

Provisional comments by the UNHCR Regional Representation for Northern Europe relating to the Draft Amendments to the Order of the Minister of Social Security and Labour of the Republic of Lithuania on the Approval of the Description of the Procedure of Rendering Support of the Lithuanian State for Integration of Foreigners Granted Asylum in the Republic of Lithuania

(No A1-238)

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (RRNE) appreciates the opportunity to present its comments on the Draft Amendments to the Order No A1-238 on the Approval of the Description of the Procedure of Rendering Support of the Lithuanian State for Integration of Foreigners Granted Asylum in the Republic of Lithuania, as approved by the Minister of Social Security and Labour of the Republic of Lithuania on 21 October 2004 (hereinafter – ‘Draft Amendments’). We understand that the Draft Amendments are *inter alia* initiated with a view to preparing for relocation of asylum applicants from Italy and Greece under relevant decisions of the Council of the European Union.
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 refugees¹. 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[.]”² 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 -

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

² *Ibid.*, paragraph 8(a).

‘UNHCR Handbook’) and subsequent Guidelines on International Protection.³ This 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.⁴

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”.
4. UNHCR greatly appreciates its long-lasting co-operation with the Ministry of Social Security and Labour (hereinafter – the ‘Ministry’) in the field of refugee integration. The mapping of integration of refugees in Lithuania jointly carried out in 2013 and the launch of the *Report on Integration of Refugees in Lithuania. Participation and Empowerment. Understanding Integration in Lithuania through and age, gender and diversity based participatory approach*⁵ (hereinafter – the ‘Integration Report’) are examples of successful partnership based activities aimed at improving integration related support structures, and thereby enabling refugees to better integrate into the Lithuanian society. The integration report outlines challenges in refugee integration in Lithuania as well as recommendations for developing further the integration support mechanisms based on significant experience available in other European countries. UNHCR strongly supports and welcomes commitments of the Ministry to develop the refugee integration strategy⁶ and the action plan by the end of 2016.⁷ UNHCR hopes that Lithuania will develop the existing integration support system into a holistic national strategy based on a clear vision of goals, direction and guidance to be provided by the state to local authorities and agencies. UNHCR is

³ 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>.

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, Integration of Refugees in Lithuania: Participation and Empowerment. Understanding Integration in Lithuania through an age, gender and diversity-based participatory approach, October – November 2013, page 38, available at: http://www.unhcr-northerneurope.org/uploads/tx_news/UNHCR_Integration_of_refugees_in_Lithuania.pdf

⁶ For the Refugee Integration Strategy see: Lietuvos Respublikos socialinės apsaugos ir darbo ministro įsakymas Nr. A1-284 „Dėl Prieglobsčio, migracijos ir integracijos fondo 2014–2020 metų nacionalinės programos veiksmų įgyvendinimo plano patvirtinimo“, consolidated version of 23 October 2015, available at <https://www.e-tar.lt/portal/lt/legalAct/c96218b0fec111e488da8908dfa91cac/CjmqniGUIB>

⁷ For the Action Plan see: Lietuvos Respublikos socialinės apsaugos ir darbo ministro 2014 m. gruodžio 31 d. įsakymas Nr. A1-683 „Dėl Užsieniečių integracijos politikos įgyvendinimo 2015–2017 metų veiksmų plano patvirtinimo“, available at <https://www.e-tar.lt/portal/lt/legalAct/ee908ca090d211e4bb408baba2bddd3>

confident that Lithuania is willing and able to develop further the refugee integration system that ensures effective integration as a durable solution, benefiting refugees and society as a whole, through empowering refugees and enabling them to become productive members of the hosting community.

II. Specific Observations

5. UNHCR welcomes the fact that the Draft Amendments have been shared for comments with NGOs involved in refugee integration in Lithuania. NGOs play a crucial role in the integration of refugees and often have a unique experience and expertise in addressing the refugees' integration obstacles and strengthening the integration potential of refugees on a one-to-one basis. In this regard UNHCR considers as good practice the provisions of the Integration Support Order, as provided in paragraph 6 of the Draft Amendments, which secures the access of NGOs and other relevant agencies, to refugees and beneficiaries of subsidiary protection from the initial stages of the integration support program at the Refugee Reception Centre.
6. UNHCR also welcomes the provisions of paragraph 11 of the Draft Amendments that shorten the period of stay at the Refugee Reception Centre from 8-12 months to 3-4 months. UNHCR considers that placing recognized refugees and beneficiaries of subsidiary protection in local communities as soon as possible, is as a step towards implementing community based reception in line with the recommendations provided in the Integration Report. In this respect, UNHCR would like to reiterate that community based reception and accommodation arrangements are key for securing successful integration, while a prolonged stay in reception centres or other collective accommodation facilities inevitably leads to isolation of asylum seekers and refugees from the host society and limits their social interaction and integration, hence being counterproductive to the goals of the integration support programs.
 - ***Co-operation with UNHCR and NGOs***
7. UNHCR notes with appreciation that the Draft Amendments, in the proposed paragraph 5.3.13 of the Order, provide for wider partnership possibilities for the Refugee Reception Centre in the context of co-ordination of the refugee integration program. As the only UN Agency in Lithuania dealing with refugee matters, we would recommend including UNHCR in the list of partners, as the practice already reflects it.

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| UNHCR recommends inserting the words "United Nations High Commissioner for Refugees" in the proposed paragraph 5.3.13. |
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- **Level and duration of integration support**

8. UNHCR notes that the Draft Amendments essentially reduce the level of integration support that is currently available for refugees and beneficiaries of subsidiary protection in Lithuania. Hence, the proposed paragraph 51.2 stipulates that the monthly benefits must be decreased by 50 % as from the 7th month of the concerned persons' stay in a given municipality. This means that a single refugee or beneficiary of subsidiary protection would receive 132.6 EUR per month, a family of 2 persons – 163.2 EUR per month, and a family of 3 persons – 244.8 EUR per month. The allowance is intended to cover housing, utilities, food and other everyday costs.
9. UNHCR is concerned that the envisaged decrease of integration related support may lead to hardship and destitution of refugees and subsidiary protection beneficiaries, and significantly hinder their ability to integrate fully into all vital sub-sectors of the society. The vast majority of refugees find themselves in a significantly disadvantaged situation, and do not have the same opportunities as nationals to achieve an adequate standard of living on the basis of their own efforts⁸. Refugees need to overcome the trauma of persecution, the effects of displacement, the language and cultural barriers and therefore require - to a larger extent than the nationals of Lithuania - adequate support, until conditions are established in which they can obtain their own entitlements. This approach is based on the principles of substantive equality and non-discrimination as enshrined in international law and inter alia interpreted by the European Court of Human Rights. In the Court's view, "[t]he right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."⁹ Allowances paid to beneficiaries of international protection within the refugee integration programme should therefore not be seen as an additional social welfare support per se, but rather as *a special measure* that aims at preventing discriminatory effects of the same treatment approach. These allowances, thus, need to take into consideration the specific situation of refugees in the new country and should serve as a booster to facilitate the integration process. Keeping refugees at the limit of poverty and hardship is counterproductive and would only delay integration.
10. In support of the above, the EU Qualification Directive,¹⁰ in referring to the level of social benefits, puts an emphasis on avoiding hardship, adequate level of social welfare and means of subsistence and no discrimination with the nationals, as well as special needs and particular integration problems which refugees might be confronted with. Any level of

⁸ A. Eide, 'The Right to an Adequate Standard of Living Including the Right to Food' in Economic, Social and Cultural Rights: A Textbook, pp. 133–148, quoted in E. Lester, 'Article 24', in A. Zimmerman (ed.), *Commentary of the 1951 Convention relating to the Status of Refugees*, Oxford University Press, 2011, p. 1049, at 19.

⁹ ECtHR, *Thlimmenos v. Greece* [GC], 06.04.2000, Reports 2000-IV, para. 44, available at: <http://www.unhcr.org/refworld/docid/4a3a3af70.html>

¹⁰ See: Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) available at <http://www.refworld.org/docid/4f197df02.html>, recitals 40-45 and Article 29.

assistance for the period of integration in the new country should take into consideration these criteria in the light of the specific situation of refugees.

11. The envisaged reduction of integration support that is currently available for refugees and beneficiaries of subsidiary protection in Lithuania should also be considered in the light of the international human rights framework. In particular, the reduction of any achieved benefits would be contrary to the principle of “progressive realization” of social and economic rights and full achievement of these rights to the maximum of States’ available resources.¹¹ There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. In any case, if any deliberately retrogressive measures are taken, the States must prove that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant on Economic, Social and Cultural Rights, in the context of the full use of the maximum available resources of the State party.¹²
12. UNHCR would like to draw the attention to the fact that under the Lithuanian national legal system, beneficiaries of subsidiary protection are currently not given access to all core social benefits available for nationals within the regular social welfare system, including child benefits, guarantees for disabled persons and state social assistance benefits¹³. Therefore, beneficiaries of subsidiary protection will be further disadvantaged by the reduction of benefits which would limit their capacity to attain an adequate standard of living and exacerbate their inability to integrate.
13. UNHCR further notes that the decrease of the support proposed in the Draft Amendments is contrary to recommendations of the Integration Report jointly conducted with the line Ministry in charge of integration. One of the findings of the report suggests that low income leads to social marginalisation and destitution.¹⁴ The proposed 50 % reduced support may significantly reduce the ability of refugees and beneficiaries of subsidiary protection to afford housing and could potentially lead to homelessness and destitution, in particular given the fact that social housing or other forms of support within the regular housing

¹¹ See para. 40 of the UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008 available at: <http://www.refworld.org/docid/47b17b5b39c.html>

¹² *Idem*, para. 42

¹³ See *Lietuvos Respublikos išmokų vaikams įstatymas*, Nr. I-621, consolidated version of 17 May 2014, available at https://www.e-tar.lt/portal/lt/legalAct/TAR.1DEDD43B92AE/TAIS_471308, *Lietuvos Respublikos neįgalųjų socialinės integracijos įstatymas*, Nr. I-2044, consolidated version of 23 July 2013, available at https://www.e-tar.lt/portal/lt/legalAct/TAR.199156E4E004/TAIS_454193, *Lietuvos Respublikos valstybinių šalpos išmokų įstatymas*, Nr. I-675, consolidated version of 12 June 2014, available at https://www.e-tar.lt/portal/lt/legalAct/TAR.2CE6CFE9E2EE/TAIS_473878

¹⁴ See the UNHCR, *Integration of refugees in Lithuania. Participation and Empowerment Understanding Integration in Lithuania through an age, gender and diversity based participatory approach*, October – November 2013, page 41.

schemes is currently hardly available for beneficiaries of international protection in Lithuania.

14. It follows, that refugees would not be able to fully integrate into and compete on the labour market after a 6 months period of their initial stay in the municipality. In this respect, the Integration Report underlines the importance of mapping individual capacities and aspirations to be taken into account and the need to develop individual integration plans that consider specific individual needs and potential. The report also suggests to ensure that the concerned refugees are integrated into national employment policies and schemes, while being able to benefit from targeted integration support.
15. As regards the duration of the integration support programme, the practice of countries with long experience in integration of refugees, such as Finland, Denmark, Norway and Sweden, demonstrates that integration support is required in the first 2-3 years. Vulnerable persons may need additional support going beyond this period. In this respect, UNHCR notes that pursuant to the Draft Amendments the period of integration support for vulnerable individuals may be extended, and recommends retaining such a flexible approach that allows for taking into account particular circumstances of the individual.

UNHCR recommends refraining from lowering the current support to foreigners granted asylum.

In particular, UNHCR recommends deleting the amendment proposed with respect to paragraph 26 and 51.2 of the Order as regards the decrease of the amount of the monthly benefit by 50 %.

UNHCR also recommends considering additional measures aimed at empowering refugees and beneficiaries of subsidiary protection such as strengthening language training and improving their ability to compete on the labour market.

- ***Housing***

16. The amendment proposed with respect to paragraph 36 of the Order concerns housing related counselling. It provides that ‘*Aliens granted asylum shall find accommodation themselves with the support of the institution supporting integration.*’ Through the Integration Study refugees conveyed the importance of receiving support in finding a place to stay due to frequently occurring refusals to rent apartments based on xenophobic and intolerant attitudes of landlords. In Finland, Denmark, Norway and Sweden, refugees granted international protection receive assistance to secure housing and to move out to municipalities as soon as possible after the recognition of their status. State agencies are responsible for finding housing in a suitable municipality and for concluding a contract with the landlord. The UNHCR RICE study¹⁵ recommends states to provide refugees with support in finding suitable and affordable housing upon recognition and to take measures

¹⁵ See UN High Commissioner for Refugees (UNHCR), *A New Beginning: Refugee Integration in Sweden - It's about time!*, September 2013, available at: <http://www.refworld.org/docid/5295a60e4.html>

to prevent refugees from being homeless. The Integration Report also recommends introducing a system whereby a state agency or an NGO is assigned the responsibility for assisting refugees to find affordable housing and for facilitating the signing of the contract.

UNHCR recommends adjusting the proposed wording of paragraph 36 as follows:

“Aliens granted asylum shall be supported in their effort to find housing by the institution supporting integration, in particular in finding affordable offers and facilitating the signing of the lease agreement.”

17. It follows 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 hopes that this approach will inform the debates on the present Draft Amendments and that the amendments would not lead to lowering current level of protection and assistance available for persons granted international protection in Lithuania. It is also hoped that the debate will give an impetus to start discussions aiming to consolidate the work on development of integration support in a comprehensive manner with a view to making integration a durable solution for refugees in Lithuania.

UNHCR Regional Representation for Northern Europe
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