

Preliminary comments of the UNHCR in Bosnia and Herzegovina on the Draft Law on Aliens

UNHCR Representation in Bosnia and Herzegovina would like to thank the Ministry of Security for sharing with us the Draft Law on Aliens for our comments.

Please find herein our preliminary comments hoping that we shall continue to cooperate and discuss the text of the Law on Aliens during its drafting process.

Data protection in case of an alien who has expressed intention to seek international protection (asylum) in BiH

UNHCR advises that there should be provisions included safeguarding the confidentiality of information relating to the personal data of asylum-seekers. The revelation of any personal information relating to individual asylum-seekers to any other authority should always be subject to the consent of the asylum-seeker concerned.

UNHCR suggests that the above considerations are regarded in the context of Article 14 relating to the establishment of the identity and Article 110 of the Draft Law on Aliens.

Temporary residence on the ground of family reunification – Article 50 (2)

UNHCR advises that refugees should be exempted from needing to establish conditions of support for the family members, such as evidence of adequate accommodation, sickness insurance and economic resources. UNHCR proposes that more lenient requirements for family reunification be prescribed for refugees in Bosnia and Herzegovina, in connection with the requirements listed in Article 50 (2), particularly taking into account the specific situation of refugees and their families, which is why refugees and their families should not be required to meet the same requirements as other aliens.

The rights of stateless persons – Article 58 (5)

The 1954 Convention on the Status of Stateless Persons provides that stateless persons enjoy at least the same access to the rights and privileges as those granted to aliens, especially the rights relating to gainful employment (Articles 17, 18 and 19), while their access to primary education (Article 22) and general benefits (Article 23), whose content should correspond to social welfare and health care, is equal to the treatment of nationals. UNHCR advises that these considerations are reflected in Article 58 (5).

Residence which does not constitute the ground for permanent residence – Article 80

UNHCR suggests enabling that persons under international protection (refugees and persons under subsidiary protection) as well as stateless persons who have been granted temporary residence on

humanitarian grounds be eligible for approval of their permanent residence in BiH based on the granted status and the residence arising from that status.

Article 34 of the 1951 Convention relating to the Status of Refugees stipulates that *"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."*

BiH as a signatory to the Convention on the Status of Refugees has pledged to facilitate the assimilation and naturalization of refugees. UNHCR proposes to amend the said Article in order to facilitate the assimilation and naturalization of refugees. It should be noted that the decision on a refugee status has a declarative character. Recognition of a refugee status does not make the concerned person a refugee, but declares him/her to be one. He/she does not become a refugee because of recognition, but is recognized because he/she is a refugee (see paragraph 28 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status¹).

Article 32 of the 1954 Convention relating to the Status of Stateless Persons of 1954, signed also by BiH, stipulates that *"The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."* The BiH has thus undertaken the obligation to provide facilitated assimilation and naturalization of stateless persons.

The protection needs of beneficiaries of complementary protection (subsidiary protection) are often of equal duration to those of refugees, and return to the home country is not a likely option for most such persons.

The UNHCR Executive Committee, in its conclusion no. 103 (LVI) - 2005 - Conclusion on the Provision on International Protection Including Through Complementary Forms of Protection, paragraph (n) calls upon States to ensure the highest degree of stability and certainty for persons granted complementary form of protection:

"NOTING the value of establishing general principles upon which complementary forms of protection for those in need of international protection may be based, on the persons who might benefit from it, and on the compatibility of these forms of protection with the 1951 Convention and its 1967 Protocol and other relevant international and regional instruments,

...

(n) *Encourages* States, in granting complementary forms of protection to those persons in need of it, **to provide for the highest degree of stability and certainty** by ensuring the human rights and

¹ UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>

fundamental freedoms of such persons without discrimination, taking into account the relevant international instruments and giving due regard to the best interest of the child and family unity principles;”

UNHCR proposes that Art. 80 (1) is amended to allow for permanent residence for refugees, persons granted subsidiary protection and stateless persons.

The principle of non-refoulement – Article 109

UNHCR welcomes inclusion of the principle of non-refoulement in the Law on Aliens. We would suggest that the principle of non-refoulement given in Article 109 includes also prohibition of indirect refoulement as prescribed in the Draft Law on Asylum.

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