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

UNHCR Representation for Northern Europe

Sveavägen 166, 15th fl.
SE-11346 Stockholm

Tel.: +46 10 10 12 800
Email: swest@unhcr.org

29 May 2020

Notre/Our code: 50/RNE/2020

RE: **UNHCR observations on the Law Proposal** *Frumvarp til laga um breytingu á lögum um útlendinga og lögum um atvinnuréttindi útlendinga (alþjóðleg vernd, brottvísunartilskipunin, dvalar- og atvinnuleyfi)*

On behalf of the Representation for Northern Europe of the United Nations High Commissioner for Refugees (UNHCR), I am pleased to share our supplementing comments with the Icelandic Parliament on the above-mentioned proposal (hereinafter referred to as "Proposal"). As the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with governments, seek durable solutions to the problems of refugees,[1] UNHCR has a direct interest in law and policy proposals in the field of asylum and refugee integration.

In August 2019, UNHCR submitted its comments[2] to the Icelandic Ministry of Justice on an earlier version of the Proposal commented upon today. The comments submitted last August (hereafter referred to as "previous comments") are re-attached to this submission and remain relevant with regard to the current "Proposal". In the context of both these submissions, UNHCR has not been in possession of an authoritative translation of the proposal(s).

UNHCR notes that some changes have been made to the Proposal since UNHCR submitted its previous comments. Below, UNHCR outlines its views and recommendations on some of these changes.

1. Retain the right to automatic suspensive effect upon appeal with regards to all applications from a "first country of asylum" (Article 36 a. of the Act on Foreigners). (Recommendation 1.4. of the previous comments)

UNHCR is pleased to note that the Icelandic Government has now proposed to retain suspensive legal effect for applicants granted protection elsewhere. As outlined in the previous comments in the context of whether a country can be considered as a first country of asylum or not, taking also into consideration the higher risk of violating Article 3 of the European

---

1 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").

2 UNHCR observations on the Law Proposal Frumvarp til laga um breytingu á lögum um útlendinga, nr. 80/2016 (alþjóðleg vernd og brottvísunartilskipunin) -international protection and returns directive.

Convention on Human Rights and Fundamental Freedoms when applying safe country concepts in general, a deviation from the standard of automatic suspensive effect is not justified in these cases.

UNHCR also notes that one of the amendments to the Proposal is that the "humanitarian clauses" as outlined in the Foreign Nationals Act[3] are proposed to no longer be applicable to first country of asylum cases.

In the context of the COVID-19 crisis, UNHCR understands that the Icelandic authorities have agreed to admit a certain number of both so called Dublin cases and first country of asylum cases into the Icelandic procedures, making use of these clauses. UNHCR also understands that the clauses otherwise have functioned as a humanitarian threshold, where cases deemed generally vulnerable have been occasionally admitted into the procedures following a holistic assessment of the case.

UNHCR recognizes both of these examples as means to ensure fast and fair asylum procedures for applicants in need, at the same time with a view to demonstrating solidarity and contributing to burden-sharing arrangements between countries in Europe and beyond.

2. **Remove the wording "or some other form of protection" from Article 36 a (first two rows), in order for the admissibility safeguards to correspond fully with the standards of treatment commensurate with the 1951 Convention and international human rights standards. (Recommendation 1.3. of the previous comments)**

UNHCR is pleased to note that this change has been made in the current proposal. UNHCR perceived the former wording of the article as too broad, and thereby risking not corresponding fully with the standards of treatment commensurate with the 1951 Convention and international human rights standards to which refugees and others in need of international protection should have access.

3. **Maintain the right to family reunification for all individuals granted international protection, including resettled refugees and persons granted derivative status. (Recommendation 5 of the previous comments)**

UNHCR is pleased to note, as outlined in the general comments to the proposal, that UNHCR's recommendation to grant the full right to family reunification also to resettled refugees, has been recognized and accepted. However, UNHCR would still encourage further clarity on the subject also in the legal text itself, as Article 22 of the Proposal still refers to the Minister retaining discretion with regards to the issuance of residence permits for immediate relatives of refugees arriving in Iceland, in accordance with Article 43 of the Foreign Nationals Act.

In UNHCR's view, family reunion remains a strong element in support of successful integration strategies and programs as well as an important factor in reducing mental health issues among refugees. Family unity is a fundamental and important human right contained in a number of international and regional instruments. Furthermore, family reunification channels help to discourage communities from resorting to smugglers, and ensure more gender equity in terms of access to protection UNHCR thus maintains its previous comments to maintain the right to family reunification also for persons with derivative refugee status.

[3] Article 36, para.2, refers to situations where applications deemed inadmissible to Icelandic procedures can nevertheless be accepted to be processed on merits "if the foreign national has special ties to Iceland of such a nature that it appears reasonable that he/she should be granted protection, or if other special circumstances support such action."

UNHCR

UNHCR appreciates the constructive dialogue with the Icelandic Parliament and Government, and we thank you for your considerations of this important matter.

We remain at your disposal for any clarifications or additional information.

Yours sincerely,

P.p. Wilfried Buchhorn
Deputy Representative

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

UNHCR Regional Representation for Northern Europe

Sveavägen 166, 15th fl.
SE-11346 Stockholm

Tel.: +46 10 10 12 800
Email: swest@unhcr.org

16 August 2019

Notre/Our code: 100/RRNE/2019

RE: **UNHCR Observations on the Law Proposal**
Frumvarp til laga um breytingu á lögum um útlendinga, nr. 80/2016 (alþjóðleg vernd og brottvísunartilskipunin) - international protection and returns directive

The UNHCR Regional Representation for Northern Europe (RRNE) is grateful for the invitation to provide comments on the above mentioned proposal (hereinafter "Proposal"). As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek durable solutions to the problems of refugees[1], UNHCR has a direct interest in law and policy proposals in the field of asylum and refugee integration.

UNHCR notes that the Proposal sets out to "fight secondary movement", as the number of applicants arriving in Iceland who have already either applied for or been granted protection elsewhere, including another EU Member State, has increased. To achieve this aim and to enhance the efficiency of the asylum procedure in general, the Proposal recommends changing the rules about legal suspensive effect in the asylum procedures, amending the definition of a manifestly unfounded application, and also improving the legal framework regarding repeated applications and time frames for appeal. UNHCR has provided also observations on suggested changes in the Proposal pertaining to the rules regarding family reunification.

UNHCR worked closely with relevant Ministries in the context of the revision of the Act on Foreigners in 2015 and provided detailed observations and recommendations on various subjects in that context. Some of these remain relevant also with regard to the current Proposal[2]. UNHCR has recently also set out its position on the European Commission's proposal for an Asylum Procedures Regulation[3], including safe country concepts, border and accelerated procedures and effective remedies, regarding which most of UNHCR's specific comments to this Proposal are based, as further outlined below.

---

[1] 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").

[2] See primarily; UN High Commissioner for Refugees (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: https://www.refworld.org/docid/56e17dc54.html, UN High Commissioner for Refugees (UNHCR), *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)*, 1 April 2016, available at: https://www.refworld.org/docid/56fe7ba74.html and UN High Commissioner for Refugees (UNHCR), *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)*, 10 May 2016, available at: https://www.refworld.org/docid/5731f3d84.html

[3] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, available at: https://www.refworld.org/docid/5cb597a27.html

To complement these recommendations, UNHCR issued in 2018 the 'UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union, outlining key elements of a fair and fast asylum procedure'[4]. This paper offers recommendations to Member States and EU institutions on accelerated and simplified procedures. It draws on existing practice of European States, and on UNHCR's experience in mandate refugee status determination, with a focus on specific models and tools that have proved efficient, flexible, and fair for processing manifestly well-founded and manifestly unfounded claims.

1. Lack of suspensive effect in the Icelandic asylum procedures

While applicants in Iceland generally benefit from automatic suspensive effect on appeal, UNHCR notes that since changes to Article 35 of the Act on Foreigners in 2017, an appeal does not automatically suspend the enforcement of decisions by the Directorate of Immigration that the foreign national is to leave the country, in cases where the Directorate of Immigration has concluded that the application is manifestly unfounded **and** s/he is from a country which is on the Directorate's list of safe countries of origin[5]. Neither has the applicant the right to seek the suspension of the enforcement of a negative decision and remain in the country of asylum until a final decision is rendered by the Appeals Board for this group of cases.

UNHCR notes that the Proposal aims to take this approach one step further, in that it suggests removing the automatic suspensive effect from cases that have been granted international protection in another country as defined with Article 36 a. (first two rows), and that suspensive effect would thereby have to be separately sought from the Appeals Board in order for the applicant to remain in the country pending second instance decision.

1.1 General observations on the relevance of the suspensive effect

UNHCR recognizes that **rendering asylum procedures more efficient is a shared key objective**, both for States and UNHCR. UNHCR therefore supports the intention of the Icelandic Proposal of fair and efficient processing and supports the use of accelerated procedures for manifestly unfounded and manifestly well-founded claims, as recommended in its paper *Better Protecting Refugees in Europe and Globally*[6]. Such procedures could help guarantee quick access to international protection for those who need it, and help facilitate return of those who do not. However, UNHCR is concerned about some of the ways the proposal seeks to reach this objective. In particular, the **safe country concepts**, and **accelerated examination procedures**, without sufficient procedural safeguards, as currently proposed, raise serious concerns.

The proposed grounds for acceleration go beyond what UNHCR considers to be appropriate. In particular, UNHCR has a **different understanding of "manifestly unfounded"** claims, and of procedural consequences which should apply in such cases. In addition, time limits for appeals need to be reasonable in the particular circumstances of the individual case, and the applicant must be able to submit all relevant evidence. This is needed to ensure that a remedy is effective. Lastly, the proposal to **remove automatic suspensive effect of appeals** in some accelerated examination procedures, increases the risk of persons who may be in need of international protection being returned, contrary to the principle of *non-refoulement*.

---

[4] UN High Commissioner for Refugees (UNHCR), *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, available at: https://www.refworld.org/docid/5b589eef4.html

[5] Current Article 35 paragraph 2.

[6] UN High Commissioner for Refugees (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

UNHCR is of the opinion that there is a higher risk of a possible violation of Article 3 of the ECHR when applying the concept of safe third country and therefore the suspensive effect of the appeal remains necessary to ensure an effective remedy. Furthermore, UNHCR considers this risk is also high when applying other safe country concepts (i.e. first country of asylum and safe country of origin) and that the remedy must allow automatic suspensive effect except for very limited cases. States should only be able to derogate from the automatic suspensive effect of an appeal on an exceptional basis, when the decision determines that the claim is "clearly abusive" or "manifestly unfounded" as defined in EXCOM Conclusion No. 30 (XXXIV) 1983. Additional exceptions could apply with respect to appeals in the case of second or further subsequent applications, and when the application is rejected as explicitly withdrawn. In such situations, in accordance with international law, the appellant nevertheless must have the right and the effective opportunity to request a court or tribunal to grant suspensive effect. In all other cases, automatic suspensive effect of appeals on rejections should be granted.

In sum, while achieving more efficient procedures is an important goal, it must not be operationalised in a way that endangers the rights to a fair procedure and to an effective remedy, or increases the risk of refoulement.

1.2. Lack of suspensive effect with regards to manifestly unfounded applications from a "safe country of origin" (Article 35 of the Act on Foreigners)

UNHCR considers that the assessment of a country as "safe" must be based on precise, reliable, objective, and up-to-date information from a range of credible sources, including from UNHCR. The lists of countries and sources of country of origin information should be publicly available[7], as it is currently also the case in Iceland. Generally, UNHCR also considers that admissibility arrangements and the use of "safe country" concepts would need to be part of efforts to share responsibilities and involve key protection safeguards, such as an effective opportunity to rebut the presumption of safety in light of individual circumstances.

Further, in UNHCR's view, despite the designation of a country as a "safe country of origin" in general, it may be that the country is not safe in a particular case because of a certain profile. It is therefore important for the concept to be applied on a case-by-case basis, ensuring an individual assessment that takes into account the specific circumstances of the case. In this regard, the determining authority must ensure that the applicant has an effective opportunity to rebut any presumption of safety, including providing him or her with all the necessary information to do so. The procedure must therefore be an in-merits procedure, which ensures all procedural safeguards, including a personal interview, legal assistance and representation, and the right to an effective remedy.

In this context UNHCR wishes to emphasize that although there may be manifestly unfounded cases among applicants from safe countries of origin, this cannot be automatically assumed. The fact that a person comes from a safe country of origin alone does therefore not mean that his/her application is clearly not related to the criteria for refugee status or that it is clearly fraudulent or abusive, nor would it obviate the need for international protection.

[7] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p. 44, available at: https://www.refworld.org/docid/5cb597a27.html

As referred to above, UNHCR considers that States should only be able to derogate from the automatic suspensive effect of an appeal on an exceptional basis, when the decision determines that the claim is "clearly abusive" or "manifestly unfounded" as defined in EXCOM Conclusion No.30 (XXXIV) 1983[8]. While such cases, sometimes including cases from safe countries of origin, can be examined in an expeditious manner, i.e. an accelerated examination procedure, they need to be approached with utmost care to ensure they are indeed abusive or without substance prior to declaring them manifestly unfounded. Thus, if applications from safe country of origin are considered to be manifestly unfounded, in accordance with international law, states may derogate from the automatic suspensive effect, but the appellant nevertheless must have the right and the effective opportunity to request a court or tribunal to grant suspensive effect.

UNHCR recommends to remove the second paragraph of Article 35 and to re-instate the right to apply for and be granted suspensive effect for applications from safe countries of origin, considered also as manifestly unfounded.

Further, with regards to applications from a safe country of origin *not considered manifestly unfounded*, UNHCR recalls particularly that the remedy against an inadmissibility decision, including based on safe country concepts, must have automatic suspensive effect in law and in practice, where the applicant has an arguable claim of a risk of ill-treatment upon return or of arbitrary deportation from the country of return in accordance with Art. 3 and 13 ECHR[9]. UNHCR also therefore recommends a clarification to the proposed Article 29 a. as referred to below under section 2.

UNHCR recommends retain the automatic suspensive effect upon appeal for all applications from safe countries of origin not considered as manifestly unfounded.

1.3 Suspensive effect with regards to applications from a "first country of asylum" (Article 36 a. of the Act on Foreigners)

The Proposal foresees to remove the automatic suspensive effect from this type of cases, and that suspensive effect would have to be sought separately from the Appeals Board. UNHCR notes the substantial share of applications in both 2018 and 2019 belonging to this group, and therefore understands the authorities' wish to address the situation in order to make procedures more efficient.

UNHCR acknowledges for a country to be considered a "first country of asylum" that a particular applicant has and will continue to enjoy protection in accordance with the 1951 Convention. It is however equally important that refugees are treated in accordance with international human rights law standards[10]. Upon return, refugees need to be granted lawful stay in the country and as such be entitled to the corresponding rights of the 1951 Convention, i.e. all rights applicable to refugees generally, including protection from refoulement and access to the legal right to pursue gainful employment in accordance with Articles 17, 18 and 19 of the 1951 Convention in order to enable the progressive achievement of self-reliance.

[8] UN High Commissioner for Refugees (UNHCR), *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum No. 30 (XXXIV) - 1983*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: https://www.refworld.org/docid/3ae68c6118.html

[9] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, page 20, available at: https://www.refworld.org/docid/5cb597a27.html

[10] UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, April 2019, COM (2016) 467, p. 39, available at: https://www.refworld.org/docid/5cb597a27.html

Whether standards of treatment commensurate with the 1951 Convention, its 1967 Protocol and international human rights standards are available cannot be answered without looking at the state's international legal obligations, its domestic laws and the actual practice of implementation. To ensure access to protection is effective and enduring, being a state party to the 1951 Convention and/or its 1967 Protocol and basic human rights instruments without any limitations is a critical indicator. Access to human rights standards and standards of treatment commensurate with the 1951 Convention and its 1967 Protocol may only be effectively and durably guaranteed when the state is obliged to provide such access under international treaty law, has adopted national laws to implement the relevant treaties and can rely on actual practice indicating consistent compliance by the state with its international legal obligations[11].

In summary, UNHCR perceives the reference to "effective" international protection in Article 36 a. of the Act on Foreigners (first two rows) as adequate and as ensuring safeguards referred to above and below. UNHCR however recommends removing the wording *"some other form of protection"* from the article, as such a broad wording may risk not corresponding fully with the standards of treatment commensurate with the 1951 Convention and international human rights standards to which refugees and others in need of international protection should have access.

The following elements, while not exhaustive, are critical factors for the appreciation of "effective protection" in the context of return to third countries. UNHCR recommends reflecting these factors in either primary or secondary legislation:

a) The person has no well-founded fear of persecution in the third State on any of the 1951 Convention grounds.

b) There will be respect for fundamental human rights in the third State in accordance with applicable international standards, including but not limited to the following: there is no real risk that the person would be subjected to torture or to cruel, inhuman or degrading treatment or punishment in the third State; there is no real risk to the life of the person in the third State; there is no real risk that the person would be deprived of his or her liberty in the third State without due process.

c) There is no real risk that the person would be sent by the third State to another State in which he or she would not receive effective protection or would be at risk of being sent from there on to any other State where such protection would not be available.

d) While respecting data protection principles during the notification process, the third State has explicitly agreed to readmit the person as an asylum-seeker or, as the case may be, a refugee.

e) While accession to international refugee instruments and basic human rights instruments is a critical indicator, the actual practice of States and their compliance with these instruments is key to the assessment of the effectiveness of protection. Where the return of an asylum-seeker to a third State is involved, accession to and compliance with the 1951 Convention and/or 1967 Protocol are essential, unless the destination country can demonstrate that the third State has developed a practice akin to the 1951 Convention and/or its 1967 Protocol.

f) The third State grants the person access to fair and efficient procedures for the determination of refugee status, which includes – as the basis of recognition of refugee status – grounds that would be recognised in the destination country. In cases, however, where the third State provides prima facie recognition of refugee status, the examination must establish that the person can avail him- or herself of such recognition and the ensuing protection.

[11] UN High Commissioner for Refugees (UNHCR), *Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries*, April 2018, pages 4-5, available at: https://www.refworld.org/docid/5acb33ad4.html

g) The person has access to means of subsistence sufficient to maintain an adequate standard of living. Following recognition as a refugee, steps are undertaken by the third State to enable the progressive achievement of self-reliance, pending the realisation of durable solutions.

h) The third State takes account of any special vulnerabilities of the person concerned and maintains the privacy interests of the person and his or her family.

i) If the person is recognised as a refugee, effective protection will remain available until a durable solution can be found[12].

Given these elements, to be assessed in the context of whether a country can be considered as a first country of asylum or not, and as outlined under section 1.1., the higher risk of violating Article 3 ECHR when applying safe country concepts in general, a deviation from the standard of automatic suspensive effect is not justified in these cases.

UNHCR recommends to remove the wording *"or some other form of protection"* from Article 36 a (first two rows), in order for the admissibility safeguards to correspond fully with the standards of treatment commensurate with the 1951 Convention and international human rights standards.

UNHCR recommends to retain the right to automatic suspensive effect upon appeal with regards to all applications from a "first country of asylum" (Article 36 a. of the Act on Foreigners).

1.4. Suspensive effect with regards to applications from a "safe third country" (Article 36 a.)

While UNHCR perceives the current formulation of the criteria in Article 36 a. (rows three to five); *"have resided in a country where he/she was not subject to persecution and where he/she could request recognised refugee status and receive protection in accordance with the 1951 Convention relating to the Status of Refugees if deemed to be a refugee",* to be adequate in terms of legal safeguards, consideration could be given to further elaborating on and including also the below mentioned elements.

In UNHCR's view, a third country can be considered "safe" for a particular applicant, when the applicant can access a fair and efficient procedure for determination of refugee status and other international protection needs; is permitted to remain while a determination is made; and is accorded standards of treatment commensurate with the 1951 Convention and international human rights law standards. In UNHCR's view, this includes inter alia providing the person access to reception facilities, healthcare and education, as well as access to means of subsistence sufficient to maintain an adequate standard of living and to undertake steps to enable the progressive achievement of self-reliance. Further, where the applicant is determined to be a refugee or otherwise in need of international protection, s/he should be recognized as such and be granted lawful stay in the third country[13].

UNHCR understands that the Proposal does not recommend any changes with regards to suspensive effect for this group of applicants, and that they would thereby retain automatic suspensive effect upon appeal, which UNHCR strongly supports.

---

[12] UN High Commissioner for Refugees (UNHCR), *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)*, February 2003, available at: https://www.refworld.org/docid/3fe9981e4.html

[13] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.41, available at: https://www.refworld.org/docid/5cb597a27.html

UNHCR further recommends to maintain automatic suspensive effect with regards to all applications from a safe third country, as defined in article 36 a.

2. The definition of a manifestly unfounded application

UNHCR notes that the proposal aims to clarify the definition of a manifestly unfounded application under Icelandic law, in the context of the proposed Article 29 a). The term 'Manifestly Unfounded' is defined in existing UNHCR guidance as covering applications for refugee status "clearly not related to the criteria for refugee status" or which are "clearly fraudulent or abusive".[14]

With regards to applications "clearly not related to the criteria for refugee status", UNHCR acknowledges that claims submitted by applicants from a particular country or profile, such as for example applicants from Safe Countries of Origin, may have in the past or at present have very low recognition rates. This does not however necessarily always imply that such claims are 'clearly' not related to the criteria for refugee status. Such an applicant should also always have the right and possibility to rebut the presumption of safety.

Further, it should be noted that only if the applicant makes what appears to be false allegations of a material or substantive nature relevant for the determination of his or her status and the claim clearly does not contain other elements which warrant further examination, could the claim be considered "clearly fraudulent". The mere fact of having made false statements does not, however, mean that the criteria for refugee status may not be met, nor would it obviate the need for asylum. False statements do not in themselves make the claim "clearly fraudulent"[15] .

In the context of the above stated, UNHCR finds proposed Article 29 a. somewhat unclear. On the one hand, the first two sentences of the article seem to more or less replicate the UNHCR definition of a manifestly unfounded application as referred to above. On the other hand, when it comes to applications from a safe country of origin in the remainder of the article however, it appears as if the article, as UNHCR understands it, more or less presumes that an application from a safe country of origin is automatically declared also as manifestly unfounded. As referred to above under section 1.2., such an assumption should not be made. In the context of proposed Article 29 a., UNHCR therefore recommends to limit the definition of a manifestly unfounded claim to the two key underlined elements as provided above, and to remove the references to safe countries of origin from the article.

UNHCR also wishes to commend the intention, as UNHCR understands the proposal, to remove current Article 29 (b) 2 from the Act on Foreigners. UNHCR made this recommendation in the context of comments on the full revision of the Act on Foreigners, as the article essentially appeared to allow for considering an application manifestly unfounded and channelling it into the accelerated procedure where the concerned person comes from either a safe third country or first country of asylum[16].

---

[14] UN High Commissioner for Refugees (UNHCR), *Aide-Memoire & Glossary of case processing modalities, terms and concepts applicable to RSD under UNHCR's Mandate (The Glossary)*, 2017, page 19, available at: https://www.refworld.org/docid/5a2657e44.html

[15] UN High Commissioner for Refugees (UNHCR), *Aide-Memoire & Glossary of case processing modalities, terms and concepts applicable to RSD under UNHCR's Mandate (The Glossary)*, 2017, p.19, available at: https://www.refworld.org/docid/5a2657e44.html and UN High Commissioner for Refugees (UNHCR), *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, p.4, available at: https://www.refworld.org/docid/5b589eef4.html

[16] UN High Commissioner for Refugees (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, para. 38, available at: https://www.refworld.org/docid/56e17dc54.html

UNHCR recommends amending proposed Article 29 a), to state that a manifestly unfounded claim is one that is either "clearly not related to the criteria for refugee status" or "clearly fraudulent or abusive".

UNHCR further recommends to remove references to safe countries of origin, from the definition of a manifestly unfounded application in the proposed Article 29 a.

3. Repeated applications

UNHCR notes that the proposed Article 35 a. aims to define under what circumstances an application can be considered a repeated application, and here also includes applications from applicants who have withdrawn or abandoned their initial application. According to the proposal, a repeat application is also to be dismissed if it does not include data or information that leads to a significantly increased likelihood that the applicant will be granted protection or residence permit in Iceland. A repeat application shall also not postpone the legal effect of the initial decision. UNHCR has noted in the past that confusion could arise from including withdrawn applications in the definition of repeated applications and therefore notes with concern that the proposal suggests that course of action. In UNHCR's view, treating an application as a subsequent application is justified only if the previous claim was considered fully on the merits, involving all the appropriate procedural safeguards[17].

With regards to the proposed Article 35 a., UNHCR recommends to clarify that an application can only be considered as a repeated application, in cases where the initial application was considered fully on merits.

UNHCR is also concerned about the proposed heightened evidence threshold required for repeat applications. In UNHCR's view, there is no justification for a requirement to assess whether elements *"significantly increasing the likelihood of the applicant qualifying as a beneficiary of international protection"* are present. Whether an application qualifies for international protection requires an examination of the merits in a new procedure and whether relevant new elements or findings have arisen or have been presented by the applicant.

UNHCR recommends to remove the requirement of *"significantly increased likelihood for qualifying for international protection"* when assessing repeat applications in the proposed Article 35 a.

As UNHCR understands the proposal, it retains the possibility to remove applicants from the country before a decision is taken on the subsequent application. Under international law, Iceland is under an obligation to ensure that a decision to revoke the right to remain would not lead to direct or indirect *refoulement.* Given that the proposal may create situations where an application is considered to be a repeat application following a withdrawal of the initial application, there might not have been a full examination of the substance of the first application. As such, it might be difficult for the determining authority to satisfy itself that the return would not lead to *refoulement* in practice.

[17]UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, page 37, available at: https://www.refworld.org/docid/5cb597a27.html

In all circumstances where the initial application was not assessed fully on merits, UNHCR recommends to consider a subsequent application as a first (subsequent) application and limit potential exceptions to the right to remain to second or further subsequent applications.

UNHCR further recommends to limit potential exceptions to the right to appeal with automatic suspensive effect to second or further subsequent applications, in all circumstances where the initial application was not assessed fully on merits[18]. In such situation, and when the application is rejected as explicitly withdrawn. In such situations, in accordance with international law, the appellant nevertheless must have the right and the effective opportunity to request a court or tribunal to grant suspensive effect. In all other cases, automatic suspensive effect of appeals on rejections should be granted.

UNHCR recommends to limit potential exceptions to the right to appeal with automatic suspensive effect to second or further subsequent applications, in all circumstances where the initial application was not assessed fully on merits.

4. Timeframes for appeals

UNHCR notes that the proposal wishes to, in the interest of procedural efficiency, shorten the general timeframe for appeals to 14 days in total (including full legal argumentation) for applications from first countries of asylum and safe third countries[19]. Applications considered manifestly unfounded and from safe countries of origin would maintain a short 5 day deadline.

UNHCR emphasises that the applicant must have sufficient time and facilities to exercise the right of appeal. Adequate time limits for lodging appeals are required to render a remedy effective[20]. As regards deadlines to seek remedies, the Court of Justice of the EU (CJEU) has considered that 15 days for lodging an appeal in an accelerated procedure does not seem, generally, to be insufficient in practical terms. '[T]he important point', according to the Court, 'is that the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action.' However, the CJEU left it to the national courts to determine whether this time line is sufficient in light of individual circumstances[21].

UNHCR believes any appeal time limit foreseen in any asylum system, will only be feasible if **appropriate modalities are in place and adequate resources allocated for case processing.** Applicants will need time to understand the decision of the determining authority and any information provided on how to challenge the decision; secure legal assistance; request and/or be given access to his/her case file; consult a legal adviser and discuss the grounds for the appeal and draft the appeal. For all these reasons, both international and EU law require sufficient time to lodge the appeal[22].

---

[18] Ibid

[19] The current Article 7 of the Act on Foreigners stipulates a 15 day timeframe for this category, although UNHCR understands additional time has usually been granted to submit full legal arguments to a case.

[20] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.18, available at: https://www.refworld.org/docid/5cb597a27.html

[21] UN High Commissioner for Refugees (UNHCR), *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, p.10, available at: https://www.refworld.org/docid/5b589eef4.html

[22] HRC, *Concluding Observations on France*, 31 July 2008, UN doc. CCPR/C/FRA/CO/4, para. 20, in which concerns were raised by the Human Rights Committee regarding a 48-hour time limit for lodging an appeal. In *Alzery v. Sweden*, the complainant had no real time to appeal the decision to deport him; he was expelled only hours after the decision to expel him was taken, HRC: *Alzery v. Sweden*, 10 November 2006, No.1416/2005, para. 3.10.

UNHCR recommends an extension to the current 5-day deadline referred to above, as such a short deadline may render it excessively difficult to exercise the right to an effective remedy.

In the context of UNHCR's comments to the proposed Asylum Procedures Regulation, UNHCR further emphasized flexibility in case specific procedural needs are to be addressed and recommended that Member States should be given the opportunity to set longer time lines. UNHCR would usually recommend that the deadline for lodging an appeal against a decision issued within an accelerated procedure be one month.

In July 2018, UNHCR published a discussion paper aimed at analysing different approaches and key elements pertaining to fair and fast asylum procedures[23]. The paper includes an annex containing examples of accelerated procedures and appeal time frames from various European countries. The diversity observed between the different national systems further highlights the challenge in pinpointing a specific appeal time frame as ideal. It is rather the combination of swift case processing modalities, adequately resourced actors and solid legal safeguards that jointly shape an efficient procedure.

In this context, UNHCR stands ready to assist Icelandic authorities in shaping the system ideal for the Icelandic context

5. Withdrawal of the right to apply for family reunification for resettled refugees and persons granted derivative status

UNHCR understands that the Proposal aims to remove the right to apply for family reunification from two groups of individuals. Firstly, refugees resettled to Iceland with the assistance of UNHCR, and secondly individuals granted so called derivative protection status[24].

UNHCR strongly believes that a supported and well-managed access to family reunion enables many women and children to safely access protection. Family reunion is also a strong element in support of successful integration strategies and programs as well as an important factor in reducing mental health issues among refugees. UNHCR is concerned that the proposed restrictions on access to family reunion for resettled refugees and persons granted derivative status lead to situations where especially women and children risk their lives and exposure to serious harm and risks by embarking on dangerous irregular travel routes. It is well known that the urge to reunite with family members is a key driver of irregular onward movements. This speaks to the need for effective family reunification arrangements, noting that constant worry about one's family who stayed behind has significant impact on the mental health of refugees in their everyday life.

With regards to the first group, the preparatory works outline that there should be no need for "additional" family reunification following arrival in Iceland, and reference is made to the right to family unity already having been "taken into consideration and ensured" during the resettlement procedures conducted by UNHCR. The preparatory works however leave room for family reunification to take place anyway under certain circumstances on a case by case basis, where there is a "reasonable explanation" for the need for family reunification following resettlement. UNHCR here wishes to note that as a result of flight, families are often separated and dispersed.

[23] UN High Commissioner for Refugees (UNHCR), *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, available at: https://www.refworld.org/docid/5b589eef4.html

[24] Family members/dependants of a recognized refugee

Sometimes families can be reunited in a country of asylum prior to resettlement, however, this is not always possible and cannot be guaranteed. Whereabouts of family members may be unknown or they may be in different countries, with no legal possibility to travel between those two countries and be reunited. The right to family reunification in the resettlement country is therefore crucial to ensure family unity of resettled refugees.

Furthermore, an assumption that all family members are always declared as part of the resettlement process may not be entirely accurate. For example, UNHCR is aware of rare occasions where it has occurred that a refugee chose to omit family members during the resettlement procedure fearing that disclosure would affect his or her prospect for resettlement. Refugees may also be ill-advised not to mention that they have a missing family member for fear that this may delay or prevent them from departing on resettlement altogether. It is also important to highlight that human or technological error in the collection or presentation of the information as part of the resettlement process cannot be ruled out.

With regards to both resettled refugees and individuals granted derivative refugee status, UNHCR wishes to point out that the family is the fundamental unit of society entitled to protection by society and the State. While the 1951 Convention is silent on the question on family reunification and family unity, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends that Member States "take the necessary measures for the protection of the refugee's family, especially with a view to (…) [e]nsuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country[25]."

Furthermore, family unity is a fundamental and important human right contained in a number of international and regional instruments. These are the Universal Declaration of Human Rights, (Article 16(3); the International Covenant on Civil and Political Rights, (Article 17); the International Covenant on Economic, Social and Cultural Rights, (Article 10); the Convention on the Rights of the Child, (Article 16); as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8). Following separation caused by forced displacement such as from persecution and war, family reunification is often the only way to ensure respect for a refugee's right to family unity[26].

The case law of the European Court of Human Rights (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.

UNHCR recommends to <u>maintain the right to family reunification for all individuals granted international protection</u>, including resettled refugees and persons granted derivative status.

[25]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. 3, available at: http://www.refworld.org/docid/4f55e1cf2.html

[26] Ibid

UNHCR conclusive recommendations

In UNHCR's view, the modality chosen to examine an application for international protection, as outlined above, should not negatively affect procedural safeguards, including the suspensive effect of appeal. Given the severe consequences of a wrong negative decision on applications examined through such procedures, these claims, with the possible exceptions as outlined above, should be provided with full procedural safeguards to ensure full respect for the principle of non-refoulement, including by providing automatic suspensive effect of appeals.

1.1. UNHCR recommends to remove the second paragraph of Article 35 and to re-instate the right to apply for and be granted suspensive effect for applications from safe countries of origin, considered also as manifestly unfounded.

1.2. UNHCR recommends retain the automatic suspensive effect upon appeal for all applications from safe countries of origin not considered as manifestly unfounded.

1.3. UNHCR recommends to remove the wording *"or some other form of protection"* from Article 36 a (first two rows), in order for the admissibility safeguards to correspond fully with the standards of treatment commensurate with the 1951 Convention and international human rights standards.

1.4. UNHCR recommends to retain the right to automatic suspensive effect upon appeal with regards to all applications from a first country of asylum (Article 36 a. of the Act on Foreigners).

1.5. UNHCR further recommends to maintain automatic suspensive effect with regards to all applications from a safe third country, as defined in article 36 a.

2.1. UNHCR recommends amending proposed Article 29 a), to state that a manifestly unfounded claim is one that is either *"clearly not related to the criteria for refugee status"* or *"clearly fraudulent or abusive".*

2.2. UNHCR further recommends to remove references to safe countries of origin, from the definition of a manifestly unfounded application in the proposed Article 29 a.

3.1. With regards to the proposed Article 35 a., UNHCR recommends to clarify that an application can only be considered as a repeated application, in cases where the initial application was considered fully on merits.

3.2. UNHCR recommends to remove the requirement of "significantly increased likelihood for qualifying for international protection" when assessing repeat applications in the proposed Article 35 a.

3.3. In all circumstances where the initial application was not assessed fully on merits, UNHCR recommends to consider a subsequent application as a first (subsequent) application and limit potential exceptions to the right to remain to second or further subsequent applications.

3.4. UNHCR recommends to limit potential exceptions to the right to appeal with automatic suspensive effect to second or further subsequent applications, in all circumstances where the initial application was not assessed fully on merits.

4. UNHCR recommends an extension to the current 5-day deadline referred to above, as such a short deadline may render it excessively difficult to exercise the right to an effective remedy.

5. UNHCR recommends to maintain the right to family reunification for all individuals granted international protection, including resettled refugees and persons granted derivative status.

UNHCR Regional Representation for Northern Europe, 16 August 2019