

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES
*Délégation Régionale
pour le Benelux
et les Institutions Européennes*



VERENIGDE NATIES
HOOG COMMISSARIAAT
VOOR DE VLUCHTELINGEN
*Regionale Vertegenwoordiging
voor de Benelux en de
Europese Instellingen*

Rue Van Eyck 11B
B – 1050 Bruxelles

Téléfax : 627.17.30
Téléphone : 649.01.53
Email : belbr@unhcr.org

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
for the Benelux
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Van Eyckstraat 11B
B – 1050 Brussel

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Telefoon : 649.01.53
Email : belbr@unhcr.org

Background Note on the Protection of Asylum Seekers and Refugees in Estonia

Estonia ratified the 1951 Convention and 1967 Protocol on the Status of Refugees on 19 February 1997 and adopted the first Refugees Act of the Republic of Estonia on 18 February 1997. All instruments entered into force on 9 July 1997, followed by a number of amendments to the Refugees Act entered on 1 September 1999. Estonia has made considerable efforts to build up a functioning asylum system within a limited timeframe.

Extensive amendments to the Refugees Act and the Aliens Act were drafted in May 2000 as a result of the identification of certain legislative gaps, undertaken within the framework of the EU Phare Horizontal Programme on asylum in 1999-2000. The Act Amending the Aliens Act and Refugees Act of 26 May 2000 was replaced with the Act Amending the Refugees Act of 31 May 2002. That Act was adopted in January 2003 and the amendments entered into force on 1 May 2003.

Prior to its adoption, UNHCR issued extensive comments on the proposed Act Amending the Refugees Act (available upon request).

Even though many gaps in the current system are addressed through the adopted amendments, a number of issues remain at variance with international and European standards and principles, such as: the processing of applications lodged by persons deemed to have arrived from safe countries of origin in the admissibility procedure; the merging of admissibility and accelerated procedures; the lack of a suspensive effect of appeals in the case of decisions on admissibility (including at the border) and manifestly unfounded decisions (although the permission to lift the non suspensive effect may be required to the Administrative Court); the lack of effective social rights for persons granted alternative protection; the lack of a possibility for family reunification for refugees whose spouses are of a different nationality than the refugees themselves.

According to a governmental Regulation adopted in 1997, the Citizenship and Migration Board (CMB) is the competent authority to conduct the asylum procedure. Applications submitted at the border are to be processed by the Board of Border Guards. However the final version of the above mentioned Act includes a provision stipulating that the Board of Border Guards can take

a decision on inadmissibility at the border only in consultation with the Citizenship and Migration Board.

Rejected asylum seekers are entitled to lodge an appeal first to the local Administrative Court and then to the District Court. Further, a judicial review is possible before the Supreme Court.

The asylum application rate in Estonia is low. The first asylum application was submitted on 11 July 1997 and the total number of applications that have been submitted in Estonia since then stands at 76. In total, 4 persons have been granted asylum, 7 persons have received temporary residence permits on humanitarian grounds and 6 cases are currently pending in the first or second instance. In 2003, as of May, 7 persons have sought asylum in Estonia.

In December 2000, with UNHCR's assistance, the first non-governmental organisation (NGO) working for asylum seekers and refugees, the Estonian Refugee Council, was established. Its main task is to ensure the provision of free legal assistance to asylum seekers and refugees as well as to raise awareness about refugee issues in Estonia. As of 2002, the Estonian Refugee Council works as UNHCR's implementing partner in Estonia.

Specific Issues

UNHCR fully appreciates the efforts made by Estonia to establish a functioning refugee status determination procedure over such a short period of time. However, the Estonian asylum institutions cannot yet be considered as fully qualified and competent. This is due to a combination of, on the one hand, a relative lack of experience and full understanding of the correct application of some of the concepts of international and European refugee law and on the other hand, of too little attention paid to these matters.

UNHCR is concerned about the length of the asylum procedure (2-3 years) that is mainly due to the protracted appeals procedure. In Estonia, if the appeal is granted, the second instance does not make a decision on the claim but returns the case to the first instance for its reconsideration, which considerably delays the outcome of the asylum request.

Furthermore, the practice in Estonia according to which refugees are granted residence permits for maximum two years after which they have to apply for the extension of the permit justifying it again is not in compliance with the 1951 Convention. Such arrangement cannot be considered as amounting to granting a secure status to the refugee and assisting in finding a durable solution.

Although the amendments that entered into force on 1 May 2003 introduced a single asylum procedure in which applications lodged on the basis of Article 1 of the 1951 Convention are also screened for possible protection needs on the basis of Article 3 of ECHR and Article 3 of the UN Convention Against Torture and vice versa, the Refugee Law lacks provisions on the granting of temporary protection for war refugees arriving in mass influx, in accordance with the Directive on temporary protection as adopted by the Council in July 2001.

In addition, the few recognised refugees, and even more so persons holding a residence permit granted on humanitarian grounds, are facing great difficulties to integrate into society. Local authorities are reluctant to receive refugees and persons granted temporary residence permits on humanitarian grounds have practically no access to the social security system.

Main Points for Considerations

- Encourage the national authorities to seriously address asylum matters in order to upgrade the system to European and international standards;
- Enhance administrative and judicial capacities in asylum matters;
- Provide adequate training to border guards on asylum and refugee matters;
- Help the Estonian Refugee Council to become financially self-sufficient and encourage the government to subsidy NGOs.

UNHCR
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