



UNHCR Comments to the Finnish Ministry of Interior's Preliminary Proposal on Changes to the Current Legal Aid and Assistance System for Asylum-Seekers

Reference is made to the Finnish Ministry of Interior's request dated 17 March 2011 concerning the Preliminary Proposal on Changes to the Current Legal Aid and Assistance System for Asylum-Seekers (*"Kansainvälistä suojelua hakevalle annettava oikeudellinen neuvonta ja oikeusapu"*, hereinafter - Preliminary Proposal).

Foremost, the UNHCR Regional Office for the Baltic and Nordic Countries (hereinafter – UNHCR) notes with appreciation the consistently close working relationship between Finland and UNHCR on matters concerning legislation related to persons of concern to UNHCR. UNHCR has an interest in such legislation in line with its supervisory responsibility entrusted by the UN General Assembly. In this spirit, UNHCR is pleased to provide the following comments on the Preliminary Proposal with the aim of assisting Finland in assuring its usual high level of compliance with applicable international and European legal standards.

UNHCR understands that the Finnish Ministry of the Interior is looking into the opportunity to clarify the current situation with legal services for asylum-seekers and assess potential needs for changes regarding the organization of these services.

In considering the Preliminary Proposal, UNHCR makes the following observations:

The right to legal assistance throughout the refugee status determination procedure is based on general principles of law and has most notably been reaffirmed by States Parties to the *1951 Convention related to the Status of Refugees* in the Global Consultations on International Protection, organized by UNHCR, as well as being recognized by the Executive Committee of UNHCR, the European Union and the Council of Europe in various legal instruments and relevant declarations¹.

As was noted at the Global Consultations on International Protection in 2001, "[a]ppropriate counselling of the asylum-seeker on the meaning and nature of the asylum procedure, on his/her rights and responsibilities, and on the consequences of not cooperating have proved helpful in promoting cooperation [of the asylum seeker in complying with certain requirements, such as assisting to confirm his/her identity]"². According to the conclusions adopted at the Global Consultations "at all stages of the procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel."³

¹ Article 5, Reception Directive; EU Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures 19/09/1996, para. 13; UNHCR ExCom Conclusion No 8 (XXVIII) of 1977 on Determination of Refugee Status; Council of Europe Recommendation 1236, Right to Asylum.

² UN High Commissioner for Refugees, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, at 37; available at: <http://www.unhcr.org/refworld/docid/3b36f2fca.html>

³ Ibid, at 50(g).

UNHCR acknowledges the current high level of compliance with the above-mentioned standards. Furthermore, UNHCR would like to highlight the satisfactory quality of the legal aid system currently in place in Finland.

The Preliminary Proposal of the Ministry of the Interior suggests a separation of the general legal advice services from the individual legal assistance for asylum-seekers. The general legal advice would continue to be organized and financed through the current reception system under the Ministry of the Interior while the individual legal assistance would be organized through the legal aid system based on the Legal Aid Act under the Ministry of Justice. As such, UNHCR welcomes this initiative since the individual legal assistance is currently provided through the Finnish Immigration Service (Migri) ,which suggests legal counsels for individual asylum-seekers. The present system does not fully embrace the principal of impartiality, since counsels proposed by Migri risk ending up in a loyalty conflict vis-à-vis their assigner and opponent at the appeal level in the Helsinki Administrative Court. UNHCR is of the view that these concerns are of principal importance and that any deficits which may result in protection gaps under the present system should be addressed.

It is however UNHCR's view that the outcome of the present initiative of the Ministry of the Interior should be carefully evaluated, giving due consideration to the requirements of fairness and efficiency to make sure that efficiency is not achieved at the expense of fairness. In UNHCR's opinion, a transfer of the individual legal assistance provisions under the Legal Aid Act may endanger the quality of the legal aid provided. The access to free legal aid by asylum-seekers at the initial stage of the asylum procedure needs furthermore to be explicitly safeguarded, since the aid provided according to the current act is connected to the financial situation and the actual need for assistance of the client.

UNHCR is concerned that the issues covered by the Preliminary Proposal might not address all shortcomings related to fairness in the procedure, or more specifically, the observed lack of equal knowledge and expertise among the parties. It is UNHCR's experience that lawyers, jurists and others representing asylum-seekers in Finland do not always possess a level of legal and/or factual knowledge comparable to the Migri or FRAC staff. While the reasons for this situation will have to be further looked into, it is UNHCR's view that in case of transferring individual legal assistance under the Legal Aid Act, there is a need to establish a mechanism, which would identify the more qualified counsels in the field of asylum law, as well as address the problems related to the inequality of resources.

The inequality could be addressed through the introduction of measures in the appointment system which would serve to provide equal access to expertise among the parties. An example of such a measure would be to raise the general knowledge of lawyers and other legal counsels through regular trainings on situational updates in countries of origin, concerns related to specific groups and questions of legal interpretation.

UNHCR notes that the Preliminary Proposal suggests relatively few hours for the individual legal assistance of each asylum-seeker. UNHCR is of the opinion that asylum-seekers should be given a reasonable and sufficient time to prepare their case, to communicate with and seek advice from a legal counselor or appropriate NGOs, and to obtain whatever background information is necessary in support of their claim. The amount of hours allocated for asylum-seekers under the state legal aid system shall not hinder the effective exercise of the right to claim asylum. It is also important to consider special needs of i.e. traumatized asylum-seekers in the calculation of the working time to be paid to legal representatives under the Legal Aid Act.

UNHCR also wants to point out the importance to ensure the quality of general legal advice provided to asylum-seekers at the initial stages of asylum procedure. It is essential that such an advice is given by organizations or bodies, which have necessary expertise and knowledge of international refugee law and provisions of national legislation. Currently, the reception centres may propose any interested person with legal education to assist an asylum-seeker. UNHCR believes that it is reasonable to use already existing networks of legal practitioners in Finland, like the Finnish Refugee Advice Centre, for delivery of the quality legal services for applicants.

In conclusion, UNHCR urges a careful review of the project as currently elaborated, especially as concerns the issue of quality and expertise of the legal aid providers as well as the access to competent legal aid already at the initial stage of the asylum procedure.

We hope that our comments will be of use to you. Please do not hesitate to contact us should you need any further information in relation to this matter.

UNHCR
Regional Office for Baltic and Nordic Countries
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