

## UNHCR's Comments on a Proposal for a new Foreigner's Act

### I. INTRODUCTION

1. The United Nations High Commissioner for Refugees Representation in Croatia ("UNHCR") is grateful to the Ministry of Interior of the Republic of Croatia for the opportunity to express its views on the proposal for a new Foreigner's Act (the "Proposal")<sup>1</sup> dated 24 October 2019.
2. 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.<sup>2</sup> 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."<sup>3</sup> 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"),<sup>4</sup> to which Croatia is a party, 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").<sup>5</sup>
3. The following comments are also based on international standards on statelessness set out in particular in the 1954 Convention Relating to the Status of Stateless Persons<sup>6</sup> and the 1961 Convention on the Reduction of Statelessness,<sup>7</sup> Conclusions on International Protection of the UNHCR

---

<sup>1</sup> Proposal of the Foreigner's Act, available at: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=12482>.

<sup>2</sup> 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").

<sup>3</sup> *Ibid.* (8)(a).

<sup>4</sup> UNTS No 2445, Vol.189, p.137. Croatia is a party to the 1951 Convention as of 8 October 1991 on the basis of succession notification. Text of the Convention is published in: *Official Gazette of the SFRY, International Treaties*, no. 7/60.

<sup>5</sup> UNTS No. 8791, Vol. 606, p. 267. Croatia is a party to the 1967 Protocol as of 8 October 1991 on the basis of succession notification. Text of the Protocol is published in: *Official Gazette of the SFRY, International Treaties*, no. 15/67.

<sup>6</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>.

<sup>7</sup> UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>.

Executive Committee,<sup>8</sup> UNHCR Handbook on the Protection of Stateless Persons,<sup>9</sup> and other relevant sources.<sup>10</sup>

4. The UN General Assembly has entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness.<sup>11</sup> UNHCR's Executive Committee has further requested UNHCR to undertake "targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons".<sup>12</sup> The Executive Committee also requests the Office "to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions".<sup>13</sup> UNHCR thus has a direct interest in national legislation that regulates the protection of stateless persons, including implementation of the 1954 Convention relating to the Status of Stateless Persons.<sup>14</sup>
5. 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"),<sup>15</sup> as well as in Article 18 of the Charter of Fundamental Rights of the European Union ("EU Charter"),<sup>16</sup> and Declaration 17 to the Treaty of Amsterdam which provides that "consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy".<sup>17</sup>

---

<sup>8</sup> UNHCR, UNHCR's Executive Committee Conclusions on Statelessness, updated 2010, available at:

<http://www.unhcr.org/protection/statelessness/41b4607c4/executive-committee-conclusions-relating-statelessness.html>

<sup>9</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at:

<http://www.refworld.org/docid/53b676aa4.html>.

<sup>10</sup> UN High Commissioner for Refugees (UNHCR), *Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions")*, December 2010, available at: <https://www.refworld.org/docid/4d9022762.html>.

<sup>11</sup> UN General Assembly Resolution A/RES/50/152, 9 February 1996, available at

<http://www.unhcr.org/refworld/docid/3b00f31d24.html>. Reiterated in subsequent resolutions, *inter alia*, A/RES/61/137 of 25

January 2007, available at <http://www.unhcr.org/refworld/docid/45fa902d2.html>,

A/RES/62/124 of 24 January 2008, available at <http://www.unhcr.org/refworld/docid/47b2fa642.html>, and A/RES/63/148 of 27

January 2009, available at <http://www.unhcr.org/refworld/docid/4989619e2.html>.

<sup>12</sup> ExCom Conclusion 106, para. (a).

<sup>13</sup> *Ibid*, para. (x); see also para. (i).

<sup>14</sup> Decision on publishing international multilateral international agreements to which Republic of Croatia is a party based on the notifications on succession, point 36, *Official Gazette* 12/1993, available at: [https://narodne-novine.nn.hr/clanci/medunarodni/1993\\_10\\_12\\_27.html](https://narodne-novine.nn.hr/clanci/medunarodni/1993_10_12_27.html).

<sup>15</sup> 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>.

<sup>16</sup> 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>.

<sup>17</sup> 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>.

## II. COMMENTS

1. UNHCR welcomes the efforts of the Government of Croatia to further improve the Croatian Foreigner's Act.<sup>18</sup> Improvements are in particular noted in section 8 of the Proposal, which enables family members of beneficiaries of international protection to acquire a special travel document for third country nationals if their national passports expired and they need to travel abroad to acquire a new national passport. Furthermore, UNHCR welcomes section 9 of the Proposal which provides for the issuance of 1954 Convention Travel Documents for stateless persons. Finally, UNHCR would like to note the improvement brought about in section 153 of the Proposal, pursuant to which stateless persons and third country nationals who have been granted asylum or subsidiary protection in accordance with the regulation governing international protection do not need to present a valid travel document when applying for long term residence.
2. As a general remark, UNHCR recommends changing the term "minor" to "child" in line with the Convention on the Rights of the Child.<sup>19</sup>

### ***Section 59: Conditions for approval of a temporary residence permit***

3. Section 59 of the Proposal regulates conditions for approval of a temporary residence permit. Because of their specific situation and the vulnerabilities they face, stateless persons are often denied the enjoyment of rights such as equality before the law, the right to work, education or healthcare as well as personal documentation, including travel documents.<sup>20</sup>

**Recommendation:** UNHCR recommends adding a provision stating that stateless persons are exempt from conditions stipulated in section 59 (1) sub 2-5 of the Proposal.

### ***Section 61: Duration of a temporary residence permit***

UNHCR welcomes the provision articulated in section 61 (3) of the Proposal which regulates that a third country national who does not have a valid travel document will be granted temporary residence in Croatia. However, section 61 (4) stipulates that a third country national must present a valid foreign travel document in support of his/her request for extension of temporary residence. The lack of nationality denies stateless persons the documentation that is necessary to enter or reside in any State lawfully, therefore the requirement of possessing valid foreign travel documents would be inequitable. Without a right to remain, the individual is at risk of insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international

---

<sup>18</sup> Croatian Foreigner's Act, Official Gazette, NN 130/11, 74/13, 69/17, 46/18, available at: <https://www.zakon.hr/z/142/Zakon-o-strancima>.

<sup>19</sup> Article 1 of the UN Convention on the Rights of the Child, 20 November 1989, UNTS No. 27531, Vol. 1577, p. 3. Croatia is a party to the Convention as of 8 October 1991 on the basis of succession notification. Text of the Convention is published in: Official Gazette of the SFRY, International Treaties, no. 15/1990.

<sup>20</sup> UNHCR Handbook on Protection of Stateless Persons, 30 June 2014, p. 1 and para. 69, available at: <https://www.refworld.org/docid/53b676aa4.html>.

human rights law. Furthermore, the 1954 Convention grants the right to travel documents for stateless persons ‘lawfully staying’ on the territory of the state.<sup>21</sup>

**Recommendation:** UNHCR recommends that section 61 (4) be amended to include a provision that stateless persons are exempt from submitting valid foreign travel document when applying for extension of their temporary stay, so as to enable the continuity of their stay.

**Section 66: Regulation of a temporary residence for a family member of the third country national who has been granted protection in accordance with the regulation governing international protection**

4. UNHCR welcomes alignment of the Act with the International and Temporary Protection Act<sup>22</sup> allowing “other evidence subject to the general administrative procedure” for establishing family links with a beneficiary of international protection.

**Recommendation:** UNHCR recommends transposition of the full text of section 66 (6) of the International and Temporary Protection Act into section 66 (2) of the Foreigner's Act:

*“A decision to refuse an application for family reunification cannot be based exclusively on the fact that no official document exists to prove a specific family relationship.”<sup>23</sup>*

UNHCR notes the provision in section 66 (1) of the Foreigner's Act that family members of persons granted international protection do not have to submit proof of a valid foreign travel document or the ensured means of subsistence. However, the same section stipulates that family members need to provide proof of health insurance. UNHCR notes that this is not required by the current Foreigner's Act.<sup>24</sup> Upon arrival, family members of persons granted international protection enjoy the same rights, including the right to health protection governed by the regulation on health insurance and health protection of foreigners legally staying in Croatia.

**Recommendation:** UNHCR thus recommends amending section 66 (1) of the Foreigner's Act to include a waiver from the requirement to submit proof of health insurance as follows:

*“(1) An immediate family member of a third country national who has been granted asylum or subsidiary protection in accordance with the regulation governing international protection does not have to provide proof of a valid foreign travel document, the ensured means of subsistence and health insurance for the temporary residence permit with the purpose of family reunification.”*

**Section 153: Conditions for approval of Long-Term Stay**

**Section 156: Permanent residence**

5. UNHCR notes the intention to further transpose the Long-term Residence Directive into the Foreigner's Act.<sup>25</sup> The Proposal sets out in section 2 (18) and (19) the eligibility conditions of two

---

<sup>21</sup> UNHCR Handbook on Protection of Stateless Persons, paras. 69, 147 and 150.

<sup>22</sup> International and Temporary Protection Act, Official Gazette, 70/15 and 127/17.

<sup>23</sup> Ibid, section 66 Para 2.

<sup>24</sup> Foreigner's Act, section 58.

<sup>25</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=HR>.

forms of stay, namely “long term residence” and “permanent stay”. Based on these conditions, persons granted long-term residence do not qualify for naturalization because section 8 (3) of the Croatian Citizenship Act stipulates that Croatian nationality can be granted to a foreigner who, among other criteria, has been living in the territory of the Republic of Croatia for at least eight years and has been granted permanent stay. Thus, refugees and/or stateless persons with long term residence permits would not be eligible for naturalization.

As per the 1951 Refugee and 1954 Statelessness Conventions, States are encouraged to facilitate the assimilation and naturalization of refugees and stateless persons and to make every effort to expedite naturalization proceedings.<sup>26</sup> UNHCR recommends that States grant permits to stateless persons that are renewable, providing the possibility for facilitated naturalization.<sup>27</sup> UNHCR’s Executive Committee has also called upon States to support refugees’ ability to attain local integration through the timely grant of a secure legal status and residence rights, and to facilitate their naturalization.<sup>28</sup> Furthermore, UNHCR observes that many State Parties grant permanent residence status to refugees in their territories after several years, eventually leading to their integration and naturalization.<sup>29</sup>

**Recommendation:** UNHCR recommends adding a new paragraph in section 156 of the Proposal to include beneficiaries of international protection and stateless persons as eligible for obtaining permanent residence, similar to section 153 (2) of the Proposal.

### ***Section 181: Types of measures ensuring the return and method of implementation***

6. UNHCR notes alignment of the Proposal with the Return Directive.<sup>30</sup> Article 2(2)(a) of the Return Directive allows Member States to exclude from the scope of the Return Directive any person apprehended for irregular crossing of an external border, who has not subsequently obtained authorization to stay, although certain limited guarantees apply to all returns. This could mean that many of the protections contained in the Directive would apply only to third-country nationals who entered the European Union legally.<sup>31</sup> However, asylum seekers are not always in a position to reach safety in a regular manner.

**Recommendation:** UNHCR recommends adopting more favourable standards, as envisaged in Article 4(3) of the Return Directive, and remove from section 181 (3) of the Proposal reference to

---

<sup>26</sup> Article 34 of the 1951 Convention and Article 32 of the 1954 Convention.

<sup>27</sup> UNHCR Handbook on Protection of Stateless Persons, para. 148.

<sup>28</sup> UNHCR, ExCom Conclusion No. 104, Conclusion on Local Integration No. 104 (LVI) – 2005, para. (j), available at: <http://www.unhcr.org/excom/exconc/4357a91b2/conclusion-local-integration.html>

<sup>29</sup> 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), 10 February 2003, HCR/GIP/03/03, para. 3, available at: <https://www.refworld.org/docid/3e50de6b4.html>.

<sup>30</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98–107 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV).

Special edition in Croatian: Chapter 19 Volume 008 P. 188 – 197; <http://data.europa.eu/eli/dir/2008/115/oj>.

<sup>31</sup> UNHCR, UNHCR Position on the Proposal for a Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, June 2008, <https://www.unhcr.org/protection/operations/485632a32/unhcr-position-proposal-directive-common-standards-procedures-member-states.html>.

“third country nationals intercepted at the border with the third country during or immediately after irregular entry”, to ensure that *non-refoulement* obligations are met. The Return Directive explicitly stipulates that its „*application is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967*” (§23 of the Preamble). Therefore, the provisions of Articles 31 and 33 of the 1951 Convention remain in any case applicable when persons intercepted in the circumstances foreseen by section 181 of the Proposal fall within the parameters described by those two articles.

**Section 221: Placement of children and families in the centre<sup>32</sup>**

7. Section 221 (1) of the Proposal has been aligned with Article 17 of the Return Directive and provides that under normal conditions, a minor third country national who is unaccompanied is to be placed in the premises of the ministry responsible for social welfare. Section 221 (2) of the Proposal however allows for placement in the centre of a minor third country national who is unaccompanied and a minor third country national who is accompanied by their family members if the return cannot be ensured otherwise and for the shortest time necessary.

UNHCR notes that in these reception centres for foreigners, conditions for vulnerable groups, such as unaccompanied and separated children as well as children with families, are in line with the requirements of Article 17 of the Return Directive (such as separate premises, access to play and recreational activities). However, there is strong evidence that detention has a profound and negative impact on children's physical and psychological well-being and compromises their cognitive development, regardless of the conditions in which children are held and even when detained for short periods of time or with their families. For this reason, and in accordance with international standards, UNHCR's position is that children should not be detained for immigration-related purposes, irrespective of their legal or migratory status or that of their parents and that detention is never in their best interest.<sup>33</sup> Instead, appropriate care arrangements and alternatives to detention need to be in place.<sup>34</sup>

**Recommendation:** UNHCR recommends that higher standards in line with the Convention on the Rights of the Child be adopted and that section 221 of the Proposal be amended to ensure that children are not detained for immigration related purposes.

---

<sup>32</sup> This centre is referred to in the Foreigner's Act as a 'Reception Centres for Foreigners'. These facilities are detention centres.

<sup>33</sup> UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>.

<sup>34</sup> UNHCR acknowledges and welcomes the existing State practice in providing care arrangements and alternatives to detention for children and families and has compiled a number of examples in its Options Paper 1. See UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2015, available at: <http://www.refworld.org/docid/5523e8d94.html>.