

Lausunto

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Lausuntopyyntö luonnoksesta hallituksen esitykseksi eduskunnalle laiksi ulkomaalaislain muuttamisesta (tilapäinen suojelu)

Lausunnonantajan lausunto

Voitte kirjoittaa lausuntonne tähän.

UNHCR Observations on the proposal to amend the Finnish Aliens Act (temporary protection)

Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta (tilapäinen suojelu)

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries appreciates the opportunity to provide observations on the “Government’s proposal to the parliament to amend the Aliens Act (temporary protection)” (Hallituksen esitys eduskunnalle ulkomaalaislain muuttamisesta (tilapäinen suojelu)) - hereafter the “Proposal”. [1]

2. UNHCR has a direct interest in law proposals related to asylum, as the agency entrusted by the United Nations (“UN”) General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees. [2] Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, [3] whereas the 1951 Convention relating to the Status of Refugees [4] and its 1967 Protocol (hereafter collectively referred to as “1951 Convention”) oblige State Parties to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union (“EU”) law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU. [5] The UN General Assembly has also entrusted UNHCR with a global

mandate to provide protection to stateless persons world-wide and for preventing and reducing statelessness. [6]

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. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection ("UNHCR Handbook") [7] UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions for forcibly displaced and stateless people.

4. UNHCR's observations are structured as follows: Section II sets out the scope of the Proposal. Section III sets out specific observations to clarify UNHCR's position. Section IV sets out the conclusions.

II. Scope of the Proposal

5. Following the full-scale invasion of Ukraine in February 2022, the EU's Justice and Home Affairs Council approved Council Implementing Decision on 4 March 2022. [8] The Council has since decided to extend the temporary protection until 4 March 2026. [9] The Council's decision was applied in Finland by the Government decision 149/2022 on 7 March 2022. [10]

6. Following the full-scale invasion of Ukraine [11] and the Government of Finland's decision to extend temporary protection to refugees from Ukraine, [12] the Aliens Act was amended. Section 109 of the Act stipulates that temporary protection can be granted to a foreigner in need of international protection whose safe return to their home country or permanent residence is not possible due to mass displacement due to an armed conflict, other violent situation or an environmental catastrophe. Section 109 further stipulates that such protection can be granted for a maximum duration of three years. Section 110 stipulates that permits based on temporary protection are granted for one year at a time. Section 113 stipulates that the holder of a temporary residence permit ("väliaikainen oleskelulupa") would be granted a continuous residence permit ("jatkuva oleskelulupa") after three years. The continuous residence permit entitles the beneficiary of temporary protection to apply for permanent residence permit ("pysyvä oleskelulupa") and citizenship. The required residency requirement for permanent residence is four years. However, time spent on a temporary residence permit is not counted towards the four-year residence requirement period for permanent residency.

7. According to the Proposal, Subsection 1 of Section 109 would be amended and the three-year maximum period for temporary protection removed from the law. Further, Section 113 would be amended and the subsection which provides for continuous residence permit for beneficiaries of

temporary protection would be removed. Consequently, beneficiaries of temporary protection would not receive a continuous residence permit after three years of residence in Finland any longer. As a result, beneficiaries of temporary protection would remain on temporary residence permit and would no longer be entitled to a permanent residence permit or citizenship.

8. Furthermore, Section 110 would be amended to provide that the validity of the residence permit issued to beneficiaries of temporary protection will be determined in accordance with the validity of the Government's decision on temporary protection at any given time.

III. Observations

9. UNHCR welcomes the Proposal to remove the maximum length of time, currently three years, a person can be granted temporary protection. UNHCR further appreciates Finland's keenness to effectively manage the situation of beneficiaries of temporary protection through the amendment.

10. UNHCR notes that the Proposal introduces restrictions for beneficiaries of temporary protection to access permanent residency resulting in differential treatment based on protection status.

11. Under international and European standards, differentiated treatment according to immigration status is only permitted when the grounds therefore are objectively and reasonably justified. [13] UNHCR notes that the Proposal justifies that amendment stating, that due to the temporary nature of temporary protection, it is not foreseen that such protection would be provided for a prolonged period of time. [14]

12. In this regard, UNHCR wishes to recall that individuals who are granted refugee status, subsidiary protection or temporary protection may equally be refugees under international law. It is settled law that a person is a refugee within the meaning of the 1951 Convention as soon as he or she fulfils the legal criteria. A person may be a refugee prior to any formal determination of that status. Recognition of refugee status does not therefore make a person a refugee but declares him or her to be one. Beneficiaries of temporary protection may accordingly also be refugees under international law.

13. Temporary Protection or Stay Arrangements ("TPSAs") – such as the Finnish temporary protection – are simply pragmatic tools complementary to the international refugee protection regime and used at times to fill gaps in that regime as well as in national response systems and capacity, particularly in times of large-scale influxes. [15] However, the use of such tools has no direct bearing on the duration of the protection needs that refugees may have. Further, TPSAs

employed as emergency response to large-scale refugee movements should include a minimum set of standards of stay, while preserving any more favourable standards that apply. [16] In cases of extended stay, or where transition to solutions is delayed, the standards of treatment would need to be gradually improved. [17] For these reasons, UNHCR is concerned that the Proposal would create distinctions in the rights given to individuals who have been granted various forms of international protection under Finnish law (refugee status, subsidiary protection and temporary protection).

14. UNHCR also wishes to recall that the European Court of Human Rights (“ECtHR”) has found a violation of the non-discrimination guarantee under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) in several cases on the grounds of differentiating between different types of immigration status. ECtHR jurisprudence shows that differences in treatment between persons who are similarly situated – such as refugees and subsidiary protection beneficiaries – can only be justified if they pursue a legitimate aim and there is a proportionate relationship between this aim and the means employed to realize it. [18] In UNHCR’s view, the practical consequences of the Proposal for beneficiaries of temporary protection versus those granted international protection under other grounds in terms of eligibility for permanent residence or lack thereof in the case of beneficiaries of temporary protection, do not appear proportionate.

15. UNHCR is concerned that the proposed amendments not only reduce the legal certainty enjoyed thus far by beneficiaries of temporary protection but also risk having a negative impact on their socio-economic inclusion in Finland.

IV. Concluding remarks

16. UNHCR appreciates Finland’s continued support to refugees from Ukraine and welcomes the proposal to remove the maximum length of time a foreigner can be granted temporary protection.

17. UNHCR recommends that Finland reconsiders the differential treatment between refugees, beneficiaries of subsidiary protection and beneficiaries of temporary protection, in respect of the eligibility for permanent residence permits.

18. UNHCR would welcome the opportunity to discuss these recommendations in greater detail with the Finnish authorities.

ENDNOTES:

- [1] The full presentation of the Proposal by the Ministry of the Interior, including explanatory notes and proposed legislative text (in Finnish): Tilapäisen suojelun jatkaminen, Hankenumero SM022:00/2024, <https://intermin.fi/hankkeet/hankesivu?tunnus=SM022:00/2024>.
- [2] UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V) <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).
- [3] Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.
- [4] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189 <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) UNHCR has the “duty of supervising the application of the provisions of the Convention”.
- [5] EU, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390, <https://www.refworld.org/docid/52303e8d4.html>.
- [6] UN General Assembly Resolution A/RES/50/152, 9 February 1996, <http://www.unhcr.org/refworld/docid/3b00f31d24.html>, reiterated in subsequent resolutions, including A/RES/61/137 of 25 January 2007, <http://www.unhcr.org/refworld/docid/45fa902d2.html>, A/RES/62/124 of 24 January 2008 <http://www.unhcr.org/refworld/docid/47b2fa642.html>, and A/RES/63/148 of 27 January 2009 <http://www.unhcr.org/refworld/docid/4989619e2.html>.
- [7] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.html>.
- [8] Council of the European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, 4 March 2022, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32022D0382>.
- [9] The Council of the European Union, Council Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382, 25 June 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024D1836>.
- [10] The Government of Finland, Government decision on granting temporary protection to respond to the situation in Ukraine, 149/2022, 7 March 2022, <https://www.finlex.fi/fi/laki/alkup/2022/20220149>.
- [11] The EU's Justice and Home Affairs Council approved Council Implementing Decision on 4 March 2022. The Council has since decided to extend the temporary protection until 4 March 2026. Council of the European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, 4

March 2022, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32022D0382>. The Council of the European Union, Council Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382, 25 June 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024D1836>.

[12] The Government of Finland, Government decision on granting temporary protection to respond to the situation in Ukraine, 149/2022, 7 March 2022, <http://www.finlex.fi/fi/laki/alkup/2022/20220149>.

[13] Charter of Fundamental Rights of the EU, Art. 21; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”), as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, <https://www.refworld.org/docid/3ae6b3b04.html>, Art. 14.

[14] The Proposal, p. 12.

[15] UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014, <https://www.refworld.org/policy/legalguidance/unhcr/2014/en/74916>.

[16] Ibid.

[17] Ibid. See also UNHCR, Updated UNHCR Observations on the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/109/EC Establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection, August 2010, <https://www.refworld.org/legal/intlegcomments/unhcr/2010/en/75419>.

[18] For jurisprudence in Council of Europe: European Court of Human Rights, see for example *Niedzwiecki v. Germany*, 58453/00, 15 February 2006, <https://www.refworld.org/jurisprudence/caselaw/echr/2006/en/119154>; *Okpisz v. Germany*, 59140/00, 25 October 2005, <https://www.refworld.org/jurisprudence/caselaw/echr/2005/en/19454>; *Biao v. Denmark* (Grand Chamber), Application no. 38590/10, 24 May 2016, <https://www.refworld.org/jurisprudence/caselaw/echr/2016/en/114050> and *Hode and Abdi v. The United Kingdom*, (Application no. 22341/09), 6 November 2012, <https://www.refworld.org/jurisprudence/caselaw/echr/2012/en/89212>.

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