crossing the border and illegal stay in Belarus.

Social rights

Housing

While a person's application for refugee status or subsidiary protection in the Republic of Belarus is being processed, they have the right to stay in private accommodation. In this case, they are entitled to receive benefits from the state equal to the amount of the actual cost of the accommodation, provided it does not exceed ten basic units per month. If the foreigner is unable to find independent accommodation they have

² Law of the Republic of Belarus of June 3rd1993 "On the Legal Status of Foreign Citizens and Stateless Persons in Belarus"

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the right to reside in temporary accommodation centre or a temporary shelter. Currently, in Belarus there are two such accommodation centres in Vitebsk and Gomel.

A temporary accommodation centre is needed in Minsk because often people find themselves sleeping for a night or two at the railway station while waiting for their applications to be referred to the Office of Citizenship and Migration in Minsk.

For recognised refugees the issue of finding housing remains difficult, as it is for many Belarusian citizens.

In general, all recognized refugees have equal rights to apply for help with housing alongside Belarusian citizens. They do not face discrimination in applying for social housing. About 20 large families with refugee status have received state accommodation or have been given low-credit loans to allow them to build houses.

However, occasionally there are cases where families of recognized refugees move from other cities in Belarus to Minsk, and are denied the right to apply for better housing conditions under the provisions of the legislation of the Republic of Belarus. In accordance with Presidential Decree dated November 29, 2005 N° 565 *"On some measures to regulate housing relations"* these persons are not eligible to apply for housing for five years from the day they receive residence registration in Minsk. Consequently, these families spend 5 years on the waiting list. If the family is smaller then realistically their housing problems will take 20 years to resolve as there is a large number of people in need of improved housing.

Many recognised refugees live in rented apartments. Housing is very expensive in the capital, and since the majority of refugees prefer to remain in the capital, accommodation constitutes a large part of a family's budget.

Employment

In accordance with the Law "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus", foreigners who apply for protection and those with subsidiary protection have the same employment rights as other foreigners in Belarus.

The new law provides for a simplified procedure for the employment of asylum seekers, without the requirement for special work permits.

The changes in the law on employment also apply to foreign nationals and stateless persons who have been granted refugee status or asylum in the Republic of Belarus. The same applies to foreign nationals and stateless persons applying for refugee status or subsidiary protection or asylum in Belarus, as well as to foreign nationals and stateless persons.

Thus, new legislation has created favourable conditions to grant maximum employment rights to refugees and asylum seekers.

In practice, the majority of refugees and asylum seekers work illegally, preferring to work in the markets and earn a better salary for their work. However, it must not be forgotten that by working illegally, refugees are more vulnerable, as they lose social security protection under Belarusian law.

Another obstacle to finding a job is a lack of knowledge of the Russian language. Only a few refugees attend Russian language courses, which are organized by the Belarusian Red Cross. Most refugees speak Russian colloquially, which is often insufficient for finding work.

The government set up a programme - "Establishment of agro-towns", which has been under-used to date. It was designed to encourage people to move to the countryside. Agricultural areas of the Republic of Belarus have an acute shortage of manpower, and there are some 2000 job vacancies ranging from tractor driver to doctor. Some employers even offer housing (and hence residence registration), but refugees who are offered such opportunities often show no interest because they do not wish to change their way of life in the city.

Medical

In accordance with the Law of the Republic of Belarus "On the granting of refugee status, subsidiary and temporary protection to foreign citizens and stateless persons with in the Republic of Belarus" and the Law of the Republic of Belarus "On the Legal Status of Foreign Citizens and Stateless Persons of the Republic of Belarus" persons applying for protection have the following rights regarding health care:

- 1. The right to free basic medical treatment for foreigners applying for protection, at their place of residence or temporary residence in the Republic of Belarus;
- 2. The right to free ambulance (and emergency) medical care in public health institutions;
- 3. The right to medical treatment for adult foreigners at their own expense;
- 4. The right to medical care for foreign minors at their place of residence or temporary residence in the Republic of Belarus on a par with underage citizens of the Republic of Belarus.

Persons who have been granted refugee status or subsidiary protection are entitled to medical care as citizens of the Republic of Belarus.

Education

Foreign minors who apply for protection as well as those who have been granted refugee status or subsidiary protection are entitled to study in institutions providing preschool and general secondary education, as other Belarusian citizens are.

In accordance with the Law of the Republic of Belarus *"On Education"* people with refugee status in Belarus are entitled to access to higher education funded by the state, on a competitive basis, in the same way as Belarusian citizens.

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Recommendations:

- 1. New temporary accommodation centres in Minsk are needed to accommodate those asylum seekers who have to stay overnight while waiting for decisions by the Department of Citizenship and Migration situated in Minsk.
- 2. A booklet should be published on the procedure and the rights and responsibilities of applicants, as required by the new legislation governing the granting of refugee status or subsidiary protection.
- 3. Refugees need to be better informed about their rights and obligations, especially relating to employment.
- 4. The time allowed for appeals against decisions brought by the Department of Citizenship and Migration of the Republic of Belarus should be increased.
- 5. The right of cassation appeal should be given to those cases reviewed under the fast-track system by the Department of Citizenship and Migration of the Republic of Belarus.
- 6. Employers need to be better informed about the rights and obligations of refugees.
- 7. Refugees should be encouraged to attend a language course.
- 8. There is an urgent need for financial support to NGOs, which will allow new projects and initiatives to be set up with the aim to better integrate refugees and asylum seekers.

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