



**UNHCR**

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

**UNHCR Representation for Northern Europe**

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**RE: Observations by the United Nations High Commissioner for Refugees (UNHCR) on the proposed amendments to the Aliens Act and Legal Aid Act of the Republic of Finland**

**(Luonnos hallituksen esitykseksi eduskunnalle turvapaikanhakijoiden oikeusturvan vahvistamista koskevaksi lainsäädännöksi)**

Dear Sir/Madam,

The UNHCR Representation for Northern Europe is pleased to submit to the Finnish Ministry of Justice its observations by the United Nations High Commissioner for Refugees (UNHCR) on the proposed amendments to the Aliens Act and Legal Aid Act of the Republic of Finland.

As always, UNHCR appreciates the constructive relationship between Finland and UNHCR, and we remain at your disposal for any clarifications required.

Yours sincerely,

Wilfried Buchhorn  
Deputy Representative



# UNHCR

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

## Observations by the United Nations High Commissioner for Refugees (UNHCR) on the proposed amendments to the Aliens Act and Legal Aid Act of the Republic of Finland

(Luonnos hallituksen esitykseksi eduskunnalle turvapaikanhakijoiden  
oikeusturvan vahvistamista koskevaksi lainsäädännöksi)

### I. INTRODUCTION

1. The UNHCR Representation for Northern Europe is grateful to the Ministry of Justice for the invitation to express its views on the draft law proposal to amend the Aliens Act and the Legal Aid Act of Finland entitled, "Government's proposition to the Parliament on legislation strengthening the legal protection of asylum-seekers".
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,<sup>1</sup> 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[.]".<sup>2</sup> UNHCR's supervisory responsibility is reiterated in Article 35 of the 1951 Convention<sup>3</sup> and in Article II of the 1967 Protocol relating to the Status of Refugees<sup>4</sup> (hereafter collectively referred to as the "1951 Convention").<sup>5</sup>
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 (hereafter "TFEU"),<sup>6</sup> as well as in Article 29 of the Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) (hereafter "recast APD"),<sup>7</sup> according to which 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".

<sup>1</sup> 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").

<sup>2</sup> *Ibid.*, para. 8(a).

<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the 1951 Convention".

<sup>6</sup> European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>

<sup>7</sup> European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html>.

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 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.<sup>8</sup> 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, international human rights law, Conclusions on International Protection of the UNHCR Executive Committee (hereafter "ExCom"),<sup>9</sup> and 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.<sup>10</sup> As a member of the UNHCR ExCom since 1979, Finland has contributed extensively to the development of the Conclusions on International Protection, adopted unanimously by ExCom.

## II. THE PROPOSAL

6. The current draft law proposal aims at withdrawing three of the restrictions introduced to the Aliens Act and the Legal Aid Act in 2016.<sup>11</sup> According to the changes introduced in 2016, free (state-sponsored) legal aid has only been provided during the first instance asylum procedure where exceptional grounds warranted it ("erityisen painavia syitä"), such as for applicants with specific vulnerabilities,<sup>12</sup> and only by public legal aid attorneys. The 2016 amendments also shortened the appeal times in asylum cases from 30 days to, depending on the appeals instance, either 14 or 21 days. Provisions concerning reimbursement of legal aid were also changed so that legal representatives have been reimbursed on a lump sum basis, rather than for the actual number of hours spent on a case.
7. The present proposal aims at reintroducing free legal aid in the first instance for all asylum-seekers, not only based on exceptional grounds. Secondly, the proposal aims at reintroducing regular appeal times in the asylum procedure, thus reverting to the regular 30 days appeals period. Thirdly, the proposal aims at reintroducing the regular legal aid reimbursement method in the asylum procedure to reimburse legal counsel based on the hours worked on a case. However, the provision that only public legal aid attorneys will be reimbursed while acting as a legal counsel in the first instance will be maintained.

## III. OBSERVATIONS

<sup>8</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, available at: <https://www.refworld.org/docid/5cb474b27.html>.

<sup>9</sup> UNHCR, *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114)*, October 2017, HCR/IP/3/Eng/REV. 2017, available at: <https://www.refworld.org/docid/5a2ead6b4.html>.

<sup>10</sup> Goodwin Gill/McAdam, *The Refugee in International Law*, Oxford University Press, 2007, p. 217.

<sup>11</sup> See further, UNHCR, *Comments by the UNHCR Regional Representation for Northern Europe on the draft Law Proposal amending the Aliens Act and some other laws of the Republic of Finland*, January 2016, available at: <https://www.refworld.org/docid/56991a7a4.html>.

<sup>12</sup> The provision of free legal aid for all asylum-seekers in the second instance, by public or private lawyer, was retained.

8. UNHCR welcomes the proposed amendments in the draft law proposal and fully supports the general aim of the Government to ensure access to free quality legal assistance and representation at all stages of the asylum procedure. UNHCR considers that investing in the first instance procedure, including through the provision of free legal aid early in the process, has the potential to enhance the quality and timeliness of decisions. High quality first instance decisions are also less likely to be overturned at second instance and may thus reduce the number of appeals and related costs for processing and reception. An investment in the early stages of the asylum process may thus save resources and facilitate the integration of those who are found to be in need of international protection and return of those who are not.<sup>13</sup>
9. In UNHCR's view, the right to legal assistance and representation is an essential procedural safeguard. Asylum-seekers are often unable to articulate cogently the elements relevant to an asylum claim without the assistance of a qualified counsellor, as they are not sufficiently familiar with the precise eligibility criteria for the recognition of refugee status and the legal system of a foreign country. Quality legal assistance and representation is, moreover, in the interest of States, as it can help to ensure that international protection needs are identified accurately and early. The efficiency of first instance procedures is thereby improved.<sup>14</sup> In UNHCR's view, free legal assistance should be provided in first instance, ideally encompassing the preparation of procedural documents, and legal representation (with participation of the representative) in the personal interview.<sup>15</sup> UNHCR thus welcomes that the proposed amendments will ensure that all asylum-seekers, not only those in a vulnerable position, will be able to receive free legal aid.
10. UNHCR supports the general aim of the Government to improve the quality of the legal aid, and welcomes that the proposal retains the quality-ensuring amendment introduced in 2016, according to which only certain lawyers can be appointed as legal counsels to asylum-seekers.<sup>16</sup> However, it is UNHCR's understanding that public legal aid attorneys do not need any special certification to represent asylum-seekers. It is thus not clear to UNHCR how only using public legal aid attorneys to provide free legal assistance in the first instance contributes to ensuring quality. As set out in our comments in 2016,<sup>17</sup> UNHCR recommends investing in capacity building and certification of all legal representatives in asylum matters, rather than restricting the providers of free legal aid in the first instance to public legal aid attorneys only. The goal of high-quality asylum decisions in the first instance may best be met by certifying the most motivated, qualified and experienced lawyers, whether they are public or private.<sup>18</sup>

<sup>13</sup> UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.34, available at: <https://www.refworld.org/docid/5cb597a27.html>, and; UNHCR, *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*, December 2016, available at: <https://www.refworld.org/docid/58385d4e4.html>

<sup>14</sup> UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p. 15, available at: <https://www.refworld.org/docid/5cb597a27.html>.

<sup>15</sup> UNHCR, *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, page 17, available at: <http://www.refworld.org/docid/4f3281762.html>.

<sup>16</sup> These include public legal aid attorneys, attorneys-at-law and certified lawyers.

<sup>17</sup> UNHCR, *Comments by the UNHCR Regional Representation for Northern Europe on the draft Law Proposal amending the Aliens Act and some other laws of the Republic of Finland*, January 2016, available at: <https://www.refworld.org/docid/56991a7a4.html>.

<sup>18</sup> Many private lawyers in Finland have vast experience in refugee law, for example, at the Finnish Refugee Advice Center, UNHCR's operational partner.

11. UNHCR welcomes that the regular time limit for appeal in the Finnish administrative legal procedure, 30 days, is reintroduced in asylum cases. As pointed out in the draft law proposal, a longer time period for appeal improves an asylum-seeker's possibility to find a legal counsel and substantively appeal a decision, and thus strengthens important legal rights of asylum-seekers. The quality of appeals is expected to increase as legal counsels will have more time to prepare the appeals.<sup>19</sup>
12. UNHCR also welcomes that legal aid providers would, according to the proposed amendment, be remunerated based on the working hours instead of the current system of a set fee per case. UNHCR understands that remuneration per hour is the main rule in the Finnish legal aid system, and that the set fee has been an exception applied in asylum cases. According to the study on legal aid commissioned by the Ministry of Justice and published in December 2018, many attorneys-at-law have stopped providing legal assistance to asylum-seekers as they find the set fee to be too low to cover the work needed.<sup>20</sup> With regard to ensuring quality of legal assistance provided to asylum-seekers, UNHCR strongly supports the proposed amendment.

#### IV. CONCLUDING RECOMMENDATIONS

13. UNHCR recommends
  - To withdraw the restriction that only public legal aid attorneys can provide free (state sponsored) legal aid in the first instance of the asylum procedure;
  - To continue to improve the quality of legal assistance through investing in capacity building and certification of the legal representatives.

UNHCR Representation for Northern Europe  
Stockholm, 10 January 2020

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<sup>19</sup> UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.17-19, available at: <https://www.refworld.org/docid/5cb597a27.html>.

<sup>20</sup> *Turvapaikanhakijat oikeusavun asiakkaina*, page 10, available (in Finnish) at: <https://tietokayttoon.fi/julkaisu?pubid=28901>.