Domstolsstyrelsen

Justitsministeriet

Slotsholmsgade 10
1216 København K

Store Kongensgade 1-3
1264 København K
Tlf. +45 70 10 33 22
Fax +45 7010 4455
post@domstolsstyrelsen.dk
CVR nr. 21-65-95-09
EAN-nr.5798000161184

J. nr. 2011-4101-0040-2
Sagsbeh. Niels Juhl
Dir.tlf. +45 99 68 42 27
Mail NIJ@domstolsstyrelsen.dk

30. maj 2011

**Høring over udkast til forslag til lov om ændring af udlændingeloven (Skærpede udvisningsregler)**

Justitsministeriet har i dag anmodet om Domstolsstyrelsens eventuelle bemærkninger til udkast til forslag til lov om ændring af udlændingeloven (Skærpede udvisningsregler).

Justitsministeriet har konkret anmodet styrelsen om bemærkninger til, at det i lovforslaget anføres, at " *Lovforslaget må forventes at medføre et øget antal sager, hvor der vil skulle nedlægges påstand om udvisning, og vil som en konsekvens heraf medføre et øget ressourceforbrug både for anklagemyndigheden og for domstolene. De økonomiske konsekvenser af lovforslaget forventes afholdt inden for de eksisterende økonomiske rammer.* "

Lovforslaget indebærer, at der i flere straffesager mod udlændinge end i dag vil skulle tages stilling til spørgsmålet om udvisning. Således skal fremover kun udlændinge, "der står til udvisning", have lov til at blive her i landet, hvis dette med sikkerhed vil være i strid med Danmarks internationale forpligtelser.

I sager om udvisning af udlændinge skal retten, som det også fremgår af lovforslaget, blandt andet tage stilling til, om udvisningen vil være i strid med Danmarks internationale forpligtelser. Sager om udvisning af udlændinge er derfor langt mere tidskrævende, end sager, hvor der ikke er rejst spørgsmål udvisning af den pågældende.

Afgørelser om udvisning i forbindelse med straffesager bliver derudover langt oftere anket til landsretterne end domme i straffesager i almindelighed, idet afgørelser om udvisning i sagens natur ofte vil være væsentligt mere indgribende for den dømte end afgørelser om bøde eller fængselsstraf. Derudover bliver en væsentligt større andel af sager om udvisning erfaringsmæssigt forsøgt indbragt til Højesteret ved ansøgning til Procesbevillingsnævnet.

Den foreslåede skærpelse af udvisningsreglerne vil derfor medføre en merbelastning af domstolene og Procesbevilllingsnævnet, som generelt vil kunne føre til stigende sagsbehandlingstider.

Med venlig hilsen

Adam Wolf

## UNHCR's observations on Lovforslag 210

### Law on amendments to the Alien Act (Skærpede udvisningsregler)

### 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* ("herinafter; the 1951 Convention") 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". The same commitment is included in Article II of the *1967 Protocol relating to the Status of Refugees* ("the 1967 Protocol")."

### Proposal for increased possibilities of expulsion in case of violations of the Criminal Law

*The new proposed amendments leads to a overall tightening of the regulations concerning expulsion of foreigners who have committed a crime.*

UNHCR welcomes the statement in the remarks to the bill that Denmark's international obligations will be respected in the implementation of this provision

[1] See 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 ("Statute").

and would, in this connection, wish to take the opportunity to recall some of these obligations pertaining to persons with protection needs.[2]

In principle, every state has the right to expel non-nationals from its territory in accordance with the State's obligations under international law, in particular human rights law. There are specific provisions applicable to non-nationals who are lawfully on the territory. With regard to refugees lawfully on the territory, expulsion to a third country is limited under Article 32 and Article 33(2) of the 1951 Convention. Article 32 enumerates the permissible grounds for expulsion as "national security" and "public order". These grounds would not permit expulsion or return (*refoulement*) to the country of origin, or to a third country where the refugee's life or liberty would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

*Refoulement* under the 1951 Convention may only be justified when the stringent conditions of its Article 33(2) are met. The permissible grounds for *refoulement* under Article 33(2) are limited to situations when there are reasonable grounds for regarding a particular refugee as "a danger to the security of the country" of asylum or when he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the host community. If the grounds for expulsion of a refugee foreseen in the proposed Danish Act do not fall under these terms, they would be contrary to the 1951 Convention. Since a refugee, unlike an ordinary alien, does not have a country to which to return, his expulsion may have particularly serious consequences, which would justify a restrictive interpretation of this provision. Also the *travaux préparatoires* for both Articles 32 and 33(2) emphasize that these provisions should be interpreted in a restrictive manner.

In UNHCR's understanding, the gravity of the crimes should be judged against international standards, not simply by its categorization in the host State. In either case, these should be treated as exceptions and the principle of proportionality should be applied. This would require that there be a rational connection between the removal of the refugee and the elimination of the danger; the removal must be the last possible resort to eliminate the danger; and the danger to the country of refuge must outweigh the risk to the refugee upon expulsion.

---

[2] C.f UNHCR ExCom Conclusion 1977, No. 7 (XXVIII) - 1977, available at: http://www.unhcr.org/refworld/ docid/3ae68c4437.html [accessed 16 April 2010] Advisory Opinion from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees, 6 January 2006, "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", Sir Elihu Lauterpacht and Daniel Bethlehem, 20 June 2001, in "*Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*", edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, Cambridge (2003).

The *public order* exception would permit the expulsion of a refugee who had been convicted of certain serious crimes where such crimes are considered to be violations of public order. Even in cases where criminal offences are repeatedly committed, one of the offences should be particularly grave in order to justify expulsion. A separate finding is required to the effect that the continued presence of the offender is prejudicial to the maintenance of public order. In addition, these convictions are only relevant if they indicate a present threat that the individual will act the same way in the future.

Article 33(2) requires a conviction by a Court of a "particularly serious crime", which would include crimes such as murder, rape, arson and armed robbery. Certain other offences could be considered particularly serious if they are accompanied by the use of deadly weapons, involve serious injury to persons, or there is evidence of serious habitual criminal conduct. Factors to be considered include the nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, and whether most jurisdictions would consider the act in question as a serious crime. It should thus be considered that only egregious crimes warrant an exception to the *non-refoulement* principle.

More importantly, conviction of a particularly serious crime is not sufficient, in, and, of itself. The person concerned must, in view of this crime, also present a *danger to the community*. As with Article 32, this would require an assessment of the present or future danger posed by the wrong-doer. Hence, not any offence and not any criminal conviction may justify expulsion under the terms of either Article 32 or 33(2). Expulsion measures against a refugee should only be taken in very exceptional cases and after due consideration of all the circumstances, including the possibility for the refugee to be admitted to a third country other than his or her country of origin. Against this background UNHCR believes that the proposed rules relating to expulsion of refugees go beyond what is permitted by Article 32 of the 1951 Convention

In UNHCR's view, the proposal is also problematic insofar as the expulsion of a refugee entails that s(he) loses his/her refugee status. The cessation of refugee status is exhaustively regulated by Article 1C of the 1951 Convention. This provision does not allow for cessation of refugee status on the ground that a refugee has committed common crimes such as those which according to the proposed Danish legislation can lead to expulsion. Revocation, or withdrawal, of refugee status may be foreseen for refugees who engage in conduct coming within the scope of Article 1F(a) or 1F(c), provided that all the criteria for the application of either of these articles is met. While asylum could be withdrawn in cases where Articles 32 and 33(2) are applicable, the termination of refugee status would be at variance with the 1951 Convention unless, as noted above, the criteria of Articles 1C, 1F(a) and 1F(c) are met.

**UNHCR Regional Office for the Baltic and Nordic countries**
**June 2011**