



# UNHCR

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

**UNHCR Regional Representation for Northern Europe**

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Notre/Our code: 17/RRNE/2019

RE: **UNHCR observations on the Law Proposal** "Lov om ændring af udlændingeloven, integrationsloven, repatrieringsloven og forskellige andre love. (Videre adgang til inddragelse af opholdstilladelser for flygtninge, loft over antallet af familiesammenføringer, skærpet straf for overtrædelse af indrejseforbud og overtrædelse af opholds-, underretnings- og meldepligt, ydelsesnedsættelse for forsørger mv.)" (sags. nr. 2018-20616, akt. nr. 598518) (hereinafter "the Proposal")

**Dear Sir / Madam,**

The UNHCR Regional Representation for Northern Europe (RRNE) is grateful for the invitation to provide comments on the above mentioned Law Proposal shared on 21 December 2018<sup>1</sup>.

Given the very short time frame made available to comment on the comprehensive changes in a number of different legislations governing asylum and the rights of refugees - less than two weeks considering the public holidays in December 2018 - it has not been possible for UNHCR to complete a comprehensive review of all aspects of the proposals put forward and the 200+ pages of explanatory notes. We also understand that the Ministry has proceeded with presenting the Proposal to Parliament prior to the deadline for comments.

Against this background, UNHCR is therefore only in a position to present very limited and preliminary observations ahead of the deadline of 18 January 2019.

UNHCR intends to continue a thorough review of the proposal and will be communicating additional observations which will be shared with the Ministry as well as with members of the Parliamentary Committee considering the proposal, in particular spokespersons on refugee matters from the various political parties represented in the Danish Parliament.

UNHCR Comments are in part based on the enclosed UNHCR Observations<sup>2</sup> on the proposed amendments to the Danish Aliens Act L87: (Udskydelse af retten til familiesammenføring for personer med midlertidig beskyttelsesstatus, skærpelse af reglerne om tidsubegrænset

<sup>1</sup> In Danish at: <https://hoeringsportalen.dk/Hearing/Details/62641>

<sup>2</sup> <https://www.refworld.org/country,LEGAL,UNHCR,NATLEGCOMMENTS,DNK,,5694ed3a4,0.html>

opholdstilladelse, skærpelse af reglerne om inddragelse af flygtninges opholdstilladelse m.v.). These observations were initially submitted by UNHCR to the Danish Government in January 2016, when the Aliens Act was amended, with the view to provide guidance and recommendations, which are also relevant with regard to the current proposed amendments to the Danish legislations.

## UNHCR's General Observations

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As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek permanent solutions to the problems of refugees,<sup>3</sup> UNHCR has a direct interest in law and policy proposals in the field of asylum and refugee integration.

As one of the first Parties to the 1951 Convention, Denmark has a long tradition of providing sanctuary to those in need of international protection. Denmark was also one of the first 15 members of the UNHCR Advisory Committee established in 1951, which was a predecessor to the Executive Committee of the High Commissioner's program. Hence, not least given Denmark's role internationally as an active supporter of the development of a strong international protection regime, UNHCR is concerned with the pace and scope of the restrictions the Danish Government has introduced in the areas of asylum, integration and family reunification. The adoption of increasingly restrictive asylum policies and unilateral measures by States risk to marginalize refugees, and make durable solutions, including successful integration more difficult. Good regional and national asylum policies and practices are important to shape how refugee situations are managed globally, and to show solidarity and shared responsibility. The recently adopted Global Compact on Refugees, which Denmark supports, reaffirms those standards and principles, and seeks to ensure more predictable and equitable burden- and responsibility-sharing among all United Nations Member States, together with other relevant stakeholders for the benefit of refugees and the communities that host them.

## Regularly review of protection status upon extension of residence permit

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One of the proposal's most significant changes is to UNHCR's understanding the introduction of regular review of the protection status upon extension of the residence permits granted to persons afforded protection under Article 7 and 8 of the Danish Aliens Act. As UNHCR understands the Proposal, according to Article 11 and 19 a, regular and systematic checks on whether the criteria for (resettled) refugee, subsidiary or temporary protection status continue to be met **shall be initiated by the Danish Immigration Service** upon extension of the respective short term, one or two-year, residence permits.

UNHCR has long advocated that refugees are entitled to a secure and stable status, which should not be subject to regular review. Just as refugees, beneficiaries of subsidiary protection should also not have their status subject to regular review. Notably, in 2015, the UNHCR Executive Committee (ExCom)<sup>4</sup>, including Denmark, called on States to support refugees' ability to attain local integration through the timely grant of a secure legal status and residency rights, and to facilitate their naturalization. The ExCom has thus recognized that short-term residence permits and frequent reviews are counter-productive to integration. Moreover, the 1951 Convention foresees a gradual attainment of rights, with the end of the continuum being

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<sup>3</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ac6b3628.html> (hereafter "UNHCR Statute").

<sup>4</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>

naturalization in the country of asylum or the end of the refugee's protection needs and voluntary return, for example, as a result of fundamental and durable changes in the country of origin. UNHCR expressed the same view to the Government of Denmark in its comments to the Law Proposal L 67<sup>5</sup>, and to the Law Proposal L 87,<sup>6</sup> which included a shortening of the length of residence permits granted to individuals afforded protection under Article 7 of the Danish Aliens Act.

UNHCR considers that frequent periodic reviews of individuals' international protection needs often undermine the individuals' sense of security and, thus, do not help facilitate the integration process. According to UNHCR, refugees and others in need of international protection are entitled to a secure status. Anything else would be detrimental to refugees' sense of security, which international protection is intended to provide.<sup>7</sup> Short-term residence permits and frequent reviews thereof are counter-productive to integration objectives<sup>8</sup>. Beneficiaries of international protection would have no legal certainty on how long they will receive protection, as their status may be reviewed not only as a result of new COI ('country of origin information') but at any occasion when their residence permit has to be renewed. Failure to confirm with the principle of legal certainty may raise issues under Article 8 of the European Convention on Human Rights (ECHR). To illustrate, the ECtHR addressed the issue of legal certainty in *B.A.C. v. Greece* and found a violation of Article 8 (the right to respect for family and private life) based on the State authorities' failure to take appropriate measures to keep the applicant's state of uncertainty to a minimum.<sup>9</sup>

Further, the timely grant of a secure legal status and residency rights are essential factors in the integration process.<sup>10</sup> Among other main challenges, such as access to housing<sup>11</sup>, status review are particularly likely to harm employment prospects, which conflicts with the Government's goal to ensure effective and non-discriminatory access to labor markets for refugees.

Short-term residence permits and regular status reviews may also expose refugees to risks of labor market exploitation, as precarious status reduces their bargaining power in the employment sector. In addition, a study by mental health experts in Australia published in 2006, found that refugees holding temporary protected status experienced higher levels of anxiety, depression and post-traumatic stress disorder than refugees with permanent status, even though both groups of refugees had experienced similar levels of past trauma and persecution in their home countries.<sup>12</sup>

UNHCR has also noted that measures reducing the validity of residence permits have a considerable impact on refugees' attitudes and are detrimental to refugees' security and

<sup>5</sup> <https://www.refworld.org/country,LEGAL,UNHCR,NATLEGCOMMENTS,DNK,,5813224b7,0.html>

<sup>6</sup> <https://www.refworld.org/country,LEGAL,UNHCR,NATLEGCOMMENTS,DNK,,5694ed3a4,0.html>

<sup>7</sup> UNHCR Handbook, para. 135. See also EXCOM Conclusion No. 69 (XLIII) 1992, where in the context of applying the cessation clauses EXCOM stated that it is important that refugees have the assurance that their status will not be subject to unnecessary review in the light of temporary changes, not of a fundamental character, in the situation prevailing in the country of origin. See also, UNHCR, note on the Integration of Refugees in the European Union, May 2007, available at: <http://www.unhcr.org/463b462c4.pdf>, ("UNHCR Integration Note").

<sup>8</sup> UNHCR, Note on the Integration of Refugees in the European Union, para. 18, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>

<sup>9</sup> *93 B.A.C. v. Greece*, Application no. 11981/15, Council of Europe: European Court of Human Rights, 13 October 2016, available at: <http://www.refworld.org/cases,ECHR,580a37dc4.html>, paras. 69 and 263. A similar result was reached by the Grand Chamber in *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.refworld.org/docid/4d39bc7f2.html>.

See also *A v. Secretary of State for the Home Department*, 27 May 2016, CSIH 38, available at: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=856415a7-8980-69d2-b500-ff0000d74aa7>, in which a British court held that "[t]he circumstances in which refugee status may be lost are extremely limited" (para. 66).

<sup>10</sup> UNHCR Executive Committee, Conclusion No. 104, para. (j), UNHCR, Thematic Compilation of Executive Committee Conclusions, August 2009, 4th edition, available at: <http://www.refworld.org/docid/4a7c4b882.html>

<sup>11</sup> UNHCR notes that one element of the Proposal include access to housing, which now does not have to be of a permanent nature

<sup>12</sup> UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, page. 30, available at <https://www.refworld.org/docid/5a7835f24.html>

stability.<sup>13</sup> UNHCR has therefore urged States to apply cessation policies in a limited fashion so as to minimize disruptive effects for refugees.<sup>14</sup>

### **Mandatory review of the status of resettled refugees**

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Furthermore, UNHCR notes with concern that the Proposal envisages the **regular review to apply to resettled refugees** as well, even though resettlement should be seen as a durable solution allowing the resettled refugee security for a permanent solution in Denmark. According to UNHCR's Statute, UNHCR "*shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments ... to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.*" Resettlement was initially construed to ensure protection against refoulement, and to provide a durable solution to refugees for whom this could not be secured through either voluntary repatriation or local integration. Accordingly, resettlement involves "the selection and transfer of refugees from a State in which they have sought protection, to a third State which has agreed to admit them as refugees with permanent residence status".

The nature of resettlement as a durable solution is further confirmed in a number of Executive Committee (ExCom) Conclusions. For example, ExCom Conclusion No. 99 endorses the Multilateral Framework of Understanding on resettlement, which underlines that resettlement countries are to "work with refugees, as needed, to enhance their effective integration, with a view to progressively attaining the standards enjoyed by nationals" and "promote naturalization. Also, ExCom Conclusion No. 109 on protracted refugee situations reinforces the role of UNHCR in searching for permanent solutions, and underlines the permanent nature of resettlement as a durable solution.

In order to take into account the special position of refugees, UNHCR recommends that permanent residence should be granted, at the latest, after a three year residence period, and that this time-frame should also apply to beneficiaries of subsidiary protection statuses.

### **Increased use of cessation**

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UNHCR is concerned that the Proposal might not fully reflect the need for cessation of status to be subject to extensive legal safeguards, in particular, as cessation requires an individual assessment, access to firm procedural guarantees and that changes in the country of origin must be fundamental, stable and durable for cessation to be considered in any individual case, and may lead to increased use of cessation.

According to the Proposal, Denmark considers increasing the use of cessation although it has thus far rarely been used. To elaborate further, UNHCR would like to refer to the Observations submitted on 6 January 2016, especially para. 29, which reads "The 1951 Convention recognizes that refugee status ends under certain clearly defined conditions. This means that once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of one of the cessation clauses contained in Article 1 C of the 1951 Convention or their status is cancelled or revoked. Refugee status may cease either through the actions of the refugee (Article 1 C (1) to (4)), such as by re-establishment in his or her country of origin, or through fundamental changes in the objective circumstances in the country of origin (Article 1 C (5) and (6)). The cessation clauses are exhaustively enumerated, that is, no additional grounds would justify a conclusion that international protection is no longer required". Therefore, in order to not renew the temporary permit on the ground that the individual's protection needs have

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<sup>13</sup> See UNHCR Integration Note, note 91 above, para. 18.

<sup>14</sup> See UNHCR Integration Note, note 91 above, para. 21.

ceased, the conditions in one or more of these clauses would need to be met.

As a general note in respect of the Proposal, UNHCR wishes to underline that so far, the cessation clauses have rarely been invoked by States in individual cases, in particular not the "ceased circumstances" clauses in Articles 1 C (5) and (6) of the 1951 Convention, which require changes of a durable and fundamental nature, in recognition of the need to respect a basic degree of stability for refugees and the overarching objective of international protection, namely to find durable solutions for refugees in the form of integration in the country of asylum, resettlement to a third State, or voluntary repatriation to the country of origin, when this is possible in safety and dignity. The UNHCR ExCom has affirmed, in its Conclusion No. 69<sup>15</sup>, that "States must carefully assess the fundamental character of the changes in the country of nationality or origin ... to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist. ... An essential component in such assessment by States is the fundamental, stable and durable character of the changes ..." While UNHCR agrees that partial cessation is possible in narrowly defined situations, we, in principle, advise against applying cessation where the changes only affect certain parts of the country.

As regards procedural safeguards, UNHCR considers that any review and possible withdrawal of status and residence permits always need to be subject to rigorous scrutiny and follow established criteria, whether those under review are refugees or beneficiaries of subsidiary protection. Acknowledging that they often flee for similar reasons and have similar needs, the EU legislature has intended to establish a uniform status for all beneficiaries of international protection, which demands that beneficiaries of subsidiary protection are generally afforded the same protection and rights as those enjoyed by refugees. The European Court of Human Rights has also concluded that the conferring of rights to categories of immigrants must be done in a non-discriminatory manner. A difference in treatment of immigrants who are in an analogous position is thus discriminatory, unless the difference is objectively and reasonably justified. UNHCR thus urges Denmark to use the same or similar criteria for the non-renewal or ending of the status and permits of persons granted subsidiary form of protection, as those which apply to 1951 Convention refugees.

Furthermore, the proposed regular mandatory status reviews when renewing residence permits may create an unnecessary burden on the asylum authorities since they are unlikely to end protection status in many cases, as protection needs of persons seeking international protection in Denmark are not typically of a short duration. Many current refugee-producing situations worldwide are of a protracted nature, with the average duration being an estimated 26 years. Global forced displacement hit a record high in 2017, with 68.5 million persons being forced to leave their homes due to conflict and persecution. Given the nature of many of the underlying conflicts, it seems likely that the protection needs in Denmark of those forcibly displaced by these conflicts are likely to continue. Cessation procedures without any substantive ground for review, such as those proposed in the Proposal, will therefore be unnecessary in many cases.

Even when cessation can be invoked, States should consider allowing to remain refugees who, due to compelling reasons arising out of previous persecution cannot be expected to return to their country of origin, as well as individuals who due to a long stay in that country have developed strong family, social and economic links there (see further, UNHCR Guidelines on International Protection No. 3 on the "Ceased Circumstances" Clauses (2003) and UNHCR Guidelines on Exemption Procedures in respect of Cessation Declarations (2011)).

Conclusively, UNHCR is of the strong view that it remains of great importance to recognize the need to respect a basic degree of stability for refugees and the overarching objective of international protection, namely to find durable and permanent solutions for refugees, as set out

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<sup>15</sup> <https://www.refworld.org/docid/3ae68c431c.html>

in ExCom Conclusion No. 104 on integration. Given Denmark's role internationally as a longstanding active supporter of the development of a strong international protection regime, it is critical that Denmark continues to set a good example in granting durable solutions to persons in need of international protection, including by according them a secure legal status and permanent residence permits.

UNHCR appreciates the constructive dialogue with the Ministry of Immigration and Integration, and we thank you for your considerations of this important matter.

We remain at your disposal for any clarification required.

Yours sincerely,



Wilfried Buchhorn  
Deputy Regional Representative