



Comments by the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Northern Europe on the draft Law Proposal amending the Aliens Act and related laws of the Republic of Finland

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Ministry of the Interior of Finland for the invitation to comment on the draft Law Proposal of 21 December 2015 amending the Finnish Aliens Act, Citizenship Act, Act on Border Control and Act on the Population Information System and Authentication Services of the Population Register Centre¹ (hereafter the “Proposal”).
2. 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,² UNHCR has a direct interest in law and policy proposals in the field of asylum. 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[.]”³ This supervisory responsibility is reiterated in the preamble as well as reflected in Article 35 of the 1951 Convention,⁴ and in Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as the “1951 Convention”). UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in the 1951 Convention,⁵ as well as by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

¹ Available at:

http://www.intermin.fi/download/64531_Hallituksen_esitys_luonnos_ulkomaalaislain_muutos_21122_015.pdf?91aef15aa80ad388.

² 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”).

³ *Ibid.*, para. 8(a).

⁴ 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, *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/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

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 (hereafter "TFEU"),⁶ 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*".⁷ Secondary EU legislation also emphasizes the role of UNHCR. For instance, Article 29 of the "Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast)"⁸ (hereafter "recast APD") states 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*".

II. General Observations

4. UNHCR notes that according to the Proposal certain administrative tasks regarding immigration are transferred from the police and border guards to the Finnish Immigration Service (hereafter "Migri"). In matters relating to residence permits, travel documents for aliens and citizenship, the duties would be transferred in their entirety and thus make Migri the sole authority mandated to grant permits to aliens. The police and border guards would be responsible for the notification of decisions, removal procedures as well as for tasks relating to the monitoring of aliens.
5. UNHCR further notes, that in matters relating to asylum the transfer of responsibilities would be partial. The handling of asylum applications would be centralized to Migri, while the police's and border guards' tasks within the asylum procedure would be restricted to receiving the asylum application and registering the applicant, executing the decision on removal from the territory and the notification of certain decisions.
6. The Proposal also contains a new provision on the maximum handling time of applications for international protection of six months and which also sets out the possibilities of prolonging this time-frame, based on Article 31 (3-5) of the recast APD.
7. In general, UNHCR welcomes the proposed amendments. UNHCR appreciates the intention to make Migri the sole authority granting permits and giving Migri the full role as determining authority in the asylum procedure.

⁶ 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>.

⁷ European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340/134 of 10.11.1997, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17: EN:HTML>.

⁸ European Union: Council of the European Union, *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, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html>.

III. Specific Observations

Migri's role in the asylum procedure

8. It is UNHCR's understanding that the police and border guards would no longer examine the identity, entry into the country and travel route of the applicant as a part of the asylum procedure, as this task would be transferred to Migri. UNHCR welcomes this, since it is UNHCR's recommendation that all interviews, including those on admissibility, be conducted by a single and central determining authority, in line with the guidance contained in UNHCR's Executive Committee Conclusion No. 8 (XXXVIII) of 1977,⁹ and as also outlined in UNHCR's comments to the 2009 recast APD.¹⁰ By having qualified staff from the central determining authority conduct also the admissibility interviews, the procedure is "frontloaded" with quality, and the likelihood of decisions being upheld upon appeal greater.
9. In its observations from July 2014 on the Draft Law Proposal of 26 May 2014 amending the Aliens Act for the transposition in Finland of the recast EU Directive on Asylum Procedures,¹¹ UNHCR RRNE recommended to provide that (also) admissibility interviews are conducted by a single and central determining authority, in line with the general principle reflected in Article 4 (1) of the recast APD concerning the designation of a single determining authority responsible for all first instance procedures and decisions. UNHCR appreciates that this recommendation now becomes a reality.
10. It is also UNHCR's understanding that the current possibility to ask the police to conduct asylum interviews would be abolished as a result of the transfer of tasks to Migri. UNHCR welcomes this as being in line with the principle of a single and central determining authority as described above in paragraphs 8 and 9.
11. UNHCR further understands that as a result of transferring responsibilities to Migri, the police or border guards will no longer initiate medical age assessments which will only be done by Migri. UNHCR welcomes this proposed amendment, and would like to emphasize the importance of following the relevant guidelines for age assessments.¹² Age assessments are only to be conducted in cases when a

⁹ UNHCR, Determination of Refugee Status, 12 October 1977, No. 8 (XXVIII) - 1977, e (iii), available at: <http://www.unhcr.org/refworld/docid/3ae68c6e4.html>.

¹⁰ UNHCR, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, pp.9-10, available at: <http://www.refworld.org/docid/4c63ebd32.html>. Also UNHCR, UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and the Council on common procedures for granting and withdrawing international protection status (Recast COM (2011) 319 final, January 2012, pp. 8-9, available at: available at: <http://www.refworld.org/docid/4f3281762.html>.

¹¹ Observations by the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Northern Europe on the Draft Law Proposal of 26 May 2014 amending the Aliens Act for the transposition in Finland of the recast EU Directive on Asylum Procedures, available at http://www.unhcr-northerneurope.org/fileadmin/user_upload/Documents/PDF/Finland/FIN-2014-Jul-Law_Comments_APD.pdf.

¹² See for instance, ExCom, Conclusion on *Children at Risk*, 5 Oct. 2007, No. 107 (LVIII) - 2007, (hereafter "ExCom, Conclusion No. 107"), para. (g)(ix), available at:

child's age is in doubt and in a child-sensitive and holistic manner. In cases of doubt, a person claiming to be under the age of 18 should provisionally be treated as such.¹³

Time-frame for decisions on international protection

12. According to the Proposal, the Aliens Act is to be amended in order to transpose Article 31 (3-5) of the recast APD concerning a six-months maximum time period for handling asylum applications and rules enabling a prolongation of the period. These provisions would be included in a new Section (98 a). The aim of the Proposal is that this particular amendment will enter into force on 20 July 2018, which is the time-limit imposed in the recast APD.
13. It is UNHCR's understanding that the Proposal adds to the legislation the possibility to extend, for a maximum of nine further months, the proposed six-month deadline to conclude the procedure where "a large number of third country nationals or stateless persons simultaneously request international protection which makes it very difficult to conclude the procedure within the six-month time-limit". To render this provision clear and consistently implementable, UNHCR considers it necessary to define "a large number of third country nationals or stateless persons [that] simultaneously request international protection." In the absence of a clear definition, this concept could lead to unjustified prolongation of procedures, with associated costs and uncertainties for all concerned.¹⁴
14. It is further UNHCR's understanding, that the Proposal introduces the possibility to postpone the conclusion of procedures where the determining authority cannot reasonably be expected to decide within the time limit of six months "due to an uncertain situation in the country of origin which is expected to be temporary". While UNHCR accepts that in certain circumstances, the examination of an application could validly be suspended or deprioritised for short periods, this

<http://www.unhcr.org/refworld/docid/471897232.html>; CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para 31 (i), available at: <http://www.refworld.org/docid/42dd174b4.html>; Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 12, available at: <http://www.refworld.org/docid/4ff535f52.html>; UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, para. 75, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>; UNHCR, *THE HEART OF THE MATTER: Assessing Credibility when Children Apply for Asylum in the European Union*, December 2014, pp. 102-103, available at: www.refworld.org/docid/55014f434.html; UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, Geneva, 1997, paras. 5.11, 6, available at: <http://www.unhcr.org/refworld/docid/3ae6b3360.html>; UNICEF, *Age Assessment: A Technical Note*, January 2013, available at: <http://www.refworld.org/docid/5130659f2.html>.

¹³ UNHCR, *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, p. 34, available at: <http://www.refworld.org/docid/5423da264.html>. Article 25 (5) of the recast APD similarly suggests a step-by-step process where Member States may use medical examinations to determine the age of unaccompanied minors where Member States have doubts concerning the applicant's age.

¹⁴ UNHCR, *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, p. 24, see footnote 10 above.

should be done in narrowly circumscribed cases and for short periods only, which are subject to regular reassessment.

15. UNHCR notes that the Proposal already provides authorities with the possibility to extend the time-limit for the examination of an application. In fact, cases where there is “an uncertain situation in the country of origin” fall within the scope of the possibility to extend the time limit of “further six months where complex issues of facts and law are involved”. “Uncertainty” is an inherent feature of most or all modern conflicts and other situations in which persecution and serious harm are prevalent. Asylum decision-makers are required in the large majority of cases to weigh the risk of future persecution or serious harm in situations that are dynamic. It is thus questionable whether such a provision is useful in the context of asylum procedures in EU Member States today, or can be reconciled with the obligation to provide protection to those who meet the legal criteria under European and international law.¹⁵
16. For example, Article 18 of the EU Charter of Fundamental Rights states that the “Right to asylum shall be guaranteed in accordance with the Geneva Convention [...]”.¹⁶ The Charter enshrines a positive obligation for Member States to provide international protection. Such a postponement of the enjoyment of the right to asylum would potentially be at variance with the Charter. The 1951 Convention and the European asylum *acquis* provides for cases where an “uncertain situation” in the country of origin ends. When the circumstances in connection with which the applicant has been granted international protection have ceased to exist, cessation¹⁷ or withdrawal of his/her status can be invoked. Rather than postponing the conclusion of the procedure, Member States should process applications, grant international protection where required, and make use of the instruments provided for by the EU instruments to withdraw international protection when the circumstances in connection with which the applicant has been granted international protection cease to exist.¹⁸ Considering the above, UNHCR strongly recommends deleting Subsection 2 of Section 98 a.

IV. Conclusion and recommendations

17. UNHCR welcomes the amendments to strengthen the role of Migri as the single and central determining authority. By ensuring that qualified staff from the central determining authority conduct all stages of the asylum procedure, including both interviews - on admissibility and on substance - the procedure is “frontloaded”.

¹⁵ UNHCR, *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, pp. 24–25, see footnote 23 above.

¹⁶ European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), available at: <http://www.unhcr.org/refworld/docid/3ae6b3b70.html>.

¹⁷ UNHCR, Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses), 10 February 2003, HCR/GIP/03/03, available at: <http://www.unhcr.org/refworld/docid/3e50de6b4.html>.

¹⁸ UNHCR, *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, pp. 24–25, see footnote 10 above.

UNHCR also welcomes the introduction of a maximum time-period for the asylum procedure since it is in the interest of all parties to ensure efficient, as well as fair, procedures within a reasonable time. UNHCR however wishes to convey two recommendations concerning the possibilities to prolong the maximum time-period.

UNHCR recommendations:

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- The Government to include a definition of “a large number of third country nationals or stateless persons that simultaneously request international protection” in the Proposal.
- The Government to delete Subsection 2 of Section 98 a from the Proposal.

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