UNHCR
The UN Refugee Agency

UNHCR Comments on the Draft Law on Asylum in the Republic of Albania

A. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) thanks the Ministry of Interior of Albania for the opportunity to submit its comments on the draft Law on Asylum, No […]/2019.

2. UNHCR offers the following comments in its capacity as the agency entrusted by the United Nations General Assembly with the responsibility of providing international protection to refugees and other persons within its mandate, and of assisting governments in seeking permanent solutions to the problems of refugees.[1] UNHCR has a direct interest in asylum laws and policies and in the search of durable solutions for refugees. Under its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, '[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto'.[2] UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees (the 1951 Convention)[3], according to which State parties undertake to 'co-operate with [UNHCR] […] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention'. The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees (the 1967 Protocol).[4]

3. The following are some general observations related to various aspects of the draft law. In addition, detailed comments on a number of draft provisions are provided hereunder, and UNHCR stands ready to offer additional clarifications as considered useful. UNHCR would welcome an opportunity to discuss the below observations in a dialogue with the Ministry of Interior and other relevant stakeholders, as appropriate.

B. General observations

4. UNHCR welcomes Albania's efforts to align its new Law on Asylum with the Common European Asylum System, which, as stated in Article 78(1) of the Treaty on the Functioning of the European Union, had to be developed in accordance with the 1951 Convention and its 1967 Protocol, and other relevant treaties.[5]

5. The draft law is generally in line with international refugee law and standards. However, UNHCR finds that some provisions as outlined hereunder may be unnecessarily complex and therefore difficult to apply in practice. The draft law introduces certain concepts and foresees procedures that have been implemented over many years in different asylum systems, and have therefore been extensively analyzed and interpreted, including by national and supra-national European courts. Issues may arise if these concepts and procedures are not properly articulated. The objective of these comments is therefore to assist the authorities of Albania in adopting a legislation which is compliant with international law and standards, as well as sufficiently clear to facilitate implementation. In this regard, UNHCR would also like

[1] Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1 (1950).
[2] Ibid. para. 8(a).
[3] UN Treaty Series (UNTS) No. 2545, Vol. 189, p. 137.
[4] UNTS No. 8791, Vol. 606, p. 267.
[5] European Union, Treaty on the Functioning of the European Union (consolidated version), OJ L C 326/47, 26 October 2012, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN

to point out that the implementation of such an ambitious legislation will require the allocation of sufficient budgetary and human resources, as well as dedicated capacity building activities.

C. Observations related to specific provisions of the draft law

a) The principle of non-*refoulement*

6. Article 5(2) of the draft law mirrors Article 33(2) of the 1951 Convention, which sets out the exceptions to the principle of non-*refoulement*. However, the exact wording of Article 33(2) is not fully reflected in Article 5(2) insofar as the term 'particularly' has been left out. The fact that the 'crime' foreseen in Article 33(2) is doubly qualified by the terms 'particularly' and 'serious', underscores the high degree of gravity required for the crime to meet this prong of the exception to the principle of non-*refoulement*.[6] UNHCR therefore recommends that the term 'particularly' be incorporated into Article 5(2) to reflect this consideration. Given the fundamental character of the principle of non-*refoulement* as the cornerstone of international refugee protection, UNHCR consistently recommends a literal translation of this provision when transposing it into national law.

7. UNHCR would like to take this opportunity to emphasize that the principle of non-*refoulement* also applies **at the border** and that no one who is seeking asylum may be rejected at the border if this would result in an individual being forcibly returned, directly or indirectly, to a country where his/her life or freedom would be threatened on account of one of the five specifically mentioned reasons, unless the exception applies. The prohibition of *refoulement* under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or 'renditions' and non-admission at the border.[7]

b) The refugee definition

8. The draft law includes specific provisions on the concept of persecution (Article 6), the grounds of persecution (Article 7) and the possible actors of persecution and protection (Article 8). First, Article 6 of the draft law defines the 'meaning of persecution' and lists various 'acts' and 'forms' of persecution in an exhaustive manner. In UNHCR's view, the interpretation of what constitutes **persecution** needs to remain flexible, adaptable and sufficiently open to accommodate the various and changing forms of mistreatment and inflicted harm that could amount to persecution.[8] It is therefore recommended that Article 6 outlines the different forms of persecution merely in an exemplary manner rather than exhaustively.

9. Second, while Article 7 of the draft law includes interpretative provisions of the 1951 Convention persecution **grounds**, these should not be considered as providing a conclusive or exhaustive interpretation of these grounds. Other elements, not specifically outlined in the law, for instance in relation to the concept of 'particular social group' may prove equally relevant.[9] Persecution motives can be multifarious and may

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[6] UNHCR, Observations on the Draft Law 472 SE amending the Act on Granting International Protection to Aliens, 25 August 2017, para. 36, available at: https://www.refworld.org/docid/59ae9e5e4.html

[7] UNHCR, Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, para. 7, available at: https://www.refworld.org/docid/45f17a1a4.html

[8] 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, February 2019, HCR/1P/4/ENG/REV. 4, ('UNHCR Handbook'), para. 51-53, available at: https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html. UNHCR, Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection granted (OJ L 304/12 of 30.9.2004), p. 20, available at: https://www.refworld.org/docid/4200d8354.html

[9] See for instance UNHCR, Guidelines on International Protection No. 2; 'Membership of a particular social group' within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees,

change over time, and the 1951 Convention grounds should therefore be interpreted accordingly.[10] In consequence, UNHCR recommends that Article 7 clearly reflects the idea that its provisions are indicative and not exhaustive.

10. Article 8(1) of the draft law provides a list of **actors of persecution** or serious harm, correctly reflecting the view that persecution can be committed by other entities than the State. However, this provision also includes the condition that, where persecution is committed by non-state agents, it must be demonstrated that the State, parties or organisations controlling the territory, including international organisations, are unable or unwilling to provide protection against persecution or serious harm. With regard to the issue of **actors of protection**, UNHCR wishes to note that generally national protection can only be provided by the State, and not by non-state actors. National protection provided by States cannot be equated with the activities of a non-state actor, which may exercise some level of *de facto* – but not *de jure* – control over the territory. Such control is often temporary and without the range of functions and authority of a State. Importantly, such non-state entities are not parties to international human rights treaties and some international bodies even enjoy privileges and immunities (international organisations), making them unaccountable for their actions, contrary to States.[11] Moreover, the ability of non-state actors to enforce the law is often very limited.[12]

c) Exclusion from refugee status, subsidiary protection status and temporary protection

11. Articles 12, 14 and 86 of the draft law regulate the issue of exclusion from refugee status, subsidiary protection and temporary protection, respectively. All three articles transpose the provisions of Article 1F of the 1951 Convention while departing from the text of Article 1F insofar as they introduce unnecessary provisions (Articles 12(2) and 14(2)), slightly diverge from its wording (Article 14(1)(b))[13], and introduce additional grounds for exclusion (Articles 14(1)(d), 14(3) and 86(1)(d)).

12. UNHCR would like to recall that given the potentially serious consequences of their application, the exclusion clauses should be applied cautiously and following a full assessment of the individual circumstances of the case. The grounds for exclusion from refugee status in Article 1F of the 1951 Convention are thus exhaustive and additional grounds should not be included in national legislation.[14]

13. Article 12 is in line with the relevant provisions of the 1951 Convention but includes an unnecessary paragraph specifically covering persons who are 'incited to commit, or otherwise, participate in' excludable acts (Article 12(2)). A similar provision covering persons who 'instigate or otherwise participate in' excludable acts has been included in Article 14(2). From UNHCR's perspective, there is no need to add these

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7 May 2002, which contains additional interpretative elements in relation to this concept, available at: https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html

[10] UNHCR recommends that decision-makers use as a reference point the UNHCR Handbook, note 8 above.

[11] UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, February 2018, ('UNHCR 2018 QR Comments'), p. 13, available at: https://www.refworld.org/docid/5a7835f24.html

[12] See UNHCR, Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, 2 December 2016, HCR/GIP/16/12, para. 41, available at: https://www.unhcr.org/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee-status-related.html

[13] Article 14(1)(b) of the draft law applies to persons who 'committed serious crimes' and does not use the full wording of Article 1F(b) of the 1951 Convention, which refers to a person having committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee.

[14] See UNHCR, Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the status of Refugees, HCR/GIP/03/05, 4 September 2003, para. 2, available at: https://www.unhcr.org/publications/legal/3f7d48514/guidelines-international-protection-5-application-exclusion-clauses-article.html

specific provisions since the situations foreseen by these articles would in any case be considered within the framework of the exclusion clauses if the facts of the case reveal a context of incitement to commit excludable acts.

14. Article 14(1)(d) of the draft law introduces additional grounds for exclusion from subsidiary protection for persons who pose 'a danger to the order and security of the Republic of Albania' and 'a risk to the security and public order of the Republic of Albania', respectively. However, the similarities in terms of their international protection needs and the consequences in case of exclusion between refugees and beneficiaries of subsidiary protection advocate against a differentiation between these two categories. UNHCR therefore recommends to align the exclusion grounds applicable to these two statuses.[15] Article 14(3) also introduces a somewhat unclear provision, which reads as an additional ground for exclusion but would rather constitute a regular ground for rejection of a claim (flight from *prosecution* rather than *persecution*).[16] This paragraph should in any case be removed in light of the above comment on the exhaustive nature of the exclusion clauses.

d) Freedom of movement

15. Article 23(1) affirms the principle of freedom of movement of asylum-seekers. The other paragraphs of Article 23 then regulate the situation of applicants who are 'kept' in the reception centre for asylum-seekers, namely the motives and procedure for resorting to such a 'keeping' measure and, finally, the different modalities whereby the freedom of movement of an asylum-seeker, regardless of whether or not accommodated in a reception centre, can be restricted. Firstly, UNHCR would like to observe that the term 'kept' used in the draft law has no clear legal meaning and, as such, should be modified or complemented with a definition. UNHCR also notes that the draft law foresees the possibility to confine an asylum-seeker to the asylum reception centre (Article 23(5)(a)). The difference between such confinement and the 'keeping' measure is not clear. In addition, the confinement is considered to be 'an alternative measure for the restriction of freedom of movement' regulated by Article 23(5) of the draft law, whereas this measure amounts, in fact, to a form of detention.[17]

16. UNHCR finds that Article 23 is confusing as it includes elements relating to reception and detention, and would therefore require restructuring in order to spell out the principle (freedom of movement), the exception (detention), the alternatives to detention, and the applicable modalities, including the procedural guarantees in relation to the implementation of these measures. Some procedural guarantees are partially already embedded in the current draft and UNHCR stands ready to provide technical support in redrafting Article 23, drawing on its Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (the Detention Guidelines).[18]

17. Paragraphs 7 and 8 of Article 23 cover respectively the situation of a 'special category of persons' and that of 'minors', without specifying whether the latter concern unaccompanied children or children with their parents. Neither of these paragraphs make reference to the procedural guarantees foreseen in the previous part of Article 23. UNHCR would like to particularly emphasize that the restriction of the freedom of movement of children, resulting in detention, is not in their best interest, which is a primary consideration under Article 3 of the Convention on the Rights of the Child, to which Albania is also a party.

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[15] See UNHCR 2018 QR Comments, note 11 above, p. 19.

[16] It reads as follows; *'Subsidiary protection shall not be granted to the person who has committed one or more criminal offences outside the scope of paragraph 1 of this Article prior to his/her entry into the Republic of Albania, but which would be punishable with imprisonment if committed in the Republic of Albania* ***and if he/she has fled the country of origin only to escape the punishment resulting from such crimes****.' (emphasis added)*

[17] See definition of detention provided in the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, ('Detention Guidelines'), p. 9, available at: https://www.refworld.org/docid/503489533b8.html

[18] See UNHCR Detention Guidelines, note 17 above.

Instead specific modalities for their reception should be considered.[19] UNHCR's Detention Guidelines could also usefully be relied upon while restructuring these specific provisions of Article 23. Moreover, UNHCR notes that the 'special category of persons' refers to Article 3(25), which provides a list of categories that would typically be considered as vulnerable. In this regard, UNHCR recommends to specify in Article 3(25) that this list is not exhaustive, but rather indicative, in order not to exclude persons with vulnerabilities that may not be covered from special considerations.

e) Unaccompanied and separated children

18. Article 20 of the draft law concerns 'unaccompanied minors' and foresees the appointment of a 'representative' by the relevant social services of the municipality of residence. However, Article 20 does not contain any provisions, or make reference to other legislation in order to ensure the parallel appointment of a 'guardian', whose role is different from that of a 'representative'. UNHCR considers that the role of a guardian is broader in the sense that he/she will cover the continuum from the outset of the asylum procedure to the time when the child attains majority of age or leaves the country, while a legal representative will primarily accompany the child during the refugee status determination procedure.[20] The requirement to appoint a guardian should therefore be included in the draft law, which can also be achieved through a reference to other relevant legislation.

19. Furthermore, while Article 20 contains a reference to the concept of the best interests of the child, its use seems to be limited to particular aspects of the asylum procedure. UNHCR recommends that a provision be included in the draft law to the effect that **the best interests of the child** shall be a primary consideration in all actions that concern an unaccompanied child.[21] Moreover, any best interest assessment should reflect the elements outlined by the Committee on the Rights of the Child (CRC), such as the need to give a child the possibility to provide his/her views, to benefit from specific protection, care and safety arrangements, etc.[22] UNHCR recommends that such best interest assessments be carried out by relevant child protection professionals including social workers and health workers as also recommended by the CRC. Finally, with regard to the accommodation of unaccompanied and separated children, UNHCR strongly recommends to remove the provision regarding placing such child applicants aged 16 years and above in adult accommodation (Article 20(9)) as this cannot be considered as being in their best interests due to the inherent risks, even if they consent to it.

f) Access to the asylum procedure

20. Article 57 regulates access to the asylum procedure. However, UNHCR notes that this and other provisions of the draft law uses various terms, such as 'make', 'express an intention', 'submit', 'file', 'register', 'lodge', 'substantiate', to describe the steps an applicant needs to take in order to access the asylum procedure. Therefore, UNHCR recommends the use of a simplified and harmonised terminology throughout the document when describing the various steps for accessing the asylum procedure and specifying the rights and obligations related to those steps. UNHCR usually welcomes the distinction between the '**making**' and '**lodging'** of an application for international protection.[23] The 'making' of an

[19] See UNHCR Position on the Detention of Refugee and Migrant Children in the Migration Context, January 2017, available at: https://www.refworld.org/pdfid/5885c2434.pdf

[20] See UNHCR, Guidelines on International Protection No 8: Child Asylum Claims under Articles 1A(2) and 1F of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 September 2009, HCR/GIP/09/08, para. 69, available at: https://www.refworld.org/docid/4b2f4f6d2.html

[21] UNHCR Comments on the European Commission Proposal for an Asylum Procedure Regulation – COM (2016) 467, April 2019, ('UNHCR 2019 APR Comments'), p. 22, available at: https://www.refworld.org/docid/5cb597a27.html

[22] UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC/C/GC/14, available at: https://www.refworld.org/docid/51a84b5e4.html.

[23] UNHCR 2019 APR Comments, note 21 above, p. 25.

application does not involve any formalities, but simply refers to a wish expressed by a non-national or a stateless person, who can be understood to be seeking international protection, to officials of the determining authority or other authorities, such as border guards, police, or authorities responsible for detention facilities. When an application has been made, it shall promptly be registered by the responsible authority. The 'lodging' would occur when the asylum claim is being filed with the responsible authority, and usually provides the baseline for calculating the time frames involved in the asylum procedure.

21. According to Article 57(2) of the draft law, the applicant has a time frame of 72 hours (three days) to 'file' with the competent Directorate of the Ministry of Interior his/her asylum application from the moment he/she has expressed an intention to apply for international protection (the 'making'). In practice, this time frame can create difficulties for applicants to comply with as they may face, *inter alia*, difficult human and material situations, and challenges in bringing by documents, which are required to substantiate the application,[24] which would suggest the adoption of a more generous deadline or flexibility in its application that is recognized in the law. Currently, however, the authorities are often not able to receive asylum-seekers within this time limit, which is leading to protection risks for the concerned individuals as they remain undocumented and have no access to assistance and services. The draft law should therefore also specify the obligation of the administration to give the asylum-seeker an **effective opportunity** to file his/her application, and to provide a solution for cases where this is not possible. For instance, a certificate should then be issued within one week, indicating that the person is an asylum-seeker in the Republic of Albania. This certificate should suffice to exercise the rights accorded to asylum-seekers. Lastly, in the case of unaccompanied or separated child applicants, UNHCR reiterates that the time limit for lodging an application should only be triggered once a **guardian** is appointed and has met with the child.[25]

g) Accelerated procedure

22. The draft law foresees the possibility to implement an **accelerated procedure**, with a reduced appeal deadline of seven days, in a number of circumstances which are delineated in Article 66(1)(a) and (b). Article 66(1)(a) covers situations where a positive decision can be made on the basis of available evidence, whereas the second part of the provision refers to Articles 68 and 69 of the draft law. In turn, these articles refer to another set of articles of the draft law. As a result of these successive referrals, the draft law reads as if the accelerated procedure could apply to all types of negative decisions, including those based on the exclusion clauses, as well as to inadmissibility decisions based on the safe third country concept.

23. UNHCR would therefore suggest to simplify these provisions of the draft law, rationalise the current referrals and review the procedural safeguards for the accelerated procedure, in order to avoid confusion and difficulties in implementation. UNHCR recommends that the use of an accelerated procedure be restricted to certain well-defined grounds in view of the typically reduced legal remedies. In particular, asylum-seekers with **manifestly well-founded** or **manifestly unfounded** claims could be channelled into an accelerated procedure. Manifestly well-founded applications refer to asylum claims which, on their face, clearly indicate that the applicant meets the definition of a refugee or subsidiary protection.[26] Manifestly unfounded are those that are clearly not related to the criteria for granting refugee status as laid down in the 1951 Convention nor to any other criteria justifying the granting of international protection, or are clearly fraudulent or abusive.[27] An accelerated procedure, provided **procedural safeguards** are in place,

[24] UNHCR 2019 APR Comments, note 21 above, p. 27.
[25] Ibid., p. 26.
[26] See further on manifestly well-founded applications in UNHCR, Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union, May 2018, available at: https://www.refworld.org/pdfid/5b589eef4.pdf
[27] UNHCR, Aide-Memoire & Glossary of Case Processing Modalities, Terms and Concepts Applicable to RSD under UNHCR's Mandate, 2017, p. 19, available at: https://www.refworld.org/docid/5a2657e44.html

would provide quick access to protection for those who need it, and **facilitate return** for those who do not.[28]

24. According to Article 66(3), accelerated procedures should not be applied to **unaccompanied and separated children** or **other persons with specific needs**, which is positive. UNHCR recommends that the specific needs of these groups be adequately considered in the asylum procedure and that their applications be **prioritized**.[29]

h) Unfounded applications

25. Article 69 provides a list of reasons for considering an application as unfounded. The introductory sentence of this provision reads that '[w]here the accelerated procedure does not apply, the Directorate shall refuse an application for international protection as unfounded'. However, as indicated above, Article 69 is linked to Article 66, which regulates the accelerated procedure and provides that such a procedure should apply to situations foreseen by Article 69. Reading these two provisions together raises questions about the scope of Article 69 ('where the accelerated procedure does not apply'), and UNHCR therefore recommends a clarification.

26. Nevertheless, if the intention of the drafters is to list in Article 69 the reasons that can trigger an acceleration of the asylum procedure, UNHCR is concerned that some of the grounds provided for in this provision are broader than those that can be defined as either manifestly well-founded or manifestly unfounded and refer to cases for which an acceleration of the examination would not be appropriate, such as where the applicant has entered the territory of the Republic of Albania illegally (Article 69 (1)(h), or where the applicant may be considered a danger to the national security or public order (Article 69(1)(j)).[30] UNHCR therefore recommends that the list of situations foreseen in Article 69 be carefully reviewed in order to ensure an appropriate delineation of cases that can be adjudicated in an accelerated procedure and those that cannot in accordance with the above-outlined recommendation that accelerated procedures should be restricted to certain well-defined grounds.

i) Safe country concepts

27. Article 70 of the draft law foresees that applications may be considered **inadmissible** in application of the 'first country of asylum' and 'safe third country' concepts. Positively, the draft law also provides for the possibility to rebut the use of these concepts (Article 70(2)(a)), however does not explicitly provide for the applicant's right to a **personal admissibility interview** in this regard, which is an essential precondition for the applicant's effective opportunity to rebut the presumption of safety based on his/her personal circumstances. UNHCR strongly recommends that applicants should, in principle, be granted the opportunity for a personal interview at substantive but also at admissibility stage.[31]

j) The withdrawal of refugee or subsidiary protection status (cessation, cancellation, revocation)

28. Articles 74 to 77 of the draft law provide for different situations in which refugee or subsidiary protection status may be lost, revoked or its 'renewal' refused. While the provisions of Article 74 on cessation ('*loss of refugee status'* in the terminology of the draft law) are consistent with those of Article

[28] UNHCR, Better Protecting Refugees in the EU and Globally, December 2016, p. 12, available at: https://www.refworld.org/docid/58385d4e4.html. See generally UNHCR recommendations on models and tools for ensuring fair and efficient processing for certain categories of applications for international protection in: UNHCR, Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union, note 26 above.

[29] UNHCR 2019 APR Comments, note 21 above, p. 35. UNHCR Better Protecting Refugees in the EU and Globally, note 28 above, p. 12.

[30] See UNHCR's Position on Manifestly Unfounded Applications for Asylum, 1 December 1992, available at: https://www.refworld.org/docid/3ae6b31d83.html. UNHCR 2019 APR Comments, note 21 above, p. 35.

[31] UNHCR 2019 APR Comments, note 21 above, p. 12 and 39.

1C of the 1951 Convention, the wording of Article 75 merges the concepts of 'revocation' and 'cancellation'. Also, the draft law introduces a terminology ('refusal to renew'), which departs from international standards as the granting of refugee or subsidiary protection status is not time-bound, i.e. these statuses require no renewal.

29. Article 75 of the draft law provides for the **revocation** of refugee status when certain criteria are met. However, through the reference to Article 74 in Article 75 (1)(a) (currently the reference is seemingly mistakenly made to Article 68 in the draft law), these include circumstances which, in fact, would lead to the **cessation** of refugee status in accordance with Article 1C of the 1951 Convention. Since cessation is already regulated by Article 74 of the draft law, there is no need to cover these grounds again in Article 75, not least since 'cessation' and 'revocation' are different legal concepts. Furthermore, Article 75 merges the concepts of 'revocation' and 'cancellation'. As per applicable legal principles and standards, UNHCR recommends to clearly delineate situations where revocation could be envisaged, i.e. when a refugee has engaged in excludable acts related to Article 1F(a) and (c) of the 1951 Convention, from situations where cancellation could be envisaged, i.e. where refugee status should not have been granted in the first place.[32] The legal effects of these two distinct types of decisions are also different, as in cases of cancellation the refugee status is removed *ex tunc* whereas a revocation lifts the status *ex nunc.* Finally, Article 75 also envisages a revocation in the context of a threat to national security or a risk to the Albanian society (Article 75 (d)(e)), which is at variance with applicable legal principles and standards pertaining to the concept of revocation. These types of concerns are sufficiently considered in the applicable exceptions to the non-*refoulement* principle in Article 33(2) of the 1951 Convention as discussed above.

30. The above comments also apply to Article 76 and 77, which cover cessation and revocation of subsidiary protection status. With respect to the **cessation** of subsidiary protection specifically (Article 76), UNHCR recommends that the 'compelling reasons' exception based on past serious harm of Article 1C(5) of the 1951 Convention, as included in Article 74(3) of the draft law for the cessation of refugee status, be equally applied to the cessation of subsidiary protection and therefore be included in Article 76. This provision reflects a general humanitarian principle, which is well-grounded in state practice.[33]

C. Conclusion

31. UNHCR hopes that the responsible Albanian authorities will give due consideration to this first set of comments. UNHCR is available to provide the necessary technical support and expertise in order to ensure that this important legislative initiative leads to the adoption of a national asylum law that further improves the operation of the national asylum system and is fully in line with relevant international and EU law.

UNHCR Tirana,
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[32] UNHCR Note on Cancellation of Refugee Status, 22 November 2004, page 2, available at: https://www.refworld.org/docid/41a5dfd94.html

[33] UNHCR, Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses), HCR/GIP/03/03, 10 February 2003, paras. 20-21, available at https://www.unhcr.org/publications/legal/3e637a202/guidelines-international-protection-3-cessation-refugee-status-under-article.html. UNHCR Handbook, note 8 above, para. 136.