



# UNHCR

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

UNHCR

Regional Representation for Northern Europe

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Re: **UNHCR Observations on the proposed amendments to the Icelandic Act on Foreigners: Frumvarp til laga um breytingu á lögum um útlendinga, nr. 96 15. maí 2002, með síðari breytingum (kærunefnd, fjölgun nefndarmanna), (Lagt fyrir Alþingi á 145. löggjafarþingi 2015–2016.)**

The UNHCR Regional Representation for Northern Europe hereby presents its observations on the law proposal referred to above.

We remain at your disposal for any clarifications required.

Yours sincerely,

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## UNHCR Observations on the proposed amendments to the Icelandic Act on Foreigners:

### Frumvarp til laga

#### um breytingu á lögum um útlendinga, nr. 96 15. maí 2002, með síðari breytingum (kærunefnd, fjölgun nefndarmanna) (Lagt fyrir Alþingi á 145. löggjafarþingi 2015–2016)

### I. Introduction

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) hereby submits its observations on selected articles in “Frumvarp til laga um breytingu á lögum um útlendinga, nr. 96 15. maí 2002, með síðari breytingum (kærunefnd, fjölgun nefndarmanna) (Lagt fyrir Alþingi á 145. löggjafarþingi 2015–2016)” of 29 April 2016, containing additional amendments to the Icelandic Act on Foreigners (hereafter “the Proposal”).
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 proposal 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 (hereafter collectively referred to as the “1951 Convention”). It 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>4</sup>
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in the 1951 Convention,<sup>5</sup> as well as by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

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<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.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (hereafter “UNHCR Statute”).

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

<sup>3</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>4</sup> 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>.

<sup>5</sup> 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> (hereafter “UNHCR Handbook”).

4. While not a member of the European Union (hereafter “EU”) and consequently not bound by the Common European Asylum System (hereafter “CEAS”), Iceland seeks to coordinate asylum and migration issues with its EU neighbours and has in EU enlargement negotiations indicated that it generally applies the EU asylum *acquis*. The present observations, therefore, are *inter alia* informed by standards stemming from EU asylum law.

## II. General Observations

5. UNHCR notes that the Proposal contains provisions suggested in earlier versions of the comprehensive revision of the Icelandic Act on Foreigners, some of which have been revised pursuant to previous observations submitted by UNHCR in November 2015<sup>6</sup> and in April 2016.<sup>7</sup> UNHCR is grateful to the Icelandic Ministry of Interior for having considered UNHCR’s previous observations and also for having provided a partial translation of the Proposal into English. This assistance has been essential for UNHCR’s ability to exercise its supervisory responsibility and provide comments to the Proposal.
6. UNHCR’s observations below pertain to those articles in the Proposal which were translated by the Ministry of Interior and provided to UNHCR and which, in UNHCR’s view, still need further aligning with international standards. UNHCR’s observations do therefore not reflect the entire Proposal. As the translation is unofficial and UNHCR is not fully clear about the meaning of some of the provisions, UNHCR has refrained from commenting on specific legal language and instead provided general observations.

## III. Observations on specific articles in the draft Proposal

### a. Powers of the Chair of the Appeals Board

7. UNHCR notes that according to proposed Article 8 Section 3, the Chair of the Appeals Board will be given the right to decide on his/her own in cases where there are “no legal doubts” about facts and legal issues relevant to the outcome of the case, including in cases processed within accelerated procedures where the applicant is considered to come from a safe country of origin. UNHCR understands that this suggestion is similar to earlier versions of the revision. In this regard, UNHCR therefore wishes to refer to its previous observations which noted:

“With regards to the authority of the Chairperson of the Board and in what circumstances s/he may rule alone on cases of concern, UNHCR observes that whether an appeal is heard by a single judge or a panel of judges may depend on the nature of the decision taken by the determining authority. UNHCR would recommend that if the case presents particular difficulties of a factual or legal nature or the legal matter is of fundamental significance, the case is not determined by the Chair alone, but with the full Board.<sup>8</sup>”

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<sup>6</sup> UNHCR, *Observations by the UNHCR Regional Representation for Northern Europe on the draft Proposal to amend the Foreigner's Act in Iceland ("Frumvarp til laga um útlendinga")*, November 2015, available at: <http://www.refworld.org/docid/56e17dc54.html> (hereafter “UNHCR Observations, November 2015”).

<sup>7</sup> UNHCR, *Observations on the proposed amendments to the Icelandic Act on Foreigners: Frumvarp til laga um breytingu á lögum um útlendinga, nr. 96 15. maí 2002, með síðari breytingum (kærunefnd, fjölgunnefndarmanna)*, 1 April 2016, available at: <http://www.refworld.org/docid/56fe7ba74.html> (hereafter “UNHCR Observations, April 2016”).

<sup>8</sup> UNHCR Observations, November 2015, para 13; UNHCR Observations, April 2016, para. 10.

8. Further, UNHCR understands that the Chair of the Board may rule on his/her own also in cases channelled through accelerated procedures, including where the concept of safe country of origin is applied. In this regard, UNHCR wishes to point out that certain claims made by applicants from a country generally considered as safe may raise issues of a complex nature, and could thus warrant a consideration by the full Board.

#### **UNHCR Recommendations:**

- UNHCR recommends to, in the Act on Foreigners, clearly outline under which circumstances the Chair can decide on his/her own, and that these powers are used as restrictively as possible.

#### **b. Special authority of the Minister of Interior**

9. To UNHCR's understanding, the Minister of Interior according to proposed Article 23 will be given the authority to further regulate the procedures of the Directorate of Immigration, the Appeals Board and the police for simplified and accelerated processing of certain cases. Further, according to proposed Article 35, the Minister of Interior may, by regulation, prescribe the procedure before the Appeals Board for handling requests for suspensive effect, including deadlines for submitting such a request which may not be less than 24 hours, processing times and the conditions for such a request to be accepted.
10. In UNHCR's view, the right to an effective remedy in asylum cases includes the right to appeal a (negative) decision made in an accelerated procedure.<sup>9</sup> As a general rule, UNHCR considers that the time-limit for submitting appeals must be reasonable.<sup>10</sup> While short time-limits in first instance asylum proceedings aim to ensure an efficient and cost-effective examination of cases, the need to process asylum applications in a rapid and efficient manner cannot prevail over *non-refoulement* obligations.<sup>11</sup> It should further be noted that the Court of Justice of the European Union (hereafter "CJEU") has held that "with regard to abbreviated procedures, a 15-day time limit for bringing an action does not seem, generally, to be insufficient in practical terms to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved".<sup>12</sup>
11. In respect of suspensive effect, UNHCR wishes to reiterate its previous observations. To be effective, the remedy must allow automatic suspensive effect except for very limited

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<sup>9</sup> UNHCR ExCom, Conclusion No. 8 (XXVIII), 1977, noted that "If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system", available at: <http://www.unhcr.org/refworld/docid/3ae68c6e4.html>. at para. (vi).

<sup>10</sup> Cf. EU Asylum Procedures Directive (recast), Article 46(4). See also, 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, available at: <http://www.refworld.org/docid/4f3281762.html>, p. 33.

<sup>11</sup> See also *Council of Europe: Parliamentary Assembly, Resolution 1471 (2005) on Accelerated Asylum Procedures in Council of Europe Member States*, para. 8.1.17 October 2005, 1471 (2005), available at: <http://www.unhcr.org/refworld/docid/43f349e04.html>.

<sup>12</sup> *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration*, Case C-69/10, European Union: Court of Justice of the European Union, 28 July 2011, available at: <http://www.refworld.org/docid/4e37bd2b2.html>, para. 67.

cases when the granting of suspensive effect is subject to a decision from a court or tribunal:<sup>13</sup>

“The notion of an effective remedy, furthermore, entails the right to an automatic suspensive effect of the first instance decision, allowing the applicant to remain in the country until a final decision has been taken on the asylum application. UNHCR notes that the recast APD [EU Asylum Procedures Directive<sup>14</sup>] permits four exceptions to the right to an automatic suspensive effect, outlined in Article 46(6), where the suspensive effect is subject to a decision from a court or tribunal. UNHCR wishes to note its concern about the potential risk of *refoulement* where such derogations apply and to underline the importance of ensuring the safeguards enshrined in Articles 46 (5) (7) and (8) of the recast APD, including the requirement to allow the applicant to remain on Icelandic territory pending the Board’s decision over the applicant’s right to remain.”<sup>15</sup>

12. The European Court of Human Rights (hereafter “ECtHR”) has also affirmed that the first instance decision must have automatic suspensive effect.<sup>16</sup> According to the Court, if the ordinary appeal procedure does not have automatic suspensive effect it must be possible for the individual to use an urgent procedure to prevent the execution of a deportation order and await the outcome of the ordinary appeal.<sup>17</sup>

#### UNHCR Recommendations:

- UNHCR recommends a minimum time-frame for appeals of 15 days and that the proposal to introduce a possibility for a deadline of 24 hours to be removed;
- UNHCR recommends that the Government of Iceland grants automatic suspensive effect of appeals be granted in all asylum cases, including cases assessed within admissibility and accelerated procedures.

#### c. Temporary permits for unaccompanied and separated children

13. As UNHCR understands Article 73 of the Proposal, unaccompanied and separated children (hereafter “UASC”) granted international protection (whether they qualify under the 1951 Convention or based on the criteria in Article 3 of the European Convention on Human

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<sup>13</sup> When there is clearly abusive behavior on the part of the applicant, or where the “unfoundedness” of a claim is manifest, the automatic application of suspensive effect could be lifted. See, UNHCR, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status* (Council Document 14203/04, Asile 64, of 9 November 2004), 10 February 2005, available at: <http://www.unhcr.org/refworld/docid/42492b302.html>, p. 51.

<sup>14</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, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <http://www.refworld.org/docid/51d29b224.html>.

<sup>15</sup> UNHCR Observations, November 2015 para. 10; UNHCR Observations, April, para. 14.

<sup>16</sup> See e.g. *Gebremedhin [Gaberamadhien] c. France*, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007, available at: <http://www.refworld.org/docid/46441fa02.html>, para. 66; *Conka v. Belgium*, 51564/99, Council of Europe: European Court of Human Rights, 5 February 2002, available at: <http://www.refworld.org/docid/3e71fd4.html>, para. 79.

<sup>17</sup> See *Conka*, *ibid.*

Rights<sup>18</sup>) will be granted a temporary residence permit until they turn 18 years old, when their protection needs will be re-assessed, regardless of at what age they were granted international protection and residence in Iceland.

14. In UNHCR's view, children in need of international protection should be granted full protection status and an ordinary residence permit. To afford children lesser protection than adults would, in UNHCR's view, be at variance with the provisions on non-discrimination contained in both the 1951 Convention and the Convention on the Rights of the Child (hereafter the "CRC").<sup>19</sup> A non-discriminatory application of the 1951 Convention requires that children are placed on an equal footing with others concerning the enjoyment of the rights under the Convention. In addition, children seeking asylum are entitled to appropriate protection and assistance according to Article 22 of the CRC.
15. UNHCR is further concerned that the temporary nature of the children's protection status could be detrimental for their development into adulthood. UNHCR wishes to emphasize that children, just as adults, are entitled to a stable and secure legal status.<sup>20</sup> In the case of children, this is further supported by a number of rights in the CRC, which recognizes children's right to development and the right of refugee children and children deprived of their family environment to special protection and assistance.<sup>21</sup> Article 20 of the CRC specifically provides that "when considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing". Finding durable solutions for young children, that will allow them to integrate into communities, should be central in determining the best interests of children in line with Article 3 of the CRC, which provides that the principle of the best interests of the child should be a primary consideration in all actions concerning children.<sup>22</sup> The UN Committee on the Rights of the Child, which provides guidance on the interpretation of the CRC, has in its General Comment No. 6,<sup>23</sup> found that efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated.
16. In view of the above, UNHCR is concerned that granting UASC temporary residence permits could be at variance with the CRC, including the principle of the best interests of the child, and the recommendations by the UN Committee on the Rights of the Child.

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<sup>18</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>.

<sup>19</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>.

<sup>20</sup> UNHCR, ExCom, Conclusion No. 104, para. (j). See also observations above concerning cessation of refugee status.

<sup>21</sup> The CRC, Articles 6, 20 22, and 27.

<sup>22</sup> As noted in UNHCR, *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html> "Being allowed to remain under humanitarian or other forms of protection until reaching majority does not in itself constitute a solution for the unaccompanied or separated child. Particularly troubling is the practice of allowing children to remain until they reach majority and then returning them. Unless individually tailored reintegration plans are in place, drawn up together with the child, the child's successful development into adulthood may be jeopardized." p. 49.

<sup>23</sup> UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>, para. 79.

## UNHCR Recommendations:

- UNHCR recommends that children, be they unaccompanied or separated or in families, be granted a legal and secure residence status that supports their attainment of a durable solution, which is long-term and sustainable and ensures that the child is able to develop into adulthood, consistent with the child's needs and rights according to the CRC, and more specifically the principle of the best interests of the child.

### d. Duration and renewal of residence permits

17. According to Article 73 of the Proposal, the duration of the residence permit for individuals granted international protection will be reduced from four to three years. UNHCR regrets this amendment, which, while staying within minimum safeguards, restricts current good practices in Iceland.
18. UNHCR understands that residence permits granted to beneficiaries of international protection will be renewed, unless the conditions for withdrawal set out in Article 48 are met. UNHCR further understands that the renewal of the permits could be refused for reasons of national security or public interest and wishes to remind of the exclusive conditions under which refugee status can be withdrawn.<sup>24</sup> Detailed guidance on the subject can be found in UNHCR's Note on the Cancellation of Refugee Status and other UNHCR Guidelines.<sup>25</sup>

### e. Family reunification

#### *Eligible family members*

19. According to the Proposal, individuals granted international protection will have the right to family reunification with their spouse and unmarried children under the age of 18 years. Parents above the age of 65 will also be entitled to family reunification, provided that the family member granted protection in Iceland can demonstrate that s/he has a minimum income to support the parent(s) (see further below). UNHCR welcomes that UASC granted protection in Iceland will also be entitled to reunification with their parents and siblings below 18 years of age.
20. UNHCR encourages States to adopt a more inclusive definition, beyond what is known as the traditional "nuclear family", including for the purpose of family reunification. UNHCR

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<sup>24</sup> Three categories of withdrawal need to be distinguished: cancellation (a decision to invalidate a refugee status recognition which should not have been granted in the first place), revocation (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 1951 Convention) and cessation (the ending of refugee status pursuant to Article 1C of the 1951 Convention). These grounds for ending international refugee protection should not be confused with expulsion under Article 32 of the 1951 Convention nor with loss of protection against *refoulement* pursuant to Article 33(2) of the 1951 Convention. Neither of these provide for the loss of refugee status of a person who, at the time of the initial determination, met the eligibility criteria of the 1951 Convention.

<sup>25</sup> See e.g. UNHCR, Note on the Cancellation of Refugee Status, 22 November 2004, available at: <http://www.refworld.org/docid/41a5dfd94.html>; UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.refworld.org/docid/3f5857684.html>; UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at: <http://www.refworld.org/docid/3f5857d24.html>, paras. 11 and 17; UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 10 February 2003, HCR/GIP/03/03, available at: <http://www.refworld.org/docid/3e50de6b4.html>.

considers that a nuclear family is generally accepted as consisting of spouses and, their minor or dependent, unmarried children and minor siblings. This would include adopted children, whether adopted legally or on a customary basis, as well as married minor children where it is in their best interests to consider them as family members. Minor siblings of an applicant (including where the applicant or sibling is married), if it is in their best interests, may also be considered.<sup>26</sup>

21. UNHCR welcomes the inclusion of older parents among the family members eligible for family reunification. UNHCR would, in addition, recommend allowing for other dependent family members to be considered. UNHCR wishes to underline that the element of dependency among family members, physical and financial, as well as psychological and emotional, should find its appropriate weight in the final determination.<sup>27</sup>
22. With respect to the more restrictive rules pertaining to family establishment, UNHCR would like to underline that it is essential to inform applicants for international protection about the importance of specifying each family member currently outside of Iceland, such as adopted children and fiancés, as the information s/he gives in the asylum interview will be of relevance for a future application for family reunification.

#### ***Time-frames for submission of applications for family reunification***

23. As UNHCR understands Article 45 of the Proposal, an application for family reunification must be submitted no later than six months after the issuance of a residence permit. While it is not entirely clear to UNHCR what will happen after the six-months period has lapsed, UNHCR understands that if an application is not submitted within this time-frame, family reunification will become possible only after four years of legal stay of the person in Iceland. Exceptions to the four-year rule may apparently be made in certain cases, however, UNHCR is not able to provide its observations on those aspects as UNHCR does not have reliable translations of these provisions.
24. UNHCR notes with concern the proposed six-month rule as it could prevent or delay family reunification in many cases. Refugees and other persons in need of international protection may not be aware if their family members are still alive, or of their whereabouts if they were separated during flight. Tracing of family members is a lengthy process which often exceeds six months. In addition, family members may be required to travel – sometimes across several countries – in order to reach an Embassy at which they can submit an application for family reunification. They may also face difficulties in providing the documentation required, as documents may have been lost or destroyed during flight, and family members

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<sup>26</sup> UNHCR, *Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, available at: <http://www.refworld.org/docid/4f55e1cf2.html>; UNHCR, *UNHCR Resettlement Handbook*, 2011, July 2011, p. 271, available at: <http://www.refworld.org/docid/4ecb973c2.html>.

<sup>27</sup> "Dependency may usually be assumed to exist when a person is under the age of 18 years, but continues if the individual (over the age of 18) in question remains within the family unit and retains economic, social and emotional bonds. Dependency should be recognized if a person is disabled and incapable of self-support, either permanently or for a period expected to be of long duration. Other members of the household may also be dependents, such as grandparents, single/lone brothers, sisters, aunts, uncles, cousins, nieces, nephews, grandchildren; as well as individuals who are not biologically related but are cared for within the family unit." See, UNHCR, *UNHCR Resettlement Handbook*, 2011, July 2011, available at: <http://www.refworld.org/docid/4ecb973c2.html>, p.178 and p. 273. See also: UNHCR, *Note on Family Reunification*, 18 July 1983, available at: <http://www.refworld.org/docid/3bd3f0fa4.html>.

are unable to approach the authorities of their country of origin for documents due to risks of persecution.

25. For those who are not able to submit their application within six months, a four-year period of waiting and separation could have devastating consequences on their well-being, as well as on their ability to rehabilitate from traumatic experiences of persecution and war and focus on learning a new language and adapting to the environment in their country of asylum<sup>28</sup>. The family plays an essential role in helping persons rebuild their lives and can provide critical support to adapt to new and challenging circumstances, and overcome traumatic experiences. Restoring families can also ease the sense of loss that accompanies many refugees who, in addition to family, have lost their country, network and life as they knew it. Family support in this sense goes beyond any traditional and cultural understanding of a family but will include those who rely and depend on each other. It is with this in mind that UNHCR advocates for family reunification mechanisms which are swift and efficient in order to bring families together as early as possible.<sup>29</sup>
26. The case law of the ECtHR, has also affirmed that family unity is an essential right and a fundamental element in allowing persons who have fled persecution to resume a normal life, and that refugees should benefit from a family reunification procedure which is more favourable than other foreigners, due to their vulnerabilities. In this context, the ECtHR finds it essential that the national authorities process the request for family reunification without undue delay.<sup>30</sup>

#### ***Income requirement***

27. The Proposal also seeks to introduce an income requirement for beneficiaries of international protection who apply for family reunification after four years. In UNHCR's understanding, the requirement applies to all beneficiaries of international protection. UNHCR welcomes that unaccompanied and separated children are exempted from the income requirement.
28. UNHCR is concerned that applying an income requirement for family reunification, where the application for family reunification is not submitted within six months after the granting of the status, does not take sufficiently into account the particularities of the situation of refugees and other persons in need of international protection, or the special circumstances that have led to the separation of their families. This may prove to be a serious obstacle to family reunification for them.
29. In this respect, UNHCR refers to the European Commission guidance on the application of the EU Family Reunification Directive,<sup>31</sup> where it is recommended to refrain from applying a time-frame within which an application has to be submitted in order to be exempt from the income requirement.<sup>32</sup> The Commission adds that "if Member States opt to apply this

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<sup>28</sup> UNHCR, *A New Beginning: Refugee Integration in Sweden - It's about time!*, September 2013, available at: <http://www.refworld.org/docid/5295a60e4.html>.

<sup>29</sup> *Ibid.*, pp.3-4.

<sup>30</sup> *Tanda-Muzinga c. France*, Requête no 2260/10, Council of Europe: European Court of Human Rights, 10 July 2014, available at: <http://www.refworld.org/docid/53be80094.html>, para. 75.

<sup>31</sup> European Union: Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, available at: <http://www.refworld.org/docid/3f8bb4a10.html>.

<sup>32</sup> European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, p. 23,

provision (Article 12 subparagraph 3), the Commission considers that they should take into account objective practical obstacles the applicant faces as one of the factors when assessing an individual application.”<sup>33</sup> In addition, the European Commission, in its guidance on the application of the sufficient resources requirement, refers to the Chakroun case, in which the CJEU held that, since authorisation of family reunification is the general rule, this faculty (i.e. the sufficient resources requirement) must be interpreted strictly. The margin which EU Member States are recognized as having must therefore not be used in a manner that would undermine the objective and the effectiveness of the Directive.<sup>34</sup> The CJEU also specified that this faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life.<sup>35</sup>

30. Hence, UNHCR recommends that the Government of Iceland refrains from applying an income requirement as a blanket provision, to beneficiaries of international protection, in order not to undermine the right to achieve family unity. As a minimum, time-limits should only apply to the initial application for family reunification and should not require that the applicant and family member provide all the documents needed within the six-month period.<sup>36</sup>

#### **UNHCR Recommendations:**

- UNHCR recommends to consider extending the right to family reunification to a broader range of family members who are dependent on each other, including for example parents below 65 years old and unmarried adult children;
- UNHCR recommends to remove the six-month time-limit for submission of applications for family reunification;
- UNHCR recommends to not impose an income requirement for family reunification of beneficiaries of international protection.

#### **UNHCR Regional Representation for Northern Europe**

Stockholm, 10 May 2016

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available at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/legal-migration/familyreunification/docs/guidance\\_for\\_application\\_of\\_directive\\_on\\_the\\_right\\_to\\_family\\_reunification\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/legal-migration/familyreunification/docs/guidance_for_application_of_directive_on_the_right_to_family_reunification_en.pdf).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, p. 12, which refers to Case C-578/08, Chakroun, 4 March 2010, para. 43; Cases C-356/11 and C-357/11, O. & S., 6 December 2012, para. 74.

<sup>35</sup> *Ibid.*, which refers to Cases C-356/11 and C-357/11, O. & S., 6 December 2012, para. 82.

<sup>36</sup> UNHCR, *Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, p. 6, available at: <http://www.refworld.org/docid/4f55e1cf2.html>.