



**UNHCR's Observations
on the proposed amendments to the Norwegian Immigration Regulation
Forslag til endring i utlendingsforskriften – 15-månedesregel for saksbehandlingen i
Utlendingsnemnda (UNE)**

Introduction

UNHCR provides these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.¹ As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto." UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees (hereinafter; "the 1951 Convention") and Article II of the 1967 Protocol relating to the Status of Refugees (hereinafter "the 1967 Protocol"), according to which State parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention". Norway is party to both the 1951 Convention and the 1967 Protocol.

General observations

It is proposed to introduce a provision in paragraph 8-2 of the Immigration Regulation, according to which a residence permit can be granted on compassionate grounds under article 38 of the Immigration Act, to asylum-seekers with children, if UNE has not assessed the appeal application within a period of 15 months. It is further stipulated that the proposal sets a standard for a maximum period of time for processing appeal applications concerning asylum-seekers with children, and that the long term goal is to process the majority of such cases from the time of registration until a final decision has been taken to one year.

UNHCR notes that it is in the interest of all parties to ensure efficient, as well as fair, procedures for the determination of international protection needs within a reasonable time.

¹ Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para.1, available at <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

This requirement emerges, inter alia, from CJEU case law.² The right to have “his or her affairs handled [...] within a reasonable time” is also set out by Article 41 of the EU Charter of Fundamental Rights³ which, according to some expert commentators, can be “invoked where Member States implement EC law”,⁴ including in asylum procedures.

Overly lengthy procedures have been seen to present a “pull factor” where it would appear that certain categories of applicants claim international protection only in order to enjoy reception conditions for the time the determining authority takes to reach a decision. Quality decisions taken within a short timeframe are in the interest of States as they would reduce the costs of both procedures and reception conditions. This is one of the arguments underlying the frontloading principle. A decision taken within a reasonable time is also in the interest of applicants, who would not be left in uncertainty for long periods⁵.

This will in turn facilitate the finding of durable solutions which protect the best interests of each individual child in a family.

UNHCR welcomes the Government’s long term goal to reduce the processing time from the time of registration of families with children until a final decision has been taken to one year, provided that a necessary rest and recuperation period is granted upon arrival and that the procedure itself is fair and transparent and contains the necessary safeguards particularly in respect of families with children. This would be in line with the 12 month maximum period for processing asylum applications set forth in the recast EU Asylum Procedures Directive⁶.

Integration of the best interests of the child principle in asylum and immigration systems

UNHCR promotes the integration of the standards set out in the Convention on the Rights of the Child and other international and regional human rights instruments in national systems established to protect the rights and meet the specific needs of children seeking international protection. In this respect, UNHCR would like to highlight – as a best practice - the emphasis

² Rights guaranteed by EU law require a “procedural system which is [...] capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time” In *Panayotova and others v. Minister voor Vreemdelingenzaken en Integratie*, C-327/02, European Union: European Court of Justice, 16 November 2004, paragraph 27, UN High Commissioner for Refugees, 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.unhcr.org/refworld/docid/4f3281762.html>

³ European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), at: <http://www.unhcr.org/refworld/docid/3ae6b3b70.html>

⁴ Costello, C: *The European asylum procedures directive in legal context*, page 26, see footnote 71; see also UNHCR, UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures, para. 32, 21 May 2010, at: <http://www.unhcr.org/refworld/docid/4bf67fa12.html>.

⁵ UN High Commissioner for Refugees, 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, p. 23, available at: <http://www.unhcr.org/refworld/docid/4f3281762.html>

⁶ European Union: European Commission, Amended Proposal for a Directive of the European Parliament and the Council on common procedures for granting and withdrawing international protection status (Recast), 1 June 2011, COM(2011) 319 final, at: www.unhcr.org/refworld/docid/4e3941c22.html

placed in the Norwegian Immigration Act (utlendingslov) on the need for a child-sensitive application of the refugee law, and the explicit reference to the best interests of the child in paragraph 38 of the Norwegian Immigration Act.

Paragraph 38 stipulates that: *"In cases concerning children, the best interest of the child shall be a fundamental consideration. Children may be granted a residence permit [on the grounds of strong humanitarian considerations] even if the situation is not so serious that a residence permit would have been granted to an adult."*

The best interest principle contained in Article 3 of the Convention on the Right of the Child applies to **all** children without any discrimination⁷. This includes both unaccompanied and separated children as well as children in families.

UNHCR notes that the proposed 15 months sets a standard for a maximum period of time for processing applications concerning asylum-seekers with children at the appeal instance. UNHCR further notes that paragraph 8-2 of the Immigration Regulation already includes a maximum timeframe of a 15 months period for processing asylum cases at the first instance, and that the average processing time from registration to a final decision is two years.

It is in the best interests of asylum seekers generally, but for families with children seeking asylum in particular to have their application for international protection processed in a fair and efficient manner. UNHCR recommends determining authorities to consider the best interests (and therefore the wider needs) of the child within the family in asylum applications, treating them as rights bearers with an opinion and feelings of their own, which should duly be considered according to their age and maturity. Considering the child's needs and opinion could help facilitate the identification and implementation of a durable solution, which would be in the best interests of all parties concerned, i.e. the State, the family and ultimately the child(ren) within that family.

UNHCR recommends that decisions concerning children in families are taken within a reasonable time frame, thereby preventing that children, in families, are left in uncertainty for long periods and thus respecting the best interests of the child. Not only an adult's but also a child's mental and emotional health can be adversely affected by a failure to reach a timely decision about his or her future. Any delay, which is not necessitated by the applicant's individual circumstances, is not likely to be in the best interest of the applicant nor his or her minor dependent(s), as unnecessary delays are likely to exacerbate their anxiety about their future and may lead to further psychological and emotional harm for the family as a whole.

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⁷ Article 2 of the Convention on the Rights of the Child.