

## **UNHCR Observations on the proposal to amend the Finnish Aliens Act** *Hallituksen esitys eduskunnalle ulkomaalaislain muuttamisesta*

### **I. Introduction**

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) appreciates the invitation to provide observations on the “Government’s proposal to the parliament to amend the Aliens Act” (*Hallituksen esitys eduskunnalle ulkomaalaislain muuttamisesta*) - hereafter the “Proposal”.<sup>1</sup>
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.<sup>2</sup> Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,<sup>3</sup> whereas the 1951 Convention relating to the Status of Refugees<sup>4</sup> 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. 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.<sup>5</sup>

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<sup>1</sup> The full presentation of the Proposal by the Ministry of the Interior, including explanatory notes and proposed legislative text (in Finnish), is available at Ulkomaalaislain muuttamista koskeva hanke, Hankenumero SM037:00/2023, <https://intermin.fi/hankkeet/hankesivu?tunnus=SM037:00/2023>.

<sup>2</sup> 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”).

<sup>3</sup> 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.

<sup>4</sup> 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) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

<sup>5</sup> 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>.

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”).<sup>6</sup> 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.

## II. General observations

4. The stated overall purpose of the Proposal is to introduce the more stringent provisions in the Finnish Aliens Act permitted by EU law and in accordance with the Government Programme of June 2023.<sup>7</sup>
5. The Proposal aims to make international protection temporary in nature by shortening the length of the residence permits granted on protection grounds to the minimum allowed by the EU Qualification Directive.<sup>8</sup> Further, according to the Proposal, the international protection needs of refugees and beneficiaries of subsidiary protection will be subject to a mandatory review when their residence permits are up for renewal. UNHCR regrets that these proposed amendments, while staying within minimum safeguards, restrict current good practices in Finland. UNHCR encourages Finland to retain its current good practices and to continue being one of Europe’s leaders in refugee protection.
6. Moreover, the Proposal seeks to expand the grounds for exclusion and cessation of protection status for refugees and beneficiaries of subsidiary protection who commit a serious offense and are considered a danger to national security or society. In UNHCR’s view, these changes are not in line with the 1951 Convention and should not be introduced. UNHCR is concerned that the different concepts relating to the ending of protection and protection that should not be granted in the first place are conflated in the Proposal. Each of the concepts of cessation, cancellation, revocation and exclusion have distinct criteria and purposes.<sup>9</sup>

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<sup>6</sup> 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>.

<sup>7</sup> Finnish Government, “A strong and committed Finland – the Government’s vision” Programme of Prime Minister Petteri Orpo’s Government, 2023:60, 20 June 2023, <https://urn.fi/URN:ISBN:978-952-383-818-5>, p. 220.

<sup>8</sup> Council of the European Union, 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), OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, 20 December 2011, <https://www.refworld.org/legal/reglegislation/council/2011/en/84781>.

<sup>9</sup> UNHCR considers that **cancellation** refers to a decision to invalidate a refugee status recognition which should not have been granted in the first place. **Revocation** refers to withdrawal of refugee status in situations where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the

7. In the following observations on specific aspects of the Proposal, UNHCR will focus on a) the temporary nature of protection, including the proposed shortened duration of residence permits and introduction of mandatory regular review of international protection needs and b) the proposed expansion of the grounds for exclusion from refugee and subsidiary protection status and c) the proposed expansion of the grounds for cessation of refugee and subsidiary protection status.

### III. Specific observations

#### a. Temporary nature of protection

##### *Short-term residence permits*

8. According to the Proposal, a residence permit based on refugee status would be granted for three years instead of the current four years (proposed amendment to Section 53 of the Aliens Act refers), while beneficiaries of subsidiary protection would be granted a residence permit for one year instead of four years. The extension permits are also proposed to be shortened, from four to three years for refugees, and from four to two years for beneficiaries of subsidiary protection through amendments to Section 55 of the Aliens Act. There is no stipulated upper time-limit for how long short-term permits may be issued. Finland currently provides residence permits of equal duration to both refugees and beneficiaries of subsidiary protection.
9. According to UNHCR, refugees and others in need of international protection are entitled to a secure status. UNHCR is concerned that a system with short-term residence permits for an extended period of time are detrimental to their sense of security and stability.<sup>10</sup> Short-term residence permits and frequent reviews thereof are counter-productive to integration objectives and to the well-being of refugees and beneficiaries of subsidiary protection.<sup>11</sup>

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1951 Convention after having been recognized as a refugee. **Cessation** refers to the ending of refugee status pursuant to Article 1C of the 1951 Convention because international protection is no longer necessary or justified on the basis of certain voluntary acts of the individual concerned or a fundamental change in the situation prevailing in the country of origin. **Exclusion** refers to the denial of the benefits of refugee status to certain persons who would otherwise qualify as refugees. The purpose is to deprive those guilty of heinous acts, and serious common crimes, of international refugee protection and to ensure that such persons do not abuse the institution of asylum in order to avoid being held legally accountable for their acts.

<sup>10</sup> UNHCR, Note on the Integration of Refugees in the European Union, May 2007, <http://www.unhcr.org/463b462c4.pdf>, para. 18; UNHCR, Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, February 2018,

<https://www.refworld.org/legal/intlegcomments/unhcr/2018/en/120341>, p. 27.

<sup>11</sup> Swedish Red Cross, Humanitarian Consequences of the Swedish Temporary Aliens Act, October 2018, <https://www.rodakorset.se/om-oss/fakta-och-standpunkter/rapporter/konsekvenser-av-tillfalliga-utlanningslagen/>. See also Kristoffer Jutvik & Darrel Robinson, (2020). Permanent or temporary settlement? A study on the short-term effects of residence status on refugees' labour market participation. Comparative Migration Studies, 8, 44, <https://doi.org/10.1186/s40878-020-00203-3>; Jacob Lind, Christina Hansen &

10. UNHCR is further concerned that the Proposal lacks information about the prospects for refugees and beneficiaries of subsidiary protection to obtain a durable solution following the initial period of short-term permits. UNHCR’s Executive Committee (ExCom) of which Finland is a member, has called on States to support refugees’ ability to attain local integration “*through the timely grant of a secure legal status and residency rights, and/or to facilitate naturalization*”.<sup>12</sup> The ExCom has thus recognized that short-term residence permits and frequent reviews are counter-productive to integration.
11. The 1951 Convention foresees a gradual attainment of rights with the end of the continuum being naturalization in the country of asylum. The ExCom has also referred to the progressive realization of rights and 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”.*<sup>13</sup>

In UNHCR’s view, the current proposal will facilitate a “retrogression” rather than a progressive realization of rights, as it intends to shorten the duration of permits and is silent on long-term solutions for beneficiaries of international protection.

#### *Differential duration of residence permits*

12. With respect to the proposed introduction of a difference in the length of the permits granted to refugees and beneficiaries of subsidiary protection respectively, UNHCR finds that a distinction between beneficiaries of international protection is often neither necessary nor objectively justified in terms of flight experience and protection needs. In UNHCR’s experience, these two categories of beneficiaries of international protection have the same protection needs and face the same integration opportunities and challenges, as well as similar return prospects. In practice, beneficiaries of subsidiary protection are generally not able to return home earlier than refugees.
13. According to international and European standards, a differentiated treatment according to immigration status is only permitted when the grounds therefore are objectively and reasonably justified.<sup>14</sup> Jurisprudence of the European Court of Human Rights (“ECtHR”)

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Nadeen Khoury, (2023). The Impact of Temporary Residence Permits on Young Refugees’ Abilities to Build a Life in Sweden. Social Sciences, 12(3), 143, <https://www.diva-portal.org/smash/get/diva2:1740461/FULLTEXT01.pdf>.

<sup>12</sup> UNHCR, ExCom, Conclusion on Local Integration No. 104 (LVI) - 2005, No. 104 (LVI), 7 October 2005, <https://www.refworld.org/policy/exconc/excom/2005/en/114429>, para. (j).

<sup>13</sup> Ibid, para. (l).

<sup>14</sup> Charter of Fundamental Rights of the EU, Article 21; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 14.

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. In the context of duration of permits, the ECtHR has found a violation of the non-discrimination guarantee under Article 14 of the European Convention on Human Rights and Fundamental Freedoms (“ECHR”) in several cases on the grounds of differentiating between different categories of migrants.<sup>15</sup>

14. While UNHCR acknowledges that the EU Qualification Directive does not oblige States to grant beneficiaries of subsidiary protection residence permits of the same length as those granted to refugees, UNHCR recommends that the same type and length of permits should be granted to both persons holding subsidiary protection status and those recognized as Convention refugees, to avoid discrimination and ensure equal treatment.<sup>16</sup> The Proposal also acknowledges that the Finnish Government previously assessed that the duration of residence permit for refugee and subsidiary protection should be similar.<sup>17</sup>

*Regular review of protection needs*

15. The Proposal further seeks to introduce an assessment of the need for the continuation of international protection when the residence permit granted to a beneficiary of international protection is up for renewal.<sup>18</sup> According to proposed amended Section 54, if grounds for cessation and/or revocation are at hand in accordance with Sections 107 and 108 of the Finnish Aliens Act (see further below), a new temporary permit will not be granted. The Proposal recognizes that the renewal process will create additional financial costs for the Finnish Migration Agency. The Proposal further notes that planned restrictions on permanent residence permits by the Finnish Government are likely to increase applications for renewal of fixed-term permits.
16. In UNHCR’s view, short-term permits and frequent mandatory review of a refugee’s status may undermine the sense of stability and security which international protection is intended

<sup>15</sup> For jurisprudence, see, for example, *Niedzwiecki v. Germany*, European Court of Human Rights (ECtHR), 25 October 2005, <http://www.refworld.org/docid/4406d6cc4.html>; *Okpiz v. Germany*, ECtHR, 25 October 2005, <http://www.unhcr.org/refworld/docid/4406d7ea4.html>; *Biao v. Denmark* (Grand Chamber), ECtHR, 24 May 2016, <http://www.refworld.org/cases,ECHR,574473374.html>; *Hode and Abdi v. The United Kingdom*, ECtHR, 6 November 2012, <http://www.refworld.org/cases,ECHR,509b93792.html>. For cases at the national level, see, for example, Decision of the AAC of 7 March 2006; in re: M.D., Egypt, interpreting Article 14 Swiss Federal Constitution (right to marry and to have a family), <http://www.ark-cra.ch/emark/2006/english.htm>, and Arrêt n° 121/2013, Belgium: Cour constitutionnelle, 26 September 2013, [http://www.refworld.org/publisher,BEL\\_CC,,BEL,5270ce364,0.html](http://www.refworld.org/publisher,BEL_CC,,BEL,5270ce364,0.html).

<sup>16</sup> UNHCR, Comments on the European Commission Proposal for a Qualification Regulation, p. 33.

<sup>17</sup> Proposal, p. 9.

<sup>18</sup> Finnish Aliens Act, Article 54, currently states that a permit is renewed unless issues are raised based on which it is obvious that the reasons for which the applicant was granted international protection are no longer valid.

to provide.<sup>19</sup> A stable residence permit has conversely been found to correlate with mental well-being.<sup>20</sup>

17. Regular mandatory reviews may not only be detrimental for the individual but can also create an unnecessary burden on the asylum authorities and increase costs for the State. In many cases, it is unlikely that protection status will end, as the protection needs are not typically of a short duration. Many situations of forced displacement worldwide are regrettably of a protracted nature and go on for many years, even decades.
18. UNHCR would also like to recall that it was never the intention that refugees were to be subjected to constant reassessments once their protection needs have been established. From that moment the focus should be on providing refugees with a set of rights and support in order to restart their lives, enable them to provide for themselves and their families, and contribute to the society that hosts them. There is no time limit set out in the 1951 Convention, and refugee status remains in place until the criteria in the Convention for ending of refugee status are met.<sup>21</sup>
19. Although the situation of a refugee is not necessarily a permanent one, the prospect of regular status reviews can create considerable uncertainty, making it difficult for a refugee to focus on the longer-term perspective which the integration effort requires. UNHCR would like to recall that States' failure to conform with the principle of legal certainty may raise issues with respect to the right to respect for family and private life enshrined in Article 7 of the Charter of Fundamental Rights, Article 12 of the Universal Declaration of Human Rights and Article 8 of the European Convention on Human Rights. The ECtHR has, for instance, found State authorities' failure to take appropriate measure to keep the applicant's state of uncertainty to a minimum to be a violation of Article 8 of the ECHR.<sup>22</sup>

#### **b. Exclusion from international protection**

20. The Proposal further seeks to align the Finnish Aliens Act with the minimum standards in the EU Qualification Directive with respect to exclusion from refugee and subsidiary protection status. Additional grounds for exclusion are proposed to be added to Section 87 of the Finnish Aliens Act as well as to Section 88 as a continuation of the existing exclusion clauses. UNHCR notes, however, that the Aliens Act already incorporates the exclusion grounds exhaustively enumerated in Article 1F of the 1951 Convention.<sup>23</sup>

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<sup>19</sup> UNHCR Handbook, para. 135.

<sup>20</sup> UNHCR, Comments on the European Commission Proposal for a Qualification Regulation p. 30.

<sup>21</sup> Ibid, para. 6.

<sup>22</sup> B.A.C v Greece, Application no. 11981/15, Council of Europe: European Court of Human Rights, 13 October 2016, <http://www.refworld.org/cases,ECHR,580a37de4.html>, paras. 69 and 263. A similar result was reached in M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, <http://www.refworld.org/docid/4d39bc7f2.html>.

<sup>23</sup> Section 87 of the Finnish Aliens Act also incorporates Articles 1D and 1E of the 1951 Convention.



### *Additional grounds for exclusion from refugee status*

21. According to the Proposal, asylum will “not be granted” (“jättää antamatta”) to a foreigner who incites or otherwise participates in the commission of excludable crimes and acts. This addition is intended to codify a practice that is already established in Finnish jurisprudence. Incitement and commissioning of excludable crimes and acts will be added to Section 87 of the Aliens Act, in effect, as a ground for exclusion from refugee status.
22. UNHCR considers that such an addition is not necessary and should not be introduced, as it could lead Finland to exclude persons without having regard to the *actus reus* and *mens rea* requirements to commit, or participate in the commission of, excludable crimes. UNHCR has previously raised similar concerns in its comments on the European Commission Proposal for a Qualification Regulation.<sup>24</sup> UNHCR recalls that the application of an exclusion clause requires a finding that the person concerned incurred individual responsibility, either through the commission of excludable acts or one of the modes of participation in the commission of such acts by others.
23. Further, the Proposal seeks to introduce two other grounds for “not granting” refugee status, that is, where there are reasonable grounds to assume that the refugee is 1) a danger to national security or 2) is considered dangerous to society having been convicted of a particularly serious crime by a final judgement. While UNHCR acknowledges that the EU Qualification Directive permits States to incorporate these two reasons as grounds for not granting refugee status, the Proposal runs the risk of departing substantively from the framework of the 1951 Convention by adding exclusion grounds which are not foreseen in the 1951 Convention.
24. UNHCR notes that these two proposed exclusion grounds appear to be based on the exceptions to the principle of non-refoulement in Article 33(2) of the 1951 Convention. However, under the 1951 Convention, the exclusion clauses (Article 1F) and the exceptions to the principle of non-refoulement (Article 33(2)) serve different purposes. The rationale of Article 1F, which exhaustively enumerates the grounds for exclusion based on criminal conduct of the applicant, is twofold. First, certain acts are so grave that they render their perpetrators undeserving of international protection. Secondly, the refugee protection framework should not stand in the way of prosecution of criminals. By contrast, Article 33(2) deals with the treatment of refugees and defines the circumstances under which they may exceptionally lose their entitlement to protection against refoulement under international refugee law. The provision aims at protecting the safety of the country of refuge or of the community. Its application hinges on the assessment that the refugee in question is a danger to the national security of the country or, having been convicted by a final judgment of a particularly serious crime, poses a danger to the community.
25. Article 33(2) was not conceived as a ground for terminating refugee status. Unless the person has engaged in conduct which justifies exclusion based on Article 1F(a) or (c) of

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<sup>24</sup> UNHCR, Comments on the European Commission Proposal for a Qualification Regulation, p. 18.

the 1951 Convention, s/he remains a refugee in the sense of Article 1 of the 1951 Convention. Assimilating the exceptions to the non-refoulement principle permitted under Article 33(2) to the exclusion clauses of Article 1F would therefore be incompatible with the 1951 Convention. Moreover, it may lead to an incorrect interpretation of both provisions of the 1951 Convention.<sup>25</sup>

26. UNHCR therefore recommends that cases of refugees who are considered a danger to the security of the country of refuge or the community should be dealt pursuant to the criteria set out in Article 33(2) of the 1951 Convention as per amendments proposed to Section 149 of the Aliens Act (see further below at paragraph 38).
27. UNHCR would also like to reiterate that the exclusion clauses must be interpreted and applied restrictively, as confirmed by national case law.<sup>26</sup> Similar considerations as those set out above arise with regard to the parallel provision for beneficiaries of subsidiary protection set out in the Proposal.

*Additional grounds for exclusion from subsidiary protection*

28. The Proposal further seeks to introduce two additional grounds for exclusion from subsidiary protection status, that is, 1) where s/he constitutes a danger to the community or to the security, and 2) where s/he has committed a crime prior to his or her admission, which is punishable by imprisonment if committed in Finland, and s/he left the country of origin solely to avoid sanctions for the crime.
29. UNHCR acknowledges that these grounds for exclusion from subsidiary protection status are permitted according to the EU Qualification Directive. However, given the close linkages between refugee status and subsidiary protection status, UNHCR recommends aligning the exclusion grounds for both statuses in accordance with its comments set out above. Finland had previously made similar observations noting that introducing wider exclusion grounds for subsidiary protection than for refugee status was considered questionable and inappropriate from a protection point of view.<sup>27</sup>

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<sup>25</sup> For instance, there is a risk that decisions on whether a person poses a danger to the security or community of a Member State may be taken in proceedings where the concerned persons are not entitled to see all the evidence against them or to respond effectively, which increases the possibility of incorrect application of these provisions. That these concerns are justified has been confirmed by a 2007 review of national implementing legislation and state practice. UNHCR, *Asylum in the European Union, A study on the implementation of the Qualification Directive*, November 2007, <http://www.refworld.org/docid/473050632.html>.

<sup>26</sup> UNHCR, *The Exclusion Clauses: Guidelines on their Application*, 2 December 1996, <https://www.refworld.org/policy/legalguidance/unhcr/1996/en/31302>. For case law, see, *Al-Sirri (FC) (Appellant) v. Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (FC) (Appellant) v. Secretary of State for the Home Department (Respondent)*, [2012] UKSC 54, United Kingdom: Supreme Court, 21 November 2012, <http://www.refworld.org/docid/50b89fd62.html>. The Court held that Article 1F(c) “should be interpreted restrictively and used with caution”, para. 16. See also, *Austria – Supreme Administrative Court*, 21 April 2015, Ra 2014/01/0154.

<sup>27</sup> Proposal p. 8.



30. UNHCR notes moreover that Finland’s obligations under international human rights law regarding non-refoulement apply in the case of exclusion. Therefore, even in a case of exclusion, a potential subsequent return must not violate the principle of non-refoulement.<sup>28</sup>

### c. Cessation of international protection

31. As noted in the Proposal, committing crimes and jeopardizing national security are currently not grounds in Finnish law for ceasing refugee and subsidiary protection status already granted. The Proposal thus seeks to expand the grounds for cessation (“lakkauttaa”) of international protection “when there is a justified reason to assume that the refugee is a danger to national security or is considered dangerous to society, because he has been convicted of a particularly serious crime by a legally binding sentence”.<sup>29</sup>

32. Cessation of refugee status is regulated in Section 107 of the Aliens Act, which currently reflects the grounds for cessation contained in the 1951 Convention, Article 1C (1) to (5). According to the Proposal, three additional cessation clauses would be added to this Section, whereby refugee status could be terminated if a) the refugee has committed, instigated or otherwise participated in acts falling within the scope of the exclusion clauses equivalent to Article 1F (a) and (c) of the 1951 Convention as referred to in Section 87; 2) is a danger to national security or 3) is considered dangerous to society, because he or she has been convicted by final judgement of a particularly serious crime.

33. Section 107 also includes a provision for cessation of subsidiary protection reflecting the EU Qualification Directive, Article 16(1). According to the Proposal, the grounds for exclusion from subsidiary protection, contained in Section 88 paragraphs 2 and 3, would also serve as grounds for cessation.

34. UNHCR would like to recall that the 1951 Convention recognizes that refugee status ends under certain clearly defined conditions. This means that once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of one of the cessation clauses contained in Article 1 C of the 1951 Convention or their status is cancelled or revoked (see further below).<sup>30</sup> The cessation clauses are exhaustively enumerated, that is, no additional grounds would justify a conclusion that international protection is no longer required. The cessation clauses in Article 1C (1-6) of the 1951 Convention therefore set out the only situations in which refugee status properly and legitimately granted comes to an end.<sup>31</sup>

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<sup>28</sup> See, among others, *J.S.A. v. Ministry of Interior*, 6 Azs 40/2010-7023, Supreme Administrative Court of the Czech Republic, March 2011, where the court held that notwithstanding the exclusion clauses of the 1951 Convention and the QD, there is an obligation under Article 3 of the ECHR not to return any individual to a country where there is a risk of torture or other inhuman or degrading treatment.

<sup>29</sup> Proposal, p. 11.

<sup>30</sup> UNHCR, Handbook, para. 112.

<sup>31</sup> UNHCR, Handbook, paras. 115-116; UNHCR, *The Cessation Clauses: Guidelines on Their Application*, 26 April 1999, <https://www.refworld.org/docid/3c06138c4.html>; UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to*

35. Commission of a crime is not an act that falls within the scope of Article 1C and should therefore not invoke an assessment of whether the refugee should continue to benefit from international protection. Article 1C and its equivalent in national legislation should not serve as a pre-requisite for expulsion and to terminate refugee status when refugees have committed crimes. There is no causal link between the commission of crimes by refugees and the cessation clauses, nor is it regarded under the 1951 Convention as a reason for cessation of refugee status.<sup>32</sup> The basis and application of the cessation clauses must be clearly distinguished from other situations which warrant termination of refugee status in the event a refugee commits a serious crime and the application of Articles 32 and 33(2) of the 1951 Convention which may exceptionally justify expulsion or return to the country of origin.
36. In UNHCR's view, the proposed amendment to Section 107 of the Aliens Act as a ground for cessation of refugee status is therefore inconsistent with Article 1C of the 1951 Convention. Additional grounds for cessation beyond those enumerated in the Convention are not permitted. While refugee status and subsidiary protection status are legally distinct, the cessation of subsidiary protection status should, in UNHCR's view, by analogy be guided by the same principles as those applicable to cessation under the 1951 Convention.<sup>33</sup>

#### **d. Cancellation and revocation of international protection**

37. UNHCR acknowledges the concerns raised in the Proposal about refugees who engage in criminal conduct. This situation is foreseen by the international refugee law framework. Refugees who have committed a crime may in certain circumstances lose their refugee status already granted through cancellation or revocation (in Finnish, both are referred to as "peruuttaminen") in line with certain procedural safeguards. Cessation, however, is not intended for addressing situations where the refugee has engaged in criminal conduct.
38. The logic of the 1951 Convention is that criminal conduct after admission into the country of refuge would be handled through rigorous domestic criminal law enforcement and/or, where necessary and appropriate, the application of Article 32 or Article 33(2).<sup>34</sup> However,

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the Status of Refugees, 10 February 2003, HCR/GIP/03/03, <https://www.refworld.org/policy/legalguidance/unhcr/2003/en/14489>.

<sup>32</sup> Ibid, endnote 1. This was further confirmed by the Norwegian Borgarting Court of Appeal in LB-2021-78433, Judgement of 11 March 2022, where the Court confirmed that the criteria for cessation of refugee status are independent of the individual's criminal behaviour. The same conclusion was reached in LB-2018-148797, Judgement of 26 February 2020 and by the Civil Ombudsman in a statement on 11 July 2019 concerning an Afghan boy who was deported on the basis of an imposed sentence <https://www.sivilombudet.no/uttalelser/utlendingsnemndas-rettsanvendelse-i-sak-om-oppbor-av-flyktningstatus-opprettet-etter-ilagt-straff/>.

<sup>33</sup> EU Qualification Directive, Articles 11, 14, 16 and 19, cf Article 1 C(5) and (6) of the 1951 Convention. See also, EU Court of Justice, Mohammed Bilali v. Bundesamt für Fremdenwesen und Asyl, C-720/17, 23 May 2019.

<sup>34</sup> UNHCR, Additional UNHCR Observations on Article 33(2) of the 1951 Convention in the Context of the Draft Qualification Directive, December 2002, <https://www.refworld.org/docid/437c6e874.html>, para. 6.

initiating a re-examination of an individual's need for international protection on the basis that they have committed a crime, as foreseen by proposed Section 54, is not grounded in international refugee law. Articles 32 and 33(2) provide the correct framework in such cases, neither of which involve re-examination of refugee status nor its removal, but the potential to remove the right to non-refoulement and the ability to expel the refugee from the host country.

39. In line with Article 2 of the 1951 Convention, refugees must conform to the laws and regulations of the country of asylum and to measures taken for the maintenance of public order. In other words, recognized refugees who commit crime in the country of asylum should normally be prosecuted and sentenced in line with the framework of national law and proceedings.<sup>35</sup> Article 2 does not provide any sanctions in the case of a refugee who does not fulfil his or her duties. The individual will not forfeit their status as a refugee and will not – by virtue of this Article – forfeit any of the rights and benefits which the 1951 Convention confers on refugees.<sup>36</sup>
40. UNHCR notes that grounds for cancellation already appear to be incorporated into Finnish law in Section 108. Furthermore, grounds for revocation are proposed to be introduced in Section 107(6) of the Aliens Act. UNHCR therefore considers that no further amendments are necessary.

#### **IV. Concluding remarks**

41. Based on the above observations, UNHCR invites Finland to consider potential amendments to the Proposal in order to:
- a. Issue residence permits of a longer duration, preferably with a minimum duration of five years, to those who are recognized as in need of international protection to facilitate an early and effective integration process;
  - b. Grant the same rights to refugees and other beneficiaries of international protection in respect of length of residence permits, to avoid discrimination and ensure equal treatment;
  - c. Provide a secure and stable status by refraining from introducing mandatory regular reviews of the protection needs of refugees and beneficiaries of subsidiary protection;
  - d. Clearly distinguish between the concepts of cessation, exclusion, cancellation and revocation and avoid conflating them together in the same provision, as each have distinct requirements and purposes;

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<sup>35</sup> UNHCR, Handbook, para. 154.

<sup>36</sup> See A. Grahl-Madsen, Commentary on the Refugee Convention, Articles 2-11, 13-37, published by UNHCR (1997), Commentary to Article 2, at (3) <https://www.refworld.org/docid/4785ee9d2.html>.

- e. In particular, refrain from introducing the exception to refoulement in Article 33(2) of the 1951 Convention as additional exclusion and cessation clauses as this would be inconsistent with the 1951 Convention. The exclusion and cessation clauses contained in Article 1C and F of the 1951 Convention are exhaustively enumerated and no additional grounds are permitted;
- f. Consider fully incorporating Article 33 of the 1951 Convention in the Finnish Aliens Act to ensure protection from refoulement.

**UNHCR Representation for Nordic and Baltic Countries**  
**March 2024**