



UNHCR

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

Provisional comments by the UNHCR Regional Representation for Northern Europe relating to the Draft Amendments to the Lithuanian Aliens Law (No. XIIP-3291)

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (RRNE) appreciates the opportunity to present its comments on the Draft Law No **XIIP-3291** amending the Law on the Legal Status of Aliens (hereinafter – ‘Draft Amendments’). We understand that the Draft Amendments *inter alia* aim at transposing the recast Asylum Procedures Directive¹ (hereafter – ‘APD’) and the recast Reception Conditions Directive² (hereafter – ‘RCD’).
2. UNHCR has a direct interest in law proposals in the field of 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 refugees³. According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”⁴ 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 Convention Relating to the Status of Refugees (hereinafter - ‘1951 Refugee Convention’). Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereinafter - ‘UNHCR Handbook’) and subsequent Guidelines on International Protection.⁵ This supervisory responsibility is reiterated in Article 35 of the 1951

¹ 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 (recast), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <http://www.refworld.org/docid/51d29b224.html>

² European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <http://www.refworld.org/docid/51d29db54.html>

³ 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.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (“UNHCR Statute”).

⁴ *Ibid.*, paragraph 8(a).

⁵ UN High Commissioner for Refugees (UNHCR), Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/IP/4/ENG/REV. 3, available at:

<http://www.refworld.org/docid/4f33c8d92.html>.

Convention, and in Article II of the 1967 Protocol relating to the Status of Refugees.⁶

3. UNHCR's supervisory responsibility has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78 (1) of the Treaty on the Functioning of the European Union, as well as in Declaration 17 to the Treaty of Amsterdam, which provides that "consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy". Secondary EU legislation also emphasizes the role of UNHCR. Hence, recital 22 of the recast Qualification Directive states that consultations with UNHCR "may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention".

II. Specific Observations

4. At the outset, UNHCR is pleased to note that the present Draft Amendments represent a solid legislative initiative capable, if approved, of significantly strengthening the protection of asylum-seekers, refugees and beneficiaries of subsidiary protection in Lithuania. UNHCR also notes, with appreciation that it was given the possibility in line with Article 35 of the 1951 Convention to contribute with comments on the initial Draft Amendments. In particular, UNHCR welcomes and strongly supports the requirement to provide third country nationals with information on the right to apply for asylum and applicable procedures where there are indications that those third-country nationals may wish to request asylum (Article 17 of the Draft Amendments), the obligation to identify vulnerable persons and provide them with reception conditions that take into account their special needs (Article 18 (2) and (3) and Article 20 (2) of the Draft Amendments), the exemption of unaccompanied minors and survivors of torture, rape or other serious forms of psychological, physical or sexual violence from accelerated procedures (Article 24 (5) of the Draft Amendments), the provision allowing for accommodating vulnerable asylum-seekers and their family members in accommodation facilities run by non-governmental organizations (Article 27 (4) of the Draft Amendments), the duty of the Migration Department to arrange for a medical examination and to seek advice from experts on particular issues where it is relevant for the examination of an asylum application (Article 28 (2) and Article 31 of the Draft Amendments), and the shortest possible time requirement with respect to detention of asylum-seekers (Article 43 (4) of the Draft Amendments). UNHCR also notes with appreciation that the Draft Amendments, for the first time, introduce a legislative framework for resettlement and relocation of persons in need of international protection (Article 1 (2) (13) and Article 35 of the Draft Amendments).

⁶ According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the 1951 Convention".

5. UNHCR, however, considers that some provisions of the present Draft Amendments may be further clarified with a view to ensuring that the national legislative framework is in full compliance with both the international standards flowing from the 1951 Refugee Convention and other relevant instruments of international law and the EU asylum *acquis*. UNHCR further recalls that Article 5 of the recast Asylum Procedures Directive and Article 4 of the recast Reception Conditions Directive explicitly authorise Member States to introduce or retain more favourable standards, and hopes that this approach will inform the debates on the present Draft Amendments and that the amendments to the Law on the Legal Status of Aliens (hereinafter – ‘Aliens Law’) will not lead to lowering the level of protection currently available for asylum-seekers in Lithuania.

➤ Accommodation arrangements for asylum-seekers

6. UNHCR notes with appreciation that the Draft Amendments provide for wider community based reception arrangements for asylum-seekers⁷. UNHCR strongly supports this approach and considers that, if approved, the proposed provisions would strengthen the capacity of the national asylum system to offer gender, age and trauma sensitive reception services to asylum-seekers in line with Article 21 of the recast Reception Conditions Directive. UNHCR notes, however, that the number of newly arriving asylum-seekers may increase at any time, as this is currently the case in other European countries. This would require a flexible and timely response by both the state and the civil society. In this respect, UNHCR notes that pursuant to the Aliens Law currently in force and the Draft Amendments, the Foreigners Registration Centre remains the only state run reception facility available for asylum-seekers in Lithuania with the exception of unaccompanied minors who are offered accommodation at the Refugee Reception Centre in Rukla. According to the European Migration Network study, the maximum accommodation capacity of the Foreigners Registration Centre is 92 persons.⁸ This infrastructure may appear to be insufficient if larger numbers of asylum-seekers would arrive to Lithuania. Moreover, despite sound efforts of the Lithuanian Government to improve material reception conditions in the Foreigners Registration Centre, UNHCR remains concerned that asylum-seekers, including vulnerable ones, find themselves in a militarized environment in immediate proximity of the detention unit of the center.⁹

⁷ Pursuant to the proposed Article 79 (4) of the Aliens Law, as provided in Article 27 of the Draft Amendments, vulnerable asylum-seekers and their family members may be accommodated in reception facilities run by non-governmental organizations by a decision of the Migration Department. Vulnerable asylum-seekers may also be allowed to stay with legally residing close relatives or a representative.

⁸ EMN Focused Study 2013: The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution from Lithuania, page 3, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/16a.lithuania_national_report_reception_facilities_en_final_en.pdf

⁹ On the conditions in the Foreigners Registration Centre and its impact on social integration see Integration of Refugees in Lithuania: Participation and Empowerment. Understanding Integration in Lithuania through an age, gender and diversity-based participatory approach, UNHCR, October – November 2013, page 38, available at: http://www.unhcr-northern-europe.org/fileadmin/user_upload/Documents/PDF/Lithuania/2013-Nov-Lit-Report-Integration-of-refugees-in-Lithuania.pdf; see also CAT Concluding Observations, 17 June 2014, CAT/C/LTU/CO/3.

Therefore, UNHCR would recommend having more flexibility as to where to accommodate asylum-seekers including in the event of an increase of arrivals beyond the capacity of the Foreigners Reception Center, in particular using, when necessary, the Refugee Reception Center or/and other facilities that meet international and EU reception standards. For that purpose it is necessary to provide, at the legislative level, for the possibility to accommodate asylum-seekers, notably those belonging to vulnerable groups and who otherwise would not be able to secure their own accommodation, in the Rukla Refugee Reception Centre or other relevant facilities.

7. Furthermore, in order to ensure a flexible and fast response to an influx, UNHCR recommends that the Government (and/or relevant Ministries) be entrusted to identify/establish other reception capacities should the situation require so.

UNHCR recommends adjusting the proposed Article 2 (17-1) as follows:

“The Refugee Reception Centre is a budgetary institution providing social services to aliens who have been granted asylum in the Republic of Lithuania and accommodation for unaccompanied minor aliens as well as for implementing social integration of the aliens who have been granted asylum. **The Refugee Reception Centre may also be used for providing accommodation and other reception conditions for asylum applicants, notably the vulnerable ones in accordance with the procedure laid down by the Minister of Social Security and Labour and the Minister of the Interior.**”

UNHCR further recommends providing in the proposed Article 79 (4) as follows:

“The concerned asylum applicants may be accommodated at the Refugee Reception Centre or other state run or municipal facilities by decision of the Migration Department in accordance with the procedure laid down by the Minister of Social Security and Labour and the Minister of the Interior.”

UNHCR further recommends introducing paragraph 5 in the proposed Article 79 that would provide for the possibility of establishing additional reception facilities as follows:

“Additional reception facilities for asylum applicants may be established by the Government of the Republic of Lithuania.”

➤ Schooling and education of minors

8. Pursuant to the proposed Article 71 (2), as provided in Article 21 of the Draft Amendments, the right of an asylum seeking child to access the general education schools and vocational schools must be implemented not later than within 3 months from the date on which the application for asylum was lodged.
9. In UNHCR’s view, access to education for children should be granted as soon as possible following the lodging of the application for asylum in order to avoid further interruptions

in education, unless the best interests of the child would suggest otherwise.¹⁰ UNHCR also notes that in practice access to school for asylum seeking children is generally secured within several weeks in Lithuania. UNHCR considers that this is an example of a good practice and is concerned that the suggested reference to the 3 month period, if not accompanied by additional safeguards, may lead to unnecessary delays.

UNHCR recommends deleting the line “*The possibility to implement this right shall be ensured not later than within 3 months from the date on which the application for asylum was lodged*” in the proposed version of Article 71 (2) of the Aliens Law or, alternatively, modifying it as follows:

*“The possibility to implement this right shall be ensured **as soon as practicably possible**, and in any case not later than 3 months from the date on which the application for asylum was lodged.”*

➤ Accelerated procedures

10. Article 24 of the Draft Amendments provides for introducing a revised list of grounds for applying an accelerated procedure in Article 76 (2) of the Aliens Law. While in the APD, the list of grounds of accelerated procedures is an optional clause, the proposed Article 76 (2) is essentially a mandatory provision, since it requires the Migration Department to apply an accelerated procedure once an application falls under one of the grounds stipulated in the proposed Article 76 (2).
11. In this respect, UNHCR notes that Article 31 (2) of the recast Asylum Procedures Directive requires Member States to comply with the principle of ***an adequate and complete examination*** in all cases, and Article 31 (9), in the context of accelerated procedures, further specifies that Member States may exceed time limits for completing accelerated procedures “where necessary in order to ensure an adequate and complete examination of the application for international protection”. This essential provision is missing in the Draft Amendments. Instead, the proposed Article 24 (6) stipulates that the application initially falling under any of the grounds of accelerated procedures shall be subject to general time limits where the concerned grounds “cease to exist” (*lith. išnyksta*). UNHCR considers that this safeguard is not sufficient for ensuring “an adequate and complete examination of the application for international protection” as required by the Directive, in particular because some of the proposed grounds, e.g. the fact that the applicant has lodged a subsequent application for asylum or is from a safe country of origin would not “cease to exist” in the course of the accelerated procedure. Yet, in both of these cases the concerned applicant may eventually qualify as a refugee or a person in need of subsidiary protection. Hence, it is vital to ensure that the legislative framework provides for the possibility to channel the application into a regular procedure where it later appears that more time is needed to ensure an adequate and complete examination of the application.

¹⁰ UN High Commissioner for Refugees (UNHCR), UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), April 2015, page 37, available at: <http://www.refworld.org/docid/5541d4f24.html>

12. Furthermore, the list of grounds of accelerated procedures, as stipulated in the proposed Article 76 (2) of the Aliens Law, *inter alia* encompasses situations whereby the asylum applicant:

- refuses to comply with an obligation to have his or her fingerprints taken (proposed Article 76 (2) (7));
- may, for serious reasons, be considered a danger to the state security or public, or has been forcibly expelled for serious reasons of state security or public order (proposed Article 76 (2) (8)).

13. In this respect, UNHCR reiterates its view¹¹ that non-compliance with the obligation to have fingerprints taken does not necessarily give an indication of the substance of the claim. There may be a variety of reasons, including cultural sensitivities, why asylum-seekers may refuse to have their fingerprints taken. While such a refusal may be taken into account as an element amongst others when assessing the credibility of the claim, it should not serve as a basis to channel the application into an accelerated procedure.

14. As regards the application of accelerated procedures with respect to the applicant who allegedly represents a threat to the state security or public order, UNHCR reiterates that the concerned cases may involve serious circumstances requiring detailed examination. Given the severe consequences of a negative decision in cases of applications raising issues of national security, the Parliamentary Assembly of the Council of Europe¹² has recommended that these be exempted from accelerated procedures. UNHCR supports this recommendation and reaffirms that this ground should therefore not be invoked to accelerate such claims.¹³

UNHCR recommends inserting the following line in the proposed Article 76 (2):

“The time limits provided for in Article 81 (1) and (2) shall also apply where the Migration Department, based on the assessment of the circumstances of the case, concludes that more time is needed in order to ensure an adequate and complete examination of the application for asylum”.

UNHCR also recommends deleting sub-paragraphs 7 and 8 in the proposed Article 76 (2).

UNHCR Regional Representation for Northern Europe

¹¹ UN High Commissioner for Refugees (UNHCR), UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004), 10 February 2005, page 32, available at: <http://www.refworld.org/docid/42492b302.html>

¹² Council of Europe: Parliamentary Assembly, *Resolution 1471 (2005) on Accelerated Asylum Procedures in Council of Europe Member States*, 7 October 2005, 1471 (2005), para 8.9, at: <http://www.unhcr.org/refworld/docid/43f349e04.html>

¹³ UN High Commissioner for Refugees (UNHCR), *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, p.32, available at: <http://www.refworld.org/docid/42492b302.html>

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