UNHCR Comments on the Law on "International Protection and other Provisions"

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.[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,[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.[4] UNHCR's supervisory responsibility has also been reflected in European Union law, in Article 78(1) TFEU,[5] as well as in Article 18 of the EU Charter.[6]

As a preliminary remark, UNHCR regrets that, notwithstanding its supervisory authority in accordance with Article 35 of the Geneva Convention, the time provided for consultation, namely four working days (from 16.10.2019 to 21.10.2019), was extremely short given the significance and the number of the provisions of the Law. In this context, UNHCR submitted initial comments to the Ministry[7], which were limited to the most relevant provisions. In parallel UNHCR presented orally its comments on specific provisions before the competent Parliamentary Committee on 24 October 2019 and submitted a written Memorandum to the Committee.[8] The present commentary is, on the one hand, more detailed while, on the other hand, it refers to the final text of the Law (L. 4636/2019) as it was adopted by the Parliament[9]. Thus it takes into consideration the considerable number of amendments to the text after it was tabled with the Parliament. The purpose of the present commentary is to identify provisions that in UNHCR's view are either not in conformity with

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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, Para. 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, available at: 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, available at: http://www.refworld.org/docid/3ae6b3b70.html

[7] UNHCR's comments on the Draft Law for International Protection "Provisions on the qualification and the status of third country nationals or stateless persons as beneficiaries of international protection, for a single status for refugees or persons eligible for subsidiary protection and for the content of protection granted, unification of provisions for the reception of applicants for international protection, the procedure for granting and revoking of the status for international protection, restructuring of judicial protection of asylum seekers and other provisions", 21.10.2019.

[8] UNHCR Memorandum before the Permanent Committee of Public Administration, Public Order and Justice of the Hellenic Parliament submitted on 24 October 2019 in the context of deliberations for the Draft Law on "International Protection and other provisions".

[9] Available at :http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wFqnM3eAbJzrXdtvSoClrL8Gl-APRkFu5B5MXD0LzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJb0x1LIdQ163nV9K--td6SIueCMUzTsvyK02-qLNbPkx-pf6ZOZhvI93abl82bwsaY8

international refugee law or the EU asylum *acquis* or pose significant implementation challenges as experienced during the first month of their implementation.

The present submission follows the structure of the Law. Following some general considerations **(Part I)**, comments will be provided on Articles 1 to 38 related to the Qualification for international protection **(Part II)**, on Articles 39 to 61 related to the Reception of applicants for international protection **(Part III)**, on Articles 62 to 107 related to Asylum Procedures **(Part IV),** and on Articles 116 to 125 under the "Special part" of the law **(Part V).**

Part I – General Comments

1. UNHCR welcomes the effort made in the Law as stated in the Explanatory Report **to codify legislation on international protection and, thus, reinforce legal certainty and effectiveness.**

2. UNHCR acknowledges that the asylum system in Greece is overstretched and suffers from significant delays, as a result of complicated procedures and inefficiencies. Remedial actions should include a significant and rapid increase of the capacity of the asylum authorities, along with greater rationalization through the establishment of mechanisms to assess the system's efficiency and to plan future processing capacity. Instead, **UNHCR is concerned that the Law is introducing stringent procedural requirements and formalities which an asylum-seeker should not reasonably be expected to fulfil.** This approach may lead to a *de facto* denial of rights as a result of the impossibility to exercise these rights in practice, dropping out from the asylum procedure, a failure to examine international protection needs and a risk of violation of the principle of *non-refoulement* if the person is, ultimately, returned. The provisions that raise such concerns include the requirement that the applicant appoints a lawyer through a document bearing his certified signature (Article 71 para. 1), the obligation of the applicant to present him/herself before the authorities (with some exceptions) at all stages of the procedure (Article 78 para. 3), the issuance of a rejection decision on the merits in all cases where the application for international protection is considered as implicitly withdrawn (Article 81) and the specific content that is required for the written appeal, including specific appeal grounds at the risk of otherwise being rejected as inadmissible (Article 93). Some of these provisions might also be at variance with the Asylum Procedures Directive (see below) in addition to long-standing jurisprudence of national as well as European courts, which has established that procedural requirements and formalities should not render impossible the exercise of a right that is provided in Law.[10]

3. Furthermore, UNHCR considers **that the implementation of a significant number of these new legal provisions will impose a heavy burden on the competent State administrative authorities which are already overstretched and thus face serious difficulties to respond, thereby compounding current delays and inefficiency.** Examples of such provisions are the following:

a. Articles 70 para. 4 and 92 para. 2 provide for four types of asylum-seeker cards with multiple validity periods (varying from 15 to 30 days) depending on the type of the procedure followed

[10] CJEU Danqua, C-429/15, para. 29 and available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=184688&_pageIndex=0&doclang=EN&mode=_lst&dir=&occ=first&part=1&cid=6324194, CJEU N., C-604/12, paragraph 41 and the case-law cited, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=184688&pageIndex=0&doclang=EN&mode=_lst&dir=&occ=first&part=1&cid=_6324194. See also ECtHR judgments in M.S.S. v Belgium and Greece [GC], application no. 30696/09, para. 318, available at: http://hudoc.echr.coe.int/ eng?i=001-103050, Sharifi and Others v Italy and Greece, application no. 16643/09, para. 167, available at: http://hudoc.echr.coe.int/eng?i=001-147287

(namely, procedures of absolute priority, of simple priority, accelerated, inadmissible and subsequent). This will lead to an increased workload for the authorities who will have to issue the corresponding decisions and cards as well as renew them if the procedure is not completed within the tight timeframes;

b. Article 104 para. 2 provides for exceptions to the automatic suspensive effect of an appeal, conditioning it to the lodging of a specific request by the appellant, which will then be added to the corresponding appeals to be examined by the Independent Appeals Committees;

c. Article 24 para. 1 introduces a different validity of the residence permit of refugees and beneficiaries of subsidiary protection (three years and one year, respectively), which will likely lead to an increase of appeals by beneficiaries of subsidiary protection on their first instance decision in order to be recognized as refugees, further burdening the authorities of both first and second instance;

d. Article 113 provides for the automatic rejection of all appeals submitted before 20 July 2016 and applications for international protection submitted before the entry into force of P.D. 141/2013 (that is before 21 October 2013), unless the concerned applicants submit a declaration within six months from the entry into force of the Law, confirming their interest in the continuation of the examination of their claim. This will lead to more applicants approaching the Asylum Service and Appeals Authority (which is located only in Athens) while the same objective could be achieved through a desk review of pending applications to identify those asylum-seekers who have renewed regularly and without interruption their asylum-seeker card.

4. The composition of the Independent Appeals Committees: Article 116 of the Law replaced the expert designated by UNHCR as a member of the three-member Independent Appeals Committees with a third judge. While UNHCR has always lent its support to countries to strengthen their asylum system and bolster their capacity with a view to eventually disengage from any direct involvement in the asylum procedure, the proposed change carries the risk of creating further delays in the functioning of the Committees and lead to an increased backlog. This is particularly the case since the Greek system is still in a transitional phase until the announced transfer of the competence of the adjudication at appeal stage to the Administrative Courts. As is known, the UNHCR-designated members are independent experts with expertise in refugee law, do not represent UNHCR, and are appointed and contracted by the Ministry of Citizen Protection. In UNHCR’s and other involved actors’ assessment, the arrangement under the legal framework previously in force has functioned well and the drawbacks noted in the functioning of the Committees are not linked to their composition. UNHCR believes that the independent experts are contributing to the efficiency of the appeal process, as their expertise in refugee law doctrine and jurisprudence allow, in many instances, for a faster examination of cases. UNHCR is also of the view that the mixed composition of the Committees has contributed significantly to the maintenance of high-quality standards at the appeal stage and has been beneficial both for the judges and the independent experts.

5. The absence of transitional provisions. UNHCR notes the absence of transitional provisions in the Law, which may lead to serious interpretational issues and undermine legal certainty. As the Law introduces important procedural and substantive changes, detailed transitional provisions would help ensure that rights attained under the legal framework previously in force are not adversely affected. Examples of necessary transitional provisions include the duration of residence permits of persons who have been granted subsidiary protection prior to the entry into force of the present Law, the renewal of residence permits granted under the legal framework previously in force to family members that are no longer considered as family members under the new Law, the

procedure to be followed in case of decisions to discontinue the examination of an application for international protection that were issued before the possibility of issuing such decisions was repealed, the application of additional procedural requirements at the appeal stage in respect of applicants who were notified with a negative first instance decision before the entry into force of the Law.

6. The role of UNHCR: UNHCR regrets that Article 73 of the Law envisages a more limited role for the organization compared to its role under the legislation previously in force. Moreover, as the provision of Article 73 does not literally transpose the EU *acquis* on this question, this might lead to misinterpretations regarding **UNHCR's supervisory mandate under international law as reflected in the Qualification Directive and the Asylum Procedures Directive, and as confirmed by the CJEU.**[11] More specifically, Article 29 para. 1(c) of the Directive 2013/32/EU, transposed by Article 73 para. 1 (c) provides that Member States shall allow UNHCR "to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure". In Article 73 para. 1 (c) of the Law which transposes the above provision both words "**supervisory**" and "**individual**" are missing.

In the same context, UNHCR wishes to highlight that the support of the organization to the State asylum authorities through the provision of legal and technical expertise as well as country of origin information due to its operations across the world and work at international level, has been widely and consistently recognized as valuable to States, including by the CJEU,[12] as contributing to fair and efficient asylum systems.

In light of the above, UNHCR recommends that Article 73 is revised to ensure a continuous effective cooperation between UNHCR and the State authorities in accordance with the organization's mandate.

Part II - Articles 1 to 38 - Qualification for International Protection

Article 2 – Definition of "family members"

UNHCR notes with concern that the definition of "family members of the beneficiary of international protection" is amended to exclude from its scope families formed after leaving the country of origin, e.g. through marriage in refugee camps and in transit but before arrival on the territory of Greece, affecting also children born to such couples. UNHCR considers that this amendment disregards the particular circumstances of forced displacement whereby applicants may have stayed for a protracted period outside the country of origin before reaching the EU,[13] which is not consistent with ECtHR case law. In a 2012 case against the UK, the ECtHR could not find a justification for a

[11] UN High Commissioner for Refugees (UNHCR), UNHCR public statement in relation to Zuheyr Freyeh Halaf v. the Bulgarian State Agency for Refugees pending before the Court of Justice of the European Union, August 2012, C-528/11, available at: https://www.refworld.org/docid/5017fc202.html. Zuheyr Frayeh Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet, C-528/11, European Union: Court of Justice of the European Union, 30 May 2013, para. 45, available at: https://www.refworld.org/cases,ECJ,51a85c224.html

[12] Zuheyr Frayeh Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet, C-528/11, European Union: Court of Justice of the European Union, 30 May 2013, para. 44, available at: https://www.refworld.org/cases,ECJ,51a85c224.html

[13] UNHCR, *Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, available at: http://www.refworld.org/docid/4f55e1cf2.html

different treatment of pre- and post-flight spouses.[14] Differentiating between couples who married in the country of origin and those who married after leaving the country of origin may therefore amount to discrimination,[15] and violate the principle of family unity protected under Article 8 of the ECHR.

Furthermore, UNHCR wishes to note that the definition of family members in Article 2 is limited to the "beneficiary of international protection" while **a definition of family members of applicants for international protection is not included in the text of the Law.** This omission can be expected to create interpretative issues and should be the subject of an amendment of the Law.

UNHCR thus recommends to re-insert the relevant provision of Law 4540/2018 (Article 3 para. bb) related to family links created after flight. This would also take account of the fact that the definition of family in the EC Proposal for a Qualification Regulation[16] includes families formed after leaving the country of origin and family members of applicants for international protection.

Article 23 - Family unity
UNHCR regrets the narrowing down of the scope of application *ratione personae* of the provisions on maintaining family unity, namely:
The repealing of the provision of PD 141/2013, Article 23 para. 2b, which stipulated that access to rights granted to family members of a beneficiary of international protection is maintained even after reaching adulthood, the dissolution of the marital relationship (due to death, divorce or separation) with, or the death of the beneficiary of international protection; and
The repealing of the provision, of PD 141/2013, Article 23 para. 5, which stipulated that the parents of an adult beneficiary of international protection who do not individually fulfil the requirements for being granted international protection status, are entitled to the same rights as the beneficiary of international protection provided they were cohabitating in the country of origin and were dependent, fully or partially, on him/her.
In sum, these amendments lead to the future exclusion of the above family members from the right to a residence permit and to the non-renewal or revocation of previously granted residence permits to such family members.

With regard to the first point, UNHCR considers that family members deriving their status or right to a residence permit from the status of a family member who has been recognized as a beneficiary of international protection, should, in principle retain their status notwithstanding the dissolution of the family through divorce, separation or death or the fact that a child reaches the age of majority. Hence, careful consideration should be given to the individual circumstances of these family members to determine whether retention of status is appropriate in a particular case rather than only a matter of personal convenience.[17] Furthermore, UNHCR considers that dependent parents of adult refugees, should continue to be eligible for the grant of a residence permit.[18]

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[14] *Hode and Abdi v. The United Kingdom, (Application no. 22341/09, http://hudoc.echr.coe.int /eng?i=001-114244)*
[15] UN High Commissioner for Refugees, *UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466*, February 2018, available at: https://www.refworld.org/docid/5a7835f24.html, p. 31.
[16] COM(2016) 466 final.
[17] UN High Commissioner for Refugees (UNHCR), UNHCR RSD Procedural Standards - Processing Claims Based on the Right to Family Unity, 2016, p. 13, available at: https://www.refworld.org/docid/577e17944.html
[18] See UN High Commissioner for Refugees QR Comments p. 32, footnote 15 above. See also CJEU, TB v. Bevándorlási és Menekültügyi Hivatal, C-519/18, para. 52 on the concept of "dependency" under EU Law, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=221527&pageIndex =0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7338990

With regard to the second, in case the above provision is not amended, UNHCR recommends that the new provisions on family unity for beneficiaries of international protection are only applied to persons granted international protection status as of the entry into force of the new Law (1 January 2020) while those recognized until then (31 December 2019) continue to be treated under the provisions of PD 141/2013, in line with the principle of legal certainty and the protection of legitimate expectations ("αρχή της δικαιολογημένης εμπιστοσύνης") vis-à-vis the administration.

Based on the above, UNHCR recommends that the provisions regulating family unity for beneficiaries of international protection under the legal framework previously in force be reinstated.

Article 24 - Residence permits of beneficiaries of international protection

UNHCR is of the view that a distinction in the rights and entitlements of beneficiaries of international protection are often neither necessary nor objectively justified in terms of flight experience and protection needs. This is evidenced by EU Member States' adjudication practice, as the application of the protection statuses across the EU varies widely. Some Member States regularly grant refugee status to people from a particular country of origin, while other Member States grant only subsidiary protection status to people with similar profiles from the same country of origin.[19] It is thus not clear which objective criteria may justify a different duration of residence permits.[20] Furthermore, as stressed above (Part I, 3), different validity periods are expected to lead to an increase in appeals by beneficiaries of subsidiary protection against their first instance decision in order to be recognized as refugees and, consequently, be granted a residence permit with longer duration. Equally, they are expected to significantly increase the workload of the Asylum Service (and the police authorities for applications submitted before the beginning of operation of the Asylum Service), which would then need to annually renew/re-examine residence permits of beneficiaries of subsidiary protection.

UNHCR takes note of the Explanatory Report which mentions as a reason for this differentiation that subsidiary protection is granted for specific reasons related to the volatile situation in countries of origin, and therefore has to be examined in shorter intervals. However, recent history and present situations around the globe demonstrate that armed conflict and indiscriminate human rights violations that are often leading to the granting of subsidiary protection usually last much longer than one or two years.

Based on the above, UNHCR strongly recommends that the provisions on the validity of residence permits are maintained as they were under legislation previously in force, namely identical for both refugees and beneficiaries of subsidiary protection. If Article 24 is not amended, it is nevertheless recommended that the issuance of residence permits to beneficiaries of subsidiary protection status with a validity of one year is applied only to those whose initial residence permit will be issued as of the entry into force of the Law (1 January 2020), and not for those whose

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[19] See Eurostat statistics for the 3rd quarter of 2019, according to which Germany granted refugee status and subsidiary protection to almost an equal number of Syrian applicants, whereas Greece only granted refugee status and France primarily subsidiary protection status to Syrians, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Table6_-_First_instance_decisions_by citizenship_and_outcome, selected_Member States,_3rd_quarter_2019.png

[20] See, UN High Commissioner for Refugees QR Comments, p.35, footnote 15 above and UNHCR, Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence, 27 July 2011, available at: http://www.refworld.org/docid/4e2ee0022.html; see also UNHCR, Moving Further Toward a Common European Asylum System. UNHCR's statement on the EU asylum legislative package, June 2013, available at: http://www.unhcr.org/protection/operations/51b7348c9/moving-further-toward-common-european-asylum-system-unhcrs-statement-eu.html.

residence permits have already been issued in accordance with the principle of legitimate expectations ("αρχή της δικαιολογημένης εμπιστοσύνης").

Article 33 - Access to accommodation

UNHCR notes that Article 32(1) of the Recast Qualification Directive places an obligation on Member States to ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.

In Kamberaj v IPES (Italy)[21] the CJEU ruled that EU law precluded national or regional legislation treating third country nationals who are long-term residents differently from EU citizens with regard to the allocation of funds for housing benefit. The Court therefore recognized access to housing benefit as a 'core benefit' for the purposes of Article 11(4) of the Long-Term Residence Directive (2003/109/EC). In this regard, the CJEU acknowledged a right to equal treatment for persons entitled to housing benefit with the intention to ensure a 'decent existence' for anyone who does not have the resources to maintain such a standard themselves.[22]

Consequently, UNHCR wishes to highlight that Article 21 of the Geneva Convention providing for the treatment of beneficiaries of international protection under equivalent conditions as other third country nationals legally resident, in combination with the CJEU's above ruling in Kamberaj v IPES, support that beneficiaries of international protection in Greece are entitled to the same treatment as Greek citizens in terms of access to housing.

Part III – Provisions on First Reception and Identification and Reception Conditions

Article 39 para. 3 – Information provision by Hellenic Police, Coast Guard and Armed Forces Personnel

UNHCR notes that this article envisages that apart from the personnel of the Reception and Identification Service, in case of mass arrivals, information to persons newly arrived to the Reception and Identification Centres is provided by personnel of the Hellenic Police, the Coast Guard or the Armed Forces. However, despite their different profile compared to that of employees of the Reception and Identification Service, the personnel of these authorities is not required to undertake any training on the provision of information to persons in need of international protection, as is the case for the employees of the Reception and Identification Service according to Article 11 para. 10 of L. 4375/2016.

Considering the importance of provision of information on their rights and obligations to persons seeking international protection to enable them exercise their rights, especially in cases where issues of gender, child protection, sexual orientation etc. arise, which require a specialized approach, Article 18(7) of the RCD (recast) provides that the "persons working in accommodation centres shall be adequately trained". In addition, Article 6(1) third indent of the APD (recast) provides that Member States shall ensure that personnel of authorities likely to receive applications

[21] Judgment of the Court (Grand Chamber), 24 April 2012. Case C-571/10. Servet Kamberaj v Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others, available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-571/10

[22] Evaluation of the application of the recast Qualification Directive (2011/95/EU), Luxembourg: Publications Office of the European Union, 2019, p. 247, available at https://op.europa.eu/en/publication-detail/-/publication/e9528006-1ec1-11e9-8d04-01aa75ed71a1/language-en

for international protection receive the necessary training and instructions to inform applicants as to where and how applications for international protection may be lodged.

Based on the above, UNHCR recommends that the provision allowing the above authorities to provide information to asylum-seekers is abrogated or amended in order to specifically condition the provision of such services by these authorities to the prior successful completion of relevant training.

Article 39 para. 5 (d) – Definition of vulnerable persons in the context of first reception and identification.

UNHCR notes that shipwreck survivors which are included in Article 14 para. 8 of L. 4375/2016, and women in the post-natal period are excluded from the respective provision of the Law defining categories of vulnerable persons for reasons of (first) reception. On the other hand, the "direct relatives (parents and siblings)" of shipwreck victims are included and considered vulnerable. UNHCR wishes to underline that the omission of the shipwreck survivors themselves as well as other "direct" relatives such as the children and spouses of shipwreck victims might lead to important interpretative issues and potentially to protection gaps for the above categories of persons which include persons with evident and severe vulnerabilities demanding their treatment under increased safeguard in the context of reception and identification procedures. More specifically, shipwreck survivors and their relatives might have experienced severe stress and trauma, resulting in difficult physical and psychological conditions, in particular in case of dead and/or missing family members, while women in the post-natal period undergo a critical period for the health and survival of the mother and her new-born. This fact is also recognized expressly by the Greek legislation.[23] Furthermore, Article 21 of Directive 2013/33/EU provides an **indicative (not exhaustive) list** of categories of vulnerable persons. This means that States may add further categories of vulnerable groups.

Based on the above, UNHCR recommends the amendment of Article 39 so as to maintain shipwreck survivors in the list of vulnerable groups, include other direct relatives of shipwreck victims such as the spouse and children as well as women in the post-natal period. The present comment and recommendation **is valid also for Articles 20 and 58 of the Law**, given that the definitions of vulnerable persons are identical.

Article 39 para. 10 (b) and (c) in combination with Article 81 para. 2 (h) - Consequences of refusal to transfer in the context of first reception and identification procedures and second-line reception

UNHCR notes that these provisions create a non-rebuttable presumption that the non-compliance with a "transfer decision" in the context of first reception and identification procedures signifies that the applicant "hinders the submission or the continuation of the examination of an application for international protection" leading to his/her application being considered as implicitly withdrawn. Therefore, if an application for international protection has been submitted, it is directed to prioritized procedures, its examination is accelerated and shall be concluded in 20 days and Article 81 para. 2(h) suggests that it shall be rejected as unfounded in all cases.

UNHCR notes that the link between a misconduct in the context of first reception and identification procedures or in the context of second-line reception (regulated under the Reception Condition Directive), such as a refusal to transfer, and the application of accelerated procedures, such as the "prioritized" procedure which shall be concluded in 20 days, based on a non-rebuttable

[23] See Article 41 para. 1 L. 3907/2011 prohibiting the return of women for six months after delivery.

presumption of implicit withdrawal of the application for international **protection is not in compliance with Articles 31 (8) and 28 of the APD (recast), defining the categories of applications that can be examined under accelerated procedures and possible behaviors of the applicant that can lead to his/her application for international protection as being considered as implicitly withdrawn.** In particular, according to Article 28(2) APD (recast), Member States shall ensure that applicants are provided with at least nine months, within which their applications may be re-opened or a new application lodged. In UNHCR's view, the refusal to comply with a transfer decision cannot be deemed sufficient to infer an intention to delay or hinder the asylum proceedings absent other relevant elements.

Therefore, UNHCR recommends the abrogation of the above provision as not in line with Articles 31 (8) and 28 of the Directive 2013/32/EU.

Article 46 - Detention of applicants
UNHCR is concerned that the Law introduces several additional provisions allowing for the detention of applicants, which undermine the general legal principle that the detention of asylum-seekers should be exceptional and only be resorted to when necessary to achieve a legitimate purpose (Article 31 of the 1951 Convention and Article 8 of the Directive 2013/33/EU). In particular:

a. In para. 2, the Law expands the possibility of detention even for applicants who are not being detained in view of return/deportation procedures, contrary to the provision of Article 46 para. 2 L. 4375/2016, which provided for the detention of applicants only in case they have already been in detention in view of a return decision. In UNHCR's view **this expansion of detention grounds is not in line with international law**.

b. Article 46 para. 3 L. 4375/2016, previously in force, provided that the detention order may be issued **only** upon recommendation of the Asylum Service, unless detention is ordered on the basis that the applicant constitutes a danger for national security or public order (in which case detention can be ordered directly by the Police Director). However, para. 3 of Article 46 of the Law provides that the Asylum Service does not issue a recommendation but **shares only information with the competent Police Director who then issues the detention order** irrespective of this information. This means that police may order detention even on the basis of asylum-related reasons and although the AS considers that detention cannot be justified. **UNHCR highlights that this seems not to be in line with Directive 2013/33/EE** and may lead to arbitrary detention as the necessity of detention should be established in each case following a proper individual assessment. In line with Article 9 para.2 of Directive 2013/33/EE, the Asylum Service is the competent "Determining Authority" for the application of international protection, and **is as such the only authority that may assess the need for detention based on the specific elements of the application and substantiate the grounds for detention as required by law.**

c. UNHCR is also **seriously concerned about the significant increase in the maximum detention time limits for applicants of international protection**, contrary to the Explanatory Report of the Law stipulating that the time limits remain identical to those in the legal provision previously in force. While according to Article 46 para. 5 of L.4375/2016, the detention of applicants cannot exceed 45 days, with a possibility to prolong just once for another 45 days, the wording of the current provision seems to allow an initial detention period of 50 days that can be extended by an additional 50 days, not just once, but until the exhaustion of the maximum detention period of 18 months. According to Article 46 of L. 4375/2016, 18 months is also the upper limit of detention of a third country national in view of return. Taking into consideration that, according to the Law, the period of

detention on the basis of return or deportation procedures is not calculated into the total time of detention, the total detention period may actually reach 36 months.

This maximum time limit raises significant concerns as regards its compliance with international human rights law and relevant ECtHR case law under Article 5(1)(f) of the ECHR, which provides that the length of detention must be reasonable.[24] In particular, the possibility to extend the period of detention up to 18 months for applicants of international protection **cannot be considered as meeting the requirement of a minimum period in line with the principle of proportionality, necessity and reasonableness, which should govern measures of deprivation of liberty.**[25]

In light of the above, UNHCR recommends that the above amendments proposed in the regulatory framework for the detention of applicants of international protection should be abrogated.

Article 51 para. 2 – Reduction of reception conditions in case children do not enroll or attend school

UNHCR notes with concern that this article provides for the reduction of material reception conditions in case child applicants for international protection or the children of applicants for international protection do not enroll or do not attend school "because they do not wish to integrate into the system of education". UNHCR considers that the intention not to enroll in schools because of the refusal to integrate into the system of education cannot easily be proved and leaves a very large margin of appreciation to the deciding authority. Furthermore, this provision seems to be at variance with Article 20 of Directive 33/2013/EU where the conditions for reducing material reception conditions are exhaustively enumerated.[26]

Based on the above, UNHCR suggests the amendment of the above provision.

Article 53 - Access to the labour market of applicants for international protection

UNHCR supports an early access to the labour market for asylum-seekers as such access can be beneficial for both the State and the asylum-seeker. It promotes social inclusion and self-reliance of asylum-seekers and avoids the loss of existing skills and dependency. The proposed measure to access the labour market six months after the submission of the application for international protection is allowed by the EU framework (Recast Reception Directive), however it requires the State to ensure that there are sufficient resources to cover the reception needs of the totality of the applicants of international protection in the country for six months after the submission of their application. Currently, reception needs are still largely covered by EU funds and programmes implemented by international agencies such as UNHCR and IOM.

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[24] *Saadi v. United Kingdom*, 13229/03, Council of Europe: European Court of Human Rights, 29 January 2008, para. 74, available at: https://www.refworld.org/cases,ECHR,47a074302.html

[25] The ECtHR has ruled towards this direction in the case *Suso Musa v. Malta* (Application no. 42337/12), according to which: "*Lastly, the Court notes that in the present case it took the authorities one year to determine the applicant's asylum claim. This cannot be considered as a period of detention reasonably required for the purpose pursued, namely to determine an application to stay*". Nevertheless, the Court has already considered periods of three months' detention pending a determination of an asylum claim to be unreasonably lengthy, when coupled with inappropriate conditions (*Suso Musa v. Malta*, Application no. 42337/12, Council of Europe: European Court of Human Rights, 23 July 2013, available at: http://www.refworld.org/docid/52025a8f4.html).

[26] For sanctions under Article 20(4) RCD and the very strict criteria that apply particularly in case of children, including the need for a proportionality assessment and strict observance of the Charter of Fundamental Rights, see European Union: Court of Justice of the European Union, 12 November 2019,, *Haqbin*, C-233/18, para. 53, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=220532&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=577604

UNHCR understands that the rationale behind this amendment might be to deter the abuse of the asylum procedure by third country nationals wishing to access the labour market without having international protection needs. However, UNHCR is of the view that this objective can also be achieved by channeling such applicants into accelerated/ simplified procedures, without limiting in general access to the labour market.

Article 55 para. 2 – Access to healthcare, social security and employment

Article 55 para. 2 provides that for reasons of facilitating access to healthcare, social security and employment, a Temporary Number for Social Security and Healthcare for Aliens («Π.Α.Α.Υ.Π.Α») shall be issued for applicants for international protection. The bearer has access to healthcare according to the provisions of Article 33 L. 4368/2016 on access to healthcare of vulnerable groups and persons without social security. Furthermore, according to the last indent of para. 2, the details for the application of the above provision shall be set with a common decision of the Ministers of Labour, Digital Governance, Citizens' Protection, Health and Education and Religious Affairs. Additionally, Article 55 para. 2 provides that the «Π.Α.Α.Υ.Π.Α» is automatically deactivated in case of a negative first instance decision on the asylum application where the appeal has no suspensive effect, leaving the bearer immediately without healthcare, social security and employment, even if the person has the right to apply to remain in the country until the completion of second instance procedures, according to Article 104 of the Law. Moreover, the way the provision is phrased UNHCR understands that only fully registered applicants will be given this number as it is linked to the asylum card, which is issued according to the new law after the full registration of the application for international protection, which may be concluded only several months after a person requested for asylum. More specifically, as practice has shown, the full registration of the claims of a large number of applicants, especially on the islands, remain pending for significant periods of time after a "simple registration"[27] of their claims. This means that a significant number of asylum-seekers will still have no access to healthcare.

Based on the above, and taking into consideration that after a decision of the Minister of Labour of 11 July 2019[28] abolishing the regulatory acts allowing asylum-seekers to be granted with a Social Security Registry Number, this category of persons is facing very important problems in accessing healthcare, social security benefits and employment, UNHCR welcomes the issuance of the Joint Ministerial Decision on the Temporary Number for Social Security and Health Care for Aliens (GG B' 199/31.01.2020) foreseen in Article 55 of Law 4636/2019, which provides for access of the applicants for international protection to health services, medical care, social security and the labour market. However, UNHCR regrets that pre-registered asylum-seekers are excluded from the procedure introduced in the said decision and thus continue not to have access to health services. In addition, taking into consideration that «Π.Α.Α.Υ.Π.Α» number is active as long as there is a valid International Protection Applicant's Card, and given that the latter is cancelled upon notification of a negative first instance decision, there will be no active «Π.Α.Α.Υ.Π.Α» number (and thus no access to healthcare and employment) during the period from the notification of the rejection until an appeal is submitted**. Lastly, UNHCR urges the Greek authorities to conclude all necessary technical requirements for the issuance of PAAYPA, so that the Ministerial Decision can be implemented without delay.**

Part IV – Asylum Procedures

[27] According to art. 36 L. 4375/2016, previously in force.

[28] Circular Ref. No Φ. 80320/οικ. 31355/Δ18.2084/11.7.2019.

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Article 67 para. 2 – Modalities for support provided to persons with special procedural needs in order to apply accelerated procedures

Para. 1 of Article 67 provides a list of characteristics/conditions of persons indicating special procedural needs, including "age, gender, sexual orientation, sexual identity, mental disorders or consequences of torture, rape or other serious forms of psychological, physical or sexual violence". Para. 2 of the same Article outlines certain modalities of "adequate support" for those persons with special procedural needs, which, if provided, allow for a channeling of these persons into accelerated and/or border procedures according to para. 3. "Adequate support" can consist of "extra breaks during the interview, the possibility for the applicant to move around during the interview, if this is necessary because of his/her state of health, and leniency with regard to non-major inaccuracies and contradictions in their claim if these are connected to their health state".

UNHCR notes that the measures mentioned in para. 2 seem to be inadequate to address the special procedural needs that the categories of applicants mentioned in para. 1 might have. In addition, the measures mentioned in para. 2 should be applicable to all applicants irrespective of whether or not they have special procedural needs, as, in UNHCR's view, all applicants should have the right to request breaks or to move during an interview if this is justified, while the leniency towards non-major inaccuracies reflects one of the core principles of any credibility assessment in asylum procedures.[29] Furthermore, Recital 29 of Directive 2013/32/EU mentions "sufficient time" as a form of "adequate support to be provided", which is proposed to be mentioned among the measures listed in Article 67 para. 2.

It is UNHCR's position that applications made by vulnerable individuals are not suitable for accelerated processing as the particular situation of these applicants requires procedures that have the adequate length to allow for a proper assessment of the vulnerability and specific needs of the applicant in order to guarantee the fairness and integrity of the proceedings (see also comment below on Article 90 para 3). Especially claims based on sexual orientation are generally unsuited for accelerated processing as they raise particular challenges for adjudicators due to their often complex nature, as well as for the applicants.[30]

Furthermore, "adequate support" should not be seen as a fixed set of measures, but rather as a flexible concept which could include any measures to fully ensure that an applicant can make his/her application in full compliance with his/her rights under the law. Such measures might therefore include specially trained case workers (e.g. on SGBV or LGBTI), assignment of the case to a case worker of the same gender, medical examination, psychological support, referral to specialized services, legal support, child-friendly interview facilities, etc.

Based on the above, UNHCR suggests that the provision is amended by removing the above-mentioned measures as examples of "adequate support".

Article 75 - Applications of unaccompanied children

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[29] See UNHCR, Beyond Proof Credibility Assessment in EU Asylum Systems, May 2013, available at: https://www.unhcr.org/protection/operations/51a8a08a9/full-report-beyond-proof-credibility-assessment-eu-asylum-systems.html; see also ECtHR R.C. v. Sweden, no. 41827/07, ECtHR, 9 March 2010, available at: http://hudoc.echr.coe.int/eng?i=001-97625, para. 52.

[30] UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of M.B. v. Spain (Appl. No 15109/15, available at: http://hudoc.echr.coe.int/eng?i=001-170641) before the European Court of Human Rights, 15 January 2016, available at: http://www.refworld.org/docid/56a22d9b4.html, para. 4.6. and UNHCR GUIDELINES ON INTERNATIONAL PROTECTION NO. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, available at: https://www.unhcr.org/509136ca9.pdf, para. 59.

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UNHCR notes with concern that the provision in the legislation previously in force stipulating that applications of unaccompanied children shall always be examined under the regular procedure (Article 45 para. 8. N 4375/2016), is not repeated in the Law, thus allowing for unaccompanied children to be examined under accelerated procedures. The only exemptions are provided in Article 75 para. 7 of the Law with regard to applications of children under 15 years of age or child victims of trafficking, torture, rape, or other forms of psychological, physical or sexual violence, which shall be examined under the regular procedure. In consequence this means that the vast majority of claims by children can be examined under accelerated procedures if the conditions of Article 83 para. 10 are met.

Cases of unaccompanied children, and other vulnerable applicants, should be treated under regular asylum procedures, while specific safeguards should be observed that fully consider their specific needs. For children, such guarantees should entail an identification and registration phase, with the immediate appointment of a guardian, referral to age appropriate first reception, and a preliminary non-invasive age assessment applying the benefit of the doubt principle. Following registration, a thorough and multidisciplinary best interest assessment should take place, which involves the child's legal advisor, guardian, and social workers, and where a holistic age assessment and proactive family tracing takes place.[31]

UNHCR recommends not to apply the accelerated procedure to unaccompanied children or other vulnerable groups, but to rather examine their applications in a prioritized procedure (see also comment below on Article 90 para 3).

Articles 77 para. 1 and 90 para. 3 (b) – Interview by personnel of the Police, Armed Forces and other authorities

UNHCR notes with concern that the above provisions envisage that **personnel of the Hellenic Police or the Armed Forces** may conduct a personal interview for the admissibility of an application for international protection, or even on the merits of an application under the condition that this personnel has received beforehand a "basic training" in a number of fields.

UNHCR considers that a "basic training" is not enough to ensure that the personnel of the "other authorities" will be in a position to properly conduct such interviews, especially in cases concerning issues of gender, child protection, sexual orientation etc. where a specialized approach and prior in-depth training is required. In any case, compliance with Article 10(3) APD (recast) requires Member States to ensure that the authority responsible for taking decisions on international protection applications fulfils certain quality standards. In particular, its personnel must know the relevant standards applicable in the field of asylum and refugee law and must have the possibility to seek advice from experts, e.g. on medical, cultural, religious, child-related or gender issues (Article 10(3)(c) and (d) APD (recast)).

Based on the above, UNHCR suggests the amendment of the above provision to ensure that only qualified personnel of the Asylum Service will conduct interviews.

Article 81 – Applications for international protection rejected on the merits in case of implicit withdrawal

According to Article 81 of the Law, when there is a reasonable ground to believe that an applicant has implicitly withdrawn or abandoned his/her application, the authorities shall reject the application on the merits "*on the basis of an adequate examination of the substance from the case elements available to the Service*".

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[31] UNHCR, Better Protecting Refugees in the EU and Globally, December 2016, available at: https://www.refworld.org/docid/58385d4e4.html, p. 16.

The above provision **fails to fully transpose the corresponding Article 28 of the Directive 2013/32/EU** (APD (recast)) as the latter allows the authorities *"**either to discontinue** the examination **or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance**, to reject the application*".

Consequently, a rejection on the merits under the APD (recast) is possible only after an **adequate** examination[32]; when an adequate examination of the substance is not possible, i.e. if an interview has not been conducted and there are no elements in the file, the authorities have no other option than to discontinue the examination of the application. An opposite conclusion, allowing the application to be rejected on the merits without an adequate examination and without the safeguards provided when a case is discontinued (i.e. possibility of reopening of the case) could lead to the exclusion of persons from the asylum procedure for merely procedural reasons and without an assessment of their international protection needs, which could result in a violation of the principle of *non-refoulement.*

Furthermore, the provision of Article 81 **fails to transpose the requirement repeated in both paragraphs 1 (a) and (b) of Article 28 of the APD (recast)** that a decision either to discontinue or to reject is issued unless "*the applicant demonstrates within a reasonable time that his or her failure was due to circumstances beyond his or her control*".

Based on the above UNHCR recommends that Article 81 is amended in accordance with the wording and requirements of the above-mentioned provisions in the APD (recast).

Article 83 para. 7 to 9 – Categories under prioritized or accelerated procedures
UNHCR notes the significant increase of the categories of cases that shall be examined under either prioritized or accelerated procedures, namely two categories of cases to be "absolutely prioritized", eight categories of cases to be "prioritized" and twelve categories of cases to be adjudicated in the accelerated procedure. As the enumeration of different categories of cases in the APD (recast) is indicative and not exhaustive, this extensive list in the Law is in principle not at variance with the Directive.

On the other hand, UNHCR considers that the criteria for applying the accelerated procedure to a category of applications should primarily be based on elements that either allow for acceleration (i.e. manifestly well-founded or unfounded applications) or are imposed by external factors (i.e. under return procedures, in transit zones etc.). In other words, acceleration should not be used as a punitive measure in case the applicant does not comply with legal obligations but solely as a procedural tool to ensure the expedient adjudication of applications for international protection for those in evident need of it and those who are clearly not. Therefore, accelerated procedures should be applied only to well defined categories of cases.[33] In this regard, UNHCR welcomes the fact that applicants with manifestly well-founded claims who were not included in the initial draft of the Law, are now included.

Furthermore, the provisions of Article 83 para. 7 to 9 foresee the examination of various categories of cases under accelerated procedures in the absence of objective elements or external factors as

[32] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p. 33, available at: https://www.refworld.org/docid/5cb597a27.html
[33] See also UN High Commissioner for Refugees (UNHCR), UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union, 25 July 2018, page 10, available at: https://www.refworld.org/docid/5b589eef4.html and UNHCR APR Comments, footnote 32 above, p. 30

outlined above. These include applicants that have misled the authorities by presenting fake documents or information (para. 9 (c)), applicants having entered irregularly in the territory, staying illegally in the country or who have not applied for asylum the soonest possible (para. 9 (h)), applicants refusing to provide fingerprints (para. 9 (i) and (j)) and persons that belong to vulnerable groups (para. 9 (k)).

As regards those cases that shall be "absolutely prioritized" and thus examined in 20 days, UNHCR would note that this category constitutes in essence an accelerated procedure rather than a prioritization of cases on the basis of specific characteristics.

Therefore, UNHCR recommends a thorough review of the 22 categories in order to apply clear and well defined criteria for those cases that shall be subjected to accelerated procedures. More specifically, UNHCR suggests that accelerated procedures are applied only in manifestly well-founded or unfounded applications or in cases where the acceleration is imposed by external factors (i.e. applicants under return procedures, in transit zones, etc.).

Article 84 - Admissibility procedures for family reunification cases (Dublin III)
UNHCR considers that admissibility procedures and more specifically the application of the "safe third country" concept, cannot prevail over the obligations of EU Member States regarding the family unity of persons present in the EU.[34] Family unity is a fundamental right[35] protected under the EU Charter of Fundamental Rights, the ECHR[36] and the Greek Constitution, while the right of a child to live in a united family is provided in the Convention on the Rights of the Child, to which Greece is a party.

In its comments on the EC Proposal for an Asylum Procedures Regulation in April 2019[37] UNHCR stressed that possibilities for family reunion should take precedence over admissibility considerations. To ensure respect for the right to family unity and the best interests of the child, persons who can be reunited with family members through the application of Dublin III should therefore not be subject to admissibility procedures in application of the "safe third country" concept.

Based on the above, UNHCR suggests an insertion in Article 84 expressly providing that grounds under para. 1 (b) should be examined before grounds under para. 1 (d).

Article 85 – First country of asylum

UNHCR regrets to note that the term "effective protection" included in legislation previously in force in relation to the concept of first country of asylum was replaced by the term "sufficient protection" in the new Law.[38]

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[34] UNHCR, *UNHCR comments on the European Commission proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) - COM (2016) 270*, 22 December 2016, p.14, available at: https://www.refworld.org/docid/585cdb094.html
[35] See, CJEU, Judgments C-63/15 Ghezelbash and C- 155/15 Karim, on the right to appeal or seek the review of the criteria for determining responsibility under the Dublin III Regulation, including family criteria.
[36] Mugenzi c. France, Requête no 52701/09, Council of Europe: European Court of Human Rights, 10 July 2014, para. 54, available at: https://www.refworld.org/cases,ECHR,53be81784.html
[37] UN High Commissioner for Refugees APR Comments, footnote 32 above, p. 30.
[38] *Ibid.*, p. 39.

In line with ECtHR case law[39], UNHCR considers that protection does not only need to be available according to the law, but effective in practice. Whether standards of treatment commensurate with the 1951 Convention, its 1967 Protocol and international human rights law are available, cannot be answered without looking at the concerned State's international legal obligations, its domestic laws and the actual practice of implementation.[40] A theoretical guarantee of non-refoulement and other key human rights safeguards, without being effective in practice, is not adequate.[41] Therefore, UNHCR continues to recommend the replacement of the words "sufficient protection" with "effective protection".[42]

Article 86 para. 1 – Criteria for a connection with the safe third country

Article 86 para. 1 provides a list of nine indicative criteria, which, in combination with transit through a third country shall suggest the existence of a connection of the applicant with the said country. However, these include criteria which, in UNHCR's view, do not indicate the existence of a meaningful connection, such as the proximity of the third country to the country of origin of the applicant.

UNHCR has consistently been advocating for a meaningful connection to exist that would make it reasonable and sustainable for a person to seek asylum in another country than the one in which he/she submitted his/her application.[43] Taking into account the duration and nature of any sojourn, and connections based on family or other close ties[44] increases the viability of the return or transfer from the viewpoint of both the individual and the third country. As such, it reduces the risk of irregular onward movement, prevents the creation of "orbit" situations[45] and advances international cooperation and responsibility sharing.[46]

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[39] Case of Ilias and Ahmed v. Hungary (Application no. 47287/15) (Grand Chamber), ECLI:CE:ECHR:2019:1121JUD004728715, Council of Europe: European Court of Human Rights, para. 141, 21 November 2019, available at: https://www.refworld.org/cases,ECHR,5dd6b4774.html

[40] UNHCR, Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries, April 2018, para. 10, available at: http://www.refworld.org/docid/5acb33ad4.html

[41] UN High Commissioner for Refugees APR Comments, footnote 32 above, p. 40, also UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/GC/01/12, ("UNHCR 2001 Global Consultations on Asylum Processes"), paras. 10-11, available at: http://www.refworld.org/docid/3b36f2fca.html; UNHCR APD Study, note 23 above, p. 282-283; Abdolkhani & Karimnia v. Turkey, Appl. No.30471/08, CoE, ECtHR, 22 Sep 2009, para. 88, available at: www.refworld.org/docid/4ab8a1a42.html

[42] UN High Commissioner for Refugees APR Comments, footnote 32 above, p. 40 and sources quoted.

[43] UNHCR, Considerations on the "Safe Third Country" Concept, July 1996, available at: http://www.refworld.org/docid/3ae6b3268.html; UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/GC/01/12, para. 16 (final sentence), available at: http://www.refworld.org/docid/3b36f2fca.html; UNHCR, Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002), February 2003, para. 12, available at: http://www.refworld.org/docid/3fe9981e4.html. See also Opinion of Advocate General Bobek, delivered on 5 December 2019 on Case C-564/18 LH v. Bevándorlási és Menekültügyi Hivatal, available at: https://eur-lex.europa.eu/legal content/EN/TXT/HTML/?uri=CELEX :62018CC0564&from=EN

[44] UNHCR has identified such ties as including family relations; previously acquired rights in the state such as previous residence or long-term visits, and linguistic, cultural or other similar ties. See, for example: UNHCR, Considerations on the "Safe Third Country" Concept, July 1996, available at: http://www.refworld.org/docid/3ae6b3268.html; UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Detailed Research on Key Asylum Procedures Directive Provisions, March 2010, p. 311, available at: http://www.refworld.org/docid/4c63e52d2.html

[45] EXCOM Conclusion No. 71 (XLIV) 1993, para. (k).

[46] UN High Commissioner for Refugees APR Comments, footnote 32 above, p. 42.

Based on the above, UNHCR suggests that Article 86 para. 1 is amended with a view to remove criteria that do not indicate a meaningful connection with a third country such as its proximity to the country of origin of the applicant.

Article 86 para.2 and 3, in connection with Article 77 (personal interview) – Possibility to designate a country as safe for applicants with specific characteristics

UNHCR notes that according to the Law, the criteria for the application of the "safe third country" concept shall be examined on a case-by-case basis individually for each applicant, unless the third country has been characterized as safe in general, and is included in the national list of safe third countries. Furthermore, a list of countries considered as safe may be adopted according to para. 3 of the Law, which will include **"countries considered as safe for certain categories of asylum-seekers, depending on their characteristics (race, religion etc.) […]".**

In UNHCR's view the above provision does not seem to be in line with Directive 2013/32/EU (APD (recast)), which allows for a "national designation of countries considered to be generally safe" (Article 38 para. 2 (b) of the APD (recast)) and provides an exhaustive list of general criteria for a country to be considered as safe in Article 38 para. 1. The possibility to designate a country as safe for applicants with specific characteristics in para. 3 of Article 87 seems to equally contradict para. 2 of the same Article which reflects the above wording on countries considered generally safe of the APD (recast).

Based on the above, UNHCR recommends that the above provision is amended in order to reflect the requirements of the APD (recast).

Article 90 para. 3 and para. 4 – Non-exemption from highly accelerated border procedures of cases of family reunion under Regulation 604/2013 (Dublin III) and of vulnerable applicants

Article 90 para. 3 of the Law is repeating the provision of Article 60 para. 4 of L. 4375/2016, now repealed, and provides for a highly accelerated procedure to be conducted "in case of mass arrivals of third country nationals or stateless persons, submitting applications for international protection at the border or in a transit zone or while remaining in Reception and Identification Centres […]". Contrary to the provision previously in force, the new provision does no longer exempt from its scope cases of family reunion under the Dublin III Regulation and vulnerable applicants.

In UNHCR's view, family reunion cases under the Dublin III Regulation cannot be processed within the tight time limits foreseen by Article 90 para. 3 due to the considerable time needed by the applicant to gather and present all relevant documentation in cooperation with the authorities (e.g. residence permits of family members, birth certificates, IDs, etc.) and for the cooperation between the authorities of the concerned Member States. Therefore, the border procedure should not apply to such cases as family reunion would otherwise become nearly impossible to achieve.

Regarding the application of the highly accelerated border procedure to cases of vulnerable applicants, UNHCR acknowledges that the high percentage of applicants assessed as vulnerable of those arriving on the Greek North-Eastern Aegean islands has resulted in a large proportion of applicants having been exempted form border procedures and consequently from return procedures under the EU-Turkey Statement. However, considering the importance of special procedural guarantees for vulnerable applicants for international protection under international, EU and national law, which take into consideration the particular circumstances of each

vulnerability, the right balance needs to be struck by defining vulnerability and specific needs in line with international standards.

In UNHCR's view, applications made by vulnerable individuals meeting the above definition are not suitable for accelerated processing as the particular situation of these applicants requires procedures that have the adequate length to allow for a proper assessment of the vulnerability and specific needs in order to guarantee the fairness and integrity of the proceedings.[47] This cannot happen in the extremely short time limits set in Article 90 para. 3 of the Law.

Regarding especially the application of the procedure of Article 90 para. 3 to unaccompanied minors, as stated above (see comment on Article 75), UNHCR recommends not to apply accelerated procedures to unaccompanied children or other vulnerable groups, but to rather examine their applications in a prioritized procedure.

Moreover, Article 90 para. 4 provides for five cases of **applications of unaccompanied minors that can be examined under the highly accelerated border procedure**. These cases correspond to those of article 25 para. 6 (b) of the APD which concerns the application of the border procedures of the APD. Nevertheless, as the border procedure introduced by Art. 90 para. 3 is **also** a highly **accelerated** procedure, **all guarantees provided by the APD for minors in accelerated procedures should also apply. This means that Article 25 para. 6 (a) of the APD is applicable, which allows for only three categories of asylum applications of unaccompanied minors to be subjected to accelerated procedures.**

Based on the above, the inclusion of categories under Article 90 para. 4 (d) and (e) in the accelerated border procedure does not seem to be in line with the APD (recast).

Lastly, Article 60 para. 4 L. 4375/2016 had introduced a special, highly accelerated asylum procedure to be applied at the border or to applications for international protection made by applicants in the Reception and Identification Centres. The new Law foresees to slightly albeit insufficiently extend the deadlines of this procedure, which have proven to be unrealistic in the operational context of the Greek North-eastern Aegean islands. UNHCR considers that even in accelerated procedures, deadlines should remain reasonable and in any event be rendered implementable by providing adequate resources and should not undermine the fairness and quality of the procedures.

In light of the above, UNHCR recommends (a) the exemption of family reunion cases under the Dublin III Regulation from the border procedures, (b) not to apply the accelerated procedure to unaccompanied children or other vulnerable groups defined in line with international standards, but to examine their applications in a prioritized procedure,[48] and (c) to revise the deadlines of the highly accelerated border procedures of Article 90 in order to preserve its fairness.

Article 91 para. 2(b) – No possibility for interview in procedure on withdrawal of status

UNHCR regrets to note that this provision limits significantly the rights of persons whose international protection status is being reviewed by offering them only with a right to submit a written statement rather than an interview. Given the extremely severe consequences of an

[47] See UN High Commissioner for Refugees (UNHCR), Response to Vulnerability in Asylum - Project Report, December 2013, available at: http://www.refworld.org/docid/56c444004.html; see also UN High Commissioner for Refugees APR Comments, footnote 32 above.

[48] UN High Commissioner for Refugees APR Comments, footnote 32 above, p. 35.

erroneous withdrawal of status, any such procedure should, however, provide strict guarantees[49] in order to be in accordance with international rules, including the opportunity for the concerned individual to present his/her personal circumstances in the context of an interview; a personal interview is critical to guarantee procedural fairness and that decisions are based on comprehensive information.[50] On the contrary a written procedure does not guarantee the fairness of the procedure, especially if free legal aid is not secured.

Based on the above, UNHCR strongly recommends that Article 91 para 2(b) is revised to provide the opportunity of a personal interview in procedures of withdrawal of status.

Articles 92 to 107 - Examination at appeal stage
UNHCR notes with concern that, although slightly increased, the deadlines to appeal provided for in Article 92 para. 1 (b) of the Law (i.e. deadlines to appeal decisions rejecting applications for international protection under the accelerated procedure, or as inadmissible, as well as in cases where the appeal is submitted while the applicant is in detention), remain insufficient (20 days). **Regarding the deadline to appeal in the context of the highly accelerated border procedure under Article 90 para. 3 (c), UNHCR notes that in Article 92 para. 1 (b) it is seven days while in Article 90 para. 3 (c) it is ten days. This contradiction could create serious interpretative issues and should therefore be promptly corrected.** In any case, the deadline to appeal in the context of the procedure of Article 90 para. 3 remains insufficient either way.

Article 46 para. 4 of Directive 2013/32/EU provides for **reasonable time limits** and other necessary rules for the applicant to be able to exercise his/her right to an effective remedy. These time limits shall not render such exercise impossible or excessively difficult. In this context, it is noted that the CJEU has considered 15 days for lodging an appeal in an accelerated procedure as generally not insufficient in practical terms.[51] "The important point", according to the Court, "is that the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action".[52] However, the CJEU left it to the national courts to determine whether this time line is sufficient in light of individual circumstances.[53] Furthermore, the ECtHR has already ruled that a comparable timeframe (five days) was excessively short and violated the procedural obligation under Article 3 ECHR.[54]

In view of the above, and especially regarding the extremely tight deadline of three days to appeal a decision issued in the context of the highly accelerated border procedure of Article 90 para. 3, UNHCR considers that these time frames are not "reasonable" and, thus, not in line with the Directive.

In addition to the tight timeframes, and taking into consideration the existing gaps in the provision of free legal aid at second instance as required by EU law, UNHCR notes with concern that the following provisions related to the appeals procedure are expected to have a negative impact on

[49] UN High Commissioner for Refugees QR Comments, footnote 15 above, p. 29.
[50] UN High Commissioner for Refugees APR Comments, footnote 32 above, p. 12, see also CJEU *M* (C-560/14), para. 49, *Alheto* (C585/16), para. 130.
[51] Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration, Case C-69/10, European Union: European Court of justice, 28 July 2011, paras. 49, and 67, available at: http://curia.europa.eu/juris/document/document.jsf;jsessionid=25272142F0CB771D0997F6DA61690DE1?text=&docid=108325&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5414898
[52] See Samba Diouf, note 2 above, paras 66-68.
[53] See also UN High Commissioner for Refugees, Fair and Fast, footnote 33 above.
[54] Jabari v. Turkey, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: https://www.refworld.org/cases,ECHR,3ae6b6dac.html

applicants' access to the second instance and the proper examination of their appeal, and as such seriously undermine the right to an effective remedy:

a) Article 82 para. 6 on the calculation of deadlines to appeal from the "notification" of the decision to persons other than the applicant (his/her lawyer, representative, Head of Reception Facility or Head of Regional Asylum Office, if the applicant cannot be found) without requiring that the applicant has knowledge of the issuance of the decision. In the context of the highly accelerated border procedure of Article 90 para. 3 where the deadline to appeal is ten days (or seven according to Article 92 1 (b), see above), coupled with the extremely overcrowded Reception and Identification Centres resulting in limited capacities for the provision of comprehensive information and interpretation services, this will likely lead to many applicants not being notified of their decisions and thus being unable to submit an appeal within the deadline.

b) Article 93 requires an obligatory content of the appeal, which is otherwise rejected as inadmissible. More specifically, the appeal must contain the name, surname, father's name, address of both the applicant and his/her representative/lawyer, date and place of drafting of the appeal, the number of the appealed decision and the specific grounds on which the appeal is based. These requirements are not in accordance both with the administrative character of the procedure and the specific challenges faced by applicants for international protection, especially in view of the non-availability of free State legal aid for all applicants. Regarding the requirement to provide specific reasons to appeal, it should be noted that the Asylum Procedures Directive requires a "full and *ex nunc* examination of both facts and points of law" during the appeal procedure (Article 46 para. 3 of the APD (recast)). In this regard, the authorities must also carry out an assessment **of their own motion.**[55] **Consequently, the obligation for the applicant to provide specific reasons instead of simply requesting the *ex nunc* examination of his/her application for international protection, does not seem to be in accordance with the APD (recast).**

c) Article 94 para. 1 on the obligation to submit an appeal exclusively before the Regional Asylum Offices /Autonomous Asylum Units that has issued the first instance decision. This could lead to insurmountable difficulties for the applicants, especially in cases where the first instance decision has been issued by a RAO/AAU at the border (islands or Evros) while the applicant has moved to the mainland but will have to return to the border to submit an appeal.

d) Article 97 para. 2 on the obligation of applicants to personally appear (or be represented by a lawyer) before the Independent Appeals Committees regardless of whether or not a personal interview shall be carried out, and taking into consideration the lack of free legal aid for all applicants and the fact that the Appeals Committees' seat is exclusively in Athens.

f) Article 98 para. 2 restricting the postponement of the hearing, which is only possible once and for an important reason, if the reason is proved immediately, disregards situations that may arise imposing a further postponement.

g) Article 104 para. 2 on the lack of an automatic suspensive effect for certain categories of appeals, namely appeals against decisions i) rejecting applications for international protection as inadmissible, ii) rejecting a second subsequent application, iii) rejecting an application as manifestly

[55] F.G. v. Sweden, Application no. 43611/11, Council of Europe: European Court of Human Rights, 23 March 2016, available at: https://www.refworld.org/cases,ECHR,56fd485a4.html, para. 127: *J.K. and Others v. Sweden*, Application no. 59166/12, Council of Europe: European Court of Human Rights, 23 August 2016, available at: https://www.refworld.org/cases,ECHR,57bc18e34.html, para. 98.

unfounded, or iv) rejecting an application under the accelerated procedure. UNHCR considers[56] that in respect of the principle of *non-refoulement*, the remedy must provide for an automatic suspensive effect except in very limited cases.[57] States should only be able to derogate from the automatic suspensive effect of an appeal on an exceptional basis, when the first instance decision determines that the claim is "clearly abusive" or "manifestly unfounded" as defined in EXCOM Conclusion No. 30(XXXIV) 1983.[58] Additional exceptions could apply with respect to appeals in the case of second or further subsequent applications, and when the application is rejected as explicitly withdrawn. In such situations, in accordance with international law, the appellant nevertheless must have the right and the effective opportunity to request a court or tribunal to grant suspensive effect.[59] In all other cases, automatic suspensive effect of appeals on rejections should be granted. UNHCR recalls particularly that the remedy against an inadmissibility decision, including based on safe country concepts, must have automatic suspensive effect in law and in practice, where the applicant has an arguable claim of a risk of ill-treatment upon return or of arbitrary deportation from the country of return in accordance with Article 3 and 13 ECHR.[60]

Under ECtHR case law, a remedy based on an arguable claim of certain ECHR violations has to have automatic suspensive effect in order to be considered effective.[61] The ECtHR has held in several asylum cases that the mere possibility to request suspensive effect is insufficient to ensure the applicant's right to an effective remedy. "Rigorous scrutiny" of an arguable claim and effectiveness of the remedy in practice as well as in law is required because of the irreversible nature of the harm that might occur.[62] In essence a claim is arguable if it is supported by demonstrable facts and not manifestly lacking grounds in law.[63] According to the ECtHR, the appeal system as a whole must allow for suspensive effect.[64] If the ordinary appeal procedure does not have automatic suspensive effect it must be possible for the individual to use an urgent procedure to prevent the execution of a deportation order and await the outcome of the ordinary appeal.[65]

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[56] UN High Commissioner for Refugees, APR Comments, footnote 32 above, p. 19.

[57] When there is clearly abusive behavior on the part of the applicant, or where the "unfoundedness" of a claim is manifest, the automatic application of suspensive effect could be lifted. See UNHCR, public statement in relation to Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration pending before the Court of Justice of the European Union, 21 May 2010, available at: http://www.refworld.org/docid/4bf67fa12.html

[58] See EXCOM Conclusion No. 30(XXXIV) 1983, point (d): "'clearly abusive' or 'manifestly unfounded' […] are to be defined as […] those which are clearly fraudulent or not related to the criteria for the granting of refugee status […] nor to any other criteria justifying the grant of asylum". This does not equate to a finding of "manifestly unfounded" in terms of Article 37(3) in conjunction with Article 40. It equates solely to Article 40(1)(a) and not to other grounds stated under Article 40(1). See also the comment on Article 37(3) and 40(1).

[59] UNHCR Improving Asylum Procedures: Comparative Analysis and Recommendations for Law And Practice, March 2010, available at https://www.unhcr.org/4c7b71039.pdf, p. 460.

[60] UN High Commissioner for Refugees, APR Comments, footnote 32 above, p. 20. UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016, available at: http://www.refworld.org/docid/56f3ee3f4.html, see M.S.S. v. Belgium and Greece, Application no.30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, para. 293, available at: http://www.refworld.org/docid/4d39bc7f2.html

[61] Gebremedhin [Gaberamadhien] c. France, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007, para. 66, available at: https://www.refworld.org/cases,ECHR,46441fa02.html; K.R.S. against the United Kingdom, Application No. 32733/08, 2 December 2008, available at: https://www.refworld.org/cases,ECHR,49476fd72.html; Čonka v. Belgium, 51564/99, Council of
Europe: European Court of Human Rights, 5 February 2002, available at: http://www.refworld.org/cases,ECHR,3e71fdfb4.html; Jabari v. Turkey, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: http://www.refworld.org/cases,ECHR,3ae6b6dac.html

[62] Jabari v. Turkey, note 68 above, para. 50; UNHCR public statement in Diouf, note 64 above, para. 23

[63] 0 Boyle and Rice v. The United Kingdom, 19/1986/117/165-166, Council of Europe: European Court of Human Rights, 24 March 1988, para. 52, available at: http://www.refworld.org/cases,ECHR,3ae6b6f74.html

[64] Gebremedhin c. France, note 68 above, and Čonka v. Belgium, note 68 above, para. 79.

[65] Čonka v. Belgium, note 68 above, para. 83.

h) Article 104 para. 4 provides that the Independent Appeals Committees, when deciding on the right to remain (namely, the suspensive effect of the appeal), also have to examine if the return of the applicant would violate the principle of *non-refoulement* as enshrined in Article 3 of the Convention Against Torture, Article 7 of the International Covenant for Civil and Poetical Rights, Articles 31 and 33 of the Geneva Convention and Article 3 of the ECHR. In this case, the Committees shall grant a certificate of non-removal for humanitarian reasons according to [article number missing in the text of the Law] of L. 3907/2011. However, UNHCR considers that when a possible removal during the appeal stage would lead to a violation of the above instruments, the Committees, according to Article 46 para. 6 of the APD (recast), should grant a right to remain to the appellant and decide on the suspensive effect of the appeal. In this case the appellant would remain in the country **under the status of an applicant for international protection until a final decision on his/her appeal has been reached, and not merely be granted a certificate of non-removal bearing lesser rights** (six months renewable residence permits, limitations to access employment, etc.).

Based on the above, UNHCR recommends that the legal framework on appeals is re-examined in order to guarantee the right to an effective remedy in all cases, in line with Greece's obligations under the EU legal framework (Article 46 APD (recast) and Article 47 EU Charter of Fundamental Rights) and Article 13 ECHR.

Part V – Other Provisions

Article 114 - Exit of beneficiaries of international protection from accommodation facilities

The provision foresees that all beneficiaries of international protection residing in Open Reception and Accommodation Facilities are obliged to exit such facilities within six months from the date the new Law enters into force, with the exception of unaccompanied children. UNHCR would like to express its serious concern regarding this abrupt change of policy, which is likely to cause significant operational challenges on the ground. UNHCR has received confirmation from the Greek authorities that the ESTIA accommodation and cash programmes do not fall within the scope of Article 114 and that the exit of beneficiaries of international protection from ESTIA accommodation and cash will continue to take place six months after the notification of the decision granting international protection unless this period is extended on vulnerability grounds or schooling of children. Therefore, the comments below concern only exits from the open reception facilities.

Until the publication of the Law, the exit of beneficiaries of international protection from ESTIA accommodation, open reception facilities and cash assistance was implemented gradually and aligned in terms of dates. A complex mechanism was developed and put in place to ensure the timely communication to affected persons, the careful assessment of vulnerable cases and the timely exit of those beneficiaries who did not fall under any exemption category. At the same time, close coordination was ensured with the International Organisation for Migration, which operates the Helios programme, to facilitate a smooth transition of all beneficiaries who eventually exit into the integration activities of Helios, including the rental subsidy. The exit of beneficiaries of international protection and their entry into Helios was organized in groups, taking into account the operational capacity of the programme, which was designed and implemented in coordination with the Ministry of Citizen Protection. The possible exit of more than 4,000 persons from the open reception facilities by the end of April (up to February there were more than 4,000 beneficiaries of international protection, while more will be notified of positive asylum decisions until April) will compromise to a great extent the current assurances put in place to avoid large numbers of persons being left without any support and homeless with all that this entails for the well-being of the

refugees and the local communities. The implementation of this measure requires the Helios programme to be adjusted substantially, as well as other measures to facilitate the inclusion and integration of a large number of persons by the Greek authorities before the exit.

Moreover, UNHCR would like to raise the fact that certain beneficiaries of international protection face extreme hardships regarding their physical or mental health. Their eventual exit from supported accommodation would pose a risk to their life unless they are referred to a relevant state institution.

Therefore, UNHCR urges the Greek authorities to reconsider categories that can be temporarily exempted from exiting the open accommodation facilities on vulnerability or humanitarian grounds as long as their transition to another facility is not ensured. Moreover, in case the scope of Article 114 shall not include the ESTIA programme, UNHCR strongly recommends that the non-inclusion of ESTIA programme in the scope of Article 114 is expressly stated in a future amendment for reasons of legal certainty.

Article 118 - Temporary Number for Social Security and Healthcare for Aliens

In addition to the comment on Article 55 above, UNHCR notes that the Temporary Number for Social Security and Healthcare for Aliens is also issued to holders of residence permits for humanitarian reasons and victims of crimes outlined in Articles 323, 323A, 349, 351 and 351A of the Penal Code (slave trafficking, trafficking in human beings, procuring/pimping and child sexual abuse) that have no social security and no social security (AMKA) number. As the above categories of persons do not necessarily fall within the scope of the competence of the Asylum Service, this provision risks to multiply the workload of the already overburdened Asylum Service and could lead to further delays.

Moreover, based on the above, UNHCR recommends that the scope of Articles 55 para. 2 and 118 is clarified to the effect that the Asylum Service will be responsible to issue the Temporary Number for Social Security and Healthcare for Aliens only for persons under its competence (applicants and beneficiaries of international protection).

UNHCR
February 2020