

UNHCR observations to the draft amendments of the Act no. 480/2002 Coll. On Asylum and on Amending and Supplementing of Certain Related Acts

I. Introduction

1. On 18 October 2021, the Ministry of Interior of Slovakia issued the Draft Act Amending Act no. 480/2002 Coll. Act on Asylum and on Amending and Supplementing of Certain Related Acts (hereinafter “draft amendment”) and has launched a public consultation process over the proposed amendments which should enter into force as of 1 June 2022.
2. UNHCR has a direct interest in law proposals related to asylum, as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.¹ Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,² whereas the 1951 Convention relating to the Status of Refugees (hereafter referred to as “1951 Convention”)³ and its 1967 Protocol oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union.⁴
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Geneva Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection (“UNHCR Handbook”).⁵ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.
4. Based on its supervisory responsibility, UNHCR wishes to present the following comments regarding the draft amendments which will be also uploaded in the SloLex portal administered by the Government Office of the Slovak Republic.

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html>.

² *Ibid*, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of UNHCR’s supervisory function to one or other specific international refugee conventions. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, *UNHCR’s supervisory responsibility*, October 2002, pp. 7-8, available at: <http://www.refworld.org/docid/4fe405ef2.html>.

³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention.”

⁴ 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>.

⁵ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, available at: <https://www.refworld.org/docid/5cb474b27.html>.

II. General remarks

5. UNHCR would like to commend the Ministry of Interior for introducing various positive changes in the proposed draft amendments aiming at enhancing integration for asylum seekers and persons granted international protection, notably through the reduction of the time-limit to access to the labour market for asylum-seekers.
6. UNHCR also wishes to acknowledge that the draft amendments provide clarity over rights and entitlements of asylum seekers throughout the asylum procedures, notably vis a vis services available immediately after the lodging of the application, as well as early integration measures. UNHCR notes that additional references to the role of legal aid providers and the entitlement to legal counselling and information for asylum seekers would be recommended.
7. UNHCR stands ready to engage in further consultations with the Slovak authorities and provide them with technical support and advice.

III. Specific observations

Access to employment for asylum seekers: Ad Article I, point 34 of the draft amendment (substantial comment)

8. The Ministry of Interior suggests amending Article 23 § 6⁶ on access to employment for asylum seekers. In the current proposal, asylum seekers would be allowed to access the labour market after 6 months from the lodging of the asylum application, instead of the current 9 months' time limit.
9. While commending the Ministry of Interior's proposal to reduce the time-limit for access to employment for asylum-seeker from 9 months to 6 months, UNHCR recommends that this period is further reduced to 3 months.
10. UNHCR believes that the right to work of asylum-seekers contributes to increased socio-economic inclusion prospects, reduces reception costs, hinders exploitation, and provides host communities with motivated workers. This is also in line with the *Proposal for a Directive of the European Parliament and of the Council, laying down standards for the reception of applicants for international protection (recast)*, that encourages Member States to grant access to the labour market no later than three months from the lodging of the application, if the application is likely to be well-founded⁷.

⁶ The current effective provision of the Asylum Act states: "*The applicant must not enter any employment relation or similar labour relation or do business; however, he/she shall be entitled to enter labour-law relations after nine months from the commencement of the procedure, except for the case when*

a) the filing of an administrative action against the decision issued by the Ministry in a procedure for granting asylum does not have suspensive effect and the administrative court has not ruled on the granting suspensive effect; or b) the court of cassation has not ruled on the granting suspensive effect of the cassation complaint against the decision of the administrative court concerning administrative action against the decision issued by the Ministry in a procedure for granting asylum."

⁷ Please refer to [https://ec.europa.eu/home-affairs/system/files/2020-](https://ec.europa.eu/home-affairs/system/files/2020-09/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf)

[09/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf](https://ec.europa.eu/home-affairs/system/files/2020-09/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf)

11. UNHCR consultations with asylum-seekers in Slovakia showed that the current time limit negatively impacts their economic inclusion prospects and undermines their ability to provide for themselves. In addition, the accommodation asylum facilities in Slovakia are located in a remote location close to the Slovak-Hungarian border where the host population mostly speaks Hungarian language instead of Slovak language, which further delays the integration in the host community.
12. UNHCR would also like to refer relevant legal regulations in Italy, Austria or Belgium, which have introduced a shorter period for asylum-seekers to access the labour market which goes from two to four months respectively⁸ and encourages inclusion of asylum seekers into the host country from early stages of the asylum procedures.
13. In addition, UNHCR suggests including an additional sentence *“The applicant's right to enter the labor market according to the first sentence is valid even if other legal regulations governing the stay of foreigners in the Slovak Republic do not allow it (reference to Act No. 404/2011 Coll. On the stay of foreigners)”* under this Article which would ensure the applicant's right to enter the labour market following the three months period is effective, even if other legal regulations governing the stay of foreigners in the Slovak Republic do not yet foresee that possibility. It should be noted that this Amended Act on Asylum would be posterior and more specific, and therefore its application shall prevail over previous Acts that regulate access to the labour market for other categories of foreigners, notably the Act No. 404/2011 Coll. On Residence of Foreigners.

Long term integration measures: Ad Article I, point 43 of the draft amendment (ordinary comment)

14. The Ministry of Interior proposes to introduce new provisions under Article 28 of the Asylum Act, which defines the initial integration measures available to refugees and subsidiary protection holders.
15. UNHCR commends the Ministry of Interior’s initiative to introduce new provisions related to initial integration of refugees and subsidiary protection holders in Slovakia in Article 28. UNHCR recalls that this is also one of the milestones defined by the Ministry of Interior in its recently issued policy paper *“the Migration Policy of the Slovak Republic for 2021-2025”*.
16. To achieve a successful inclusion process, there are several targeted actions which are encouraged including i) facilitate access to adequate language learning, ii) engage on skills assessment, recognition of diploma and professional experience, iii) promote targeted upskilling based on the socio-economic profiles and market opportunities iv) facilitate traineeships. It is also recommended to use the waiting time in accommodation facilities to learn the language and improve skills as well as to have the opportunity to benefit from skills assessment or validation services.

⁸ Please refer to <https://asylumineurope.org/reports/country/italy/reception-conditions/employment-and-education/access-labour-market/> for the information related to Italy; to <https://www.refugees.wien/en1/info-for-refugees/working/#:~:text=As%20a%20person%20who%20has,a%20job%20anywhere%20in%20Austria> for the information related to Austria and to <https://www.fedasilinfo.be/en/when-can-you-work> for the information related to Belgium.

17. Therefore, UNHCR recommends that the Ministry of Interior further elaborates and defines also post-initial integration measures as defined in Article 16 and/or adjust related integration policies in cooperation with the other ministries so that the legal framework and public policies promote long-term integration.⁹

Meaningful access to legal aid and representation

i) Ad Article I, point 31 of the draft amendment (substantial comment)

18. The Ministry of Interior proposes to introduce a new provision in Article 22 § 8 which defines the services that will be provided to asylum-seekers after the lodging of their application, and at the reception facilities. Those include psychological services, social counselling and a course of cultural orientation based on his/her individual needs.

19. While UNHCR commends the Ministry of Interior's proposal to provide clarity on asylum seeker's entitlements during the asylum procedures, explicit references to meaningful, timely and effective access to legal counselling services is recommended. In UNHCR's view, ensuring access to information and legal counselling is a precondition for asylum seeker's effective participation in the asylum procedures¹⁰.

20. UNHCR reiterates that free legal assistance should be provided as soon as possible after the intention to seek asylum is registered, and at all stages of the procedure, including at first instance and during the personal interview. This should ideally also encompass the preparation of procedural documents. The provision of quality information and legal aid from the onset of the procedure enhances the asylum seekers' understanding of their rights and obligations before asylum authorities and often leads to efficiencies on decision making.¹¹

21. UNHCR also recommends that in the case of applicants in need of specific procedural guarantees and unaccompanied children¹², access to free legal assistance and representation is provided systematically, irrespective of the applicant's request.

ii) Ad Article I, point 5 of the draft amendment (ordinary comment)

22. UNHCR would like to use this opportunity to suggest the Ministry of Interior to amend Article 6 § 7 to allow the legal counsel to intervene during the asylum interview and raise additional questions or suggest the interviewer additional areas for questioning, expanding their role beyond the possibility to comment upon completion of the interview.

⁹ UNHCR, Recommendations for the European Commission's Proposed Pact on Migration and Asylum, January 2020, page 10, <https://www.refworld.org/docid/5e3171364.html>

¹⁰ UNHCR, Executive Committee Conclusion No 8 (XXVIII) Determination of Refugee Status (1977), <http://bit.ly/2vevwzi>, UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (1979) (re-edited 1992), para. 192, <http://bit.ly/2tmgo5r>

¹¹ UNHCR, Global Consultations on International Protection, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 31 May 2001, para. 50 (g), <http://bit.ly/2rtjSl6> ; UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice, March 2010, pp. 87-88, <http://bit.ly/2eK0viU>, UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, <https://www.refworld.org/docid/5cb597a27.html>, p. 15

¹² ECRE, Right to Justice: Quality Legal Assistance for Unaccompanied Children – Annex I, Guiding Principles for Quality Legal Assistance for Unaccompanied Children, <http://bit.ly/2zAwACp>

23. In UNHCR's view, this would strengthen asylum-seekers' access to quality legal representation thereby enabling them to fully exercise their rights during the asylum procedure. This is particularly important in the case of asylum-seekers with specific needs to ensure that their specific procedural needs are met.
24. It should be noted that UNHCR has already made the above recommendation in the UNHCR's summary of findings and recommendations to quality review of decision-making process conducted in Slovakia in 2019.

Time limit applicable to border procedures: Ad Article I, point 7 of the draft amendment (substantial comment)

25. The Ministry of Interior proposes extending the time limit for border procedures from 7 days to 28 days. UNHCR would like to stress that border procedures often imply the use of movement restrictions and detention and in UNHCR's view, detention of asylum-seekers should not be used by default or mandatorily for all arrivals, but rather remain the exception.¹³
26. While noting that the suggested amendment is in principle consistent with the *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection* (hereinafter "the Asylum Procedures Directive"), UNHCR underlines that the facilities located at borders or in transit facilities at the airport¹⁴ are currently not suitable for confinement for up to 28 days as these are typically designed for implementing short-term apprehensions, and therefore substantial investment on reception facilities would be required to ensure that the conditions are in accordance with international and national obligations.
27. In addition, in UNHCR's view, initial vulnerability screening carried out by competent personnel (medical/psycho-social) are key to identify more complex specific needs that bear relevance for the asylum procedure, such as in the case of unaccompanied children, victims of trauma or trafficking and person with mental disabilities, for whom the use of border procedures as currently foreseen in the law would not be suitable¹⁵.
28. UNHCR therefore recommends the Ministry of Interior to ensure that detention of asylum-seekers during border procedures is used as last resort and the required safeguards are foreseen; and encourages the use of alternatives to detention in border procedures. Should the time limit be extended, UNHCR recommends that reception and transit facilities are upgraded to accommodate asylum seekers for longer periods with adequate conditions. UNHCR further recommends that the draft amendments include explicit exceptions from border procedures for certain categories of persons with specific needs.

Conclusion

¹³ UN High Commissioner for Refugees (UNHCR), *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, <https://www.refworld.org/docid/5f8838974.html>

¹⁴ Please refer to case of *Amuur v. France* (application no. 19776/92) in which the European Court of Human Rights emphasized the need for legal, humanitarian and social assistance to be available in the airport transit zones.

¹⁵ *Ibid* 6



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29. UNHCR encourages the Ministry of Interior to make use of these comments to strengthen the existing protection space for the benefit of asylum-seekers as well as to facilitate integration of refugees and subsidiary protection holders. UNHCR stands ready to further support efforts in this regard.

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