

UNHCR comments on the Amendments to the Legislation of the Republic of Armenia on Extradition and Asylum

Introduction

UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees. As set forth in 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."* 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") according to which State parties undertake to *"co-operate with the Office of the United Nations High Commissioner for Refugees [...] 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").

General remarks

UNHCR welcomes the intention pursued by the initiated amendments to ensure fair, effective and efficient procedures, and effective use of state resources in the context of extradition and asylum procedures. UNHCR hopes that the following comments and recommendations will inform the legislative reform process and may allow for some further improvement of the draft amendments.

Specific observations

1. Amendments to the Law of the Republic of Armenia on Refugees and Asylum:

On the proposed paragraph 4 to be introduced to Article 11:

Article 11 in its present formulation contains exhaustive grounds for exclusion based on an applicant's involvement in certain serious crimes or heinous acts, in full accordance with Article 1 F of the 1951 Convention relating to the Status of Refugees.

In its current formulation, the proposed paragraph 4 refers to repeated applications, an area regulated by Article 59 of the Refugee Law, and it would thus appear redundant to include in Article 11.

Consequently, UNHCR strongly recommends to delete the suggested addition.

On the proposed paragraph 2.1 to be introduced to Article 47:

UNHCR recommends that the amendments should contain explicit responsibilities of relevant state bodies, such as penitentiary establishments, the Prosecutor General's Office, the courts and other relevant authorities, to duly inform foreigners and stateless persons whose freedom of movement is restricted of their right to seek asylum in writing, in a language they understand, and that subsequently, within 15 days, the person may submit an application for asylum. There may, however, be specific circumstances beyond the control of the person in extradition detention which hinders timely application of asylum. For this reason, UNHCR would recommend to add a possibility of restoration of the 15-day deadline, so that the 15-day deadline for an asylum application will begin from the moment the obstacle ceases to exist.

In general, UNHCR advocates that asylum applications are processed swiftly, in line with UNHCR's guidance on extradition and international protection. In view of the shortened deadlines for submitting an asylum claim and appeal, UNHCR furthermore wishes to highlight that the provisions of Article 16.1(1) and 49(4) of the Refugee Law relating to provision of free legal assistance and interpretation also apply to an individual applying for asylum from extradition detention.

Recommendations on the non-penalisation principle:

Using this opportunity, we also wish to draw your attention that according to Article 31(1) of the 1951 Refugee Convention, the Contracting States *“shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”*

Article 31(1) is well reflected in Article 28(1) of the Law on Refugees and Asylum of the Republic of Armenia, which provides that *“asylum-seekers and refugees shall not be subjected to criminal or administrative liability for illegal entry into, or presence in, the Republic of Armenia.”* Further, under Article 329(3) of the Criminal Code of the Republic of Armenia, an exception to the charge of illegal border crossing is made in *“cases when a foreign citizen or stateless person enters the Republic of Armenia without prescribed documents or without due authorization to enjoy the right for asylum stipulated by the Constitution and legislation of the Republic of Armenia.”*

Nevertheless, there are still a number of asylum-seekers who have been detained and faced long imprisonment for illegal entry to Armenia. If you need more information, please draw attention to the UNHCR comments available in English and Armenian:

UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the Draft New Criminal Code of the Republic of Armenia with particular reference to the wording of Article 329(3) of the existing Criminal Code*, July 2016, available at: <http://www.refworld.org/docid/5a69a3304.html>.

On the proposed paragraph 3 to be introduced in Article 52.1(1) and the proposed amendment in Article 57(1)

UNHCR acknowledges the concern arising from attempts by some individuals to abuse asylum procedures to preclude a decision on the extradition request within the time limits in the extradition request and understands the need for more quick and effective consideration of such asylum requests. In this regard, UNHCR recommends to prioritize consideration of the asylum requests, but do not establish the time limits. The State Migration Service, in the framework of its accountability and responsibilities, should make sure that cases of persons in extradition detention are examined as soon as the asylum claim is submitted or referred by relevant state bodies. At the same time, the State Migration Service should have the necessary flexibility beyond one month in complex cases.

The same should apply in the context of proposed amendments to Article 222.14 of the Administrative Procedure Code of the Republic of Armenia, which also institutes shortened periods for decisions on appeal by the Administrative Court and the Cassation Court (15 days). However, in complex cases to guarantee the right to an effective remedy, it is reasonable to use more flexible approach beyond the 15-day time limit.

UNHCR's understanding is that "10 days" timeframe for appeal refer to the working days (not calendar days) and suggest to specify that to ensure better clarity and avoid difficulties in practice.

Taking into consideration the short timeframe for appeal, UNHCR recommends to specify that the decision on asylum should be made available to the applicant and his lawyer, and in case of the applicant to ensure that the decision is shared in the language she/he understands.

2. Amendments to the Code of Administrative Procedure of the Republic of Armenia:

Internationally accepted standards of due process or procedural fairness require an appeal or review mechanism to ensure the fair functioning of asylum procedures. In this regard the right of an asylum-seeker to appeal against a negative decision is a crucial safeguard against the risk of a denial of the substantive rights under the 1951 Convention relating to the Status of Refugees. The right to an effective remedy, as understood under international and regional human rights law, in particular Article 2(3) of the International Covenant on Civil and Political Rights and Article 13 of the European Convention on Human Rights, must be effective in practice as well as in law and it must take the form of a guarantee, not a mere statement of intent or a practical arrangement.

Article 61 of the Constitution of the Republic of Armenia also states that "[e]veryone shall have the right to effective judicial protection of his or her rights and freedoms".

UNHCR recommends to consider to introduce, in the context of the judicial reform, a special judicial review procedure for asylum cases, or the introduction of thematic or specialized chambers or other means, which would allow for specialization of judges and targeted training initiatives by UNHCR. Such approach has been taken by many countries (e.g. Austria, Belgium, Denmark, Finland, France, Sweden and the UK), and UNHCR would be pleased to share international experience in this regard. Moreover, the current practice shows that asylum cases are specific and complex as they require special expertise, including, in some complicated cases, expert advice from international organizations, thorough examination of the country of origin information, specific credibility analysis, and in some cases, a comprehensive exclusion assessment.

3. Amendments to the Criminal Procedure Code of the Republic of Armenia:

The current practice shows that more specific legal provisions are required to guarantee that (i) an asylum procedure pending the final decision on the asylum claim should automatically suspend execution of the extradition order (extradition to the requesting country); (ii) no information about the asylum request, asylum claim and asylum procedure should be provided to the country of origin; (iii) responsibility of relevant state authorities to effectively refer the asylum request to the State Migration Service without a delay should be explicitly specified; (iv) effective and efficient free legal aid and representation should be provided in case the person in the extradition detention cannot afford it; and (v) assistance of a competent interpreter should be ensured at all stages of extradition and asylum procedure for effective and efficient collection of information about the applicant and his asylum claim. In addition, if there are substantial grounds for believing that a person in the extradition procedure will face a real risk of treatment contrary to Article 3 of the European Convention of Human Rights (i.e. torture, inhuman and degrading treatment and/or punishment), legal analysis of the law and practice in the country of origin, including a rigorous scrutiny of its diplomatic assurances, should be done in thorough and comprehensive manner.

In this regard, UNHCR recommends to consider a comprehensive revision of Chapter 54 and 54¹ of the Criminal Procedure Code of the Republic of Armenia or include an explicit reference to the Refugee Law in case a person in the extradition procedure asks for asylum in Armenia.