UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Before the Permanent Commission of Public Administration, Public Order and Justice of the Hellenic Parliament

MEMORANDUM

Submitted in the context of deliberations for the **Draft Law on the "Transposition into Greek Legislation of the provisions of Directive 2013/33/EU of European Parliament and of the Council of 26th June 2013 laying down standards for the reception of applicants for international protection (recast, L180/96/29.6.2013), plus other provisions**", following an invitation by the Committee, dated 24 April 2018.

Introduction

UNHCR submits the present memorandum 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[1]. As set forth in its Statute, UNHCR fulfils its international protection mandate, inter alia, by "promoting the conclusion and ratifications 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], to which Greece is a Signatory State, according to which State parties undertake to "cooperate 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")[4]. UNHCR's supervisory responsibility has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union ("TFEU")[5], as well as in Article 18 of the Charter of Fundamental Rights of the European Union ("EU Charter")[6]. Declaration 17 to the Treaty of Amsterdam moreover, provides that "consultations shall be established with the United Nations High Commissioner for Refugees … on matters relating to asylum policy"[7].

UNHCR, since November 2016, has provided comments to previous drafts of the Law that were communicated to the Organization for consultation. Regarding this last draft which was submitted to the Parliament, UNHCR would like to welcome some positive developments, such as (a) the

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[1] See Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428 (V), Annex, UN Doc. A/1775, Par. 1, available at http://www.unhcr.org/refworld/docid/3ae6b3628.html ("Statute").
[2] Ibid. (8)(a).
[3] UNTS No 2445, Vol.189, p.137. Ratified by Greece by Legislative Decree 3989/19-26.9.1959 "for the ratification of the multilateral Convention relating to the Status of Refugees" (Official Gazette A' 201).
[4] UNTS No. 8791, Vol. 606, p. 267. Ratified by Greece by Reform Law 389 of 26.4/4.6.1968 "for the ratification of the Protocol of New York of 31.1.1967 relating to the Status of Refugees" (Official Gazette A' 125).
[5] European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, OJ C 115/47 of 9.05.2008, http://www.unhcr.org/refworld/docid/4b17a07e2.html
[6] European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, at: http://www.refworld.org/docid/3ae6b3b70.html
[7] European Union, *Treaty on European Union (Consolidated Version), Treaty of Amsterdam*, 2 October 1997, Declaration on Article 73k of the Treaty establishing the European Community
http://www.refworld.org/docid/3dec906d4.html

determination, for the first-time, of competent Reception Authorities including a competent Authority for Unaccompanied and Separated Children (UASC), (b) the adoption of an extended scope as regards protection of UASC independently of their status, (c) the provision of alternative care options for UASC, including foster care and supervised independent living, (d) the introduction of a selection process for the Director of the Appeals Authority that better serves the requirement of independence of the appeal body and (e) the determination of the competent Appeals bodies to examine the pending appeals' backlog at the Appeals Authority from years 2015-2016.

Having already presented to the Ministry of Migration Policy, a set of comments for consideration, below are comments referring to provisions that, in UNHCR's view, are most critical and that UNHCR would like to table for consideration by the members of the Parliament. The comments are presented by order of criticality within two thematic parts of the Draft Law, one related to the transposition of the Reception Conditions Directive (Recast) (RCD) (PART A) and the second related to the amendments in the asylum legislation (PART B). Numbers of articles refer to the articles of the Draft Law.

PART A: Transposition of the Reception Conditions Directive (RCD)

Article 3 (b) Definition and competencies of the Authorities for Reception

With the Draft Law (art. 3 (b) "Complementary Definitions") the "competent authority for reception" are both the Reception and Identification Service (RIS) and the Directorate for Protection of Asylum Seekers (DPAS) of the Ministry of Migration Policy. While the Draft Law includes provisions that define some competencies, in particular of the Reception and Identification Service, UNHCR would like to note that there is a need to clarify further the division of competencies between the two assigned Competent Authorities for Reception (RIS and DPAS), particularly on articles that refer to general and cross-cutting competencies related to reception, such as, for example, art. 17 on material conditions and others.

UNHCR proposes to clarify further which of the two Authorities established as Competent Authorities for Reception in the Draft Law, is responsible for the competencies attributed by respective specific articles of the Part of the Draft Law transposing the RCD.

Article 21 (1) Introduction of a procedure for the determination of the "best interest" of the child

UNHCR would like to note that the provision should be complemented with a provision for the issuance of a regulatory act to determine the procedure to be followed in order to assess the best interest of the child by the psychosocial support Unit of the Reception and Identification Service and social services of other competent authorities. The competent authorities and procedures for the assessment of the best interest of the child could be further determined by a Ministerial decision.

Article 23 Certification of victims of torture

UNHCR would like to note that according to the proposed provision only Public Hospitals can certify victims of torture. In UNHCR's view this could lead to serious gaps as not all public hospitals employ doctors having the expertise to certify victims of torture. Moreover this provision doesn't make reference to the services of the Reception and Identification Service who are competent to identify victims of torture according to art. 14, par. 8, of L. 4375/2016, and who are specifically trained according to art. 11, par. 10, of the same Law.

Based on the above, UNHCR suggests that the provision is changed so that victims of torture can be certified by doctors and the Reception and Identification Service.

Article 18 Access of family members, counselors, UNHCR and NGOs to open reception facilities for asylum seekers

In UNHCR's view, art. 18 of the Draft Law transposing art. 18 of the RCD on access of relatives, legal counselors, UNHCR and Non-Governmental Organizations to the open reception facilities of asylum seekers needs to be complemented in order to be aligned with the Directive. More specifically, with the Draft Law, paragraphs 2 (b) and 2 (c) of the Directive were combined into a single paragraph, which only concerns asylum seekers' right to communicate with the above persons and entities and not the right of family members, legal counselors, UNHCR and Non-Governmental Organizations to access to the open reception facilities of asylum seekers.

Furthermore, the wording of the Draft Law suggests that asylum seekers' right to communicate can be temporary limited for reasons of security, a restriction which is not provided for in the RCD. The RCD allows for such limitation for reasons of security only as regards the right of relatives, legal counselors, UNHCR and Non-Governmental Organizations to access reception facilities.

UNHCR proposes to align art. 18 of the Draft Law with the RCD.

Articles 28 and 29 of the RCD that are not transposed

UNHCR would like to note that **art. 28 on "Guidance, monitoring and control system" and art. 29 on "Staff and resources" of the RCD** have not been transposed in the current Draft Law.

As regards Article 28, UNHCR would like to stress the importance and utmost need to establish in the Greek legal framework monitoring and control systems including standardized approaches to collect and use statistics to monitor and report in the field of 1) pressure/capacity; 2) inflow/outflow of applicants from reception facilities, 3) the costs of reception facilities and 4) quality of service provision.

Furthermore, it is strongly recommended by UNHCR that the Draft Law clearly specifies which specific Greek authorities, under the oversight of the competent Authority for Reception, will be responsible for the supervision and monitoring of accommodation facilities in the country, as well as the authorities responsible for developing internal regulations for operation, as well as minimum standards and procedures in conjunction with Article 27 (2) of L. 4375/2016.

Therefore, UNHCR recommends the transposition of art. 28 of RCD and further specialization including the appointment of competent authorities to monitor the efficiency of the reception system and develop national tools and procedures.

PART B : Amendments to the asylum legislation

Article 28 (20) Alternative methods of notification of 2nd instance decisions

In the context of the proposed amendments in the asylum legislation, UNHCR is **concerned with the provision on alternative methods of notification of the 2nd instance decisions** (art. 28, par.20). According to this provision, notification of these decisions can be conducted to persons other than the applicant including **the lawyer who signed the appeal or who was present at the hearing or who submitted a memo before the Committee, or the Director of the Reception and Identification Center (RIC),** where the applicant had declared that s/he resides.

UNHCR is particularly concerned regarding these proposed amendments as their application could lead to inability for the applicant to exercise his/her constitutional right for judicial protection, in particular, to challenge a negative decision before the Courts, as also provided in article 64 of L. 4375/2016. This is so because, with the proposed amendment, first, the burden to notify the applicant is shifted to a lawyer that might no longer represent the applicant, and, second, the notification to the RIC Director has no guarantee that the applicant will actually be notified with the decision afterwards or that certain actions in order to notify him/her will take place on behalf of the RIC Director.

Furthermore, the proposed provision allows for the notification to be conducted by the posting of the decision to a specific web site. This raises serious confidentiality concerns. In addition, as it is not evident that all applicants have internet access and the ability to use a device in order to access the web, it raises serious concerns as regards the applicability and efficiency of this method of notification and the extent to which it will be possible for the applicants to exercise their rights.

UNHCR acknowledges the practical difficulties in order to locate applicants for notification of their decisions, it is of the view, however, that the need to accelerate and conclude the process should not be promoted to the detriment of the observance of the applicants' rights according to international and EU law standards. Moreover, it is problematic that the above alternative methods of notification can be applied directly, without exhaustion of the regular methods of notification as provided in art. 40 of L. 4375/2016.

Based on the above, UNHCR proposes the deletion from the above provision of the part allowing for notifications to persons that have not officially received a delegation of authority to be notified acts concerning the applicant and limit it to persons that have accepted to receive notifications on the part of the applicant, according to Greek law («αντίκλητος»). Furthermore, UNHCR suggests that, in case of notification to the Director of the RIC, the notification should not produce effects (initiation of the deadline for a judicial appeal) before it is known (or it can be reasonably expected to be known) to the applicant. Lastly, UNHCR proposes that the provision is complemented with the provision that these alternative methods of notification are used only if the regular notification methods provided for in are exhausted.

Article 28 (6) Definition of "subsequent applications" in conjunction with the definition of "final decision"

In UNHCR's view the provision of Article 28 (6) which defines the subsequent application in conjunction with the proposed amendment of the definition of "final decision" of article 24 (5) of the draft, creates an inconsistency which does not seem to be in line with the Asylum Procedures Directive (APD) (recast). More specifically, art. 2 (q) of the Directive provides that a "subsequent application" means a further application for international protection made after a final decision has been taken on a previous application. The proposed amendment provides that a subsequent application is an application which is submitted "after a decision that cannot be challenged through the remedy provided in art. 64 of the Law". If the amendment proposed in art. 24 (5) is maintained and the definition of "final decision" changes (so as to mean the decision of the Appeals Committees and not the Decision of the Administrative Court of Appeal), the related provision should be changed so as a subsequent application is defined as an application submitted after a final decision, in order to be in accordance with the Directive.

In view of the above the UNHCR is of the view that either the amendment proposed in art. 24 (5) is not maintained or art. 24 (6) is aligned with art. 24(5) so that a subsequent application can be submitted after the issuance of a "final decision".

Article 28 (13) Exceptions on right to remain for those with subsequent applications

With art. 28 (13), the provisions of art. 41 of the Asylum Procedures Directive (Recast) (APD) on exceptions to the right to remain, are transposed into the Greek legislation. However, the transposition proposed seems incomplete as a) no reference is made, according to art. 41 par. 1 last indent, to ensure that "a return decision will not lead to direct or indirect *refoulement*", and b) there is no provision guaranteeing the right of the applicant to request for a suspensive effect of his appeal, as is imposed by art. 46 par. 6 last indent of the Directive, in combination with art. 46 par. 6 (b).

Furthermore, even though art. 41 par. 2 (c) of the Directive allows for a derogation from art. 46 par. 8 which imposes that the applicant is allowed to "remain in the territory of the State pending the outcome of the procedure to rule whether or not s/he may remain on this territory", the applicant should,

nonetheless, be allowed to exercise an effective remedy pursuant to Article 46 (1) and to request an *interim* measure to remain in the territory pending the outcome of the decision of a court or tribunal.

UNHCR is of the view that, if this provision is maintained, it could undermine the suspensive effect upon request as provided for by Article 46(6) of the Directive. Indeed, the application of the proposed amendment may result in a denial of suspensive effect of appeal as it precludes the applicant to remain in the territory pending the outcome of the procedure to decide on his/her request by a court or tribunal.

Hence UNHCR suggests that the applicant should at least have a right to request the suspensive effect (i.e. an interim measure preventing the removal) in those cases of a subsequent application and be allowed to stay in the territory pending the outcome of the request in order to ensure an effective legal remedy.

UNHCR would like to thank the Committee for inviting us to present our views on the Draft Law and remains in the Committee's disposal for any further clarification or detail.

UNHCR Greece
Athens, 27 April 2018