UNHCR

Observations by the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Northern Europe on the Law Proposal of 30 October 2014 (218/2014) amending the Aliens Act for the transposition in Finland of the recast EU Directive on Asylum Procedures

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (RRNE) is grateful to the Administration Committee of the Parliament of Finland for the invitation to provide comments on the law proposal transposing the 'Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast)'[1] (hereafter 'recast APD'). UNHCR has participated in round table discussions during the drafting of the law amendments, and submitted both initial observations to the proposal in March 2014 as well as law comments in July 2014.

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 refugees[2]. 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] 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 (hereafter '1951 Convention'). Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ('UNHCR Handbook') and subsequent Guidelines on International Protection[4]. UNHCR's supervisory responsibility is reiterated in Article 35 of the 1951 Convention, and in Article II of the 1967 Protocol relating to the Status of Refugees[5].

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[1] 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.

[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/cgibin/texis/vtx/refworld/rwmain?docid=3ae6b3628 ("UNHCR Statute").

[3] *Ibid.*, paragraph 8(a).

[4] 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/1P/4/ENG/REV. 3, available at: http://www.refworld.org/docid/4f33c8d92.html.

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

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 ('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 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. Observations

4. In general, UNHCR welcomes initiatives aimed at bringing national legal frameworks in line with international and regional standards in the area of asylum and refugee protection, and would like to convey the following observations in respect of specific provisions in the law proposal.

Section 95. Lodging applications for international protection

5. UNHCR notes that the explanatory note to the law proposal acknowledges that the authorities referred to in Section 95 should have adequate knowledge, and that their staff should receive training corresponding to their tasks and responsibilities. UNHCR wishes to stress that this is a requirement in the recast APD, which needs to be implemented effectively. UNHCR further recommends that Finland also introduces, into the Aliens Act, the possibility for legal representatives to lodge applications on behalf of asylum-seekers who do not have the possibility to do so (e.g. people kept in criminal prison and/or unable for medical reasons), in line with Article 6 (4) of the recast APD.[8]

Section 96 a. Special procedural guarantees

6. UNHCR notes that the explanatory note to the law proposal contains a number of requirements that the relevant authorities should fulfil when determining needs for special procedural guarantees. In this regard, UNHCR recommends that an individual, multi-disciplinary and systematic assessment should be conducted by qualified and competent personnel, in line with the confidentiality principle, as soon as possible after the making of an application. Such an assessment could be conducted in a multi-stage process, starting with an initial, rapid assessment that could be completed at a later stage. UNHCR moreover

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[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] See UN High Commissioner for Refugees (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, chapter 6, available at: http://www.refworld.org/docid/4c63ebd32.html.

recommends that monitoring mechanisms are put in place for verifying that adequate support is provided throughout the asylum procedure to address special needs identified. UNHCR welcomes the safeguard introduced in the explanatory note to the law proposal, that special needs identified at a later stage in the asylum procedure must be assessed and adequate support provided accordingly, and notes that this is an obligation according to Article 24 (4) of the recast APD.

Section 97. Asylum investigation

7. According to the law proposal, Section 97 of the Aliens Act will be amended based on Article 5 of the Dublin III Regulation, according to which the determining Member State shall conduct a personal interview with the applicant. Specifically, a requirement that the Police or border guards should orally find out information which is relevant to determine the Member State responsible for examining the application will be introduced in Section 97. This corresponds to the current practice in Finland. In order to further clarify the scope of this requirement, UNHCR recommends that the Aliens Act mentions that it is essential that the personal interview provides the applicant with an opportunity to raise, for example, circumstances which may preclude his/her transfer to a particular State on protection grounds; and/or clarify circumstances which help in identifying the responsible Member State.[9]

8. Pursuant to Article 34 of the recast APD, Member States may provide that personnel of authorities other than the determining authority can conduct personal interviews on admissibility, provided they receive the required basic training, in particular with respect to international human rights law, the European Union asylum acquis and interview techniques. UNHCR nonetheless recommends that all interviews, including those on admissibility, be conducted by the single and central determining authority, in line with the guidance contained in UNHCR's Executive Committee Conclusion No. 8 (XXXVIII) of 1977[10]. Thus, in UNHCR's comments to the 2009 recast APD, UNHCR welcomed the introduction in EU law of the principle that a single and competent determining authority should conduct the asylum interviews and examine all asylum applications, and reiterated its view that also admissibility interviews should be carried out by the determining authority[11]. An incorrect certification of a claim as inadmissible may have a dramatic impact on the life of an applicant. Furthermore, 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

[9] UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's Proposal for a recast of the 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 ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008)*, 18 March 2009, chapter 8, available at: http://www.refworld.org/docid/49c0ca922.html.

[10] UNHCR, *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, letter e (iii), available at: http://www.unhcr.org/refworld/docid/3ae68c6e4.html.

[11] *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)*, August 2010, Se footnote 8.

appeal greater. UNHCR therefore recommends that the Subsection introduced to Section 97 in the draft law proposal be amended to provide that (also) admissibility interviews are conducted by the single and central determining authority, in line with the general principle reflected in Article 4 (1) of the recast APD on the designation of a single determining authority responsible for all first instance procedures and decisions.

9. The third amendment to Section 97 in the law proposal introduces further restrictions to the possibilities for Migri to ask the police in Finland to conduct asylum interviews, in line with Article 14 in the recast APD. In line with this proposal, the police can conduct asylum interviews only temporarily and only if there is a sudden big increase in the number of applications for international protection, making it impossible in practice for the determining authority to conduct timely interviews on the substance of each application. UNHCR welcomes this restriction. Since the directive only applies to applications for international protection by third country nationals and stateless persons, the explanatory note of the law proposal notes that the police could still conduct asylum interviews with applicants from within the EU. UNHCR would recommend that the competence for interviewing applicants from EUMS also lies with the determining authority.

10. The explanatory note also lists the training needed for the police to be able to conduct asylum interviews. In cases of transfer of the responsibility to conduct the interview, the designated personnel should receive in advance the necessary training, including on the elements listed in Article 6 (4) (a) to (e) of the EASO Regulation.[12] UNHCR has not opposed Article 14 of the recast APD provided that the necessary training specified in the provision is delivered along with other training developed and managed by EASO, and that an appropriate definition of "large influx of third country nationals" is established.[13] UNHCR therefore recommends the inclusion of references to such training and a definition of "large influx" in the revised Section 97 and/or in the report by the Administration Committee. UNHCR welcomes that the explanatory note of the law proposal acknowledges that persons conducting personal interviews of applicants shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

Section 99. Safe country of asylum

11. UNHCR welcomes the proposal to separate the "safe third country" and "first country of asylum" concepts in the Finnish Aliens Act. Concerning the first country of asylum concept, UNHCR welcomes the fact that the explanatory note to the law proposal states that already based on the current legislation in Finland, the applicant has the possibility to rebut the presumption of safety in cases

[12] European Union, *Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office*, 19 May 2010, OJ L.132/11-132/28; 29.5.2010, (EU)No 439/2010, available at: http://www.refworld.org/docid/4c075a202.html.

[13] *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)*, January 2012, chapter 9, available at: http://www.refworld.org/docid/4f3281762.html.

where the first country of asylum concept is applied.[14] UNHCR also welcomes the inclusion of the criteria in Article 35 (a) of the recast APD that the applicant has received and can continue to receive protection in the first country of asylum. However, UNHCR notes that the criteria in Article 35 (b) have not been fully transposed in the law proposal, namely the requirement that the applicant be readmitted to the country of asylum has not been included in the amended section 99 and recommends that this be done. Furthermore, UNHCR recommends that the wording "sufficient protection", which is proposed to be introduced in Section 99, Subsection 2 of the Aliens Act, be replaced with "effective protection", as any protection in that country should be effective and available in practice.[15] This is, *inter alia*, demonstrated by case law from the European Court of Human Rights, according to which the theoretical right to *non-refoulement* is not sufficient.[16] In this regard, UNHCR moreover recommends using the criteria on "effective protection" set out in the Lisbon Conclusions.[17] Finally, pursuant to the last paragraph of Article 35, UNHCR recommends that Member States take into account the criteria for safety under the "safe third country" under Article 38 (1) when applying the first country of asylum concept.[18]

Section 99 a. Safe third country

12. As mentioned above, UNHCR welcomes the introduction of the "safe third country" notion as a separate concept in the Aliens Act. The "safe third country" concept will be defined in a new Section 99a of the Aliens Act. UNHCR notes that the formulation in Section 99a of the criteria to be applied when considering a safe third country is different from the formulation in Article 38 of the recast APD. Furthermore, the proposed definition contains a reference to "sufficient protection", similarly to the definition proposed in Section 99 of the Aliens Act in regard to the "safe country of asylum" notion. UNHCR notes that the provisions on "safe third country" in the recast APD do not include any reference to "sufficient protection", and recommends the deletion of the words "or otherwise sufficient protection".

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[14] *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*, August 2010, para. 23, see footnote 8.

[15] *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, para. 26, see footnote 8.

[16] See, *inter alia*, *Abdolkhani and Karimnia v. Turkey*, Appl. No. 30471/08, Council of Europe: European Court of Human Rights, 22 September 2009, para. 88, at: http://www.unhcr.org/refworld/docid/4ab8a1a42.html : "*The Court reiterates in this connection that the indirect removal of an alien to an intermediary country does not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention.*"

[17] 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, at: http://www.unhcr.org/refworld/docid/3fe9981e4.html.

[18] UN High Commissioner for Refugees (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, chapter 26, see footnote 8.

13. In addition UNHCR notes that the rules contained in Article 38 (2) of the recast APD have not been transposed in the draft law proposal. These include a rule requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country. UNHCR thus recommends adding the following criteria to be applied when considering to reject an application for international protection based on the first safe third country of asylum notion:
    - he or she will be individually assessed as to the appropriateness of the transfer, subject to procedural safeguards, prior to transfer. Pre-transfer assessments are particularly important for vulnerable groups, including unaccompanied and separated children. The best interests of the child must be a primary consideration;
    - he or she will be admitted to the proposed receiving State;
    - he or she will be protected against refoulement;
    - he or she will have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
    - he or she will be treated in accordance with accepted international standards (for example, appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; persons with specific needs are identified and assisted); and
    - he or she, if recognized as being in need of international protection, will be able to enjoy asylum and/or access a durable solution.

Section 101. Manifestly unfounded applications

14. UNHCR recalls in Executive Committee Conclusions No. 30 (XXXIV)[19] of 1983 that only "clearly abusive" (i.e. clearly fraudulent) or "manifestly unfounded" (i.e. unrelated to the criteria for the granting of international protection) applications can be channeled into an accelerated procedure. National procedures for the determination of international protection needs may include special provisions for dealing expeditiously with applications which are considered to be so obviously without foundation so as not to merit a full examination at every level of the procedures limited to clearly abusive or manifestly unfounded claims. Making obviously improbable representations contradicting sufficiently verified country of origin information does not necessarily imply that his/her claim is clearly abusive, fraudulent or unfounded.[20] UNHCR points out that, in line with the UNHCR Handbook (paragraph 196) the duty to ascertain and evaluate all the relevant facts should be considered a joint responsibility of the applicant and the examiner. This also applies generally, including in cases where there are inconsistencies or contradictions, where an applicant's story appears unlikely, or insufficiently substantiated. An attempt should be made to resolve inconsistencies and contradictions, although minor inconsistencies or contradictions on issues irrelevant to the substance of the claim should not affect the credibility of the

[19] UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: http://www.unhcr.org/refworld/docid/3ae68c6118.html

[20] See *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)*, January 2012, chapter 21, see footnote 13.

applicant. In particular, trauma and mental illness, feelings of insecurity, or language problems may result in apparent contradictions or insufficient substantiation of claims. If the applicant has made a genuine effort to substantiate his or her claim and cooperate with the authorities in seeking to obtain available evidence, and if the examiner is consequently satisfied as to the applicant's general credibility, the applicant should be given the benefit of doubt.[21] UNHCR would thus recommend that the criteria in Section 101 point (1) of the Aliens Act, referring to *"...if the claims presented are clearly implausible..."* be omitted; alternatively, UNHCR recommends that the criteria be reformulated to read *"if the claims presented are clearly false and obviously improbable"*.

15. UNHCR welcomes the amendment to Section 101 in the law proposal where the words *"An application may be rejected as manifestly unfounded ..."* will be replaced with *"An application may be considered as manifestly unfounded ..."*. This amendment shows the understanding that the designation of an application as manifestly unfounded, and the grounds for rejection of a claim, are two separate stages in the asylum procedure. The combined reading of Article 32 (1) with Article 32 (2) of the recast APD will ensure that an application is only rejected when the applicant is determined to neither qualify for refugee status nor for subsidiary protection under the QD.

Section 102. Subsequent applications

16. UNHCR re-affirms the position that subsequent applications can be subjected to a preliminary examination, to determine whether new elements have arisen which would warrant an examination of the substance of the claim. However, UNHCR recalls that such preliminary examination is justified only if the previous claim was considered fully on the merit. Consequently, UNHCR considers it inappropriate to treat claims as subsequent applications if they are submitted following a rejection based on an explicit withdrawal of an earlier claim. In such cases, UNHCR instead encourages national legislation to provide for the resumption or re-opening of the asylum procedure. In this connection, and more specifically in the context of implicitly withdrawn claims, UNHCR notes with satisfaction the introduction of an obligation in Article 28 (1) of the recast APD that implicitly withdrawn claims can be rejected only after an adequate analysis of their merits in line with Article 4 of the Qualification Directive. In this framework, UNHCR observes that only implicitly withdrawn claims rejected after an adequate analysis of the substance can be considered as subsequent applications and channeled (along with other subsequent applications defined by Article 2 (q) of the recast APD) into preliminary examination to establish if new elements or findings have arisen. UNHCR reiterates its position[22] that an explicitly withdrawn claim should be considered as a subsequent application – and in this case subject to an inadmissibility procedure – only if is rejected after an analysis on its merits; or if the obligation to inform

[21] 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 30, available at: http://www.refworld.org/docid/42492b302.html

[22] *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)*, January 2012, chapter 22, see footnote 13.

the applicant of the consequences of withdrawal are properly applied under Article 12 (1) (a) of the recast APD. UNHCR thus welcomes the introduction of a further safeguard in Section 102, that an application made after an expiry decision has been made is not considered a subsequent application.

Section 103. Dismissing applications

17. The law proposal introduces an amendment to Section 103, which entails that subsequent applications where no new elements or findings have arisen are moved from the list of applications processed in the accelerated procedures to the list of applications that shall be considered inadmissible. Considering that a preliminary examination is still required to verify if new elements or findings have arisen before certifying a subsequent application as inadmissible, UNHCR can support this amendment based on the recast APD.[23] However, as noted in paragraph 8 above, UNHCR strongly recommends that all admissibility interviews be conducted by the single and central determining authority in Finland, i.e. Migri. UNHCR also wants to underline the 2(d)-leg of Recital 32 of the recast APD stipulating that: *"(...) The complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe-third country, the concept of safe country of origin or the notion of subsequent applications."*

Section 104. Using accelerated procedures

18. The use of accelerated procedure for applicants from "safe countries of origin" and "safe countries of asylum" will, according to the law proposal, be discontinued and this concept will instead be applied as admissibility criteria. According to the amended Section 104 of the Aliens Act, the accelerated procedure will only be used for manifestly unfounded applications, as defined in Section 101 (see above paragraphs 14 - 15). The draft law proposal provides that the application of an unaccompanied child can be processed in the accelerated procedure only if the applicant comes from a safe country of origin, with reference to Article 25 (6) in the recast APD. In UNHCR's view, some of the requirements in Article 25 (6) may not be consistent with EU law. The provision in Article 25 (6) is extremely convoluted, of difficult comprehension from a child's right perspective as it may seriously undermine in practice unaccompanied children's effective access to the safeguards laid down in Article 25 (1) to (5). In light of the above and considering that in many cases a simplified, single procedure may prove fairer and more efficient, UNHCR recommends Finland not to transpose the opportunity to apply article 31(8) to unaccompanied children, but to exempt unaccompanied children from accelerated procedures in all cases.

19. Based on Article 31 (9) first indent of the recast APD, a time limit of 5 months is introduced in the law proposal for the accelerated procedure, meaning that Migri has to make a decision within 5 months from the moment the application is lodged. UNHCR welcomes the time limit of 5 months and strongly supports the range of safeguards established by the recast APD for claims that are channeled into accelerated procedures. These are essential for ensuring that claims in

[23] Ibid.

accelerated procedures are examined fairly and correct decisions are made.[24] Such time limits must be reasonable and allow the applicant to prepare for the interview, to contact and consult a legal adviser, to gather and submit additional evidence and to disclose traumatic experiences. At the same time, time limits should be reasonable so as to allow the determining authority to conduct a gender-appropriate interview, to gather and assess the evidence as well as to examine the claim and draft the decision.[25] UNHCR therefore welcomes the proposed rule that if Migri, as the determining authority, does not manage to make a decision within 5 months the application will be treated in the normal procedure. To ensure an application in line with the spirit of this proposed provision, UNHCR recommends adding an explicit requirement in the report of the Administration Committee, that where necessary to ensure an adequate and complete examination, the determining authority shall exceed the time limit set up under the accelerated procedure.

Section 198 b. Request to suspend enforcement

20. UNHCR supports the introduction of time frames which enable an applicant to demonstrate why, in the circumstances of his/her particular case, removal prior to an appeal decision may prejudice his/her legal rights. This reflects the jurisprudence of the European Court of Human Rights and the European Court of Justice (CJEU).[26] Short time limits for lodging an appeal may render a remedy ineffective in practice[27]. The CJEU has held that: "detailed procedural rules governing actions for safeguarding an individual's rights under Community law [...] must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness)". The appeals procedure must include sufficient procedural safeguards, including sufficient time to lodge the appeal.[28] Article 46 (6) of the recast APD foresees that a court or tribunal shall have the power to rule whether the applicant may remain on the territory of the Member State, pending the outcome of the appeal. In line with Article 4 (4), the time limit to request the court or tribunal to grant permission to remain pending the outcome of the remedy must be reasonable. With regard to the reasonable time limits, UNHCR

[24] Ibid, chapter 21.

[25] See inter alia UN High Commissioner for Refugees (UNHCR), *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, para. 2.7, available at: http://www.refworld.org/docid/4bab55752.html

[26] *UNHCR comments on the European Commission's Proposal for a recast of the 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 ("Dublin II") and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation]*, 18 March 2009, see footnote 9.

[27] *Unibet,* C-432-05, European Union: European Court of Justice, 13 March 2007, para. 43, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0432:EN:HTML.

[28] UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : France*, 31 July 2008, CCPR/C/FRA/CO/4, available at: http://www.unhcr.org/refworld/docid/48c50ebe2.html, para. 20, in which concerns were raised by the Human Rights Committee regarding a 48-hour time limit for lodging an appeal. In *Alzery v. Sweden,* the complainant had no real time to appeal the decision to deport him; he was expelled only hours after the decision to expel him was taken, HRC: *Alzery v. Sweden*, 10 November 2006, No.1416/2005, para. 3.10.

would like to recall the judgment of the CJEU in *Samba Diouf*.[29] In paragraph 67, the Court stated that "a 15-day time limit for bringing an action does not seem, generally, to be insufficient in practical terms to prepare and to bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved." The proposed 7-day time limit can thus be seen as short and UNHCR recommends its extension to 15 days, in line with the CJEU case-law mentioned above.

Section 201. Enforcing decisions on refusal of entry

21. The lack of suspensive effect of appeal has for a long time been one of UNHCR's main concerns with the Finnish asylum procedure. According to Article 46 (8) of the recast APD, Member States shall allow applicants to remain in the territory pending the outcome of the procedure on whether or not the applicant may remain on the territory. According to Article 27 (3) (c) of the Dublin III Regulation, *"Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken"*. Based on these provisions, a right to stay in the country, until a decision on the request to suspend the enforcement has been made, is in the law proposal introduced in Section 201 of the Aliens Act. UNHCR welcomes the introduction of this guarantee which is crucial to ensure effectivity of the interim measure being requested under Article 46 (6) and other guarantees provided by Article 46 (7).

22. With reference to UNHCR's recommendation to Section 198 b in paragraph 20, that the time frame be prolonged from 7 days to 15 days, the time limit in Section 201, Subsection 2 of 8 days should be prolonged to 16 days. As UNHCR reads the law proposal, the reference in Section 201, Paragraph 3 to Section 103, Subparagraph 1, enabling enforcement of the decision if suspension is not granted after request, concerns only safe countries of asylum, not safe third countries. The fact that an application of the safe third country concept is not included in the exception from the automatic suspensive effect of appeal fulfills the requirement mentioned in the paragraph above, which UNHCR welcomes. For the sake of legal clarity, however, UNHCR recommends that this fact be elaborated in the report by the Administration Committee to prevent any uncertainty on how the provision should be interpreted.

23. The second amendment to Section 201 of the Aliens Act introduced by the law proposal concerns the introduction of an exception from the right to remain in the territory when a person has lodged a second subsequent application without new elements. The proposal is based on Article 41 (1) (b) of the recast APD, which gives Member States the possibility to derogate from the suspensive effect of the first instance procedure in case of subsequent applications for the "third time".[30] UNHCR wishes to stress, that when a Member State wants to make an exception to the right of the applicant to remain in the territory in these situations the determining authority must be satisfied that the return decision

[29] See *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration*, Case C-69/10, European Union: Court of Justice of the European Union, 28 July 2011, available at: http://www.refworld.org/docid/4e37bd2b2.html

[30] I.e. after an applicant has already lodged a subsequent application which has been declared inadmissible or rejected, and after the inadmissibility or rejection has been confirmed in appeal.

will not lead to direct or indirect *refoulement*. This is in line with the case law of the European Court on Human Rights[31].

Other issues

24. According to Section 203, Subsection 5 of the Aliens Act, asylum-seekers have the right to be notified of a decision in their mother tongue or in a language which, on reasonable grounds, they can be expected to understand. According to Article 12 (f) of the recast APD, they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand. According to the explanatory note of the law proposal there is thus no need to change the national legislation. UNHCR however considers that "in a language that the applicant is reasonably supposed to understand" should have been amended to "in a language the applicant understands" in the recast APD. As assumptions that an applicant speaks or understands the official language of his or her country of origin may be incorrect, and UNHCR therefore recommends that Finland amend the current wording of Section 203 to ensure, that the persons concerned are notified of decisions in a language they actually understand.

25. According to the explanatory note of the law proposal, the Asylum Regulation of Migri will be amended to accommodate the requirement in Article 15 of the recast APD that same-sex interpreters shall be provided upon request. UNHCR welcomes this. The explanatory note also states that the Asylum Regulation will be amended to accommodate the requirement in Article 15 that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform. UNHCR wishes to point out that although the requirement in the recast APD only concerns interviews on the substance of the applications, in UNHCR's view this should be applied to all interviews conducted in the asylum procedure including admissibility interviews. UNHCR thus recommends that Finland extends the ban on uniforms to all interviews. This is especially important in Finland since the police or border guards conduct an interview with all asylum-seekers on the identity and itinerary as part of the asylum procedure and are in the law proposal proposed to be the ones conducting the admissibility interview.

26. The amendment to Article 11 (2) of the recast APD does not, according to the law proposal, require amendments to the Finnish legislation, since the provision was never in use in Finland. UNHCR however wishes to point out that the article requires that the reasons for a rejection are stated both in fact and in law. According to the findings of UNHCR's study on the implementation of the APD,[32] the relevant legislation in Finland[33] does not explicitly require that the reasons be stated in fact and in law, but instead more generally requires that

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[31] See AC and others v. Spain, para 94, available (in French) at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"itemid":["001-142467"]}

[32] UN High Commissioner for Refugees (UNHCR), *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, page 13, available at: http://www.refworld.org/docid/4c63e52d2.html.

[33] Section 44 (3) of the Act on Administrative Conduct 434/2004 requires that a written decision includes information about "*the motivations for the decision and individualized information about what the individuals are entitled or obliged, or how the matter has otherwise been decided ...*" but this generic guiding norm does not explicitly distinguish between reasons in law and fact.

reasons be stated. For the sake of legal certainty, UNHCR hence recommends that the current good practice in Finland of stating the reasons for rejections in both fact and law should be incorporated as a clear obligation in the national law.

UNHCR Regional Representation for Northern Europe
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