



UNHCR

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

UNHCR Observations on the proposed amendments to the draft Law Nr. 739/Lp12 (Grozījumi Patvēruma likumā Nr. 739/Lp12)

I. INTRODUCTION

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) would like to present its comments and observations on the law proposal Nr. 739/Lp12 (hereinafter Law Proposal) amending the provisions related to social support to refugees and introducing provisions related to relocation and resettlement.¹
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 UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention⁴ and in Article II of the 1967 Protocol relating to the Status of Refugees⁵ (hereafter collectively referred to as the “1951 Convention”).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 (TFEU)⁷, 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. For instance, Article 29 of the recast Asylum Procedures Directive 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*”.
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

¹ See the Law proposal in Latvian available at:

<http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/90F040655EE6710DC225805F002BB1EC?OpenDocument#a>.

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.refworld.org/docid/3ae6b3628.html> (hereafter “UNHCR Statute”).

³ *Ibid.*, para. 8(a).

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>.

⁵ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html>.

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”.

⁷ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ L. 326/47-326/390; 26.10.2012, available at: <http://www.refworld.org/docid/52303e8d4.html>.

instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereafter “UNHCR Handbook”) and subsequent Guidelines on International Protection.⁸ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

5. The following comments are based on international protection standards set out in the 1951 Convention, in international human rights law, on Conclusions on International Protection of the UNHCR Executive Committee (hereafter “ExCom”), and on UNHCR guidelines. While neither UNHCR ExCom Conclusions nor UNHCR guidelines are binding on States, they contribute to the formulation of *opinio juris* by setting out standards of treatment and approaches to interpretation which illustrate States’ sense of legal obligation towards asylum-seekers and refugees.⁹ As a member of the UNHCR ExCom further to accession to the 1951 Convention in 1997, Latvia has contributed extensively to the development of Conclusions on International Protection, adopted unanimously by the ExCom.

II. THE PROPOSAL

6. The Law proposal includes amendments of Sections 9, 12, 22, 34 and 53 and introduction of a new Section 70 into the Asylum Law¹⁰. In the below comments and observation, UNHCR would like to focus in particular on Sections 9, 53 and 70.
7. Section 9 amendments provide that the reception centre for asylum-seekers is at the disposal free of charge to those organisations providing pre-school education, health as well as other integration services to asylum-seekers, refugees and beneficiaries of alternative status.
8. Section 53 introduces provisions related to the social support of beneficiaries of international protection, the criteria and duration for such support as well as distribution of responsibilities among government authorities in this regard.
9. The new Section 70 introduces provisions regarding relocation and resettlement under the EU and the auspices of UNHCR respectively.

III. UNHCR OBSERVATIONS

Integration and social support

10. UNHCR welcomes the introduction of the amendment to Section 9 facilitating the provision of services to asylum-seekers and beneficiaries of international protection

⁸ 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>.

⁹ Goodwin Gill/McAdam, *The Refugee in International Law*, Oxford University Press, 2007, p. 217.

¹⁰ Parliament (Saeima) of the Republic of Latvia, *Law on Asylum*, available in Latvian at: <https://www.vestnesis.lv/op/2016/2.1> and in English at: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Asylum_Law.pdf.

within the premises of the reception centre, including integration services (“inclusion” as referred to in the text of the Law proposal). As noted in the UNHCR and partners’ study on integration of refugees in Latvia¹¹ and in other similar studies,¹² reception conditions have a direct impact on the well-being of refugees. Integration is a long-term process, and early interventions have been found to be beneficial to the overall integration process. In this regard, the provision of language classes, education and training, health services and accommodation positively impacts refugees’ access to employment and helps them reach early economic independence. Thus, creating the necessary conditions in the reception center to offer a variety of services, including specific ones related to integration, constitutes a good practice in UNHCR’s view.

11. UNHCR also welcomes the provisions in Section 53 that allow beneficiaries of international protection to receive the subsistence allowance for a period of up to three months following a gainful employment. As noted in the explanatory note to the Law proposal, this should motivate beneficiaries of international protection to seek further increase of their income and will provide the necessary safeguarding should the employment be interrupted during these first three months for whatever reasons.
12. At the same time, UNHCR is concerned that some of the measures proposed in the amendments to Section 53 may further exacerbate the situation of beneficiaries of international protection in Latvia and may lead to greater hardship and destitution. While introduction of the one-off financial support – a welcome development - is aimed at providing an initial capital necessary to rent housing, it is done at the expense of the overall reduction of the period for which the subsistence allowance is provided.¹³
13. The proposed reduced duration of support has to be considered in the context of the significant reduction of the subsistence allowance adopted in December 2015. As communicated to UNHCR by beneficiaries of international protection, the amount does not allow for an adequate standard of living, given the need to pay rent, and utilities, to buy food, clothing and household items and also to pursue integration activities. As a result, few beneficiaries of international protection remained in Latvia. The above mentioned reduction was carried out in the context of bringing the allowance to the level of the social support provided to Latvian citizens. The explanatory note to the Law proposal also refers to the fact that it seeks to establish an equal treatment of beneficiaries of international protection to that of the Latvian nationals with respect to social support.
14. In UNHCR’s view, in establishing the amount, the duration, content and conditions for the social support to be provided to beneficiaries of international protection, the provisions of

¹¹ UN High Commissioner for Refugees (UNHCR), *A New Beginning: Refugee Integration in Europe*, September 2013, available at: <http://www.refworld.org/docid/522980604.html> cited in UN High Commissioner for Refugees (UNHCR), *Integration of refugees in Latvia: Participation and Empowerment*, June 2015, page 96 available at: <http://www.refworld.org/docid/58a4877c4.html>.

¹² Organisation for Economic Cooperation and Development (OECD), *Making Integration Work: Refugees and others in need of protection*, 28 January 2016, available at: <http://www.refworld.org/docid/56af089d4.html>

¹³ Currently the duration of subsistence allowance is set in the Asylum Law at 12 months for refugees and 9 months for alternative status beneficiaries. Under the Law proposal this period is reduced to 10 months for refugees and 7 months for alternative status beneficiaries.

the 1951 Convention and the international human rights instruments Latvia is a party to must be considered.

15. The 1951 Convention, in particular Articles 23 and 24 provide that in the area of provision of public relief and social security the Contracting States shall accord refugees the same treatment as is accorded to nationals.¹⁴ A similar right to that of Article 24 is set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights (hereafter “ICESCR”),¹⁵ which recognizes “the right of everyone to social security, including social insurance”. The rights of refugees to social security benefits are also enshrined in Articles 10, 11 and 12 of the ICESCR.
16. The vast majority of asylum-seekers and refugees find themselves in a significantly disadvantaged situation, and may not have the same opportunities as nationals to achieve an adequate standard of living on the basis of their own efforts.¹⁶ 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 nationals, specific support, until conditions are established under which they can become self-sufficient.¹⁷ 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 (ECtHR).
17. The Grand Chamber of ECtHR recognised the particular vulnerability of asylum-seekers because of the traumatic experiences many had endured previously. The ECtHR emphasized that asylum-seekers belong to “a particularly underprivileged and vulnerable population group in need of special protection” and noted “the existence of a broad consensus at the international and European level concerning this need for special protection [...]”.¹⁸ While made in the context of asylum seekers, the considerations expressed concerning the particular vulnerability of asylum-seekers do not cease to end with a person being granted international protection status.
18. Elaborating on the principle of non-discrimination, in the Court’s view, “[t]he right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is

¹⁴ See, e.g. 1951 Convention, Articles 23 and 24 and UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analyzed with a Commentary by Dr. Paul Weis*, 1990, available at: <http://www.refworld.org/docid/53e1dd114.html>. The drafters of the 1951 Convention intended for Article 23 to fill gaps where social security provisions may be inadequate and for Articles 20, 23 and 24 combined, to form a comprehensive framework for welfare assistance for many refugees.

¹⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, available at: <http://www.refworld.org/docid/3ae6b36c0.html>, p. 3.

¹⁶ 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.

¹⁷ Ibidem.

¹⁸ ECtHR, *M.S.S. v. Belgium and Greece* (Application no. 30696/09), Grand Chamber judgment of 21 January 2011, para. 232, available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html> cited in UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Defence for Children International (DCI) v. Belgium*, 13 July 2012, para 2.1.5 available at: <http://www.refworld.org/docid/500419f32.html>.

also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”¹⁹

19. In respect of the adequacy of benefits, the Committee on Economic, Social and Cultural Rights has noted that:

*“Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided.”*²⁰

20. Considering the particular circumstances of beneficiaries of international protection and the fact that they require targeted actions²¹ to bring them closer to the level of nationals, the subsistence allowances paid during the first 10-12 months should therefore be considered as a *special measure* that aims at preventing discriminatory effects of the same treatment approach. These allowances, taken together with the measures put in place to facilitate language learning, vocational training, other services and integration measures need to take account of the specific situation of refugees in the new country and should together be considered as the required set of measures necessary to ensure that the treatment accorded is in line with the substantial equality and non-discriminatory approaches. Keeping refugees at the limit of poverty and hardship is counterproductive, would only delay their integration, drive onward movements and contravenes international standards.
21. In support of the above, the EU Qualification Directive,²² in referring to the level of social benefits to be provided, puts an emphasis on **avoiding hardship, adequate level of social welfare and means of subsistence** and no discrimination as compared to the nationals, as well **consideration of special needs and particular integration problems** which refugees might be confronted with. In other words, any level of assistance for the period of integration (adaptation/inclusion) in the new country should take into

¹⁹ ECtHR, *Thlimmenos v. Greece* [GC], 06.04.2000, Reports 2000-IV, para. 44, available at: <http://www.unhcr.org/refworld/docid/4a3a3af70.html>

²⁰ 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, E/C.12/GC/19, para. 22 available at: <http://www.refworld.org/docid/47b17b5b39c.html>.

²¹ *Supra* 11, Integration of refugees in Latvia: Participation and Empowerment, page 97. “Although refugees who arrive in a new country will face common structural obstacles, it should be kept in mind that individual backgrounds, personality, psycho-social and educational resources, professional skills, history of flight, trauma and a variety of other factors will impact on the preparedness to face the challenge of meeting a new culture, learning a new language and starting a new life in a new county. Integration programs therefore need to take into consideration the individuality of the clients.”

²² 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.

consideration the specific situation of refugees and the specific integration obstacles that beneficiaries of international protection have.

22. UNHCR would like also to draw attention to the principle of “progressive realization” of social and economic rights and the full achievement of these rights to the maximum of States’ available resources.²³ The UNHCR Executive Committee has affirmed “the particular importance of the legal dimension of integration, which entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalizing”.²⁴ In this regard, should any deliberately retrogressive measures taken, the State party has the burden of proving 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, in the context of the full use of the maximum available resources of the State party.”²⁵
23. The above standards provide a solid basis upon which beneficiaries of international protection can progressively restore the social and economic independence needed to get on with their lives. As acknowledged by UNHCR’s Executive Committee, which has noted that the 1951 Refugee Convention sets out rights and minimum standards for the treatment of refugees that are geared towards the process of integration, and recognized the need for States Parties to implement their obligations under the 1951 Refugee Convention fully and effectively.²⁶ These rights as foreseen in the 1951 Convention should be implemented in the light of the provisions of international human rights law based on the principles of **substantive equality** and **non-discrimination** and **progressive realization of rights**.

Relocation and resettlement

24. UNHCR greatly values the active participation of Latvia in the intra-EU relocation and the UNHCR resettlement schemes. UNHCR would like to thank Latvia for its endorsement of the New York Declaration²⁷ and its support for the Global Compact on Refugees²⁸ which

²³ Supra 17, General Comment No. 19: The right to social security (Art. 9 of the Covenant), para. 40.

²⁴ UN High Commissioner for Refugees (UNHCR), *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) – 2005, para. (I), available at: <http://www.refworld.org/docid/4357a91b2.html>.

²⁵ 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, E/C.12/GC/19, available at: <http://www.refworld.org/docid/47b17b5b39c.html>, para. 42. See also, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html>, which notes that “the phrase must be read in the light of the overall objective, indeed the *raison d’être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” para. 9.

²⁶ *Idem*, para. (d).

²⁷ UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>.

²⁸ UN High Commissioner for Refugees (UNHCR), *Comprehensive Refugee Response Framework: from the New York Declaration to a global compact on refugees*, 5 December 2016, available at: <http://www.refworld.org/docid/589332a90.html>.

reiterate the importance of resettlement and other safe pathways as tools for international protection and durable solution for refugees.

25. In this context, UNHCR welcomes the introduction of Section 70 and the provisions regulating the process of relocation and resettlement, *inter alia*, provisions introducing the possibility to issue travel documents for those who do not possess a valid one and facilitating entry to Latvia through visas for the purpose of resettlement.
26. At the same time, UNHCR would underline that while there are some similarities between relocation and resettlement, the process and purpose of these two mechanisms vary significantly.
27. Relocation²⁹ is the **transfer of asylum-seekers** who are in clear need of international protection from one European Union Member State to another Member State, which takes charge of their asylum application and determines the status of the person.
28. Resettlement, on the other hand, is a tool to provide international protection and meet the specific needs of individual **recognized refugees** whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. In other words, resettlement is first and foremost geared towards **provision of a durable solution** for particularly vulnerable refugees recognised under UNHCR Mandate and/or the 1951 Convention. Identification of cases, needs assessments and processing are therefore fundamentally different when comparing the two mechanisms.
29. For resettlement, a definition has been developed and agreed upon with resettlement States, including EU Member States, and other partners involved in resettlement, as reflected in UNHCR's Resettlement Handbook³⁰. Concretely, there is an understanding that Resettlement is the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – **as refugees – with permanent residence status**.
30. While under some jurisdictions resettled refugees still have to formally apply for asylum upon arrival in the resettlement country, the examination of the asylum application is a mere formality. The latter is also due to the fact that the adjudication normally takes place prior to arrival of the refugee in the country of resettlement based on the information supplied on the refugee by UNHCR or obtained in the course of missions by officials of the receiving states who interview applicants directly.
31. A specific characteristic of resettlement is that it is a durable solution. This means that the legal status and the residency rights are secure or in other words that the residence is not

²⁹ European Union: Council of the European Union, *Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece*, 14 September 2015, available at: <http://www.refworld.org/docid/5604094a4.html> and European Union: Council of the European Union, *Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, 24 September 2015, L 248/80, available at: <http://www.refworld.org/docid/587cad524.html>.

³⁰ UN High Commissioner for Refugees (UNHCR), *UNHCR Resettlement Handbook*, 2011, July 2011, available at: <http://www.refworld.org/docid/4ecb973c2.html>.

of a short-duration and the status is not subjected to frequent reviews. In practical terms when a refugee is resettled the normal expectation would be that he/she will stay and fully integrate in the new country including naturalize in time.

IV. CONCLUDING RECOMMENDATIONS

32. In light of the above, UNHCR recommends that the proposed provisions of Section 53 be aligned with the requirements of the 1951 Convention and the international human rights instruments to include the necessary safeguards for the treatment of refugees in line with the principles of substantive equality and non-discrimination. In this regard the law should include at a minimum:
- provisions which ensure that while participating in a number of obligatory measures aimed at ensuring socio-economic inclusion (integration) of beneficiaries of international protection for a determined period (e.g. language learning, cultural orientation, vocational training, recognition of diplomas, etc.) the persons concerned have access to adequate means of existence, which currently is not ensured.
 - criteria which ensure that the amount and duration of support established by the Cabinet takes into account the specific situation and vulnerability of beneficiaries of international protection.
 - provisions which ensure that specific affirmative measures to promote socio-economic inclusion of the beneficiaries of international protection and ensure equal opportunities are adopted by the Cabinet.
 - provisions which ensure that measures for socio-economic inclusion consider the individual backgrounds, personality, psycho-social and educational resources, professional skills, history of flight, trauma and other factors influencing the preparedness to face the challenge of meeting a new culture, learning a new language and starting a new life in a new county.
33. UNHCR recommends also to consider introducing distinct provisions related to relocation and resettlement taking into consideration the distinct underpinnings and purposes of the two mechanisms. In particular, UNHCR recommends to introduce provisions that will reflect resettlement as a durable solution in line with the definitions contained in the UNHCR Resettlement Handbook. Additionally, UNHCR recommends introducing a provision authorising the Cabinet to adopt implementing regulations for processing the resettlement cases taking into consideration the specificity of the resettlement procedure.

UNHCR Regional Representation for Northern Europe

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