



Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU)

A Judicial Analysis

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Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU)

A Judicial Analysis

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They have been invited for this purpose by the European Asylum Support Office (EASO) in accordance with the methodology set out in Appendix C. The recruitment of the members of the working group was carried out in accordance with the scheme agreed between EASO and the members of the EASO network of court and tribunal members, including the representatives of the International Association of Refugee Law Judges (IARLJ) and the Association of European Administrative Judges (AEAJ).

The working group itself met on 2 occasions in April and June of 2016 in Malta. Comments on a discussion draft were received from individual members of the EASO network of court and tribunal members, namely Judge Jakub Camrda (CZ), Judges Harald Dörig and Ingo Kraft (DE), Judge Rossitsa Draganova (BG), Judge Ildiko Figula (HU), and Judge Bostjan Zalar (SI). In accordance with the EASO founding Regulation, UNHCR was invited to and expressed comments on the draft Judicial Analysis. All these comments were taken into account by the Working Group. The members of the Working Group are grateful to all those who have made comments which have been very helpful in finalising this Judicial Analysis.

This Judicial Analysis will be updated in accordance with the methodology set out in Appendix C.

List of abbreviations

AEAJ	Association of European Administrative Judges
APD (recast)	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)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
QD	Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
QD (recast)	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
Refugee Convention	Convention Relating to the Status of Refugees (1951), as amended by its Protocol (1967)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

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Preface

The scope of this Judicial Analysis extends to the law on ending protection in relation to Refugee Status and Subsidiary Protection, in the context of Articles 11, 14, 16 and 19 of the Qualification Directive (2011/95/EU) ⁽¹⁾. The Judicial Analysis focuses primarily on case-law from the CJEU with respect to the Common European Asylum System along with national law from the EU Member States. National case law cited is intended to be illustrative of the manner in which the QD and QD (recast) has been transposed and interpreted. Ending temporary protection is outside of the scope of the present work although it is referred to briefly in parts below. Readers should bear in mind that Member States may introduce or retain more favourable standards for determining the content of international protection (Article 3 QD (recast)), in so far as those standards are compatible with the other provisions of the Directive.

A decision on ending protection under the QD or QD (recast) is not, in and of itself, decisive of whether the persons concerned can be removed. If refugee protection is ended, the applicant may still be eligible for subsidiary protection. Where both forms of international protection are withdrawn, international law may still protect against removal from the country of refuge. Article 3 ECHR provides an absolute bar to removal where this would result in torture or inhuman or degrading treatment or punishment. *Refoulement* is prohibited under Article 21 QD (recast) and Article 33 Refugee Convention. In addition, the person concerned may be able to rely on grounds of protection under national law.

In order to ensure uniformity and consistency, the wording of Articles 11, 14, 16 and 19 is used in this Judicial Analysis. In general, the phrase ‘ending international protection’ encompasses cessation, revocation, ending or refusing to renew protection and withdrawal of refugee status as well as subsidiary and temporary protection. However, some national legislation uses different terminology ⁽²⁾ while some courts and tribunals and UNHCR use the terms ‘cancellation’ and/or ‘revocation’ ⁽³⁾.

In conducting research on the topic of ending international protection, it was found by the Working Group that the volume of relevant available case law varies greatly from Member State to Member State. In addition, the topic of ending international protection has, in some Member States, appeared periodically and not always been subject to examination by national courts on a continuing or on-going basis. It is also clear, from an overall assessment and evaluation of the cases on ending protection that, in many Member States, such provisions are not engaged as often as other provisions of the QD (recast). Consequently, some cases recur throughout this Analysis.

The Judicial Analysis is broadly divided into seven parts:

1. a general **overview** on ending protection
2. **procedural aspects** and matters pertaining to the burden and standard of **proof**

⁽¹⁾ Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, or a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9. Unless otherwise indicated, any reference to ‘Article(s)’ cited in this Judicial Analysis should be taken as referring to the recast Qualification Directive (2011/95/EU).

⁽²⁾ For example, Article 21 of the Polish Law on granting protection uses one term that includes all reasons for ending protection (only available in Polish).

⁽³⁾ UNHCR uses the term ‘cancellation’ to refer to the invalidation of refugee status which should not have been granted in the first place, either because the individual concerned did not meet the inclusion criteria of Article 1A(2) Refugee Convention, or because an exclusion ground should have been applied to him or her at the time. The term ‘revocation’ is used by the UNHCR for the application of exclusion based on Article 1F(a) or (c) Refugee Convention where a refugee engages in conduct falling within these provisions after recognition. See UNHCR, Note on Cancellation of Refugee Status, 22 November 2004.

3. cessation of refugee protection in circumstances where cessation is caused by the **actions of the individual**
4. changed circumstances in **the refugee's country of origin**
5. ending protection for refugee status by way of **exclusion** and **misrepresentation**
6. ending refugee protection due to a **conviction for a serious crime** or being a **danger to the security of a state**
7. ending **subsidiary protection**.

The relevant provisions of the QD (recast) as well as the APD (recast) are set out below:

Qualification Directive (2011/95/EU) (recast)

Recital (4)

The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

Recital (12)

The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

Recital (23)

Standards for the definition and content of refugee status should be laid down to guide the competent bodies of Member States in the application of the Geneva Convention.

Recital (37)

The notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.

Article 2(e) Definitions

'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;

Article 3 More favourable standards

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

Article 11

Cessation

1. A third-country national or a stateless person shall cease to be a refugee if he or she:
 - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
 - (b) having lost his or her nationality, has voluntarily re-acquired it; or
 - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
 - (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
 - (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
 - (f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 14

Revocation of, ending of or refusal to renew refugee status

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:
 - (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
 - (b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

- (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
- (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken. 6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

Article 16

Cessation

1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 17

Exclusion

1. A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he or she has committed a serious crime;
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
- (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

2. Paragraph 1 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would

be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

Article 19

Revocation of, ending of or refusal to renew subsidiary protection status

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person, if:

- (a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);
- (b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

Asylum Procedures Directive (2013/32/EU) (recast)

Recital (49)

With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status.

Recital (50)

It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

Article 2(o) Definitions

For the purposes of this Directive:

‘withdrawal of international protection’ means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with Directive 2011/95/EU;

Article 44 Withdrawal of international protection

Member States shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection.

Article 45 Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

- (a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and
- (b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

2. In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

- (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and
- (b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

3. Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.

Article 46

The right to an effective remedy

1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

- (a) a decision taken on their application for international protection, including a decision
 - (i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;
 - (ii) considering an application to be inadmissible pursuant to Article 33(2);
 - (iii) taken at the border or in the transit zones of a Member State as described in Article 43(1);
 - (iv) not to conduct an examination pursuant to Article 39;
- (b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;
- (c) a decision to withdraw international protection pursuant to Article 45.

2. Member States shall ensure that persons recognised by the determining authority as eligible for subsidiary protection have the right to an effective remedy pursuant to paragraph 1 against a decision considering an application unfounded in relation to refugee status.

Without prejudice to paragraph 1(c), where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings.

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 43.

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

- (a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);
- (b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);
- (c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or
- (d) not to examine or not to examine fully the application pursuant to Article 39,

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting ex officio, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.

7. Paragraph 6 shall only apply to procedures referred to in Article 43 provided that:

- (a) the applicant has the necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and
- (b) in the framework of the examination of the request referred to in paragraph 6, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.

If the conditions referred to in points (a) and (b) are not met, paragraph 5 shall apply.

8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.

9. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No 604/2013.

10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

11. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his or her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

Key questions

The present volume aims to provide an overview of ending international protection for members of courts and tribunals of Member States. It strives to answer the following main questions:

1. In which situations can refugee status come to an end? (section 1.1.)
2. What is the rationale behind the cessation clause contained in Article 11(1)(d)? (section 3.4.)
3. In what circumstances will misrepresentation lead to an ending of refugee status? (section 5.2.)
4. Must there be an intention to mislead in terms of revocation based on misrepresentation? (section 5.2.1.3.)
5. What are the consequences of misrepresentation in an asylum application? (section 5.2.4.)
6. When might an individual refuse to avail oneself of the protection of his/her country of origin? (section 3.1.2.)
7. What circumstances establish voluntary re-availment of protection in an individual's country of nationality? (section 3.1.2.)
8. In the context of voluntary re-availment of protection in an individual's country of nationality, when does 'absolute necessity' arise? (section 3.1.5.)
9. To what extent can an act of re-availment of protection in the sense of Article 11(1)(d) be considered as an act of allegiance to the authorities of the country of origin? (section 3.1.4.)
10. What is the meaning of 'significant and non-temporary' in the context of 'ceased circumstances'? (section 4.1.4.)
11. What are the circumstances which give rise to a refugee being deemed to be a danger to the security of the State? (section 6.1.)
12. When assessing the voluntariness of a refugee's actions in light of the cessation clauses, what factors might be considered by courts and tribunals? (section 3.4.)
13. What are the criteria for voluntary re-establishment in an individual's country of origin? (section 3.4.)
14. What factors might a court or tribunal consider when assessing whether a refugee has genuinely re-established her/himself in the country of origin (section 3.4.)
15. What factors might a court or tribunal consider when assessing whether a refugee constitutes a danger to the host country and under which circumstances can international protection subsequently be ended? (section 6.)
16. How are the grounds for ending subsidiary protection similar to those for ending refugee protection, and how do they differ? (section 7.)

1. Ending International Protection – An Overview

1.1 Introduction

Just as refugee protection is a status which is recognised with respect to an individual, it is also capable of being ended in certain circumstances. In general, ending international protection is linked to the conduct of the persons concerned or developments in the country of origin or, in principle, a combination of both.

There are two different angles from which the substantive law on ending protection can be viewed. On the one hand, once an application has been formally determined and international protection status officially granted, with all the benefits under the EU asylum acquis, the Refugee Convention and under national law which that entails, the protected person ‘has the assurance of a secure future in the host country and a legitimate expectation that he will not henceforth be stripped of this status, save for demonstrably good and sufficient reason’⁽⁴⁾. This is the rationale for two principles advanced by UNHCR:

- the first is that the grounds upon which international protection status may be lost are exhaustively stated in the relevant provisions;
- the second is that the clauses in question are to be interpreted restrictively⁽⁵⁾.

On the other hand, every grant of international protection status to persons who do not genuinely and fully satisfy the eligibility criteria undermines the integrity of refugee law. Refugee law is underpinned by the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, as proclaimed in the Universal Declaration of Human Rights⁽⁶⁾. It follows that valid decisions ending protection status both further the objects of and fortify the QD (recast) and the Refugee Convention. In addition, the principle of subsidiarity of international protection has particular relevance in the area of ending protection. Where the person concerned has found sufficient protection against persecution, it becomes unnecessary to regard them as a refugee⁽⁷⁾. International protection is therefore linked to the duration for which it is needed⁽⁸⁾. In addition, the correctness of the status should be reviewed over time, giving effect to changes in the circumstances of the persons concerned or their country of origin. Moreover, there is no obligation to extend international protection if an exclusion ground provided for in international refugee law becomes applicable to a refugee after recognition, or where the individual concerned did not qualify for such protection in the first place⁽⁹⁾.

In terms of procedure, every decision to end international protection should be the product of a rigorous, properly informed and procedurally fair decision-making process. Nothing less will suffice, given the potentially dire consequences which an objectively unfounded loss of refugee status can signify for the person concerned and others, in particular family members.

⁽⁴⁾ House of Lords (UK), *R (Hoxha) v Special Adjudicator* [2005] UKHL 19, para. 65.

⁽⁵⁾ 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, para. 116.

⁽⁶⁾ See the Preamble to the *Convention Relating to the Status of Refugees*, 189 UNTS 150, 28 July 1951 (entry into force: 22 April 1954).

⁽⁷⁾ See also Federal Administrative Court (Germany), judgment of 8 February 2005, BVerwG 1 C 29/03, ECLI:DE:BVerwG:2005:080205U1C29.03.0.

⁽⁸⁾ UNHCR Standing Committee, *Note on the Cessation Clauses*, May 1997, EC/47/SC/CRP.30, para. 4.

⁽⁹⁾ UNHCR, *Note on Cancellation of Refugee Status*, 22 November 2004, para. 5.

It has been consistently recognised in judicial decisions that very serious consequences may flow from ending international protection. This has been highlighted by the House of Lords in the decision *R (Hoxha)* when it stated that '[a] construction that would allow a change in circumstances to be construed too broadly does not evince a precautionary attitude on the part of the decision maker whose decision potentially poses grave consequences for the subject of the decision ⁽¹⁰⁾'. The need for minimum standards of fairness has been repeatedly emphasised by the Executive Committee of UNHCR ⁽¹¹⁾.

Under the terms of the QD (recast) there are several mechanisms for ending international protection. Collectively these are cessation, misrepresentation, exclusion, and reasons of danger to the security or the community. It is important to appreciate the differing nature of these mechanisms:

Cessation

The first mechanism for loss of protection status is cessation. This is regulated by Article 11, which reflects what are generally referred to as the 'Cessation Clauses' of the Refugee Convention, contained in Article 1(C). Cessation occurs if the individual concerned demonstrates, mostly through certain voluntary acts, that he or she is no longer in need of international protection **or** where a fundamental and lasting change in the circumstances in the country of origin means that the reason(s) for granting refugee status no longer exist(s).

There are two situations in which cessation of refugee status operates:

(i) Cessation resulting from individual actions

This category of cessation recognises four sub-categories of acts that may result in protection ending:

- (a) the voluntary **re-availment** of the protection of the person's country of nationality or former habitual residence;
- (b) the voluntary **re-acquisition** of a **lost** nationality;
- (c) the **acquisition** of a **new** nationality and the enjoyment of the protection of the country of this new nationality;
- (d) the voluntary **re-establishment** in the country previously abandoned.

(ii) Cessation because of change of circumstances

There is one further situation in which the cessation of refugee status may occur. This arises where refugees can no longer continue to refuse to avail themselves of the protection of the country of their nationality or former habitual residence because the circumstances in connection with which they have been recognised as being in need of international protection have ceased to exist.

⁽¹⁰⁾ *R (Hoxha) v Special Adjudicator*, op.cit., fn. 4, para. 113. A judgment of the Conseil du Contentieux des Etrangers (Council for Alien Law Litigation), (Belgium) is illustrative of the numerous decisions that recognised the grave consequences of revocation and held that the relevant provisions require strict interpretation: Conseil du Contentieux des Etrangers (Council for Alien Law Litigation) (Belgium), judgment of 11 March 2016, No 163 942, 153 270/V]. Moreover, in another case, the High Court of Australia noted that every decision of this kind must involve a process 'as formal at least as the granting of refugee status' [High Court (Australia), *Minister for Immigration and Multi-Cultural and Indigenous Affairs v QAAH of 2004* [2006] HCA 53, para. 133].

⁽¹¹⁾ UNHCR, UNHCR, Executive Committee Conclusion No. 8 (XXVIII), 1977, 'Determination of Refugee Status'. ExCom Conclusions are adopted by consensus by the States which are Members of the Executive Committee and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees. At present, 98 States are Members of the Executive Committee.

The feature common to all cessation situations is that refugee status is no longer considered necessary or justified. This is in harmony with the related principle that cessation does not operate to retrospectively invalidate the refugee status determination. Rather, cessation takes effect for the future only, i.e. *ex nunc* ⁽¹²⁾.

Additional Right to Subsidiary Protection

The ending of protection cannot be made conditional on a finding that the person concerned does not qualify for subsidiary protection status. These two forms of protection must be treated separately. Thus, where refugee status ceases, this is without prejudice to the right of the person concerned to request subsidiary protection ⁽¹³⁾.

Misrepresentation

Where refugee status was wrongly conferred upon a person because of misrepresentation or omission of decisive facts, refugee status shall be revoked, ended or renewal refused in accordance with Article 14(3)(b).

Exclusion

The QD (recast) expressly provides for the ending of refugee status in situations where the person concerned ‘should have been excluded or ‘is excluded’. This provision, which reflects the exclusion grounds set out in Articles 1(D), 1(E) and 1(F) Refugee Convention, applies to the following categories:

- (i) Persons falling within the scope of Article 1(D) Refugee Convention who are in receipt of protection or assistance from organs or agencies of the United Nations other than UNHCR ⁽¹⁴⁾
- (ii) Persons who have been accorded specific rights akin to those granted to the nationals of the country – other than their country of origin – in which they have established residence ⁽¹⁵⁾
- (iii) Persons who are undeserving of international refugee protection because they have committed, or participated in the commission of, certain serious crimes or heinous acts ⁽¹⁶⁾.

Guidance on the interpretation and application of the exclusion provisions in Article 12, including section (2) thereof, can be found in EASO, [Exclusion: Articles 12 and 17 Qualification Directive \(2011/95/EU\) – A Judicial Analysis](#), January 2016.

Danger to the security or to the community

The QD and the QD (recast) provide that Member States may revoke, terminate or refuse to renew refugee status when there are reasonable grounds for regarding the person concerned as a danger to the security of the Member State in which he/she is present or that the person,

⁽¹²⁾ The exclusion clauses of Article 1F(a) and (c) of the Refugee Convention operate in the same way.

⁽¹³⁾ CJEU, judgment of 2 March 2010, Grand Chamber, Joined Cases C-175/08, C-176/08, C-178/08, C-179/08, *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, and Dier Jamal v Bundesrepublik Deutschland*, EU: C:2010:105, para. 79.

⁽¹⁴⁾ Article 12(1)(a) QD (recast); Article 1(D) Refugee Convention.

⁽¹⁵⁾ Article 12(1)(b) QD (recast); Article 1(E) Refugee Convention.

⁽¹⁶⁾ Article 12(2) QD (recast); Article 1(F) Refugee Convention; It is important to note that the exclusion ground provided for in Article 12(2)(b) and Article 1(F) Refugee Convention is subject to temporal and geographic restrictions, and may thus not form the basis for ending refugee status which was correctly granted.

having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of such Member State ⁽¹⁷⁾.

Threats to the security of the host country or to its community, in cases involving a person who has been convicted of a particularly serious crime, may, in certain limited situations, result in the loss of protection against *refoulement* pursuant to Article 33(2) Refugee Convention. Refugees determined to fall within the scope of this provision may also lose certain other rights and entitlements which are linked to their lawful residence in the host country. There is a considerable divergence of opinions as to whether the QD (recast) is in conformity with the intentions of the Refugee Convention in this regard, and at the time of writing the question has been referred to the CJEU (see further section 6.) ⁽¹⁸⁾.

1.2 Some general considerations on international refugee law from a European judicial perspective

The ways in which refugee status may be ended in a manner that is consistent with international refugee law (cessation, revocation, and cancellation in UNHCR's terminology) are not fully covered by explicit provisions in the QD (recast) or the Refugee Convention.

The cessation clauses in Article 1(C) Refugee Convention have been incorporated in the QD (recast) through Article 11, and Article 14(1) refers to this provision as a basis for ending, revoking or refusing to renew refugee status. The remaining clauses of Article 14 do not, however, correspond to provisions in the Refugee Convention in the same way.

Article 14(3) covers what UNHCR refers to as 'cancellation' (although it expressly refers only to some, not all, of the grounds based on which the invalidation of refugee status which was wrongly granted would be consistent with international refugee law) and 'revocation'. Information comes to light indicating that refugee status was wrongly conferred upon a person who did not meet the eligibility criteria at the time of the determination. The Refugee Convention does not contain explicit 'cancellation clauses'. However, if it is established (in proper procedures offering adequate safeguards) that the person concerned was wrongly determined to qualify for refugee status in the first place, the *invalidation of the initial recognition and withdrawal of refugee status* is generally regarded as consistent with international refugee law.

While Article 14(4) does not permit exceptions to the principles of non-*refoulement*, it foresees circumstances for the ending, revocation or refusal to renew status similar to those in Article 33(2) Refugee Convention. Article 14(5) permits Member States to rely on these grounds for a decision 'not to grant status to a refugee'. Article 14(6) provides for the retention of certain rights by persons falling within the scope of Article 14(4) or (5).

⁽¹⁷⁾ See Article 14(4) QD (recast).

⁽¹⁸⁾ CJEU, judgment not yet delivered, Case C-391/16, *M v Ministerstvo vnitra*.

2. Procedural aspects and matters relating to proof

The determination of the lawfulness of ending international protection requires an individual assessment of the applicant's claim in the context of the correct application of the relevant burden and standard of proof. When determining whether or not international protection is to be ended, courts and tribunals are also required to take into account the relevant provisions of the Asylum Procedures Directive⁽¹⁹⁾. Some courts have ruled that the principle of *res judicata* does not hinder ending protection where the circumstances have altered materially since the original decision granting protection was made⁽²⁰⁾.

2.1 Individual assessment

Articles 14(2) and 19(4) provide that a Member State must not end protection before the individual concerned has been individually examined by the State. The duty of the Member State to carry out an individual assessment before ending protection could be regarded as comparable to the individual assessment provided for in Article 4(3) when evaluating the granting of protection⁽²¹⁾.

The procedural requirements for ending protection are fully developed in Articles 44 and 45 of the Asylum Procedures Directive (recast). Article 44 APD (recast) provides that an examination to withdraw international protection may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of this protection. Article 45 APD (recast) provides certain guarantees, such as the right of the individual concerned to be informed of the reasons for such reconsideration. This provision affords the opportunity to submit reasons as to why his or her protection should not be ended.

Protection remains valid until the Member State reaches a decision to end it, whether or not the concerned individual renews the residence permit related to this specific protection. The *Conseil d'Etat* (French Council of State) has had occasion to specify the duration of the grant of protection. The court ruled that because of the declarative nature of subsidiary protection, it is effective until the beneficiary does not or has ceased to meet the necessary requirements enunciated in Articles 16, 17 and 19⁽²²⁾.

The *Cour nationale du droit d'asile* (French National Court of Asylum Law) held that the refugee status granted to an Afghan citizen should be revoked because, after being recognised as a refugee, he obtained an Afghan passport and travelled back to his country of origin. The court however ruled that this does not preclude the assessment of subsidiary protection. Subsidiary protection was then granted to the applicant, after an individual assessment, in consideration

⁽¹⁹⁾ Particular attention should be paid to recitals (49) and (50) as well as to Articles 45 and 46(1)(c) APD (recast).

⁽²⁰⁾ Federal Administrative Court (Germany), judgment of 22 November 2011, 10 C 29/10, DE:BVVerwG:2011:221111U10C29.10.0.

⁽²¹⁾ Article 4(3) QD (recast): 'The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account'

⁽²²⁾ Council of State (France), judgment of 30 December 2014, *OFPRA v M. M. Noor et Mme S. Hassan*, No 363161, 363162.

of the intensity and prevalence of generalized violence in the Afghan province from which he came, at the time the Court rendered its decision ⁽²³⁾.

In Member States which provide for additional forms of national protection beyond those recognised in the QD and its recast, the conditions for revocation of national protection against removal are determined exclusively by reference to provisions of national law ⁽²⁴⁾.

Those provisions and the associated case-law are echoed in UNHCR safeguards and guarantees of procedural fairness, which list minimum procedural requirements regarding cessation ⁽²⁵⁾, revocation ⁽²⁶⁾ and regarding what UNHCR refers to as ‘cancellation’ of refugee status ⁽²⁷⁾.

2.2 Matters relating to proof

It is clear from the wording of Articles 14(2) and 19(4) of the Qualification Directive that, when making a decision to revoke refugee status or subsidiary protection, the burden of proof in demonstrating that the person concerned has ceased to be or had never been a refugee, or has ceased to be or is not eligible for subsidiary protection, rests on the Member State concerned. This mirrors the burden of proof in relation to the cessation clauses of the Refugee Convention ⁽²⁸⁾. Nevertheless, it is expected that the refugee explains their behaviour as required by a duty of cooperation. In the case of *RD v Home Secretary*, the United Kingdom Upper Tribunal (Immigration and Asylum Chamber) noted the existence of a presumption of re-availment of the protection of the country of origin when the refugee obtains a passport or a passport renewal of the country of nationality ⁽²⁹⁾.

In a case relating to misrepresentation, the *Cour nationale du droit d’asile* (French National Court of Asylum Law) rejected the State’s appeal against a judicial protection decision for the very reason that the information brought by the administration was not sufficient proof to certify the misrepresentation ⁽³⁰⁾. Another decision by the same court which is founded specifically on Article 14(3) noted that the burden of proof rests with the Member State, ruling that Article 14 provisions must not be interpreted as an obligation to demonstrate that the complete itinerary or the complete alleged facts submitted are fraudulent, assuming that the identified misleading information would only concern a part of the itinerary or a part of the facts that led to the grant of protection. The court also considered that submission of multiple asylum applications under various identities, the last one after the grant of protection, contravened the duty of cooperation and the obligation of loyalty on the applicant provided for by the QD (recast) and the Refugee Convention ⁽³¹⁾.

The standard of proof is the same as with first instance decisions. The wording in Articles 14(2) and 19(4) ‘on an individual basis’ echoes the duty of the Member States in Article 4(3) for an

⁽²³⁾ National Court of Asylum Law (France), judgment of 5 October 2015, *M.Z.*, No 14033523.

⁽²⁴⁾ Federal Administrative Court (Germany), judgment of 24 February 2011, BVerwG 10 C 24/10, DE:BVerwG:2011:290911U10C24.10.0.

⁽²⁵⁾ UNHCR, Note on Cancellation of Refugee Status, 22 November 2004, para. 43.

⁽²⁶⁾ 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, para. 31; 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.

⁽²⁷⁾ UNHCR, Note on Cancellation of Refugee Status, op. cit., fn. 3, para. 42, 43. Note that the term ‘cancellation’ is used by UNHCR but does not appear in the QD (recast).

⁽²⁸⁾ UNHCR, Guidelines on International Protection: 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.

⁽²⁹⁾ Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom), judgment of 28 June 2007, *RD v Home Secretary* [2007] UKAIT 66, para. 30; see also, UNHCR, Handbook, op. cit., fn. 5, para. 121.

⁽³⁰⁾ National Court of Asylum Law (France), judgment of 1 March 2011, *OPRA v. S.*, No 10004319.

⁽³¹⁾ National Court of Asylum Law (France), judgment of 7 May 2013, *OPRA v. A.*, No 12021083.

individual assessment before taking the decision to revoke or end refugee status or subsidiary protection. The authorities are therefore required to make an individual examination in an administrative procedure as detailed above ⁽³²⁾. The case of *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, Dier Jamal v Bundesrepublik Deutschland* ⁽³³⁾ establishes that when the circumstances which resulted in the granting of refugee status cease to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution either for the same reason as that initially at issue or for another reason then protection can be ended. The standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted (see further section 4.1.8).

In cases concerning the application of Article 14 on exclusion grounds provided for in Article 12, clear and credible evidence is required, supported by adequate and intelligible reasons. While the standard is that of ‘serious reasons for considering’, proof of a criminal conviction is not required ⁽³⁴⁾. Thus, the Court of Appeal (UK) has held that the presumption of innocence in criminal proceedings does not apply ⁽³⁵⁾.

In some cases, exclusion decisions will be based on evidence of a verified and legitimate conviction of a qualifying crime by a foreign court; indictment by an international tribunal; or a credible confession by the person concerned. Caution should be exercised in acting upon hearsay evidence ⁽³⁶⁾ and primary evidence should always be sought ⁽³⁷⁾. Neither a bare indictment nor evidence obtained via torture will suffice ⁽³⁸⁾. Procedural issues in relation to exclusion are treated in EASO, *Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU) – A Judicial Analysis*, January 2016.

When a court or tribunal is determining whether international protection ends, the refugee could be considered as being required to available all relevant documentation at her/his disposal. The Member State shall, on an individual basis, demonstrate that the international protection should end. There must be an assessment of all of the evidence. How evidence is assessed in proceedings to end international protection depends on the particular circumstances of the applicant and the evidence that is produced on a case-by-case basis ⁽³⁹⁾.

Further guidance can be found in the EASO-IARLJ publication: *Evidence and Credibility Assessment – A Judicial Analysis* (forthcoming, expected publication May 2017).

⁽³²⁾ I. Kraft, Article 14, MN 7 Qualification Directive 2011/95/EC, in K. Hailbronner and D. Thym (eds.), *EU Immigration and Asylum Law: A Commentary* (2nd edn., C.H. Beck, 2016).

⁽³³⁾ *Abdulla*, op. cit., fn. 13.

⁽³⁴⁾ UNHCR, *Handbook*, op. cit., fn. 5, para. 149.

⁽³⁵⁾ Court of Appeal (UK), judgment of 18 March 2009, *Al-Sirri v Secretary of State for the Home Department* [2009] EWCA Civ 222, para. 25.

⁽³⁶⁾ *Ibid.*, para. 53.

⁽³⁷⁾ *Ibid.*, para. 55.

⁽³⁸⁾ *Ibid.*, paras. 40 – 44.

⁽³⁹⁾ *RD v Home Secretary*, op. cit., fn. 29.

3. Grounds for ending refugee protection I – Cessation resulting from individual action(s): Article 11(1)(a-d)

3.1 Voluntary re-availment of protection of country of nationality – Article 11(1)(a)

Article 11(1)(a) reflects Article 1(C)(1) Refugee Convention. Refugee status will end if an individual has ‘voluntarily re-availed himself or herself of the protection of his country of nationality’. Cessation based on these clauses should be assessed under the criteria of voluntariness, intent, and effectiveness of protection gained ⁽⁴⁰⁾.

This clause applies when the refugee still lives outside of the country of origin and possesses a nationality. This situation permits termination of international protection because the person concerned, by manifesting acts of allegiance to their country of origin, have availed themselves of the protection of their respective country of origin, thus demonstrating that they are no longer in need of protection from the country of asylum ⁽⁴¹⁾. The main premise underpinning the application of Article 11(1)(a), as well as the other cessation clauses encompassed in Article 11, is that international protection is only temporary and transitory and ceases when national protection is recovered ⁽⁴²⁾.

Like situations envisaged in Article 11(1)(b), (c), and (d), Article 11(1)(a) illustrates a change in the situation of the refugee that has been brought about by the person him or herself of her/his own volition, whereas (e) and (f) reflect a change in the country where persecution was feared. Voluntarily re-availing one’s self of the protection of the country of nationality implies that the individual no longer fears persecution in their country of origin and is no longer in need of international protection.

3.1.1 Requirements

When certain steps have been taken by the applicant, it can be presumed that a voluntary re-availment of the protection of the country of origin has been made. However, these steps must embody certain characteristics. Applying this clause presupposes three conditions:

- the refugee must act voluntarily;
- the act must have been carried out intentionally, and;
- the outcome achieved must result in protection being effectively obtained ⁽⁴³⁾.

⁽⁴⁰⁾ J. Fitzpatrick, ‘*Current Issues in Cessation of Protection under Article 1C of the 1951 Refugee Convention and Article 1.4 of the 1969 OAU Convention*’, commissioned for UNHCR, 2001, p.5, para. 15.

⁽⁴¹⁾ Article 1(A)(2) Refugee Convention: ‘is unable or, owing to such fear, is unwilling to return to it.’

⁽⁴²⁾ I. Kraft, *op. cit.*, fn. 32, p. 1194.

⁽⁴³⁾ UNHCR, *Handbook*, *op. cit.*, fn. 5, para. 119.

Regarding this last requirement, it is accepted that issuance or renewal of a passport at the refugee's request amounts to having obtained the protection of the country of origin in the absence of proof to the contrary ⁽⁴⁴⁾.

The refugee's testimony or lack thereof is significant in terms of inferring intent and voluntariness. Giving testimony can be an opportunity for the refugee to demonstrate that these steps were not taken personally and voluntarily especially by, for example, claiming that a third party acted with malicious intent in requesting a passport in his name ⁽⁴⁵⁾. Therefore, if the refugee does not act voluntarily, but, for instance, follows requirements imposed by the authorities, the act will not result in the termination of refugee status. However, when the refugee declines to make a statement on the reasons of a determined act or provides unsatisfactory explanations for his or her conduct, there is no ground to rebut the there is no ground to rebut the inference arising out of such an act that re-availment has taken place. Although the refugee's statement is important, where no such statement has been made or where the court believes the statement to be untrue, intent and voluntariness may potentially be inferred from all the other circumstances established in the case.

3.1.2 The assessment of voluntariness

The assessment of the abovementioned conditions must be based on the particular circumstances of the case. The relation that refugees have towards their country of origin should be objectively and independently analysed on a case-by-case basis ⁽⁴⁶⁾. Consequences of the different type of situations entailing a presumption of re-availment of the protection of the country of origin are to be carefully weighted. The complexity of this exercise lies primarily in the necessity to take account of individual factors personal to the individual concerned and to put to the refugee the objective findings regarding the availability of the protection of their country of origin. The subjective consideration that a refugee was sincerely ignorant of the implications of the acts committed and of the consequences regarding her/his status or was not conscious of availing her-/himself of such protection, albeit relevant in the context of this assessment, will not suffice, as such, to discard the applicability of Article 11(1)(a) if actions undertaken by the refugee provide sufficient grounds to believe that s/he is no longer in need of international protection.

It is thus necessary to take account of factual and legal factors likely to have an influence on this evaluation: regarding behaviour in the host country, the nature of the act and its significance as to the intention of the refugee to maintain durable relations with his or her country will be of paramount importance. In cases of returns to the country of origin, motivation, conditions and duration of the stays are the key issues to be considered.

One must also consider why the individual was found to be in need of international protection. When recognition is based on fear of persecution emanating from non-State actors, against which national authorities are unable to provide effective protection, the issue of the voluntary re-availment of their protection, particularly in the country of asylum, may have little relevance as to the continuing need for international protection.

⁽⁴⁴⁾ *Ibid.*, para. 121.

⁽⁴⁵⁾ National Court of Asylum Law (France), judgment of 10 September 2012, M. S., No 12006411 C+.

⁽⁴⁶⁾ Kraft, *op. cit.*, fn. 32, Article 11, MN 8-9.

3.1.3 On situations which can lead to cessation

Some national courts have judged that it can be presumed that the refugee has sought protection from the country of origin when relations have been restored as demonstrated by her/his return to their country of origin ⁽⁴⁷⁾ or by contacting official authorities from the country of origin. It must be determined whether voluntarily returning to the country of origin is for the purpose of permanent residency which is cause for termination of status as per article 11 (d) of the QD. There is a distinction between returning to the country of origin for a short temporary visit or an actual return with a view to permanently re-establishing. When certain steps have been taken it can be presumed that a voluntary re-availment of the protection of the country of origin has been made. These steps can include the request of certain administrative documents such as issuing a passport or passport renewal ⁽⁴⁸⁾. A marriage in the country of origin is also a situation whereby a refugee's act of allegiance towards that country may be presumed ⁽⁴⁹⁾. The court must evaluate the nature of the steps taken and their consequences.

The *Migrationsdomstolen* (Swedish Migration Court of Appeal) proceeds in a similar manner. The termination of refugee status may be conducted when the refugee takes the necessary steps to obtain and indeed obtains, a passport from the country of origin. This is indicative of a new intention to request protection from the country of origin ⁽⁵⁰⁾. The *Verwaltungsgerichtshof* (Austrian Higher Administrative Court) has also found that the deliverance of a passport from the refugee's country of origin indicates a desire to reclaim protection from that country ⁽⁵¹⁾.

It should be noted that the cessation of the refugee status does not necessarily lead to the refusal of subsidiary protection. [Subsidiary protection is further discussed at section 7 below.] The French first-instance administrative decision-maker ceased to recognise an Afghan citizen as a refugee because he had obtained an Afghan passport delivered by the Afghan consular authorities in Paris and had travelled back to Afghanistan. The *Cour nationale du droit d'asile* (French National Court of Asylum Law) after finding that the decision-maker had been correct to cease to recognise him as a refugee, examined the situation of the applicant regarding his claim for subsidiary protection and considered that the situation in the province from where the applicant originally hailed, had to be qualified as one of indiscriminate violence resulting from an internal armed conflict and that he had therefore to be granted the benefit of subsidiary protection pursuant to Article 15(c) ⁽⁵²⁾.

3.1.4 On situations which do not lead to cessation

Cessation will not occur in the following situations:

1. When the individual cannot or has not explicitly manifested a will to re-avail her-/himself of the protection of the country of origin. For example, when the re-availment was committed by a child or a third person without the consent of the refugee.

⁽⁴⁷⁾ Council of State (France), judgment of 31 March 1999, A., No 177013, B).

⁽⁴⁸⁾ Council of State (France), judgment of 8 November 2000, M. G. No 198432; National Court of Asylum Law (France), judgment of 25 February 2016, M. M. No 15011220 C; see also, *RD v Home Secretary*, op. cit., fn. 29, para. 30.

⁽⁴⁹⁾ Council of State (France), judgment of 29 March 2000, M. B. No 187644. See also Federal Administrative Court (Germany), judgment of 2 December 1991, 9 C 126/90, which held that a marriage ceremony before the consulate of the country of origin was a singular act which was irrelevant for the relationship to that country so the need for protection did not cease to exist.

⁽⁵⁰⁾ Migration Court of Appeal (Sweden) judgment of 13 June 2011, UM 5495-10.

⁽⁵¹⁾ Higher Administrative Court (Austria), judgment of 15 May 2003, VwGH No 2001/01/0499.

⁽⁵²⁾ M. Z., No 14033523 C+, op. cit., fn. 23.

2. Certain situations are not considered acts of allegiance, especially when contact with the authorities of the country of origin are occasional or accidental. The nature of certain administrative steps does not lead to the refugee being considered to have re-availed themselves of the protection of the country of their nationality. For example, steps taken with the consulate of the country of origin to request documents pertaining to family reunification are not considered an act of allegiance to the country of origin ⁽⁵³⁾. Nor was it considered to amount to re-availment when a marriage ceremony was conducted before the consulate of the country of origin. This was considered to be a singular act which was irrelevant to the beneficiary's relationship to that country and therefore the need for protection did not cease to exist ⁽⁵⁴⁾.

3.1.5 Absolute necessity

Even though factual circumstances can give rise to an indication of the presumption of acts of allegiance to the country of origin, this presumption is rebuttable. The refugee can prove that these steps were motivated by the existence of an absolute necessity such as, for example, obtaining passports for minor children with the Consulate in order for them to return to their mother in the country of origin ⁽⁵⁵⁾. Where a refugee followed a procedure with the university authorities in his country of origin as requested by French regulations in order to obtain the necessary certificate to exercise his profession in France, this was not considered an act of allegiance ⁽⁵⁶⁾. Similarly, when a refugee was asked to renew his passport through diplomatic authorities of his country of origin by the police prefecture in order to continue receiving vital treatments it was considered as an act of necessity ⁽⁵⁷⁾.

3.2 Voluntary re-acquisition of nationality – Article 11(1)(b)

Article 11(1)(b), like the preceding Article, is applicable to a refugee who is no longer in need of international protection. It is applicable to a person who at some point (either before or after they have been recognised as a refugee) lost the nationality of their country of origin, and has now voluntarily re-acquired it. UNCHR has noted that 'nationality is generally considered to reflect the bond between the citizen and the State and, as long as the refugee has of his own free will re-acquired the lost nationality, the intent to obtain the protection of his or her government may be presumed' ⁽⁵⁸⁾. Given this presumption, this Article does not normally require an examination of the intention or motivation of the refugee. However, it must be established that the re-acquisition has been voluntary, and not for example, automatically through marriage or by decree. In the latter case, Art. 11(1)(b) may nevertheless apply if the refugee had an influence on stages preceding the conferral of nationality or where they afterwards expressly or implicitly accept that grant ⁽⁵⁹⁾.

⁽⁵³⁾ Refugee Appeals Board (France), judgment of 15 March 2005, K., No 424035.

⁽⁵⁴⁾ FAC, 9 C 126/90, op. cit., fn. 49.

⁽⁵⁵⁾ Council of State (France), judgment of 15 May 2009, G., No 288747.

⁽⁵⁶⁾ Council of State (France), judgment of 8 February 2006, A., No 277258.

⁽⁵⁷⁾ National Court of Asylum Law (France), judgment of 24 July 2013, L.M., No 12002308 C+.

⁽⁵⁸⁾ UNHCR, *The Cessation Clauses: Guidelines on Their Application*, 26 April 1999, para. 13.

⁽⁵⁹⁾ I. Kraft, op. cit., fn. 32, Article 11 MN 11, Article 14, MN 8.

3.3 Acquiring a new nationality – Article 11(1)(c)

Where a refugee has acquired a new nationality, and fully enjoys the protection of the country of their new nationality, then they are no longer in need of international protection. This most commonly occurs when the refugee becomes a national of the country of refuge, but it will also apply to any new country of nationality⁽⁶⁰⁾. The Court of Appeal (UK) has stated in rather unequivocal terms that:

It is plain that a recognised refugee who thereafter obtains the citizenship of his host country, whose protection he then enjoys, loses his refugee status. Article 1C(3) of the Refugee Convention could not be clearer⁽⁶¹⁾.

However, there must be conclusive evidence to regard the refugee as a national of another country, taking into account both the applicable law and actual administrative practice⁽⁶²⁾.

The enjoyment of the protection of the country of new nationality is the crucial factor that must be determined under this Article. UNHCR has formulated two conditions which must be fulfilled: the new nationality must be effective, in the sense that it must correspond to a genuine link between the individual and the State; and the refugee must be able and willing to avail himself or herself of the protection of the government of his or her new nationality⁽⁶³⁾. ‘The new nationality must be effective, in that at least the fundamental incidents of nationality, should be recognised, including the right of return and residence in the State’⁽⁶⁴⁾.

In cases where the new nationality has been acquired through marriage, UNHCR is of the opinion that the question of whether protection is available will depend on whether or not a genuine link has been established with the spouse’s country. Where the effective protection of the country of the spouse is available and the refugee avails themselves of such protection, then the cessation clause would apply⁽⁶⁵⁾.

3.4 Voluntary re-establishing – Article 11(1)(d)

3.4.1 General scope

Article 11(1)(d) is directly linked to Article 1C(4) Refugee Convention, which applies to any person who, by voluntary return, re-establishes himself in the country which he or she left or outside which he or she remained owing to fear of persecution. It reflects a change in the personal situation of the refugee that has been brought about by him/herself.

The rationale of this cessation clause is that in cases where the voluntary return amounts to re-establishment in the country of origin, the refugee no longer needs international protection, since he has already secured or has been able to secure national protection. Refugee status should ‘not be granted for a day longer than was absolutely necessary, and should come

⁽⁶⁰⁾ UNHCR, *The Cessation Clauses: Guidelines*, op. cit., fn. 58, para. 16. See also, UNHCR, *Handbook*, op. cit., fn. 5, para. 130.

⁽⁶¹⁾ Court of Appeal (UK), judgment of 18 December 2008, *DL (DRC) v Entry Clearance Officer; ZN (Afghanistan) v. Entry Clearance Officer*, [2008] EWCA Civ 1420, para. 29.

⁽⁶²⁾ UNHCR, *The Cessation Clauses: Guidelines*, op. cit., fn. 58, para. 16.

⁽⁶³⁾ *Ibid.*, para. 17.

⁽⁶⁴⁾ G.S Goodwin-Gill and J. McAdam, *The Refugee in International Law*, (3rd edn., OUP, 2007), p. 138.

⁽⁶⁵⁾ UNHCR, *The Cessation Clauses: Guidelines*, op. cit., fn. 58, para 17.

to an end...if, in accordance with the terms of the Convention or the Statute, a person had the status of de facto citizenship, that is to say, if he really had the rights and obligations of a citizen of a given country' ⁽⁶⁶⁾. In other words, when the refugee voluntarily returns to his country of origin with the intention to stay there permanently, he/she expresses conclusively that he no longer fears persecution ⁽⁶⁷⁾. In addition, in those situations an essential requirement of refugee status, the presence of the individual refugee outside the territory of his or her own country, will no longer be satisfied ⁽⁶⁸⁾.

Given that this cessation clause is based on acts of the refugee which result in altering his/her personal circumstances, its applicability presupposes that it is ensured that the refugees are not unlawfully deprived of the right to international protection.

There would appear to have been little, if any, case law of significance on this matter to date. Neither CJEU nor ECtHR have applied this cessation clause in any case. The available case law is sporadic and limited as well as being, in most cases, merely illustrative of a certain practice or interpretive approach. This case law, taken together with the Conclusions of UNHCR's Executive Committee ⁽⁶⁹⁾, as well as the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ⁽⁷⁰⁾ and subsequent Guidelines on International Protection issued by UNHCR, is nonetheless still a valuable tool while assessing the application of the cessation clause.

According to the UNHCR Guidelines, the key issues in considering the applicability of this cessation clause are: a) whether or not the refugee has acted voluntarily, and b) whether the result is that the national protection of the country of origin ⁽⁷¹⁾ has been secured. Cessation based on this category should be assessed under the criteria of voluntariness, intent, and effective protection ⁽⁷²⁾. However, on an alternative view, it is assumed that there is no need separately to address the question whether there now exists protection by the country of origin. This is based on the argument that by returning voluntarily and with the intention to stay permanently, the refugee expresses conclusively that he/she no longer fears persecution ⁽⁷³⁾.

3.4.2 'Voluntarily'

Under the terms of the QD (recast) and in line with the Convention, for the cessation clause to be applicable, both the return and the stay must have been undertaken voluntarily ⁽⁷⁴⁾. Only persons who have willingly resettled in their state of origin are subject to cessation status ⁽⁷⁵⁾. Whether the refugee had acted voluntarily depends on the circumstances of each case ⁽⁷⁶⁾.

Cessation is inappropriate when the return is not really based on the refugee's free consent, including situations where he/she has been coerced by threat of sanction or the withdrawal of rights, deportation, extradition, kidnapping or unexpected travel routes by transport services

⁽⁶⁶⁾ UNHCR Standing Committee, *Note on the Cessation Clauses*, op. cit., fn. 8, para. 4.

⁽⁶⁷⁾ I. Kraft, op. cit., fn. 32, Article 11 MN 14.

⁽⁶⁸⁾ J.C. Hathaway, *'The Right of States to Repatriate Former Refugees'* Ohio State Journal of Dispute Resolution, (2005) vol. 20, no. 1, p. 176; A. Grahl-Madsen, *The Status of Refugees in International Law* (A.W. Sijthoff, 1966), pp. 370-371.

⁽⁶⁹⁾ As regards the UNHCR's Executive Committee Conclusions, a valuable tool is: UNHCR, *Thematic Compilation of Executive Committee Conclusions*, 7th edition, June 2014.

⁽⁷⁰⁾ UNHCR, *Handbook*, op. cit., fn. 5.

⁽⁷¹⁾ The 'country of origin' is understood to cover both the country of nationality and the country of former habitual residence, the latter in relation to refugees who are stateless.

⁽⁷²⁾ J. Fitzpatrick, op. cit., fn. 40, p.5, para. 15.

⁽⁷³⁾ I. Kraft, op. cit., fn. 32, Article 11, MN 14.

⁽⁷⁴⁾ UNHCR, *The Cessation Clauses: Guidelines*, op. cit., fn. 58, para. 19.

⁽⁷⁵⁾ J.C. Hathaway and M. Foster, *The Law of Refugee Status*, (2nd edn., CUP, 2014), para. 464.2-464.6.

⁽⁷⁶⁾ UNHCR Standing Committee, *Note on the Cessation Clauses*, op. cit., fn. 8, para. 12.

(⁷⁷). Any mandated return may amount to a breach of the host state's duty of non-*refoulement* under Article 33 of the Refugee Convention (⁷⁸). Where the refugee returned to his or her country voluntarily, but his or her stay was not voluntary, such as due to imprisonment, then cessation may not be applicable (⁷⁹).

However, should the refugee have returned to his or her country of origin involuntarily, but nonetheless settled down without problems and resumed a normal life for a prolonged period before leaving again, the cessation clause may still apply (⁸⁰).

3.4.3 're-established himself or herself'

The return of a refugee to their country of origin, even when this choice is based on their complete freedom, does not result in ending the refugee status. Return alone is not sufficient to satisfy Article 11(1)(d), because valid cessation does not simply require a physical presence in the country of origin. The second requirement of the subsequent re-establishment has to be fulfilled.

There are no definite accepted criteria as to when a person could be considered as being 're-established'. The length of stay and the sense of 'commitment' which the refugee has in regard to the stay in the country of origin, are factors for determining 're-establishment' (⁸¹).

The cessation clause may be invoked where a refugee visits the country of origin frequently and avails himself or herself of the benefits and facilities in the country normally enjoyed by citizens of the country (⁸²). Settlement on a more permanent basis with no evident intention of leaving e.g. when the refugee, returned to his country of origin and under normal conditions, he had created a family, had children and a professional activity (⁸³), or prolonged visits may constitute re-establishment, or at least indicate that the refugee is no longer in need of international protection. Adoption of a child through the country's legal system could constitute 're-establishment' (⁸⁴). In cases where the refugee had a short stay, the cessation clause may still be invoked if the refugee enjoyed his staying without problems and performed obligations which a normal citizen would, such as paying taxes or carrying out civic duties such as military service (⁸⁵). A restoration of a normal relation between the refugee and the government of the country of origin is not required (⁸⁶).

A visit or mere presence is unlikely to demonstrate voluntary re-establishment. Re-establishment implies a certain stability and in that context repeated return trips on an ongoing basis lead to cessation (⁸⁷).

Where a refugee anticipates a brief visit that was prolonged for reasons beyond his control (most obviously, where he is imprisoned in the state of persecution), cessation is inapplicable.

(⁷⁷) J. Fitzpatrick, *op. cit.*, fn. 40, para. 529.

(⁷⁸) J.C. Hathaway, *op. cit.*, fn. 68, p. 176.

(⁷⁹) UNHCR, *The Cessation Clauses: Guidelines*, *op. cit.*, fn. 58, para. 20.

(⁸⁰) UNHCR Standing Committee, *Note on the Cessation Clauses*, *op. cit.*, fn. 8, para. 21.

(⁸¹) *Ibid.*

(⁸²) *Ibid.*, para. 12.

(⁸³) Refugee Appeals Commission (France), decision of 17 February 2006, Omar, No 406325.

(⁸⁴) Federal Court of Australia, judgment of 14 September 2001, *Seyed Hamid Rezaei and Zahra Ghanbarnezhad v Minister for Immigration and Multicultural Affairs*, [2001] FCA 1294.

(⁸⁵) I. Kraft, *op. cit.*, fn. 32, Article 11, MN 14.

(⁸⁶) J.C. Hathaway, *op. cit.*, fn. 68, p. 176.

(⁸⁷) UNHCR Standing Committee, *Note on the Cessation Clauses*, *op. cit.*, fn. 8, para. 12; I. Kraft, *op. cit.*, fn. 32, Article 11, MN 14.

Moreover, cases which involve repeated but of short duration visits by a refugee to the state of origin, such as visits for family, political or economic reasons, or a combination thereof, and the refugee's primary residence remains in the asylum state, invocation of the cessation clause may be inappropriate. A temporary visit by a refugee to his former home country, not with a national passport but, for example, with a travel document issued by his country of residence, does not constitute 're-establishment' and will not involve loss of refugee status under the present clause ⁽⁸⁸⁾. Visiting an old or sick parent will have a different bearing on the refugee's relation to his former home country than regular visits to that country spent on holidays or for the purpose of establishing business relations ⁽⁸⁹⁾. Where refugees visit their country of origin in order to gather information and assess the prospect of voluntary repatriation, this does not trigger the application of Article 11(1)(d)⁽⁹⁰⁾.

Because the political situation in the countries of origin is so frequently volatile, countries of asylum should not rush into the process of invoking Article 11(1)(d). The suspension of formal cessation should take place only after the durability and the safety of re-establishment can be determined ⁽⁹¹⁾. But, on the other hand, in cases where the cessation clause cannot be applied because the durability and safety of re-establishment has not been achieved, cessation may still occur under Article 11(1)(a) ⁽⁹²⁾.

⁽⁸⁸⁾ UNCHR, *Handbook*, op. cit., fn. 5, para. 134.

⁽⁸⁹⁾ UNHCR Standing Committee, *Note on the Cessation Clauses*, op. cit., fn. 8, para. 125.

⁽⁹⁰⁾ In Conclusion Number 18 adopted by the UNCHR Executive Committee at its thirty-first session (A/AC.96/588, paragraph 48), the Executive Committee recognised that in order to facilitate voluntary repatriation of refugees, availability of information regarding the country of origin is important and in this context, visits by individual refugees to their country of origin to inform themselves of the situation there should not involve an automatic loss of refugee status.

⁽⁹¹⁾ J. Fitzpatrick, op. cit., fn. 40, para. 41.

⁽⁹²⁾ I. Kraft, op. cit., fn. 32, Article 11, MN 14.

4. Grounds for ending refugee protection II – Changed circumstances: Article 11(1)(e-f)

4.1 Ceased circumstances in country of nationality

Article 11(1)(e) provides for the cessation of refugee status where there is a change of circumstances, the refugee cannot continue to refuse to avail himself or herself of the protection of the country of nationality, because of the change of circumstances, and there are no other grounds which give rise to a fear of persecution. Cessation, in these circumstances, does not require a voluntary act or consent by the refugee. The change of circumstance is a condition precedent to bringing cessation about. However, it is the restoration of protection or the ability to return, in the case of a stateless refugee, which must be established in order to justify cessation ⁽⁹³⁾.

4.1.1 Change of circumstances

For this ground to apply, there must be a change in circumstances in connection with which the person concerned was originally recognised as a refugee. These circumstances usually relate to the situation within the country of origin such as a change in government or a peace process. It is, however, also possible to ground the cessation of refugee status on a development relating to the personal circumstances of individual refugees. They may, for example, have given up their involvement with a political party or acquired a new religion ⁽⁹⁴⁾.

4.1.2 Establishing a change in circumstances

To establish a change in circumstances it is necessary to compare the facts on which the initial recognition of refugee status was based to those existing at the time of the decision to end protection. It ensures that the change has taken place after recognition was granted ⁽⁹⁵⁾. The power to end protection because of changed circumstances must not be mistaken for an opportunity to re-assess the viability of the grounds on which refugee status was originally recognised ⁽⁹⁶⁾.

4.1.3 Special cases- Erroneous assessment of facts in original decision

A problem arises where the initial recognition of refugee status was based on an erroneous assessment of the facts. For example, the decision-maker may have made incorrect assumptions

⁽⁹³⁾ Immigration Appeals Tribunal (UK), judgment of 17 February 1999, *Mohammed Arif v Secretary of State for Home Department* [1999] Imm AR 271.

⁽⁹⁴⁾ Federal Administrative Court (Austria), judgment of 24 July 2014, G307 1406174-1, AT:BVWG:2014:G307.1406174.1.00; Higher Administrative Court Niedersachsen (Germany), judgment of 11 August 2010, 11 LB 405/08, para. 44.

⁽⁹⁵⁾ Federal Administrative Court (Germany), judgment of 7 July 2011, 10 C 26/10, DE:BVerwG:2011:070711U10C26.10.0, para. 15.

⁽⁹⁶⁾ See also UNHCR, *Guidelines on International Protection: Cessation of Refugee Status (the “Ceased Circumstances” Clauses)*, op. cit., fn. 28, para. 18.

about the situation within the country of origin or there may have been a misrepresentation of facts by the refugee.

The Irish High Court has held, in the case of *Adegbuyi* that Article 11(1)(e) is inapplicable where there is a misrepresentation which falls under Article 14(3)(b) ⁽⁹⁷⁾. This means that if the person concerned never was a refugee in the first place, then it follows that cessation cannot apply ⁽⁹⁸⁾. By contrast, the German Federal Administrative Court has concluded that if the circumstances on which the initial recognition was based, even assuming they did then exist, have now changed, the cessation clause can apply ⁽⁹⁹⁾. On this latter approach, which applies equally to cases of misrepresentation and of error on the part of the decision maker, the question of whether the original decision was erroneous does not have to be addressed if the court holds that in any event, there are now changed circumstances within the meaning of Article 11(1)(e) QD. It is thus open to the court to rely either on cessation or on revocation, and the decision regarding which ground of ending protection should be relied on, is dependent on which can be proved with greater ease. This, of course, presupposes that under the court's procedural law it is open to the court to consider grounds for ending protection as distinct from those on which the administrative authority relied.

4.1.4 'Significant and non-temporary'

The change in circumstances required by Article 11(2) must be of a sufficiently significant and non-temporary nature. The language in which this requirement has been expressed has varied in the past. During the drafting of the QD the terms 'profound and durable'⁽¹⁰⁰⁾ as well as 'significant and durable' ⁽¹⁰¹⁾ were considered. UNHCR uses 'fundamental' and 'enduring' ⁽¹⁰²⁾ (a language that has been echoed by national courts interpreting the GC ⁽¹⁰³⁾) and points out that a mere – possibly transitory – change in the facts surrounding the individual's fear is insufficient ⁽¹⁰⁴⁾.

On the CJEU's interpretation of Article 11(3) QD, a change is of a significant and non-temporary nature when the factors which formed the basis of the refugee's fear of persecution may be regarded as having been permanently eradicated ⁽¹⁰⁵⁾. The CJEU's jurisprudence, in this respect, has been followed in France, where the French national Courts referred to the term 'significant and permanent changes' ⁽¹⁰⁶⁾, in the context of cessation.

Whereas the CJEU's formulation must be the starting point of the analysis, whether the basis of the fear of persecution has been permanently eradicated is a question of degree. Even though facts existing at the time of the decision are examined, what is meant by 'non-temporary' is that the situation can be expected to remain sufficiently stable for the foreseeable

⁽⁹⁷⁾ High Court (Ireland), judgment of 1 November 2012, *Adegbuyi v Minister for Justice and Law Reform* [2012] IEHC 484, paras. 45, 54.

⁽⁹⁸⁾ *Adegbuyi* can be distinguished from the earlier case of High Court (Ireland), judgment of 1 December 2010, *Gashi v Minister for Justice, Equality and Law Reform*, [2010] IEHC 436, para. 28, where the Irish High Court held that to uphold a decision to revoke refugee status because of misrepresentation 'is not a finding that the applicant is not now and never could be a refugee'.

⁽⁹⁹⁾ FAC, 10 C 29.10, op. cit., fn. 20, paras. 17-18.

⁽¹⁰⁰⁾ European Commission, Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or persons who otherwise need international protection, 12 September 2001, COM(2001) 510 final.

⁽¹⁰¹⁾ Council of the European Union, Outcome of proceedings of the Asylum Working Party, Council doc. 13199/02 of 25 September 2002.

⁽¹⁰²⁾ UNHCR, *Guidelines on International Protection: Cessation of Refugee Status (the "Ceased Circumstances" Clauses)*, op. cit., fn. 28, paras. 10 & 13.

⁽¹⁰³⁾ Court of Appeal (UK), judgment of 26 June 2009, *EN (Serbia) v SSHD*, [2009] EWCA Civ 630, para. 96; Federal Administrative Court (Austria), judgment of 29 September 2014, W121 1415639-1, AT:BVWG:2014:W121.1415639.1.00.

⁽¹⁰⁴⁾ UNHCR, Handbook, op. cit., fn. 5, para. 135

⁽¹⁰⁵⁾ *Abdulla*, op. cit., fn., 13, para. 73.

⁽¹⁰⁶⁾ National Court of Asylum Law (France), judgment of 25 November 2011, *M.K.*, No 10008275 R.

future. This requires a prognosis based on the evidence before the court ⁽¹⁰⁷⁾. It is necessary to weigh and balance all ascertained circumstances ⁽¹⁰⁸⁾ and their significance from the viewpoint of a rational, judicious person in the position of the individual concerned. The greater the risk of persecution, the more permanent the stability of the changed circumstances needs to be. The same applies to the amenability of the situation to forecasting future events. Nevertheless, one also cannot demand a guarantee that the changed political circumstances will continue indefinitely into the future.

4.1.5 ‘Precautionary’ approach – consolidation of the situation

A precautionary attitude must be taken in relation to a decision regarding a cease in circumstances. This was highlighted in the case of *Hoxha* ⁽¹⁰⁹⁾, which states that a construction that would allow a change in circumstances to be construed too broadly does not evince a precautionary attitude on the part of the decision maker whose decision potentially poses grave consequences for the subject of the decision ⁽¹¹⁰⁾. The assessment must be carried out with vigilance and care ⁽¹¹¹⁾. This normally necessitates a longer period of observation during which the situation can consolidate ⁽¹¹²⁾.

UNHCR gives helpful guidance which has been echoed in the case law of various courts. According to these decisions, it is possible that the fundamental changes can be evaluated after a relatively short time period has elapsed as to whether they have taken place on a durable basis. A number of situations are imaginable in this context such as following free and fair elections which lead to a government committed to respecting fundamental rights being installed or where peaceful change has taken place within the framework of a constitutional process. Moreover, relative political and economic stability in the country of origin can also be accounted for.

Where the change has been of a less specific nature, such as when there has been a *coup d’etat*, a longer period of time will need to have elapsed before a court charged with assessing the durability of the change in question can make a determination. It would seem fair to subject the prevailing human rights situation in that country to a particularly careful assessment in such a scenario. Courts must be cognisant of any on-going processes of national reconstruction or reconciliation. These must be assessed on their durability and given sufficient time to take hold, including monitoring any truces between rival militant groups. Genuine and long-lasting, although not permanent, change must be established, even more so in cases where the conflict involved different ethnic groups given the difficulties in achieving genuine reconciliation in such situations ⁽¹¹³⁾.

Factors that can be significant include changes within government, including security services, and the legal system, amnesties and elections ⁽¹¹⁴⁾. Large-scale spontaneous repatriation of ref-

⁽¹⁰⁷⁾ Federal Administrative Court (Germany), judgment of 1 June 2011, 10 C 25/10, DE:BVerwG:2011:010611U10C25.10.0, para. 24.

⁽¹⁰⁸⁾ See also J.C. Hathaway and M. Foster, op. cit., fn. 75, p. 482.

⁽¹⁰⁹⁾ *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4.

⁽¹¹⁰⁾ *Ibid.*, para. 113; see also FAC (Austria), G307 1406174-1, op. cit., fn. 94.

⁽¹¹¹⁾ FAC, 10 C 25.10, op. cit., fn. 107, para. 24.

⁽¹¹²⁾ Supreme Administrative Court (Austria), judgment of 16 February 2006, 2006/19/0032; UNHCR, *Guidelines on International Protection: Cessation (the ‘Ceased Circumstances’ Clauses)*, op. cit., fn. 28, paras. 13-14; J. Fitzpatrick and R. Bonoan, ‘Cessation of refugee protection’, in E. Feller/V. Türk/F. Nicholson (eds.), *Refugee Protection in International Law. UNHCR’s Global Consultations on International Protection* (CUP, 2003), p. 491, 497.

⁽¹¹³⁾ Immigration Appeal Tribunal (UK), judgment of 7 February 2005, *SB (Cessation and Exclusion) Haiti* [2005] UKIAT 00036, para. 28; FAC, 10 C 25.10, op. cit., fn. 107, para. 24; UNHCR, *Guidelines on International Protection: Cessation (the ‘Ceased Circumstances’ Clauses)*, op. cit., fn., 28, paras. 13-14.

⁽¹¹⁴⁾ J. Fitzpatrick and R. Bonoan, op. cit., fn., 112, p. 491 (495); G.S. Goodwin-Gill and J. McAdam, op. cit., fn. 65, p. 140-141; I. Kraft, op. cit., fn. 32, Article 11, MN 19.

ugees may be an indicator of relevant changes unless the return of former refugees generates fresh tensions ⁽¹¹⁵⁾. Where a formerly persecuted section of the population establishes its own state whose existence is no longer threatened by the opposing faction, it may sooner be possible to regard the change as non-temporary than in cases where a peace process takes place between formerly hostile groups within an undivided State ⁽¹¹⁶⁾. Cases are conceivable where persecution simply abates and where the passage of a rather long period of time without special events in the persecutor state, when combined with other factors, may, of itself, be highly significant ⁽¹¹⁷⁾.

4.1.6 Effective protection in the country of nationality

Refugee protection becomes unnecessary where protection by the country of which the refugee is a national is again available so that he or she can no longer continue to refuse to avail himself or herself of the protection of that country. In deciding whether refugee status has been lawfully revoked, it is therefore necessary to consider whether there is now effective protection against the persecution originally feared in the country of nationality.

Protection for the purposes of Article 11(1)(e) means protection against persecution.

In relation to the Refugee Convention, it has been debated whether the necessary protection is only present where in addition to physical security and safety there exists a functioning government and basic administrative structures as well as an adequate infrastructure ⁽¹¹⁸⁾. In this context, UNHCR is of the opinion that significant improvements in terms of human rights standards are necessary and refers to, inter alia, access to fair trials and courts and the rights to freedom of expression, association and religion ⁽¹¹⁹⁾. However, the UK Immigration Appeals Tribunal has expressed ‘real reservations about the UNHCR guidelines, which appear to go considerably beyond the Convention along the lines of the wider humanitarian concerns which it pursues’ ⁽¹²⁰⁾.

This question has also been raised under the QD and has been submitted to the CJEU. The CJEU ⁽¹²¹⁾ has pointed out that the protection referred to in Article 11(1)(e) is the one hitherto lacking, namely, protection against persecution for one of the reasons listed in Article 2(c) ⁽¹²²⁾. In connection with the concept of international protection, the Directive governs two distinct systems of protection, i.e. refugee status and subsidiary protection status. In order to keep these separate, the CJEU has declined to make the cessation of refugee status conditional on a finding that the person concerned does not qualify for subsidiary protection status. Given this reasoning, it was unnecessary for the CJEU to address the question submitted to it regarding whether the cessation of refugee status requires that the security situation be stable and the general living conditions ensure a minimum standard of living ⁽¹²³⁾.

⁽¹¹⁵⁾ UNHCR, *Guidelines on International Protection: Cessation (the “Ceased Circumstances” Clauses)*, op. cit., fn. 28, para. 12.

⁽¹¹⁶⁾ See National Court of Asylum Law (France), *M.K.*, op. cit., fn. 106; UNHCR, *Guidelines on International Protection: Cessation (the “Ceased Circumstances” Clauses)*, op. cit., fn. 28, para. 14.

⁽¹¹⁷⁾ FAC, 10 C 25.10, op. cit., fn. 107.

⁽¹¹⁸⁾ UNHCR, *Guidelines on International Protection: Cessation (the “Ceased Circumstances” Clauses)*, op. cit., fn. 28, para. 15; S. Kneebone and M. O’Sullivan, Article 1 C, in A. Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (OUP, 2011), para. 160-164, 188-196; J.C. Hathaway and M. Foster, op. cit., fn. 75, pp. 487-489.

⁽¹¹⁹⁾ UNHCR, *Guidelines on International Protection: Cessation (the “Ceased Circumstances” Clauses)*, op. cit., fn. 28, para. 16.

⁽¹²⁰⁾ *SB (Cessation and Exclusion) Haiti*, op. cit., fn. 113, para. 25-27.

⁽¹²¹⁾ *Abdulla*, op. cit., fn. 13, para. 65-80.

⁽¹²²⁾ Article 2(d) QD (recast).

⁽¹²³⁾ See also S. Kneebone and M. O’Sullivan, op. cit., fn. 118, para. 140.

The CJEU has thus established a symmetrical relationship between the assessment leading to initial recognition of refugee status and the one undertaken when refugee protection is ended⁽¹²⁴⁾. In considering whether there is effective protection, the question is whether there is a present fear of persecution as described in the definition of the term ‘refugee’ in the QD (recast)⁽¹²⁵⁾.

The protection needs to be effective. Article 7(2) sets out the necessary conditions. It must be verified that the actor or actors of protection have taken reasonable steps to prevent the persecution, that they, therefore, operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the individual will have access to such protection if he ceases to have refugee status⁽¹²⁶⁾. The standard of probability to be applied is that of a ‘real risk of persecution’⁽¹²⁷⁾. Whether there is now effective protection against the original persecution needs to be assessed looking at all relevant circumstances in the round and having particular regard to the refugee’s individual situation and the reasons of the original persecution⁽¹²⁸⁾. The critical issue is whether the changes eliminate the risk for the specific individuals whose refugee status is under review⁽¹²⁹⁾. It is also necessary to consider, among other things, the conditions of operation of, on the one hand, the institutions, authorities and security forces and, on the other, all groups or bodies of the country of origin which may, by their action or inaction, be responsible for acts of persecution against the refugee. This may involve an examination of the laws and regulations of the country of origin and the manner in which they are applied.

Even though a low standard of human rights protection does not of itself rule out the application of Article 11(1)(e), since it concerns itself with protection against persecution which was originally lacking but does now exist, the extent to which basic human rights are guaranteed in that country is a relevant factor in the assessment of the effectiveness of that protection⁽¹³⁰⁾. Likewise, in *SB (Haiti)*, the UK Immigration and Appeals Tribunal found that it was not a legal requirement for the operation of cessation that there be functioning institutions and rights provisions as the indicators of enduring change but that the absence of such institutions makes the prediction of stable and enduring change a more fragile exercise of judgement⁽¹³¹⁾. Apart from their possible relevance under Article 11(1)(d), visits by the persons concerned to their country of origin may indicate that there is no longer a fear of persecution⁽¹³²⁾.

The actor or actors of protection are those mentioned in Article 7(1). Apart from the state, this comprises parties or organisations, including international organisations, controlling the State or a substantial part of the territory. A multinational force is therefore a possible

⁽¹²⁴⁾ Federal Administrative Court (Germany), judgment of 24 February 2011, 10 C 3/10, DE:BVerwG:2011:240211U10C3.10.0, para. 16; see also *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4, para. 13. This applies to the content of the substantive provisions but not, as is sometimes assumed to issues of proof: see S. Kneebone and M. O’Sullivan, op. cit., fn. 118, para. 154.

⁽¹²⁵⁾ *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4, paras. 13-14.

⁽¹²⁶⁾ *Abdulla*, op. cit., fn. 13, para. 70.

⁽¹²⁷⁾ FAC, 10 C 25/10, op. cit., fn. 107, para. 23; Federal Administrative Court (Germany), judgment of 1 March 2012, 10 C 7/11, DE:BVerwG:2012:010312U10C7.11.0, para. 12; see also ECtHR, decision of 16 September 2014, *E.O. v Finland*, application no 74606/11.

⁽¹²⁸⁾ FAC (Austria), W121 1415639-1, op. cit., fn. 103; Federal Administrative Court (Austria), judgment of 30 October 2014, W215 2009415-1, AT:BVWG:2014:W215.2009415.1.00; Federal Administrative Court (Germany), judgment of 1 March 2012, 10 C 7.11, DE:BVerwG:2012:010312U10C7.11.0, para. 16; Higher Administrative Court Niedersachsen, 11 LB 405/08, op. cit., fn. 94, para. 46; J.C. Hathaway and M. Foster, op. cit., fn. 75, pp. 485-487.

⁽¹²⁹⁾ J.C. Hathaway and M. Foster, op. cit., fn. 75, p. 485.

⁽¹³⁰⁾ *Abdulla*, op. cit., fn. 13, para. 71.

⁽¹³¹⁾ *SB (Cessation and Exclusion) Haiti*, op. cit., fn. 113, para. 37.

⁽¹³²⁾ National Court of Asylum Law (France), *M.K.*, op. cit., fn. 106; Migration Court of Appeal (Sweden), UM 5495-10, op. cit., fn. 50.

actor of protection ⁽¹³³⁾. UNHCR appear to disagree in so far as the CJEU views control of a substantial part of the territory as sufficient ⁽¹³⁴⁾ but the court's view is in line with national jurisprudence ⁽¹³⁵⁾.

4.1.7 Causal connection

By stating that, because those circumstances 'have ceased to exist', the national 'can no longer ... continue to refuse to avail himself or herself of the protection of the country of nationality', Article 11(1)(e) establishes a causal connection between the change in circumstances and the impossibility for the person concerned to continue to refuse and thus to retain his refugee status, in that his original fear of persecution no longer appears to be well founded ⁽¹³⁶⁾. This connection can usually be readily established. It is however necessary to address this point, at least, briefly in order to ensure that the decision to end protection is not based solely on a reassessment of the original facts ⁽¹³⁷⁾.

4.1.8 No other basis for fear of persecution

When it has been established that the circumstances upon which refugee status was granted have ceased to exist then, depending on the personal situation of the person concerned, it may become necessary to verify whether there are other circumstances which may give rise to a well-founded fear of persecution. Only if this question is answered in the negative can refugee status be ended ⁽¹³⁸⁾. In order to prevent the cessation clause from being invoked, where fundamental changes have occurred, there must be a current fear of persecution for a Convention reason upon return ⁽¹³⁹⁾.

The assessment to be carried out is analogous to that taking place during the examination of an initial application for the granting of refugee status ⁽¹⁴⁰⁾. In particular, the same standard of probability – a well-founded fear of persecution – applies ⁽¹⁴¹⁾. The Bundesverwaltungsgericht (German Federal Administrative Court) has judged that the relevant facts are to be established afresh, the findings of fact in the original decision granting refugee status having no binding force in this context ⁽¹⁴²⁾. Notwithstanding this, it should be noted that in some circumstances the historical position may be relevant in terms of assessing future risk. However, in general, there is no proper basis for the assertion that past refugee status, of itself, raises a presumption of ill-treatment on return ⁽¹⁴³⁾.

What proof is required depends on the circumstances relied on. Since the assessment is analogous to that of an initial application, the distribution of the burden of proof set out in Article 14(2) is inapplicable as far as the facts establishing other circumstances which may give rise to

⁽¹³³⁾ *Abdulla*, op. cit., fn. 13, paras. 74-75; High Court (UK), judgment of 22 November 2000, *R v Special Adjudicator ex p. Azizi*, CO/3493/2000 (unreported), para. 15.

⁽¹³⁴⁾ UNHCR, *Guidelines on International Protection: Cessation (the "Ceased Circumstances" Clauses)*, op. cit., fn. 28, para. 17.

⁽¹³⁵⁾ See National Court of Asylum Law (France), *M.K.*, op. cit., fn. 106; Federal Administrative Court (Germany), judgment of 1 November 2005, 1 C 21.04, DE-B-VerwG:2005:011105U1C21.04.0, para. 30; *R v Special Adjudicator ex p. Azizi*, op. cit., fn. 133, para. 15.

⁽¹³⁶⁾ *Abdulla*, op. cit., fn. 13, para. 66.

⁽¹³⁷⁾ Supreme Court (Slovenia), decision of 5 September 2013, I Up 309/2013; Higher Administrative Court of Baden-Württemberg (Germany), judgment of 19 November 2015, A 12 S 1999/14, para. 46; I. Kraft, op. cit., fn. 32, Article 11, MN 17.

⁽¹³⁸⁾ *Abdulla*, op. cit., fn. 13, paras. 81-82; Regional Administrative Court Warsaw (Poland), judgment of 21 December 2010, V SA/Wa 383/10.

⁽¹³⁹⁾ House of Lords (UK), judgment of 2 April 1998, *R v Home Secretary ex p. Adan*, [1998] UKHL 15.

⁽¹⁴⁰⁾ *Abdulla*, op. cit., fn. 13, para. 83.

⁽¹⁴¹⁾ *Ibid.*, paras. 88-89.

⁽¹⁴²⁾ FAC, 10 C 29.10, op. cit., fn. 20, para. 20.

⁽¹⁴³⁾ Court of Appeal (UK), 12 February 2016, *RY (Sri Lanka) v Secretary of State for the Home Department* [2016] EWCA Civ 81.

a well-founded fear of persecution are concerned. However, the presumption in Article 4(4) may apply.

Several scenarios need to be distinguished. The person concerned may rely on the same reason for persecution as that accepted at the time when refugee status was granted. Their argument may be that even though this persecution did cease, there then occurred other facts which gave rise to a fear of persecution for that same reason. For instance, party A which persecuted members of the Volscian people, was ousted from government. Later, political allies found party B, come into power and persecute the Volscians again. Here, the issue of new grounds for persecution does not really arise. The change of circumstances was temporary. Consequently, refugee status has not ceased⁽¹⁴⁴⁾. The relevant assessment should be carried out under Article 11(2)⁽¹⁴⁵⁾, and the burden of proof is distributed according to Article 14(2).

Where the refugee points towards a reason for persecution different from the one originally accepted, the question is whether facts have been proved that bring them under the definition of refugee in Article 2(d). The person concerned will be able to rely on Article 4(4), in particular, if prior to their initial application for international protection, they suffered acts or threats of persecution on account of that other reason, but did not then rely on them. An example might be a leading opposition politician's spouse who is recognised as a refugee due to persecution because of that relationship and who later reveals that he or she also undertook party work on his or her own and fears persecution for this reason even after divorce from the leading politician⁽¹⁴⁶⁾. The same is true if someone suffers acts or threats of persecution for the new reason after they left their country of origin and those acts or threats originate in that country⁽¹⁴⁷⁾. By contrast, the lowered standard of proof does not apply to pure post-flight reasons for persecution⁽¹⁴⁸⁾. Likewise, where new acts of persecution in the country of origin are based on a characteristic the individual happens to have but which played no part in the earlier persecution (she is a Volscian but also a member of party C which used to be in coalition with party A but has fallen out with party B), the assessment is to be carried out under Article 4(1)-(3) and (5).

4.2 Ceased circumstances in country of habitual residence

For stateless persons, Article 11(1)(f) contains a provision equivalent to Article 11(1)(e). It operates where there is a change of circumstances, the refugee is able to return to the country of former habitual residence, this was caused by the change of circumstances, and there are no other grounds which give rise to a fear of persecution.

In principle, what has been said on Article 11(1)(e) also applies to this ground of cessation, and the reader is referred to the preceding section. The term 'country of former habitual residence', as under Article 2(d) describes a factual situation where a person has chosen a certain country as his or her centre of living at least of some duration but does not require any formal connection with that country of residence⁽¹⁴⁹⁾ or *animus manendi*⁽¹⁵⁰⁾. The person concerned must be able to return to this country. This requires not only that effective protection against

⁽¹⁴⁴⁾ *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4, para. 30: 'earlier persecution of one sort may lead to later persecution of another'.

⁽¹⁴⁵⁾ *Abdulla*, para. 98; FAC, 10 C 3.10, op. cit., fn. 124, para. 18.

⁽¹⁴⁶⁾ See also Supreme Court (Spain), decision of 22 October 2010, 1660/2006.

⁽¹⁴⁷⁾ *Abdulla*, para. 97; FAC, 10 C 3.10, op. cit., fn. 124, para. 18.

⁽¹⁴⁸⁾ FAC, 10 C 29/10, op. cit., fn. 124, para. 25.

⁽¹⁴⁹⁾ A. Zimmermann and C. Mahler, Article 1, para. 2, in A. Zimmermann (ed.), op. cit., fn. 118, para. 680.

⁽¹⁵⁰⁾ A. Grahl-Madsen, op. cit., fn. 68, p. 160.

the original persecution has become available but also that the refugee is legally in a position to enter the country of former habitual residence. This is the case where the person concerned is still (or again) in possession of a valid entry permit but not where they are subject to a still valid expulsion order or have applied for re-admission and been turned down ⁽¹⁵¹⁾.

A possible example of the application of Article 11(1)(f) has been mentioned by the CJEU. According to the court, where someone used to receive protection or assistance from UNRWA but that protection or assistance had ceased within the meaning of Article 12(1)(a) ⁽¹⁵²⁾, refugee status may end if they are able to return to the UNRWA area of operations in which they were formerly habitually resident because the circumstances which led to them qualifying as a refugee no longer exist ⁽¹⁵³⁾.

4.3 Compelling reasons: Article 11(3)

Article 11(3) can be read as providing for an exception to the cessation of refugee status under Article 11(1)(e) and (f). Refugee status is retained if the refugee is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of origin. The provision is modelled on Article 1 C(5) and (6) Refugee Convention which, however, was worded to apply only to statutory refugees under Article 1 A(1) Refugee Convention, i.e. those already recognized in 1951 under previous instruments. Article 11(3) is only part of the QD (recast) and not of the original QD and thus is not in force for all Member States. For instance, in the UK the House of Lords, in *Hoxha*, held that there was no basis in the 1951 Convention, apart from a continuing well-founded fear, for granting refugee status ⁽¹⁵⁴⁾.

Article 11(3) describes circumstances in which refugee protection, once granted, is not to be taken away even though there is no longer a fear of persecution. It follows that it only applies after the initial recognition of refugee status but has no part to play during that process of initial recognition ⁽¹⁵⁵⁾.

The exceptional character of the provision is evident from its historical purpose. What the drafters had in mind was the situation of refugees from Germany and Austria after the Second World War who were unwilling to return to the scene of the atrocities which they and their kin had experienced ⁽¹⁵⁶⁾.

The Refugee Appeal Commission (France) considered the application of compelling reasons in a decision involving a Chilean refugee who suffered very severe persecution and whose brother died as a result of torture applied by servicemen. The French Commission considered that the persecution was so severe that there were compelling reasons arising out of previous persecution for refusing to avail himself of the protection of his country ⁽¹⁵⁷⁾.

⁽¹⁵¹⁾ S. Kneebone and M. O'Sullivan, op. cit., fn. 118, Article 1C, para. 88.

⁽¹⁵²⁾ For background information, see G.S. Goodwin-Gill and J. McAdam, op. cit., fn. 65, pp. 151-159.

⁽¹⁵³⁾ CJEU, judgment of 19 December 2012, case C-364/11, *El Karem El Kott*, EU:C:2012:826, para. 77.

⁽¹⁵⁴⁾ *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4, para. 87.

⁽¹⁵⁵⁾ See also, *R v Home Secretary ex p. Adan*, op. cit., fn. 139, p. 9; *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4, paras. 10, 43-65.

⁽¹⁵⁶⁾ A. Grahl-Madsen, op. cit., fn. 68, p. 410.

⁽¹⁵⁷⁾ Refugee Appeals Commission (France), decision of 18 October 1999, Molina, No 336763. See also, Council of State (France), judgment of 30 July 2003, Besleaga, No 220082 (no compelling reasons).

4.3.1 Original persecution

Art. 11(3) differs from the ordinary approach in refugee law in that a present fear of persecution need not be established, for example, the statement in Adan that ‘it is the existence, or otherwise, of present fear which is determinative’⁽¹⁵⁸⁾. The provision looks backward to past persecution⁽¹⁵⁹⁾, and combines this with a prognosis as to the consequences flowing from that persecution in case refugees have to return to their country of origin. The original persecution is usually established by the fact that refugee status has been recognised in the past. There may however be cases where the past persecution relied on in the context of Article 11(3) differs from the one on which the original recognition was based. For example, a refugee may state that scars he has are the result of severe torture. The grant of refugee status may nevertheless have been based on the consideration that persons with scars (from whatever cause) are suspected by the government of having taken part in the ongoing civil war as part of the opposition forces and for that reason alone can be subject to persecution. In the context of Article 11(3), it may be highly relevant whether there really was torture. Given the purpose of the provision, it seems that it should be open to the refugee to rely on grounds for and acts of persecution on which the original recognition of refugee status was not based at least where these were relied upon by the refugee during the initial application. They would then have to be proved during the cessation proceedings.

4.3.2 Reasons to refuse the protection of the country of origin

The reasons for refusing to avail oneself of the protection of the country of origin must be so strong that it is utterly unreasonable to require the refugee to return⁽¹⁶⁰⁾. The unreasonableness of that request is to be established objectively, taking into account the subjective state of mind of the refugee⁽¹⁶¹⁾. The court needs to look for exceptional, asylum-related circumstances in an individual case; Article 11(3) does not authorise the exercise of a free-ranging discretion on humanitarian or compassionate grounds⁽¹⁶²⁾.

Possible reasons for refusing to avail oneself of the protection of the country of origin may arise from the circumstances of the original persecution as well as from the consequences a return to the country might have. Although there has been some conceptual debate⁽¹⁶³⁾, it would seem that courts have considered compelling reasons arising from both grounds. What is required is hardship going significantly beyond what former refugees might ordinarily experience if required to return to their country of origin. Article 11(3) is directed towards the exceptional psychological situation of persons who have suffered particularly grave persecution with long-term after-effect and who for this reason cannot reasonably be expected to return to the state where the persecution took place even a long time afterwards and even though circumstances have changed⁽¹⁶⁴⁾.

The prime example of compelling reasons arising out of the circumstances of persecution is where refugees have escaped genocide or severe maltreatment at the hands of the local

⁽¹⁵⁸⁾ *R v Home Secretary ex p. Adan*, op. cit., fn. 139.

⁽¹⁵⁹⁾ *R v Special Adjudicator ex p. Hoxha*, op. cit. fn. 4, para. 14; S. Kneebone and M. O’Sullivan, op. cit., fn. 118, para. 199.

⁽¹⁶⁰⁾ FAC, 1 C 21.04, op. cit., fn. 135, para. 37.

⁽¹⁶¹⁾ Higher Administrative Court of Baden-Württemberg (Germany), judgment of 5 November 2007, A 6 S 1097/05, para. 37.

⁽¹⁶²⁾ *Ibid.*, para. 21; I. Kraft, op. cit., fn. 32, Article 11, MN 28; J.C. Hathaway and M. Foster, op. cit., fn. 75, p. 493.

⁽¹⁶³⁾ D. Milner, ‘Exemption from Cessation of Refugee Status in the Second Sentence of Article 1C(5)/(6) of the 1951 Refugee Convention’, IJRL (2004), p. 91; J.C. Hathaway and M. Foster, op. cit., fn. 75, pp. 493-494.

⁽¹⁶⁴⁾ FAC, 1 C 21.04, op. cit., fn. 135, para. 38.

population with whom they would have to live together if they returned⁽¹⁶⁵⁾. The loss of close relatives through persecution may also be relevant⁽¹⁶⁶⁾, as may be experiences in camps or prisons⁽¹⁶⁷⁾. Return to the country of origin may have unacceptably severe consequences if the mental suffering of a person who received a psychotrauma during the original persecution would greatly increase upon return⁽¹⁶⁸⁾. This needs to be evaluated on an individual basis. The *Verwaltungsgerichtshof Baden-Württemberg* (German Higher Administrative Court of Baden-Württemberg) has held that a diagnosis of PTSD is, in and of itself, neither necessary nor sufficient to engage Article 11(3)⁽¹⁶⁹⁾. Another factor to consider is the probable attitude of the local population towards the returnee. Thus, where a woman was raped by members of an occupying force for reasons constituting persecution and she will now be ostracised because of this by members of the population group to which she belongs, this may be a compelling reason not to return⁽¹⁷⁰⁾. In such circumstances it is necessary to consider whether the facts do not constitute a basis for a present fear of persecution in which case the woman concerned would still be a refugee and the compelling reasons clause would not fall to be considered⁽¹⁷¹⁾. In this context, ‘whether feared ill-treatment is sufficiently grave to amount to persecution has to be seen in the context of each individual case’⁽¹⁷²⁾.

Some matters are regarded by the courts as incapable of giving rise to compelling reasons. Even if under a strict application of a ‘but for’ test, they may be regarded as causes for the refugee’s unwillingness to return, their connection to the persecution is too remote. Risks or hardship affecting the population in the country of origin in general are to be disregarded⁽¹⁷³⁾. The same applies to low living standards⁽¹⁷⁴⁾. A long period of residence in the country of refuge as well as ties the refugee has developed there fall outside the scope of Article 11(3) and need to be considered in relation to an application for a residence permit after refugee status has ceased to exist⁽¹⁷⁵⁾.

⁽¹⁶⁵⁾ Higher Administrative Court of Baden-Württemberg (Germany), A 6 S 1097/05, op. cit., fn. 161, para. 25; UNHCR, Handbook, op. cit., fn. 5, para. 136.

⁽¹⁶⁶⁾ G.S. Goodwin-Gill and J. McAdam, op. cit., fn. 65, p. 147 and cases cited there.

⁽¹⁶⁷⁾ Higher Administrative Court of Niedersachsen (Germany), 11 LB 405/08, op. cit., fn. 94, para. 57; UNHCR, Guidelines on International Protection: Cessation (the “Ceased Circumstances” Clauses), op. cit., fn. 28, para. 20.

⁽¹⁶⁸⁾ Higher Administrative Court of Baden-Württemberg (Germany), A 6 S 1097/05, op. cit., fn. 161, para. 23; see also J. Fitzpatrick and R. Bonoan, op. cit., fn. 112, p. 519; UNHCR, *Daunting Prospects – Minority Women: Obstacles to their Return and Integration*, April 2000.

⁽¹⁶⁹⁾ Higher Administrative Court of Baden-Württemberg (Germany), A 6 S 1097/05, op. cit., fn. 161, para. 26.

⁽¹⁷⁰⁾ *Ibid.*, para. 24; G.S. Goodwin-Gill and J. McAdam, op. cit., fn. 65, p. 146 and cases cited there.

⁽¹⁷¹⁾ *R v Special Adjudicator ex p. Hoxha*, op. cit., fn. 4, para. 30-38.

⁽¹⁷²⁾ *Ibid.*, para. 34.

⁽¹⁷³⁾ Council of State (France), judgment of 2 March 1984, *M.*, No 42961; FAC, 1 C 21.04, op. cit., fn. 135, para. 38.

⁽¹⁷⁴⁾ Higher Administrative Court of Baden-Württemberg (Germany), decision of 22 October 2007, A 6 S 740/05, para. 20.

⁽¹⁷⁵⁾ Council of State (France), judgment of 12 December 1986, *Tshibangu*, No 57214/57789; Higher Administrative Court of Baden-Württemberg (Germany), A 6 S 740/05, op. cit., fn. 174, para. 20; Higher Administrative Court of Bavaria (Germany), decision of 2 July 2002, 22 ZB 02.30946, para. 3; see also J. Fitzpatrick and R. Bonoan, op. cit., fn. 112, pp. 520-521.

5. Grounds for ending refugee protection III - Exclusion and Misrepresentation: Article 14(3)

In Article 14(3), the QD (recast) expressly provides for the ending, revocation or refusal to renew refugee status in cases where such status should not have been granted in the first place and where a refugee engages in conduct which gives rise to the application of an exclusion clause after recognition. The provision contains two sub-paragraphs. The first is concerned with the withdrawal of refugee status on exclusion grounds, whereas the second refers to situations in which refugee status was obtained through misrepresentation or omission of facts which may concern inclusion or exclusion aspects of the person's refugee claim.

The beginning of Article 14(3) makes it clear that the grounds for revoking, ending or refusing to renew refugee status in both sub-sections (a) and (b) must be "established" – that is, there needs to be evidence on which a decision to end, revoke or refuse to renew refugee status is based – and that the onus to show that the relevant criteria are met lies on the Member State.

5.1 Exclusion: Article 14(3)(a) and Article 12

The matter of exclusion has been dealt with in another Judicial Analysis. For a comprehensive overview of the application of exclusion clauses to situations of exclusion from refugee protection (and to instances where an applicant is excluded from being eligible for subsidiary protection) please refer to: [EASO, Exclusion: Articles 12 and 17 Qualification Directive \(2011/95/EU\) – A Judicial Analysis, January 2016.](#)

Whereas it is not the case with respect to the provisions on misrepresentation in Article 14(3) (b), the grounds for exclusion contained in Article 1(D), (E) and (F) of the Refugee Convention are fully reflected in Articles 12 (and 17 with regard to subsidiary protection). The key provision related to the mandatory exclusion from refugee status is Article 12.

It is to be remembered that a Member State is required to revoke, end or refuse to renew refugee status if it is established by that State that the applicant should have been or is excluded from being a refugee in Article 12. In cases where it is established that the individual should never have been recognised as a refugee, as well as in cases where it is established that grounds of exclusion have arisen later, Article 14(3)(a) provides that the refugee status will be revoked, ended or renewal refused as appropriate. Exclusion of a refugee because of his or her involvement in criminal conduct after recognition is applicable only on the grounds of Article 12(2)(a) and (c), which are not subject to temporal or geographic limitations.

5.2 Misrepresentation and omission

International protection shall be revoked, ended or a renewal refused in instances where misrepresentation or omission of facts, including use of false documents, was decisive for granting in the first place. Issues that are likely to arise include the following:

- What can constitute misrepresentation or omission?
- The relevance of fraud;
- The mandatory nature of the provision.

The Refugee Convention has no specific provision for ending protection due to misrepresentation. Indeed, there has also been no decision from the CJEU nor is there any indication of a pending reference on the effect of revocation, in particular, whether it is *ex tunc* or *ex nunc* or whether that is for the Member State to decide.

In its Handbook, UNHCR, addressing the topic of cancellation – that is, the invalidation of refugee status which was wrongly granted in the first place – states that:

circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place; e.g. if it subsequently appears that refugee status was obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the exclusion clauses would have applied to him had all the relevant facts been known. In such cases, the decision by which he was determined to be a refugee will normally be cancelled ⁽¹⁷⁶⁾.

5.2.1 What can constitute misrepresentation or omission?

When applying Article 14(3)(b), three elements should be considered:

- (i) Whether the applicant has provided objectively incorrect information or made omissions;
- (ii) The causality between information or omissions and the refugee status determination and;
- (iii) The relevance of any intention to mislead by the applicant.

5.2.1.1 Objectively incorrect information or omission

Regarding the first element, there may be instances where incorrect statements come to light through police, consular or prefectural information or documents, via Interpol or during the examination of another asylum application. It is for the State to demonstrate the incorrect nature of the statements made by the applicant. The incorrectness or falseness of information previously provided may be established, for example, by proving that the refugee was not present in the country of origin at the time asserted. The *Cour nationale du droit d'asile* (French National Court of Asylum Law) relied on evidence given by the French Consulate that the applicant was not living in Chechnya since 2005, contrary to his statements in support of his application. The court decided that the applicant was to be regarded as having knowingly attempted to mislead the court ⁽¹⁷⁷⁾. The High Court (Ireland) decision in *Gashi v. Minister for*

⁽¹⁷⁶⁾ UNHCR, *Handbook*, op. cit., fn. 5, para. 117. N.B. The term cancelled/cancellation is not used in the QD (recast).

⁽¹⁷⁷⁾ National Court of Asylum Law (France), judgment of 8 October 2009, T., No 701681/09007100.

Justice, Equality and Law Reform held that concealing an asylum application in another country is capable of amounting to information which was false or misleading ⁽¹⁷⁸⁾.

Misrepresentation has been found to manifest itself in the nationality for which an applicant claimed a fear of persecution. The court in *Gashi* found that giving a false nationality is a misrepresentation which can result in a revocation ⁽¹⁷⁹⁾. In a case where the applicant had, in addition to his successful claim as an Azerbaijan citizen, submitted two other previous applications pretending to be a Georgian citizen, the *Cour nationale du droit d'asile* (French National Court of Asylum Law) recognised the presence of fraud ⁽¹⁸⁰⁾. In a more recent case, the *Cour nationale du droit d'asile* (French National Court of Asylum Law) found misrepresentation based on a misleading Bhutanese nationality, considering that its decision of granting protection had been based on a fear of persecution faced in this specific country ⁽¹⁸¹⁾. The court decided the application in relation to the applicant's actual country of origin, Nepal.

5.2.1.2 Causality

As to the second element, i.e., the causative link between the incorrect information provided and the decision to grant protection, it has to be objectively demonstrated that the applicant's behaviour exercised a significant influence. In other words, without the misrepresentation or omission the protection would not have been granted ⁽¹⁸²⁾. The Irish High Court's decision in *Gashi*, is illustrative of the approach as to how decisive the misrepresentation must be in relation to the decision to grant refugee status ⁽¹⁸³⁾. The court considered that this characteristic was meant to be understood in a broader way as in French or Italian versions of the Directive, which use the word 'determining' to qualify the role played by misrepresentation in the protection process, rather than the more restrictive way chosen by the English text of the QD which uses the term 'decisive'. In this case, the refugee claimed that his concealment of a prior asylum application in another country was not decisive to his successful claim in Ireland, and that the decisive matter on which the court was called to decide was the reason why he left his country. The key question for the court was whether the application for asylum would have been treated differently had the information in question not been concealed. Finally, the court confirmed that the misleading information had exercised a significant influence on the credibility of his application for asylum ⁽¹⁸⁴⁾. Thus, where there were only minor omissions, particular care should be taken in deciding if they were decisive ⁽¹⁸⁵⁾.

5.2.1.3 Intention to mislead

In relation to the third element regarding intention there would appear to be a divergence as to whether this element must be present in order to end protection due to misrepresentation or omission. Article 14(3)(b) does not contain any particular reference to the requirement of an intention to misrepresent or to deliberately omit facts. A number of decisions of Member State courts indicate the necessary presence of this element in order to end protection due

⁽¹⁷⁸⁾ *Gashi v Minister for Justice, Equality and Law Reform*, op. cit., fn. 98, para. 11.

⁽¹⁷⁹⁾ *Ibid.*

⁽¹⁸⁰⁾ National Court of Asylum Law (France), judgment of 24 September 2009, G., No 633282/08013386.

⁽¹⁸¹⁾ National Court of Asylum Law (France), judgment of 8 April 2016, S., No 15031759.

⁽¹⁸²⁾ Supreme Administrative Court (Czech Republic), judgment of 18 April, 1 Azs 3/2013-27.

⁽¹⁸³⁾ *Gashi v Minister for Justice, Equality and Law Reform*, op. cit., fn. 98, para. 25.

⁽¹⁸⁴⁾ *Ibid.*

⁽¹⁸⁵⁾ Cf. UNHCR, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, at para. 9.

to misrepresentation or omission⁽¹⁸⁶⁾, in particular when fraud is relied upon. Although the wording of this provision does not hint that an intention to mislead the decision-maker would be necessary⁽¹⁸⁷⁾, it is argued by some that this intention constitutes a necessary element for the application of Article 14(3)(b)⁽¹⁸⁸⁾. This is also the position advanced by UNHCR⁽¹⁸⁹⁾. On the other hand, the *Bundesverwaltungsgericht* (German Federal Administrative Court) has said that an intention to mislead is unnecessary⁽¹⁹⁰⁾. Other German courts have adopted the position that it is immaterial whether the incorrectness of the original statement was known to the applicant or whether in omitting a circumstance they were subjectively at fault⁽¹⁹¹⁾. Ultimately this may be a matter for decision by the individual judge depending on the circumstances of the case and a possible reference to the CJEU could be considered.

All three elements were found to be present in the Irish case of *Nz.N v MJELR*⁽¹⁹²⁾, where the applicant was found to have produced false and misleading information to the State in relation to her name, nationality, level of education, her claim of persecution and her possession of a working visa. The High Court (Ireland) concluded that ‘the evidence of a false and fraudulent claim was strong’⁽¹⁹³⁾. Furthermore, in *Adegbuyi v MJELR*, the High Court (Ireland) was ‘more than satisfied’ that the applicant had provided the authorities with false and misleading information regarding passport documents and travel, that there was a link between the falsity and the grant of refugee status and that the information was furnished with the intention of misleading the authorities⁽¹⁹⁴⁾.

5.2.2 The relevance of fraud with regard to misrepresentation/omission

Whereas fraud does not receive explicit mention in Article 14 and there has been no decision from the CJEU, a number of national courts have referred to this element when making decisions on ending international protection. It is a generally accepted principle that an administrative decision obtained by fraud is vitiated by this fact and may be annulled⁽¹⁹⁵⁾. Such a principle is reflected in national legislation, administrative procedures, jurisprudence and UNHCR policy documents⁽¹⁹⁶⁾. Where there are no such provisions in national refugee laws, or where these do not refer to fraud, general administrative law regularly permits the setting aside of administrative acts obtained by misrepresentation or concealment of material facts⁽¹⁹⁷⁾. Given the wording of Article 14(3)(b), it could probably be said that fraud is a sufficient, but not a necessary condition for the existence of a misrepresentation or omission falling within the scope of that provision.

⁽¹⁸⁶⁾ National Court of Asylum Law (France), *T.*, op. cit., fn. 177.

⁽¹⁸⁷⁾ I. Kraft, op. cit., fn. 32, Article 14, MN 11.

⁽¹⁸⁸⁾ R. Marx, MN 16, *Handbuch zum Flüchtlingschutz. Erläuterungen zur Qualifikationsrichtlinie*, (2nd edn., C.H. Beck, 2012), p. 615

⁽¹⁸⁹⁾ UNHCR, UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, 28 January 2005, p. 29.

⁽¹⁹⁰⁾ Federal Administrative Court (Germany), judgment of 19 November 2013, 10 C 27/12, MN 17.

⁽¹⁹¹⁾ Higher Administrative Court Bavaria (Germany), judgment of 18 October 2010, 11 B 09.30050, para. 45; Higher Administrative Court Schleswig-Holstein (Germany), judgment of 21 June 2012, 1 LB 10/10, para. 40.

⁽¹⁹²⁾ High Court (Ireland), judgment of 27 January 2014, *Nz N. V Minister for Justice and Equality*, [2014] IEHC 31.

⁽¹⁹³⁾ *Ibid.*, para. 42.

⁽¹⁹⁴⁾ *Adegbuyi v Minister for Justice and Law Reform*, op. cit., fn. 97, para. 42.

⁽¹⁹⁵⁾ UNHCR, Note on Cancellation of Refugee Status, op. cit., fn. 3, para. 19.

⁽¹⁹⁶⁾ *Ibid.*

⁽¹⁹⁷⁾ Sibylle Kapferer, UNHCR, Cancellation of Refugee Status, March 2003, para. 17.

5.2.3 Article 14(3)(b) is a mandatory provision

Article 14(1), which deals with cessation clauses endorsed in Article 11, is considered, like Article 14(3)(a) and (b), which concerns revoking, ending or refusing to renew refugee status for the cause of misrepresentation, to be mandatory, as expressed by the use of ‘shall’ in the text of the Directive. Revoking, ending or refusing to renew refugee status obtained through fraud was mandatory in some countries prior to the QD (recast) ⁽¹⁹⁸⁾. It was observed by the High Court (Ireland) in *Adegbuyi* that Article 14(3)(b) had the effect of removing ministerial discretion when revoking refugee status ⁽¹⁹⁹⁾.

5.2.4 Consequences of misrepresentation

Once the misrepresentation is established, the Member State is not precluded from further examining other issues related to protection which may be advanced by the applicant. Member States may assess alternative grounds for protection from those undermined by misrepresentation. The aforementioned *Gashi* decision of the High Court (Ireland), for example, held that revocation for misrepresentation does not prevent the concerned person from continuing to seek protection ⁽²⁰⁰⁾.

Regarding the effect of a fraudulent misrepresentation, the National Court of Asylum Law (France) has held, following the rationale of ruling of the Council of State from 1986 ⁽²⁰¹⁾ that in the case of two subsequent asylum applications, it is an error of law to consider that the fraud committed during the second application deprives the claimant of any right to benefit from the protection recognised in the Refugee Convention, without verifying that his first application is also tainted by fraud ⁽²⁰²⁾. Hence, from the standpoint of the *fraus omnia corrumpit* principle known to the laws of some Member States, these rulings limit the legal consequences of deliberate misrepresentations to the proceedings during which they have been made and do not preclude the possibility of a future protection or the continuation of a protection granted on the basis of another application. Thus, regardless of the misrepresentation, the French court considered there was a duty to consider whether there are any other reasons for the persons to have a well-founded fear of persecution. It should be noted that not all Member States take the same approach and that it appears to be a question of national procedural law whether the examination of other reasons for a fear of persecution must take place during the judicial proceedings during which the question of misrepresentation is addressed.

⁽¹⁹⁸⁾ Austria: s. 69 (1) 1. of the General Administrative Procedure Act; Germany: s. 73 (2) of the Asylum Act; Slovak Republic: s. 15(2)(a) of the Asylum Law; Switzerland: s. 63 (1)(a) of the Asylum Act

⁽¹⁹⁹⁾ *Adegbuyi v Minister for Justice and Law Reform*, op. cit., fn. 97; National Court of Asylum Law (France), *T.*, op. cit., fn. 177.

⁽²⁰⁰⁾ *Gashi v Minister for Justice, Equality and Law Reform*, op. cit., fn. 98.

⁽²⁰¹⁾ *Tshibangu*, op. cit., fn. 175.

⁽²⁰²⁾ National Court of Asylum (France), *G.*, op. cit., fn. 181.

6. Grounds for ending refugee protection IV – Danger to security and conviction for serious crime: Article 14(4)

Article 14(4)(a) and (b) mirror the exception of the prohibition against *refoulement* in Article 33(2) Refugee Convention. This provision differs from Article 1(F) Refugee Convention which, similar to Article 12(2), applies to persons, who are considered as unworthy of refugee status. In contrast, Article 33 Refugee Convention protects refugees from *refoulement* with the exception provided for in paragraph 2.

The inclusion of the exceptions from the principle of *non-refoulement* among the grounds for ending protection was a matter of some contention during the drafting process⁽²⁰³⁾. A leading commentator has considered the recast QD's approach as unproblematic, arguing that in cases of expelled citizens of third countries in line with Article 33(2) Refugee Convention refugee status appears only as an empty shell⁽²⁰⁴⁾. The CJEU has cited Article 14(4) without addressing the controversy⁽²⁰⁵⁾. UNHCR has expressed concern at the possibility that this provision may expand the grounds for exclusion beyond those provided for in the Refugee Convention⁽²⁰⁶⁾. In this light the *Nejvyšší správní soud České republiky* (Czech Supreme Administrative Court) has made a request for a preliminary ruling regarding the compatibility of Article 14 (4) and (6) QD (recast) with Article 18 of the EU Charter of the Fundamental Rights, Article 78 (1) TFEU and with general principles of EU law according to Article 6 (3) TEU⁽²⁰⁷⁾.

The CJEU noted, with reference to Article 21(2) QD, which is identical to Article 21(2) QD (recast) that Member States must respect the principle of *non-refoulement* in accordance with their international obligations. Article 21(2), the wording of which essentially repeats that of Article 33(2) Refugee Convention, nevertheless provides for a derogation from that principle, allowing Member States the discretion to *refoule* a refugee where it is not prohibited by those international obligations and where there are reasonable grounds for considering that that refugee is a danger to the security of the Member State in which he is present or where, having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of that Member State⁽²⁰⁸⁾. Given the absolute character of Art. 3 ECHR⁽²⁰⁹⁾, removal from the host country is precluded if there are substantial grounds for believing that the person concerned would face torture or inhuman treatment.

Given the potentially serious consequences of the withdrawal of *non-refoulement* protection, a restrictive application of Article 14(4) is required. This entails the need for a rational connection between the removal of the refugee and the elimination of the danger resulting from his or her presence for the security of the host country. Moreover, it must not be disproportionate: the danger for the host country must outweigh the interest of the refugee of being

⁽²⁰³⁾ For the drafting history see I. Kraft, op. cit., fn. 32., Article 12, MN 9.

⁽²⁰⁴⁾ *Ibid.* Article 12, MN 10.

⁽²⁰⁵⁾ CJEU, judgment of 9 November 2010, joined cases C-57/09 and C-101/09, *B&D v Bundesrepublik Deutschland*, EU:C:2010:661, para. 101.

⁽²⁰⁶⁾ UNHCR, *Annotated Comments on the EC Council Directive 2004/83/EC*, op. cit., fn. 189, p. 28.

⁽²⁰⁷⁾ *M v Ministerstvo vnitra*, op. cit., fn. 18.

⁽²⁰⁸⁾ CJEU, judgment of 24 June 2015, case C373/13, *H.T. v Baden Württemberg*, EU:C:2015:413, para. 42.

⁽²⁰⁹⁾ ECtHR, judgment of 30.10.1991, 13.163/87, *Vilvarajah v. UK*; ECtHR, judgment of 07.07.1989, *Soering v. UK*, para. 88.

protected by the host state ⁽²¹⁰⁾. The *Bundesverwaltungsgericht* (German Federal Administrative Court) has held that the criminal conviction does not automatically lead to the exclusion from protection against removal. Removal is only justified if, considering all the circumstances of the individual case, the security of the state of refuge and the people living there requires to give lesser weight to the protection of the person who is persecuted ⁽²¹¹⁾. The *Verwaltungsgerichtshof* (Austrian Supreme Administrative Court) has stated that the public interest in not granting protection will rarely outweigh the interest of the individual where he/she faces torture or death upon return ⁽²¹²⁾. Where that is the result of the balancing exercise, protection is not ended and it is unnecessary to fall back upon Art. 3 ECHR.

The CJEU makes it clear that the *refoulement* of a refugee is:

... only the last resort a Member State may use where no other measure is possible or is sufficient for dealing with the threat that that refugee poses to the security or to the public of that Member State ⁽²¹³⁾.

The danger that the refugee constitutes to the host country must be very serious, rather than of a lesser order, and it must constitute a threat to the national security of the host country. Further guidance on the substance of the term ‘danger to the security’ and ‘danger to the community’ can be found in EASO, [Exclusion: Articles 12 and 17 Qualification Directive \(2011/95/EU\) – A Judicial Analysis](#), January 2016. It is also worth bearing in mind that Articles 44 and 45 APD (recast) apply.

6.1 ‘danger to the security’ exception: Article 14(4)(a)

The ‘danger to the security’ provision corresponds to the first exception provided for in Article 33(2) Refugee Convention, which is intended for cases in which it is established that the refugee poses a current or future danger to the host country. The provision aims to protect the State itself. Security is understood as encompassing external (integrity of borders) or internal (continuance and functioning of the state, its political structures and institutions) elements. Therefore, relevant acts could be, inter alia, espionage, sabotage or terrorist acts ⁽²¹⁴⁾. The *Bundesverwaltungsgericht* (German Federal Administrative Court) has decided that mere membership of a terrorist organisation which is suspected of or known to threaten internal security is not sufficient, rather a higher level of involvement or support is necessary. An overall assessment taking into account the danger of the organisation, its structure, violence and size is necessary ⁽²¹⁵⁾. In an obiter dictum the *Verwaltungsgerichtshof* (Austrian Supreme Administrative Court) said that it is conceivable that trafficking in people on a large scale might under certain circumstances threaten national security ⁽²¹⁶⁾. However, it decided in another case that instances of repeated trafficking in human beings and membership in a criminal organisation do not per se constitute such a danger ⁽²¹⁷⁾.

⁽²¹⁰⁾ Supreme Administrative Court (Austria), judgment of 6 October 1999, 99/01/0288 with reference to: W. Kälin, *Grundriss des Asylverfahrens* (Helbing & Lichtenhahn, 1990), p. 227; Supreme Administrative Court (Austria), judgment of 3 December 2002, 99/01/0449.

⁽²¹¹⁾ Federal Administrative Court (Germany), judgment of 16 November 2000, 9 C 6/00.

⁽²¹²⁾ Supreme Administrative Court (Austria), 99/01/0288, op. cit., fn., 210.

⁽²¹³⁾ *H.T. v Baden Württemberg*, op. cit., fn. 208, para. 71.

⁽²¹⁴⁾ I. Kraft, op. cit., fn. 32, Article 14, MN 17.

⁽²¹⁵⁾ Federal Administrative Court (Germany), judgment of 30 March 1999, No. 9 C31.98; I. Kraft, op. cit., fn. 32, Article 14, MN 19.

⁽²¹⁶⁾ Supreme Administrative Court (Austria), judgment of 6 February 1996, 95/20/0079.

⁽²¹⁷⁾ Supreme Administrative Court (Austria), judgment of 27 April 2006, 03/20/0050.

6.2 ‘danger to the community’ exception: Article 14(4)(b)

For the ‘danger to the community’ exception to apply, not only must the refugee in question have been convicted of a particularly serious crime, but it must also be established that there is a connection between the crime for which the person was convicted and the danger the person constitutes: the person must constitute a danger because of the particular crime he or she committed. It is not sufficient that e.g. due to his/her general behavior, which has not led to the conviction for a particular serious crime or due to several convictions for minor crimes, a danger to the community persists ⁽²¹⁸⁾.

In making this determination, it will be necessary to consider the nature and circumstances of the particular crime and other relevant factors (e.g. evidence or likelihood of recidivism) ⁽²¹⁹⁾. The *Bundesverwaltungsgericht* (German Federal Administrative Court) has held that there must always be a risk of re-offending. In establishing a risk of re-offending, there must be a serious threat of a danger to the public because of crimes of a comparable nature in the future. In making the prognosis whether there is a serious risk of re-offending, regard must be had to the circumstances of the individual case, in particular the sentence imposed, the seriousness of the concrete crime, the circumstances in which it was committed and the importance of the legal value threatened in case of reoffending as well as the personality of the perpetrator and his development and biography up to the relevant time for the decision. According to the court, offences which are so serious that they have led to a sentence of at least three years’ imprisonment are typically associated with a high risk of reoffending. This is particularly true of serious drug offences. The fact that the perpetrator was released on probation after serving two thirds of the sentence is insufficient of itself to rule out a risk of reoffending ⁽²²⁰⁾.

Although some crimes typically constitute particularly serious crimes (e.g. rape ⁽²²¹⁾, drug trafficking ⁽²²²⁾, aggravated robbery ⁽²²³⁾, attempted murder ⁽²²⁴⁾, kidnapping and aggravated personal injury ⁽²²⁵⁾), it is necessary to assess whether, in the individual case, the criminal act can be considered as objectively and subjectively particularly serious. According to the *Verwaltungsgerichtshof* (Austrian Supreme Administrative Court), extenuating circumstances have to be considered ⁽²²⁶⁾.

6.3 In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken: Article 14(5)

Article 14(5) contains a provision which allows States to use the grounds set out in Article 14(4) (a) and (b) as a reason to deny refugee status, and thus essentially it applies in a similar way to an exclusion clause. The provision is optional.

⁽²¹⁸⁾ Asylum Court (Austria), judgment of 11 August 2010, D9 259.578-3/2010

⁽²¹⁹⁾ *RY (Sri Lanka) v Secretary of State for the Home Department*, op. cit., fn. 143, para. 46.

⁽²²⁰⁾ Federal Administrative Court (Germany), 9 C 6/00, op. cit., fn. 211.

⁽²²¹⁾ Federal Administrative Court (Austria), G307 1314138-2, op. cit., fn. 94.

⁽²²²⁾ ECtHR, judgment of 23 June 2008, *Maslov v. Austria*, application no 1638/03; see also ECtHR, judgment of 19 February 1998, *Dalia v. France*, application no 154/1996/773/974; see also ECtHR, judgment of 30 November 1999, *Baghli v. France*, application no 34374/97; Supreme Administrative Court (Austria), judgment of 23 September 2009, 2006/01/0626.

⁽²²³⁾ Asylum Court (Austria), judgment of 18 December 2008, D5 245575-3/2008.

⁽²²⁴⁾ Federal Administrative Court (Austria), judgment of 9 April 2015, G306 2102912-1, AT:BVWG:2015:G306.2102912.1.00.

⁽²²⁵⁾ Federal Administrative Court (Austria), judgment of 22 October 2015, L515 1202543-3, AT:BVWG:2015:L515.1202543.3.00 (conviction outside host country).

⁽²²⁶⁾ Supreme Administrative Court (Austria), 99/01/0288 op. cit., fn. 210.

6.4 Article 14(6)

The application of an exception to the principle of *non-refoulement* provided for in Article 14(4)(a) and (b) and Article 14(5) does not deprive the person concerned of all rights and entitlements under international refugee law. As affirmed by the CJEU:

In the event that a Member State, pursuant to Article 14(4), revokes, ends or refuses to renew the refugee status granted to a person, that person is entitled, in accordance with Article 14(6) of that directive, to rights set out inter alia in Articles 32 and 33 of the Geneva Convention ⁽²²⁷⁾

Article 14(6) specifically refers to “the rights set out in or similar to those set out in” the following provisions of the Refugee Convention:

- Article 3, which affirms the principle of non-discrimination as to race, religion or country of origin
- Article 4, which provides for the obligation of States to provide refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children
- Article 16, which accords refugees access to courts in the same way as nationals, including legal assistance
- Article 22, which provides for equal treatment as nationals with regard to elementary education and treatment at least as favourable as for other non-nationals with regard to other forms of public education, including the recognition of diplomas and degrees
- Article 31, which provides for the non-penalization of refugees for illegal entry or presence under certain circumstances and limits the restrictions on freedom of movement which States may impose in such cases
- Article 32, which sets out procedural safeguards in cases of expulsion (albeit only to a country where he or she would not be at risk of persecution) on grounds of national security or public order
- Article 33, which limits the grounds for loss of protection against *refoulement* to the exceptional circumstances provided for in Article 33(2) and requires, at a minimum, the procedural safeguards provided for in Article 32(2) and (3) Refugee Convention

⁽²²⁷⁾ *H.T. v Baden Württemberg*, op. cit., fn. 208, para. 71.

7. Grounds for ending subsidiary protection – Article 19

Similar to Article 14 dealing with refugee protection, Article 19 regulates the revocation of, ending of and the refusal to renew subsidiary protection. As far as the provisions of Article 19 mirror Article 14, case law on Article 14 will have analogous application ⁽²²⁸⁾. There are, however, differences as Article 19 does not directly replicate the provisions of Article 14(4) but deals with criminals or individuals constituting a danger to the security or the community of the Member State by cross-references set out in Article 19(2) and (3)(a) ⁽²²⁹⁾.

7.1 Cessation: Articles 16 and 19(1)

Cessation in the context of subsidiary protection requires that:

- there is a change of circumstances,
- protection is no longer required,
- this was caused by the change of circumstances, and
- there are no other grounds which make the person concerned eligible for subsidiary protection.

Article 16 (1) does not apply where compelling reasons within the meaning of Article 16(3) exist. In general, these elements can be construed and applied in parallel with Article 11 ⁽²³⁰⁾.

7.1.1 Change of circumstances

Section 4.1 above sets out how a change of circumstances is to be established. As in the context of refugee law, it is not enough that the administrative authority comes to the conclusion that subsidiary protection should never have been granted and endeavours to revise its original decision ⁽²³¹⁾. Where the person concerned had to fear the death penalty or execution, a relevant change can consist of the abolition of capital punishment or other amendments to the law of the country of origin. Particular care needs to be taken in assessing whether the new laws are adhered to in practice and whether the amendments might realistically be reversed. Where the applicant risked torture or inhuman or degrading treatment or punishment, the threat may end because the regime loses power. Alternatively, there may be democratisation, changes within the legal system or administrative structures, an improvement of prison conditions or an amnesty ⁽²³²⁾. The risk of harm for the person concerned or the group he or she belongs to may no longer exist because of developments within the society. Where the risk arose out of indiscriminate violence in situations of armed conflict, the level of violence may have diminished because of political or military developments ⁽²³³⁾. The individual vulnerability

⁽²²⁸⁾ H. Storey, Article 19, MN 1 Qualification Directive 2011/95/EC, in: K. Hailbronner and D. Thym (eds.), op. cit., fn. 32.

⁽²²⁹⁾ *Ibid.*

⁽²³⁰⁾ Federal Administrative Court (Austria), judgment of 27 March 2014, [W127 1401780-2](#), AT:BVWG:2014:W127.1401780.2.00; Storey, op. cit., fn. 228, Article 16, MN 3 and Article 19, MN 1.

⁽²³¹⁾ Supreme Administrative Court (Czech Republic), judgment of 29 June 2011, 7 Azs 21/2011-57.

⁽²³²⁾ ECtHR, judgment of 15 November 2011, *Al Hanchi v Bosnia and Herzegovina*, application no 48205/09, paras. 42-45; see also, *E.O. v Finland*, op. cit., fn. 127, paras. 40-46.

⁽²³³⁾ See also Regional Administrative Court Warsaw (Poland), decision of 16 May 2013, [IV SA/Wa 2684/12](#).

may have decreased where the person concerned has reached adulthood and has been able to locate the place where their family now settles.

7.1.2 Protection no longer required

As a result of these changes, protection must no longer be required (see also section 4.1.6). It would seem that, in parallel with the CJEU's interpretation of Article 11(1)(e) ⁽²³⁴⁾, protection in Article 16(1) means protection against the serious harm the risk of which originally led to the grant of subsidiary protection status.

Article 16 does not contain provisions like those in Article 11(1)(a)-(d). However behaviour similar to that described in these provisions may have indicative force. In particular, where the persons concerned have re-established themselves in their country of origin, this has been taken by courts to suggest that eligibility for subsidiary protection has ceased ⁽²³⁵⁾.

A real risk of serious harm will often arise out of a combination of aspects particular to the individual circumstances of the applicant and of factors pertaining to the general situation in the country of origin. This is particularly true under Article 15(c) where a sliding scale approach applies so that the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required by him to be eligible for subsidiary protection ⁽²³⁶⁾. In scenarios where a change in the personal circumstances is complemented by a development in the general situation that is not by itself sufficient to let the need for subsidiary protection cease, it would seem best to assess each of these changes individually as far as the requirement of a significant and non-temporary change is concerned. Whether Article 16(1) and (2) actually applies is then decided under the next test which asks whether protection is no longer required. Here all the changed circumstances are looked at together.

7.1.3 No other grounds of subsidiary protection

Again in parallel with the CJEU's jurisprudence on cessation of refugee status ⁽²³⁷⁾, subsidiary protection status can only be ended if there is no real risk of serious harm within the meaning of Article 15 arising out of different circumstances from those leading to the original grant (see section 4.1.8 above). Therefore it will be of interest to follow the reference to the CJEU recently made by the UK Supreme Court, which asked:

Does Article 2(e), read with Article 15(b), of the Qualification Directive cover a real risk of serious harm to the physical or psychological health of the applicant if returned to the country of origin, resulting from previous torture or inhuman or degrading treatment for which the country of origin was responsible? ⁽²³⁸⁾

⁽²³⁴⁾ *Abdulla*, op. cit., fn. 13, para. 65-80.

⁽²³⁵⁾ Supreme Administrative Court (Poland), judgments of 23 February 2016, joined cases II OSK 1492/14, II OSK 1561/14, II OSK 1562/14; Regional Administrative Court Warsaw (Poland), IV SA/Wa 2684/12, op. cit., fn. 233; see also H. Battjes, *European Asylum Law and International Law* (Brill Nijhoff, 2006), p. 268.

⁽²³⁶⁾ CJEU, judgment of 17 February 2009, case C-465/07, *Elgafaji v Staatssecretaris van Justitie*, EU:C:2009:94, para. 39; CJEU, judgment of 30 January 2014, case C-285/12, *Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides*, EU:C:2014:39, para. 31; EASO, *Article 15(c) Qualification Directive (2011/95/EU) – A Judicial Analysis*, December 2014, pp. 22-24.

⁽²³⁷⁾ *Abdulla*, op. cit., fn. 13, paras. 81-82.

⁽²³⁸⁾ Supreme Court (United Kingdom), judgment of 22 June 2016, *MP (Sri Lanka) v. Secretary of State for the Home Department*, [2016] UKSC 32.

7.1.4 Compelling reasons: Article 16(3)

There is no cessation of subsidiary protection status if the person concerned is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of origin. Article 16(3) – which is only part of the QD (recast) and not the original QD – is modelled on Article 11(3) and shares the latter’s exceptional character (see section 4.3 above).

7.2 Exclusion: Article 17 and Articles 19(2) and 19(3)(a)

7.2.1 Fugitives from justice: Articles 19(2) and 17(3)

Article 19(2) covers fugitives from justice. Subsidiary protection may be ended if the person concerned after having been granted subsidiary protection should have been excluded from this protection pursuant to Article 17(3). The result of these provisions is that Member States may end subsidiary protection in cases where the person concerned prior to his or her admission to the Member State has committed one or more crimes outside the scope of Article 17(1) which would be punishable by imprisonment, had they been committed in the Member State concerned, and if the individual left the country of origin solely in order to avoid sanctions resulting from those crimes ⁽²³⁹⁾.

In contrast to Articles 17(1)(b) and 19(3)(a) which align with the principles set out in Article 33(2) Refugee Convention by referring to acts punishable by imprisonment, Article 17(3) allows for a wider scope ⁽²⁴⁰⁾. As the wording (‘solely’) makes clear, a person who fled not only to avoid sanctions but also for other reasons, does not fall under this provision ⁽²⁴¹⁾.

Further information concerning the content of Article 17(3) can be found in EASO, [Exclusion, Articles 12 and 17 Qualification Directive \(2011/95/EU\) – A Judicial Analysis](#), January 2016, pp. 39 – 40.

7.2.2 Criminal acts, danger to security: Article 19(3)(a) and Article 17(1) and (2)

Article 19(3)(a) is the equivalent of Article 14(3)(a) and provides for the revocation, ending or refusal to renew of subsidiary protection status where the grounds of exclusion in Article 17(1) and (2) are engaged.

This covers cases of individuals who have committed or incited or otherwise participated in the commission of one or more crimes listed in:

3. Article 17(1)(a) (i.e. crime against peace, war crime, crime against humanity),
4. Article 17(1)(b) (i.e. serious crime),

⁽²³⁹⁾ For more information concerning the content of Article 17(3) refer to EASO, [Exclusion: Articles 12 and 17 Qualification Directive \(2011/95/EU\) – A Judicial Analysis](#), January 2016, pp. 39 – 40.

⁽²⁴⁰⁾ R. Marx, *op. cit.*, fn. 188, MN 16, p. 615.

⁽²⁴¹⁾ Storey, *op. cit.*, fn. 228, Article 17, MN 7.

5. Article 17(1)(c) (i.e. acts contrary to the purposes and principles of the United Nations) or
6. Article 17(1)(d) (i.e. constituting a danger to the community or to the security of the Member State in which the person is present (d)).

As with Article 14(3)(a) (see section 5.1), Article 19(3)(a) applies to cases where the person concerned should never have been granted subsidiary protection as well as to cases where the grounds of exclusion have arisen after that grant ⁽²⁴²⁾.

The *Raad Voor Vreemdelingenbetwistingen* (Belgian Council for Alien Law Litigation) ⁽²⁴³⁾ ruled that subsidiary protection can be evoked on the basis of a ‘serious crime’ committed after protection was granted. More favourable rules in national law could not be accepted. The *Verfassungsgerichtshof* (Austrian Constitutional Court) interpreted the relevant national provision in the sense that it was applicable in cases of crimes committed after subsidiary protection had been granted ⁽²⁴⁴⁾.

Article 17 does not require a final judgment of the criminal court ⁽²⁴⁵⁾. Recently, the *Verfassungsgerichtshof* (Austrian Constitutional Court), while assessing the constitutionality of the relevant revocation provision in Austria’s Asylum Act, held that for the revocation of subsidiary protection because of commission of a ‘serious crime’ it was not particularly relevant which sentence is imposed in the concrete case. The Court considered that the revocation (withdrawal) provision remains within the general systematics of categorising crimes according to the substance of the act(s) committed, thus allowing for additional adverse legal consequences. Therefore less weight is given to the circumstances of the single case ⁽²⁴⁶⁾. The *Bundesverwaltungsgericht* (Austrian Federal Administrative Court) likewise held that it is not relevant that the individual had not been sentenced to a lengthy or heavy penalty ⁽²⁴⁷⁾ or that there was a minimal risk of further offences being committed. The same applies when the sentence was commuted according to special provisions for minors ⁽²⁴⁸⁾. Nor can the person argue that he or she had been (in his or her opinion) falsely convicted ⁽²⁴⁹⁾.

For further information concerning the content of Article 17(1) and (2) refer to EASO, *Exclusion, Articles 12 and 17 Qualification Directive (2011/95/EU) – A Judicial Analysis*, January 2016, pp. 37 – 39.

7.3 Misrepresentation and omission of facts: Article 19(3)(b)

Article 19(3)(b) provides for the end of subsidiary protection status in cases where this protection had been obtained by misrepresentation or omission of facts, and this was decisive for the granting of subsidiary protection status. The same considerations as in the case of refugee status apply (see section 5.2). For cases where the person concerned has omitted facts that

⁽²⁴²⁾ Federal Administrative Court (Germany), judgment of 31 March 2011, 10 C 2/10, MN 23, DE:BVerwG:2011:310311U10C2.10.0 (re. Article 14(3)(a)); R. Marx, MN 16, R. Marx, op. cit., fn. 188, p. 616; I. Kraft, op. cit., fn. 32, Article 14, MN 10.

⁽²⁴³⁾ Council for Alien Law Litigation (Belgium), decision of 22 July 2010, 46.578.

⁽²⁴⁴⁾ Constitutional Court (Austria), judgment of 16 December 2010, U 1769/10.

⁽²⁴⁵⁾ Storey, op. cit., fn. 228, Article 17, MN 5.

⁽²⁴⁶⁾ Constitutional Court (Austria), judgment of 08 March 2016, G 440/2015-14*; see also Federal Administrative Court (Germany), judgment of 25 March 2015, 1 C 16.14, DE:BVerwG:2015:250315U1C16.

⁽²⁴⁷⁾ Federal Administrative Court (Austria), judgment of 24 September 2015, W206 1259348-3, AT:BVVG:2015:W206.1259348.3.00; Federal Administrative Court (Austria), judgment of 08 January 2015, W 144 1407843-2, AT:BVVG:2015:W144.1407843.2.00; Federal Administrative Court (Austria), judgment of 28 May 2015, W103 1422360-3, AT:BVVG:2015:W103.1422360.3.00.

⁽²⁴⁸⁾ Federal Administrative Court (Austria), judgment of 26 March 2015, W136 1411996-2, AT:BVVG:2014:W163.1410712.2.00.

⁽²⁴⁹⁾ Federal Administrative Court (Austria), judgment of 24 November 2014, W163 1410712-2, AT:BVVG:2014:W163.1410712.2.00; Federal Administrative Court (Austria), judgment of 24 November 2014, W163 1410712-2, AT:BVVG:2014:W163.1410712.2.00.

would pursuant to Article 17(3) have excluded him or her from subsidiary protection see also Article 19(3)(a).

APPENDIX A — Selected International Provisions

1951 Convention Relating to the Status of Refugees

Article 1 - Definition Of The Term „Refugee“

C. This Convention shall cease to apply to any person falling under the terms of section A if:

1. He has voluntarily re-availed himself of the protection of the country of his nationality;
or
2. Having lost his nationality, he has voluntarily reacquired it; or
3. He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
4. He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
5. He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

6. Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

APPENDIX B — Decision Trees

The Decision Trees that follow are intended to provide guidance to members of courts and tribunals when deciding cases involving questions related to ending international protection. It should be noted that there may be some overlap between the individual grounds. When using the Decision Trees, members of courts and tribunals are invited to bear this in mind.

The Decision Trees examine the elements that need to be present for each ground for ending international protection to be established. Where that is the case, ending protection is mandatory under all the grounds here treated except Art. 14(4) and 19(2). Under these provisions, the QD gives discretion to the Member States, and national law needs to be consulted in order to establish whether and in what manner these grounds for ending protection have been incorporated.

Article 11 – Cessation of refugee status

<p>Article 11(1) Article 11(1)(a-d) deal with situations whereby the actions of the individual refugee have resulted in a situation that refugee status is no longer required. Article 11(1)(e) and (f) deal with change of circumstances, i.e., where circumstances have changed such that there is no longer a need to continue to recognise refugee status.</p>	
<p>Article 11(1)(a) Article 11(1)(a) deals with situations where the refugee has voluntarily re-availed themselves of the protection of their country or nationality.</p>	
	<ol style="list-style-type: none"> 1. Has the refugee acted in a way which raises the presumption that she/he has re-availed herself/himself of the protection of the country of nationality? <ol style="list-style-type: none"> (a) Did the refugee act voluntarily? (b) Did s/he act in an intentional manner? (c) If elements a. and b. are present, it must be examined whether the actions of the individual were brought about by absolute necessity. 2. Has s/he effectively obtained protection from the country of origin?
<p>Article 11(1)(b) Article 11(1)(b) deals with situations of voluntary re-acquisition of nationality, which had already been lost.</p>	
	<ol style="list-style-type: none"> 1. Had the refugee effectively lost his nationality? 2. Has the refugee re-acquired his nationality? <ol style="list-style-type: none"> (a) Has the refugee acted voluntarily? (b) Did s/he act with the intention of re-acquiring his nationality? (c) Has s/he effectively re-acquired this nationality?

Article 11(1)(c)	
Article 11(1)(c) deals with situations where a refugee has acquired a new nationality the protection of which she/he enjoys	
	<ol style="list-style-type: none"> 1. Has the refugee intentionally acquired a new nationality after the granting of the protection? 2. If so, does the country of the new nationality provide effective protection?
Article 11(1)(d)	
Article 11(1)(d) deals with situations where a refugee has voluntarily returned to the country which s/he left or remained outside of due to persecution. The refugee must have also re-established her/himself in that country.	
	<ol style="list-style-type: none"> 1. Has the refugee effectively re-established her/himself in her/his country of origin? <ol style="list-style-type: none"> (a) Has the refugee acted voluntarily? (b) Did s/he intentionally re-establish in the country of origin? 2. If so, does the country of the new nationality provide effective protection?

Article 14 – Revocation of, ending or refusal to renew refugee status

Articles 14(1), 11(1)(e) and (f)	
Articles 14(1), 11(1)(e) and (f) deal with change of circumstances	
Articles 14(1), 11(1)(e)	
A. Is the person concerned a third-country national?	
B. Have the circumstances in connection with which the person concerned has been recognised as a refugee ceased to exist?	
	<ol style="list-style-type: none"> 1. Comparing the facts on which the initial recognition of refugee status was based to those now existing, has there been a change of circumstances? 2. Is the change of a sufficiently significant and non-temporary nature? <ol style="list-style-type: none"> (a) Have the factors which formed the basis of the refugee's fear of persecution been permanently eradicated? (The greater the risk of persecution, the more permanent the stability of the changed circumstances and the more amenable to forecasting future events the situation needs to be.) (b) Has a sufficiently long period of observation elapsed so that the situation can be regarded as consolidated?
C. Can the person concerned no longer refuse to avail himself or herself of the protection of the country of nationality?	
	<ol style="list-style-type: none"> 1. Is there effective protection against persecution for the reasons on which the original persecution was based? 2. Is this protection afforded by one of the actors enumerated in Article 7?
D. Is there a causal connection between the change in circumstances and the impossibility for the person concerned to refuse to avail himself or herself of the protection now existing?	
E. Are there no other circumstances which give rise to a well-founded fear of persecution?	
F. Are there no compelling reasons for refusing to avail oneself of the protection of the country of origin?	
	<ol style="list-style-type: none"> 1. What were the factual circumstances of the original persecution? 2. What would be the consequences of a return to the country of origin? 3. Assessing both aspects referred to, do they constitute exceptional, asylum-related circumstances which make it impossible reasonably to require the person concerned to return?

Articles 14(1), 11(1)(f)	
A. Is the person concerned a stateless individual?	
B. Have the circumstances in connection with which the person concerned has been recognised as a refugee ceased to exist ?	
	<ol style="list-style-type: none"> 1. Comparing the facts on which the initial recognition of refugee status was based to those now existing, has there been a change of circumstances? 2. Is the change of a sufficiently significant and non-temporary nature? <ol style="list-style-type: none"> (a) Have the factors which formed the basis of the refugee's fear of persecution been permanently eradicated? (The greater the risk of persecution, the more permanent the stability of the changed circumstances and the more amenable to forecasting future events the situation needs to be.) (b) Has a sufficiently long period of observation elapsed so that the situation can be regarded as consolidated?
C. Can the person concerned no longer refuse to avail himself or herself of the protection of the country of former habitual residence ?	
	<ol style="list-style-type: none"> 3. Is there effective protection against persecution for the reasons on which the original persecution was based? 4. Is this protection afforded by one of the actors enumerated in Article 7? 5. Is the person concerned able to return to the country of former habitual residence?
D. Is there a causal connection between the change in circumstances and the impossibility for the person concerned to refuse to avail himself or herself of the protection now existing?	
E. Are there no other circumstances which give rise to a well-founded fear of persecution?	
F. Are there no compelling reasons for refusing to avail oneself of the protection of the country of origin?	
	<ol style="list-style-type: none"> 1. What were the factual circumstances of the original persecution? 2. What would be the consequences of a return to the country of origin? 3. Assessing both aspects referred to, do they constitute exceptional, asylum-related circumstances which make it impossible reasonably to require the person concerned to return?
Article 14(3)(a)	
<p>Article 14 (3)(a) deals with persons who had been granted the protection and should have been excluded in regards to the exclusion clauses provided by Articles 12 and 17. The decision tree in the EASO publication Exclusion: Articles 12 & 17 Qualification Directive (2011/95/EU) – A Judicial Analysis (January 2016) apply analogously.</p>	

<p>Article 14(3)(b) Article 14(3)(b) deals with revocation , ending of or refusal to renew the refugee status, after he or she has been granted refugee status if it is established by the Member State concerned that his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status</p>	
<p>A. Are the two cumulative elements which characterise the misrepresentation or omission present?</p>	
<p>2. Is there a causal link between these statements and the refugee status determination?</p> <p>The misrepresentation or omission must have had a decisive influence on the refugee status determination.</p>	<p>1. Was the asylum claim based on objectively incorrect statements or omission by the applicant?</p> <p>This first element is satisfied by demonstrating the existence of erroneous or false information or document such as the giving of a false nationality, multiple asylum applications, false identity...</p>
<p>B. Did the applicant intend to mislead?</p> <p>It is for the court or tribunal to decide whether, as a matter of law, intention to mislead is a necessary element of Article 14(3)(b). If, and only if, this is held to be the case, all the facts of the case need to be assessed in order to determine whether such an intention was present.</p>	
<p>Article 14(4)(a) Article 14(4)(a) allows Member States to end protection for reasons of security of the Member State concerned.</p>	
<p>Do the facts of the case raise potential issues such that the person concerned might be considered to be 'a danger to the security of the Member State in which he or she is present' within the meaning of Article 14(4)(a)?</p>	
	<p>1. What is the nature of the actions undertaken by the person concerned in the country of origin, in a third country, and on the territory of the country of refuge?</p>
	<p>2. What is the nature of the actions undertaken by the person prior to and after leaving his or her country of origin?</p>
	<p>3. What is the potential danger to the security of the State of refuge? (a) Is there a danger to the integrity of the State of refuge? (b) Is there a danger to the state's institutions?</p>
	<p>4. Is there a link (nexus) between the presence of the person on the territory of the State of refuge and the danger considered to exist? (a) How did the person act and behave on the territory of the country of refuge? (b) Has the decision-maker conducted a proper forward-looking assessment of whether the applicant poses a risk to the security of the host country?</p>
	<p>5. Does the need to protect the community within the state of refuge outweigh the interest of the individual to be protected from persecution?</p>

Article 14(4)(b) Article 14(4)(b) allows Member States to end protection for reasons of danger to the community.	
Do the facts of the case raise potential issues such that the person concerned ‘having been convicted by a final judgment of a particularly serious crime’ might be considered to be ‘a danger to the community of the Member State in which he or she is present ’ within the meaning of Article 14(4)(b)?	
	1. Was the person concerned convicted by final judgment in the country of origin, in a third country, or on the territory of the country of refuge?
	2. What is the nature of the crime(s) for which the person concerned was convicted in the country of origin, in a third country, and on the territory of the country of refuge?
	3. What is the potential danger to the community of the State of refuge? Is there a real risk of re-offending, i.e. is there a serious threat that the person concerned will commit comparable crimes in the future? This element must be assessed considering one or more of the following criteria, either individually or in combination: <ul style="list-style-type: none"> • the criminal nature and gravity of the acts committed; • the responsibility of the applicant for the acts; • the type and severity of the sentence imposed; • the date on which the acts occurred; • any repetitive character of the acts and offences that may exist.
	4. Is there a link (nexus) between the crime for which the person was convicted and the danger the person constitutes to the community of the host country? (a) What was the nature of the person’s behaviour following the acts committed and/or the sentence handed down for those acts (e.g. sentence served, remission of sentence for good conduct, respect of obligations from a restricted-release regime, etc.)? (b) How did the applicant act and behave on the territory of the country of refuge? (c) On a forward-looking assessment (prognosis), does the person concerned pose a risk to the community of the host country?
	5. Does the need to protect the community within the state of refuge outweigh the interest of the individual to be protected from persecution?

Article 16 – Cessation of subsidiary protection status

The Decision Tree in respect of Article 11(e) and (f) applies analogously.

Article 19 – Revocation of, ending of or refusal to renew subsidiary protection status

Articles 19(1), 16 Articles 19(1), 16 deal with the influence of changed circumstances on subsidiary protection status.	
A. Have the circumstances which led to the granting of subsidiary protection status ceased to exist or changed?	
	1. Comparing the facts on which the initial grant of subsidiary protection status was based to those now existing, has there been a change of circumstances?
	2. Is the change of a sufficiently significant and non-temporary nature? (a) Have the factors which formed the basis of the risk of serious harm been permanently eradicated? (The greater the risk of serious harm, the more permanent the stability of the changed circumstances and the more amenable to forecasting future events the situation needs to be.) (b) Has a sufficiently long period of observation elapsed so that the situation can be regarded as consolidated?
B. Is protection no longer required?	
	Is there effective protection against the serious harm the risk of which originally led to the grant of subsidiary protection status?
C. Is there a causal connection between the change in circumstances and the end of the need for protection?	
D. Are there no other circumstances which give rise to a real risk of serious harm?	
E. Are there no compelling reasons for refusing to avail oneself of the protection of the country of origin?	
	1. What were the factual circumstances of the previous serious harm?
	2. What would be the consequences of a return to the country of origin?
	3. Assessing both aspects referred to, do they constitute exceptional circumstances related to subsidiary protection which make it impossible reasonably to require the person concerned to return?
Articles 19(2), 17(3) Articles 19(2), 17(3) deal with situations where the applicants should have been excluded from subsidiary protection because they left their country of origin in order to avoid criminal sanctions.	
At the time of granting subsidiary protection status, should the person concerned have been excluded applying the following tests?	
	1. Do the facts of the case raise potential exclusion issues with regard to acts that fall under Article 17(1)?
	2. If the prerequisites for the application of Article 17(1) are not fulfilled, it must be considered whether (cumulatively): (a) Has the person concerned committed one or more crimes? (b) Were the crimes committed outside the country of refuge? (c) Were the crimes committed prior to the admission into the country of refuge? (d) Would the crimes in question be punished by imprisonment had they been committed in the state of refuge?

	<p>3. For what reason did the person concerned leave his or her country of origin?</p> <p>(a) Was it solely in order to avoid sanctions resulting from the crimes committed?</p> <p>(b) Was it for diverse other reasons?</p>
<p>Articles 19(3)(a), 17(1)(a), 17(2) Articles 19(3)(a), 17(1)(a), 17(2) deal with original or subsequent exclusion from subsidiary protection because of the commission of international crimes.</p>	
<p>Applying the following tests, are the conditions for exclusion under Article 17(1)(a) met either because of facts already existing at the time of granting subsidiary protection or because of facts which arose afterwards?</p>	
<p>A. It must be considered whether the facts of the case raise potential exclusion issues with regard to acts that may constitute international crimes within the meaning of Article 17(1)(a).</p>	
	<p>1. Does the factual situation involve an international armed conflict?</p>
	<p>2. If no, crimes against peace cannot be considered.</p>
	<p>3. If yes, the possibility of the application of Article 17(1)(a) ‘crimes against peace’ must be considered:</p> <p>(a) Were the acts in question related to planning, preparing, initiating or waging of a war of aggression or a war in violation of international treaties, agreements or assurances?</p> <p>AND</p> <p>(b) Did the person concerned hold a position of authority within a State?</p>
	<p>4. Does the factual situation involve acts that occurred during an armed conflict?</p>
	<p>5. If no, war crimes cannot be considered.</p>
	<p>6. If yes, the possibility of an application of Article 17(1)(a) ‘war crimes’ must be considered:</p> <p>(a) Did an armed conflict exist at the relevant time, and if so, was the armed conflict international or non-international in character? In the case of international armed conflicts, the possible application of Article 17(1)(a) ‘crimes against peace’ should be considered.</p> <p>(b) Was there a link (nexus) between the acts in question and the armed conflict?</p> <p>(c) If the nexus exists, do the acts in question meet the definition of a war crime under the applicable international standards and jurisprudence (in particular: ICC Statute (see also Elements of Crimes), 1949 Geneva Conventions and 1977 Additional Protocols, ICTY Statute, ICTR Statute)?</p>
	<p>7. Do the acts in question fall within Article 17(1)(a) ‘crimes against humanity’?</p> <p>(a) Do the acts in question fall within the definition of the underlying serious crimes provided for in Article 7 of the ICC Statute?</p> <p>AND</p> <p>(b) Did the acts in question occur as part of a widespread or systematic attack against a civilian population?</p>

B. If it has been determined that acts within the scope of Article 17(1)(a) have taken place, does the person concerned incur individual responsibility for these acts?

	<p>1. In light of the relevant definitions of the crime(s) in question and depending on the mode of individual responsibility, does the conduct of the person concerned meet the actus reus and mens rea requirements?</p> <p>(a) Did the person concerned incur individual responsibility as perpetrator of the crimes in question?</p> <p>(b) Did the person concerned incur individual responsibility for the commission of crimes by other persons that fall within the scope of Article 17(1)(a)?</p> <p>These questions relate to persons who incite or otherwise participate in the commission of the crimes or acts in Article 17(1)(a). This could include planning, ordering, soliciting, instigating, or otherwise inducing the commission of such crime by another person, or by making a contribution to it through aiding and abetting or on the basis of participation in a joint criminal enterprise.</p> <p>(c) If appropriate when examining the mens rea, are the circumstances such that they may negate individual responsibility, e.g. lack of mental capacity, involuntary intoxication or immaturity?</p> <p>If one of the three exclusion grounds enumerated under Article 17(1)(a) is found to be relevant and applicable and the criteria for establishing individual responsibility are satisfied, serious consideration should be given to ending subsidiary protection.</p> <p>Although a presumption of individual responsibility applies in situation where sufficient information to meet the standard of ‘serious reasons for considering’ is provided, individuated evidence should still be considered and the applicant given the opportunity to rebut the presumption.</p>
	<p>2. If the actus reus and mens rea requirements are otherwise met, could any of the following factors exonerate the applicant from his personal responsibility?</p> <p>(a) Self-defence (or defence of others);</p> <p>(b) Superior orders;</p> <p>Please note that this defence does not apply in respect of crimes against humanity (Article 33(2) Rome Statute).</p> <p>(c) Defence of duress or coercion.</p>

Articles 19(3)(a), 17(1)(b),17(2) Articles 19(3)(a), 17(1)(a), 17(2) deal with original or subsequent exclusion because of serious crimes.	
Applying the following tests, are the conditions for exclusion under Article 17(1)(b) met either because of facts already existing at the time of granting subsidiary protection or because of facts which arose afterwards?	
A. Do the facts of the case raise potential exclusion issues with regard to acts that may constitute serious crimes within the meaning of Article 17(1)(b)?	
	1. Were the acts committed in the country of origin, in a third country or on the territory of the country of refuge?
	2. Do the acts in question constitute a crime? (a) Do the acts in question constitute a crime in a large number of jurisdictions? (b) Do the acts in question constitute a crime in light of transnational criminal law standards, where applicable?
	3. Do the acts in question constitute a serious crime? (a) Is the act a deliberate capital crime or a grave punishable act? (b) The element of the seriousness of the crime must be assessed considering one or more of the following criteria, either individually or in combination: <ul style="list-style-type: none"> • Nature of the act (severity of the harm caused, damage inflicted); Degree of violence and methods used (e.g. use of force or of a deadly weapon); • The form of the procedure used to prosecute the crime in most jurisdictions; • The nature and duration of punishment foreseen by law (maximum penalty which could be imposed) in most jurisdictions; • The duration of sentence handed down, where applicable. This list is not to be considered as exhaustive and additional criteria can be assessed where necessary. (c) Does national law provides specific features or guidance to assess the gravity of the crime?
B. If it has been determined that acts within the scope of article 17(1)(b) have taken place, does the person concerned incur individual responsibility for these acts?	
	The Decision Tree in respect of Article 17(1)(a) applies analogously in this respect.

Articles 19(3)(a), 17(1)(c), 17(2) Articles 19(3)(a), 17(1)(c), 17(2) deal with original or subsequent exclusion from subsidiary protection because of acts contrary to the purposes and principles of the United Nations.	
Applying the following tests, are the conditions for exclusion under Article 17(1)(c) met either because of facts already existing at the time of granting subsidiary protection or because of facts which arose afterwards?	
A. Do the facts of the case raise potential exclusion issues with regard to acts that may constitute ‘acts contrary to the purposes and principles of the United Nations’ within the meaning of Article 17(1)(c)?	
	1. Do the acts in question have the requisite international dimension? Are the acts in question capable of affecting international peace and security, or friendly relations between States?
	2. Do the facts of the case raise exclusion issues, which, by their nature and gravity, fall within the scope of Article 17(1)(c)? (a) Do the acts in question constitute serious and sustained human rights violations? (b) Have the acts in question been designated by the international community as being ‘contrary to the purposes and principles of the United Nations’, e.g., in resolutions of the UN Security Council and/or the General Assembly? (c) Do the acts in question constitute acts of terrorism as per relevant international standards?
B. If it has been determined that acts within the scope of Article 17(1)(c) have taken place, does the person concerned incur individual responsibility for these acts?	
	The Decision Tree in respect of Article 17(1)(a) applies analogously in this respect.
Articles 19(3)(a), 17(1)(d), 17(2) Articles 19(3)(a), 17(1)(d), 17(2) deal with original or subsequent exclusion from subsidiary protection because the person concerned constitutes a danger to the community or to the security of the Member State in which he or she is present.	
Applying the following tests, are the conditions for exclusion under Article 17(1)(d) met either because of facts already existing at the time of granting subsidiary protection or because of facts which arose afterwards?	
A. Do the facts of the case raise potential exclusion issues such that the applicant or refugee might be considered to be ‘a danger to the community or to the security of the Member State in which he or she is present’ within the meaning of Article 17(1)(d)?	
	1. What is the nature of the acts and offences committed by the applicant or refugee in the country of origin, in a third country, AND on the territory of the country of refuge?
	2. What is the nature of the acts and offences that were committed by the applicant or refugee prior to, AND after leaving his or her country of origin?

	<p>3. What is the potential danger to the community and/or to the security of the State of refuge?</p> <p>(a) Is there a real risk of re-offending, i.e. is there a serious threat that the person concerned will commit comparable crimes in the future? This element must be assessed considering one or more of the following criteria, either individually or in combination:</p> <ul style="list-style-type: none"> • the criminal nature and gravity of the acts committed; • the responsibility of the applicant for the acts; • the possible criminal proceedings brought against the applicant, including the type and severity of the sentence imposed; • the date on which the acts occurred; • any repetitive character of the acts and offences that may exist. <p>(b) Does the need to protect the community within the state of refuge outweigh the interest of the individual to be protected from persecution?</p>
	<p>4. Is there a link (nexus) between the presence of the applicant or refugee on the territory of the State of refuge and the danger considered to exist?</p> <p>(a) What was the nature of the applicant's or refugee's behaviour following the acts committed and/or the sentence handed down for those acts (e.g. sentence served, remission of sentence for good conduct, respect of obligations from a restricted-release regime etc.)</p> <p>(b) What were the circumstances in which the applicant or refugee entered the territory of the State of refuge (e.g., fugitive status)?</p> <p>(c) How did the applicant or refugee act and behave on the territory of the country of refuge?</p> <p>(d) Has the decision-maker conducted a proper forward-looking assessment of whether the applicant or refugee poses a risk to the security or the community of the host country?</p>
<p>Article 19(3)(b) Article 19(3)(b) deals with situations where a misrepresentation or omission of facts was decisive for the granting of subsidiary protection status.</p>	
<p>The Decision Tree in respect of Article 14(3)(b) applies analogously.</p>	

APPENDIX C — Methodology

Methodology for professional development activities available to members of courts and tribunals

Background and introduction

Article 6 of the EASO founding Regulation²⁵⁰ (hereinafter the Regulation) specifies that the Agency shall establish and develop training available to members of courts and tribunals in the Member States. For this purpose, EASO shall take advantage of the expertise of academic institutions and other relevant organisations, and take into account the Union’s existing cooperation in the field with full respect to the independence of national courts and tribunals.

With the purpose of supporting the enhancement of quality standards and harmonisation of decisions across the EU, and in line with its legal mandate, EASO provides for a two-fold training support that includes the development and publication of professional development materials and the organisation of professional development activities. With the adoption of this methodology, EASO aims to outline the procedures that will be followed for the implementation of its professional development activities.

In undertaking these tasks, EASO is committed to follow the approach and principles outlined in the field of EASO’s cooperation with courts and tribunals as adopted in 2013²⁵¹. Following consultation with the EASO network of courts and tribunal members, amendments have been made to this methodology so that it better reflects developments that have occurred in the meantime.

Professional Development Series (formerly curriculum)

Content and scope - In line with the legal mandate provided by the Regulation and in cooperation with courts and tribunals, it was established that EASO will adopt a professional development curriculum aimed at providing courts and tribunal members with a full overview of the Common European Asylum System (hereinafter the CEAS). Following discussions during the Annual Coordination and Planning Meeting of the EASO network of court and tribunal members in December 2014 and thereafter, the point was raised that the term curriculum did not accurately reflect the scope of the materials to be developed nor did it properly accommodate the particular requirements of the target group. Consequently, having consulted with members of the network, the nomenclature used was amended. In the future, reference will be made to the **EASO Professional Development Series** for members of courts and tribunals (hereafter: **EASO PDS**). This series will consist, inter alia, of a number of **Judicial Analyses**, which will be accompanied in turn by **Judicial Trainer’s Guidance Notes**. The former will elaborate on substantive aspects of the subject matter from the judicial perspective, whereas the

⁽²⁵⁰⁾ Regulation 439/2010/EU of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (hereinafter the regulation).

⁽²⁵¹⁾ Note on EASO’s cooperation with Member State’s Courts and Tribunals, 21 August 2013.

latter will serve as a useful tool for those charged with organising and conducting professional development or training meetings.

The detailed content of the curriculum [as it then was, now Series] as well as the order in which the chapters will be developed was established following a needs assessment exercise conducted in cooperation with the EASO network of courts and tribunals (hereinafter the EASO network) which presently comprises EASO national contact points in the Member State's courts and tribunals, the Court of Justice of the EU (CJEU), the European Court of Human Rights (ECtHR) as well as the two judicial bodies with whom EASO has a formal exchange of letters: the International Association of Refugee Law Judges (hereafter IARLJ) and the Association of European Administrative Judges (hereafter AEAJ). In addition, other partners including UNHCR, EU Agency for Fundamental Rights (FRA), European Judicial Training Network (EJTN) and Academy of European Law (ERA) are also to be consulted as appropriate. The outcome of the exercise will also be reflected in the annual work plan adopted by EASO within the framework of EASO's planning and coordination meetings. Taking into consideration the needs communicated by the EASO network, European and national jurisprudential developments, the level of divergence in the interpretation of relevant provisions and developments in the field, training materials will be developed in line with structure agreed with the stakeholders.

In the meantime, a number of events have occurred, which have created the need for a re-assessment of both the list of chapters and the order in which they ought to be dealt with. Among others, work has been started, and in some cases completed, on certain chapters (subsidiary protection – Article 15(c) QD and exclusion). In addition, other chapters that were included on the original list have since been set aside for completion within the framework of a contract concluded between EASO and IARLJ-Europe for the provision of professional development materials on certain core subjects²⁵². This was done with a view to accelerating the process for the development of the materials and is being conducted with the involvement of the members of the EASO network, who are afforded an opportunity to comment on drafts of the materials being developed. In light of these developments, there is a need for a re-assessment of this methodology. In order to increase the foreseeability of the manner in which remaining chapters will be dealt with and to provide a more reliable roadmap for the future, a re-assessment exercise was carried out in autumn of 2015, whereby members of the EASO network of court and tribunal members provided an opinion on the order in which chapters were to be developed.

Completed thus far:

- Article 15(c) Qualification Directive (2011/95/EU)
- Exclusion: Articles 12 & 17 Qualification Directive (2011/95/EU)

Under development by IARLJ-Europe within the framework of a contract with EASO:

- Introduction to the CEAS
- Qualification for International Protection
- Access to procedures (incl. gaining access to procedures, individual procedural aspects in light of the APD (recast) as well as access to an effective remedy)
- Evidence assessment and credibility

Remaining chapters to be developed

⁽²⁵²⁾ These core subjects consist of Judicial Analyses on: an Introduction to the Common European Asylum System; Qualification for International Protection; Evidence and Credibility Assessment, and; Asylum Procedures.

- End of protection
- Reception in the context of the Reception Conditions Directive (recast)
- Evaluating and using Country of Origin Information
- Accounting for vulnerability in judicial decision-making in the asylum process
- International protection in situations of armed conflict
- Fundamental Rights and international refugee law

Involvement of experts

Drafting teams - The EASO PDS will be developed by EASO in cooperation with the EASO network through the establishment of specific working groups (drafting teams) for the development of each chapter of the PDS with the exception of those chapters being developed under the auspices of the contract concluded with IARLJ. The drafting teams will be composed of experts nominated through the EASO network. In line with EASO's work programme and the concrete plan adopted at the annual planning and coordination meetings, EASO will launch a call for experts for the development of each chapter.

The call will be sent to the EASO network specifying the scope of the chapter to be developed, the expected timeline and the number of experts that will be required. EASO national contact points for members of courts and tribunals will then be invited to liaise with national courts and tribunals for the identification of experts who are interested and available to contribute to the development of the chapter.

Based on the nominations received, EASO will share with the EASO network a proposal for the establishment of the drafting team. This proposal will be elaborated by EASO in line with the following criteria:

1. Should the number of nominations received equal or be below the required number of experts, all nominated experts will automatically be invited to take part in the drafting team.
2. Should the nominations received exceed the required number of experts, EASO will make a motivated pre-selection of experts. The pre-selection will be undertaken as follows:
 - EASO will prioritise the selection of experts who are available to participate throughout the whole process, including participation in all expert meetings.
 - Should there be more than one expert nominated from the same Member State, EASO will contact the focal point and ask him/her to select one expert. This will allow for a wider Member State representation in the group.
 - EASO will then propose the prioritisation of court and tribunal members over legal assistants or rapporteurs.
 - Should the nominations continue to exceed the required number of experts, EASO will make a motivated proposal for a selection that takes into account the date when nominations were received (earlier ones would be prioritised) as well as EASO's interest in ensuring a wide regional representation.

EASO will also invite UNHCR to nominate one representative to join the drafting team.

The EASO network will be invited to express their views and/or make suggestions on the proposed selection of experts within a maximum period of 10 days. The final selection will take into account the views of the EASO network and confirm the composition of the drafting team.

Consultative group - In line with the Regulation, EASO will seek the engagement of a consultative group composed of representatives from civil society organisations and academia in the development of the PDS.

For the purpose of establishing the consultative group, EASO will launch a call for expression of interest addressed to the members of the EASO Consultative Forum and other relevant organisations, experts or academics recommended by the EASO network.

Taking into consideration the expertise and familiarity with the judicial field of the experts and organisations who respond to the call, as well as the selection criteria of the EASO Consultative Forum, EASO will make a motivated proposal to the EASO network that will ultimately confirm the composition of the group. Members of the consultative group will be invited to either cover all developments or focus on areas related to their particular expertise.

The EU Agency for Fundamental Rights (FRA) will be invited to join the consultative group.

EASO PDS development

Preparatory phase - Prior to the initiation of the drafting process, EASO will prepare a set of materials, including but not restricted to:

1. A bibliography of relevant resources and materials available on the subject
2. A compilation of European and national jurisprudence on the subject

Along with the EASO network of court and tribunal members²⁵³, the consultative group will play an important role in the preparatory phase. For this purpose, EASO will inform the consultative group and the EASO network of the scope of each chapter and share a draft of the preparatory materials together with an invitation to provide additional information that is deemed of relevance to the development. This information will be reflected in the materials which will then be shared with the respective drafting team.

Drafting process - EASO will organise at least two (but possibly more where necessary) working meetings for each chapter development. In the course of the first meeting, the drafting team will:

- Nominate a coordinator/s for the drafting process.
- Develop the structure of the chapter and adopt the working methodology.
- Distribute tasks for the drafting process.
- Develop a basic outline of the content of the chapter.

Under the coordination of the team coordinator, and in close cooperation with EASO, the team will proceed to develop a preliminary draft of the respective chapter.

In the course of the second meeting, the group will:

- Review the preliminary draft and agree on the content.
- Ensure consistency of all parts and contributions to the draft.
- Review the draft from a didactical perspective.

⁽²⁵³⁾ UNHCR will also be consulted.

On a needs basis, the group may propose to EASO the organisation of additional meetings to further develop the draft. Once completed, the draft will be shared with EASO.

Quality review - EASO will share the first draft completed by the drafting team with the EASO network, UNHCR and the consultative group that will be invited to review the materials with a view to assisting the working group in enhancing the quality of the final draft.

All suggestions received will be shared with the coordinator of the drafting team who will coordinate with the drafting team to consider the suggestions made and prepare a final draft. Alternatively, the coordinator may suggest the organisation of an additional meeting to consider the suggestions when these are particularly extensive or would considerably affect the structure and content of the chapter.

On behalf of the drafting team, the coordinator will then share the chapter with EASO.

Updating process - In the context of the annual planning and coordination meetings, EASO will invite the EASO network to share their views regarding the need to update the chapters of the PDS.

Based on this exchange, EASO may:

- Undertake minor updates to improve the quality of the chapters including the inclusion of relevant jurisprudential developments. In this case, EASO will directly prepare a first update proposal, the adoption of which will be undertaken by the EASO network.
- Call for the establishment of a drafting team to update one or several chapters of the PDS. In this case, the update will follow the same procedure outlined for the development of the PDS.

Implementation of the EASO PDS

In cooperation with the EASO network members and relevant partners (e.g. EJTN) EASO will support the use of the PDS by national training institutions. EASO's support in this regard will involve:

Judicial Trainers Guidance Note – The Guidance Note will serve as a practical reference tool to judicial trainers and provide assistance with regard to the organisation and implementation of practical workshops on the PDS. In line with the same procedure outlined for the development of the different chapters composing the PDS, EASO will establish a drafting team to develop a Judicial Trainers' Guidance Note. It is envisaged that this drafting team may include one or more members of the drafting team, which was responsible for drafting the Judicial Analysis on which the Guidance Note will be based.

Workshops for national Judicial Trainers - Furthermore, following the development of each chapter of the PDS, EASO will organise a workshop for national Judicial Trainers that provides an in depth overview of the chapter as well as the methodology suggested for the organisation of workshops at national level.

- **Nomination of national Judicial Trainers and preparation of the workshop** - EASO will seek the support of at least two members of the drafting team to support the preparation and

facilitate the workshop. Should no members of the drafting team be available for this purpose, EASO will launch a specific call for expert Judicial Trainers through the EASO network.

- **Selection of participants** - EASO will then send an invitation to the EASO network for the identification of a number of potential judicial trainers with specific expertise in the area, who are interested and available to organise workshops on the EASO PDS at the national level. Should the nominations exceed the number specified in the invitation, EASO will make a selection that prioritises a wide geographical representation as well as the selection of those judicial trainers who are more likely to facilitate the implementation of the PDS at national level. On a needs basis and in line with its work programme and the annual work plan, as adopted within the framework of EASO's planning and coordination meetings, EASO may consider the organisation of additional workshops for judicial trainers.

National workshops - In close cooperation with the EASO network, EASO will establish contact with relevant judicial training institutions at the national level to promote the organisation of workshops at the national level. In doing so, EASO will also support the engagement of court and tribunal members who contributed to the development of the PDS or participated in EASO's workshops for judicial trainers.

EASO's advanced workshops

EASO will also hold an annual advanced workshop on selected aspects of the CEAS with the purpose of promoting practical cooperation and a high-level dialogue among court and tribunal members.

Identification of relevant areas - EASO's advanced workshops will focus on areas with a high level of divergence in national interpretation or areas where jurisprudential development is deemed relevant by the EASO network. In the context of its annual planning and coordination meetings, EASO will invite the EASO network as well as UNHCR and members of the consultative group to make suggestions for potential areas of interest. Based on these suggestions, EASO will make a proposal to the EASO network that will finally take a decision on the area to be covered by the following workshop. Whenever relevant, the workshops will lead to the development of a chapter of specific focus within the PDS.

Methodology - For the preparation of the workshops, EASO will seek the support of the EASO network, which will contribute to the development of the workshop methodology (e.g. case discussions, moot court sessions etc) and preparation of materials. The methodology followed will determine the maximum number of participants for each workshop.

Participation in EASO's workshops - Based on the methodology, and in consultation with the judicial associations, EASO will determine the maximum number of participants at each workshop. The workshop will be open to members of European and national courts and tribunals, the EASO network, the EJTN, FRA and UNHCR.

Prior to the organisation of each workshop, EASO will launch an open invitation to the EASO network and the above referred organisations specifying the focus of the workshop, methodology, maximum number of participants and registration deadline. The list of participants will ensure a good representation of court and tribunal members and prioritise the first registration request received from each Member State.

Monitoring and evaluation

In developing its activities, EASO will promote an open and transparent dialogue with the EASO network, individual court and tribunal members, UNHCR, members of the consultative group and participants in EASO's activities, who will be invited to share with EASO any views or suggestions that can potentially improve the quality of its activities.

Furthermore, EASO will develop evaluation questionnaires that will be distributed at its professional development activities. Minor suggestions for improvement will be directly incorporated by EASO that will inform the EASO network of the general evaluation of its activities in the context of its annual planning and coordination meeting.

On an annual basis, EASO will also provide the EASO network with an overview of its activities as well as relevant suggestions received for further developments which will be discussed at the annual planning and coordination meetings.

Implementing principles

- In undertaking its professional development activities, EASO will take in due regard EASO's public accountability and principles applicable to public expenditure.
- EASO and the courts and tribunals of the EU+ countries will have a joint responsibility for the professional development series. Both partners shall strive to agree on the content of each of its chapters so as to assure '*judicial auspices*' of the final product.
- The resulting chapter will be part of the EASO PDS, including copyright and all other related rights. As such, EASO will update it when necessary, and fully involve the courts and tribunals of the EU+ countries in the process.
- All decisions related to the implementation of the EASO PDS and selection of experts will be undertaken by agreement of all partners.
- The drafting, adoption and implementation of the EASO PDS will be undertaken in accordance with the methodology for professional development activities available to members of courts and tribunals

Grand Harbour Valletta, 29 October 2015

APPENDIX D — Select Bibliography

- E. Feller/V. Türk/F. Nicholson (eds.), *Refugee Protection in International Law*. UNHCR's Global Consultations on International Protection, Cambridge University Press, 2003.
- J. Fitzpatrick, 'Current Issues in Cessation of Protection under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention', commissioned for UNHCR, 2001.
- G.S Goodwin-Gill and J. McAdam, *The Refugee in International Law*, 3rd edn., Oxford University Press, 2007.
- A. Grahl-Madsen, *The Status of Refugees in International Law*, A.W. Sijthoff, 1966.
- J.C. Hathaway, 'The Right of States to Repatriate Former Refugees' *Ohio State Journal of Dispute Resolution*, (2005) vol. 20, no. 1.
- J.C. Hathaway and M. Foster, *The Law of Refugee Status*, 2nd edn., CUP, 2014.
- K. Hailbronner and D. Thym (eds.), *EU Immigration and Asylum Law: A Commentary*, 2nd edn., C.H. Beck, 2016.
- W. Kälin, *Grundriss des Asylverfahrens*, Helbing & Lichtenhahn, 1990.
- Sibylle Kapferer, UNHCR, *Cancellation of Refugee Status*, March 2003.
- R. Marx, *Handbuch zum Flüchtlingschutz. Erläuterungen zur Qualifikationsrichtlinie*, 2nd edn., C.H. Beck, 2012.
- UNHCR Standing Committee, *Note on the Cessation Clauses*, May 1997, EC/47/SC/CRP.30.
- UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998.
- UNHCR, *The Cessation Clauses: Guidelines on their Application*, 26 April 1999.
- UNHCR, *Guidelines on International Protection: 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.
- 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.
- 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.
- UNHCR, *Note on Cancellation of Refugee Status*, 22 November 2004, para. 42, 43.
- UNHCR, *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 28 January 2005.
- 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.
- A. Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Oxford University Press, 2011.

APPENDIX E — Compilation of jurisprudence

Court of Justice of the European Union (CJEU) Jurisprudence

Court	Case name/reference/date	Key words/relevance/main points	Cases cited
CJEU	Case C-175/08, C-176/08, C-178/08 and C-179/08, <i>Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, Dier Jamal v Bundesrepublik Deutschland</i> 2.3.2010	This case concerns the interpretation of Article 11 of the Qualification Directive when refugee status is deemed to have ceased to exist. The Court found this is when there has been change of circumstances which is significant and non-temporary and when there is no well-founded fear or other reason to risk being persecuted. States in assessing changes in circumstances must verify that the actors of protection have taken reasonable steps to prevent the persecution and that the person concerned has access to that protection. In making the assessment that there is no further risk the standard of probability used is the same that applied when refugee status was granted.	CJEU - C-3/04 <i>Poseidon Chartering BV v Marianne Zeeschip VOF and Others</i>

European Court of Human Rights (ECtHR) Jurisprudence

Court	Case name/reference/date	Key words/relevance/main points	Cases cited
ECtHR	E.O. v. Finland Application no. 74606/11 5.12.2011	The applicant complained under Article 3 of the Convention about the poor security situation in Nigeria, especially in the Delta region and the Warri area in general. He complained that his personal circumstances would, together with the security situation in Nigeria, put him at real risk of ill-treatment if returned to Nigeria. His personal situation had not changed since the moment when he had been granted asylum, and thus the same grounds of well-founded fear of persecution were still as valid as at the time of his asylum application. The cancelling of his refugee status would require that the circumstances under which he was considered a refugee would have manifestly and permanently ceased to exist, which according to him was not the case. He still feared persecution by the Itsekiri tribe which governed the administrative structures in the Warri area and was supported by the Nigerian Government. Furthermore, the applicant complained under Article 13 of the Convention that he should have had an effective remedy to pursue his case in Finland until a final decision had been reached in his case. The Court concluded that there are no substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if deported to Nigeria in the current circumstances. Accordingly, the complaint under Article 3 of the Convention must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.	• <i>ner v. the Netherlands</i> [GC], no. 46410/99, § 54, ECHR 2006XII <i>Saadi v. Italy</i> [GC], no. 37201/06, § 125, ECHR 2008

National Jurisprudence

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
DE Federal Administrative Court	BVerwGE 10 C 25/10 DE:BVerwG: 1.6.2011	Following the decision of <i>Abdulla et al.</i> (C-175/08) of the European Court of Justice, revocation of refugee status presupposes that a significant and non-temporary change of circumstances has taken place. This is the case if the factors which formed the basis of the recognition of refugee status, may be regarded as having been permanently eradicated. The relevant standard of probability for the determination of the likelihood of future persecution is the same both for the recognition and the revocation of refugee status, i.e. a change in circumstances has to be assessed on the basis of whether there is still a 'considerable' probability of persecution (change from former case law).	CJEU - C-175/08; C-176/08; C-178/08 & C-179/08 <i>Salahadin Abdulla & Ors v Bundesrepublik Deutschland</i> Germany - Federal Administrative Court, 24.2.2011, 10 C 3.10
DE Federal Administrative Court	BVerwGE 10 C 3.10 24.2.2011	Application of the CJEU's ruling of the 2 March 2010, <i>Abdulla et al.</i> Case C 175/08 et al, following the request for a preliminary ruling by the Federal Administrative Court. The High Administrative Court was correct in holding that the circumstances upon which the recognition of refugee status was based have ceased to exist. However, it did not examine sufficiently whether a well-founded fear of persecution persists for other reasons.	CJEU - C-175/08; C-176/08; C-178/08 & C-179/08 <i>Salahadin Abdulla & Ors v Bundesrepublik Deutschland</i>
DE Federal Administrative Court	BVerwGE 10 C 24/10 29.09.2011	A claimant may combine an application to quash the decision to revoke national protection against removal with a claim for international protection made under the condition that the application to quash is not successful. Whether the conditions for revocation of national protection against removal are met is determined exclusively by reference to provisions of national law.	
DE Federal Administrative Court	BVerwGE 10 C 29/10 22.11.2011	The principle of <i>res judicata</i> does not hinder ending protection where after the point in time which was relevant for the original court's decision granting protection the circumstances have altered materially. Standard of probability where applicant relies solely on post-flight reasons for persecution. Art. 4(4) QD does not apply to post-flight reasons for persecution.	
DE Federal Administrative Court	BVerwGE 10 C 10/11 1.3.2012	Whether protection can be ended where a new ground for denying protection is introduced by statute and it has to be determined whether it is intended to apply to applications for protection the decision on which has become final.	
DE Federal Administrative Court	BVerwGE 10 C 4/11 5.6.2012	Relevance of time limits for the institution of administrative proceedings to end protection under national law.	
DE Federal Administrative Court	BVerwGE 10 C 17/12 31.1.2013	A decision to end protection is to be fully reviewed by the court as to its lawfulness, including possible grounds to quash the decision not pleaded by the person concerned and grounds for ending protection not relied on by the administrative authority. Effect of combined sentencing decision which was based on several individual crimes for each of which a separate sentence was determined. Meaning of term of imprisonment of three years under a provision of national law which makes revocation on grounds of danger to the state or to the community conditional on such a sentence. Additionally risk of future offences needs to be established.	
DE Federal Administrative Court	BVerwGE 10 C 27/12 19.11.2013	The principle of <i>res judicata</i> does not preclude ending protection where the status was originally granted by a decision of a court that was induced by fraudulent misrepresentation. Deception as to nationality. Whether revocation because of misrepresentation is mandatory under EU law even though art. 14(3)(b) QD does not mention judicial decisions. Possible drafting error in that provision.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
<p>DE Federal Administrative Court</p>	<p>BVerwGE 10 C 2.10 DE:BVerwG:2011:310311U10C2.10.0 31.03.2011</p>	<p>1. According to Section 73(1) of the Asylum Procedure Act, recognition of refugee status and of the entitlement to asylum must be revoked if the individual concerned brings about reasons for exclusion under Section 3(2) sentence 1 no. 1 or no. 3 of the Asylum Procedure Act after that recognition.</p> <p>2. Not only those who continue or initiate terrorist activities or their support from the Federal Republic of Germany (the 'terrorism reservation'), but also those who commit or support war crimes or crimes from humanity from here, are excluded from the fundamental right to asylum.</p> <p>3. Because the legal status of a person entitled to asylum under Article 16a of the Basic Law and a refugee within the meaning of Directive 2004/83/EC may be confused with one another, the requirements of Union law under Article 3 of the Directive forbid recognising an entitlement to asylum or maintaining that recognition for a person who is excluded from being a refugee under Article 12(2) of the Directive.</p>	
<p>FR National Court of Asylum Law</p>	<p>M. Z. n° 14033523 C+ 5 October 2015</p>	<p>The cessation of refugee status does not lead to the refusal of subsidiary protection. M.Z is an Afghan citizen who was granted refugee status by a decision of the general director of the OFPRA on June 25, 2010 on the grounds of fear of persecution by the Taliban. When OFPRA found out that he had obtained an Afghan passport issued by the Afghan consular authorities in Paris and had travelled back to Afghanistan in December 2012, a decision was taken on October 23rd 2014, ceasing to recognise him as a refugee.</p> <p>Before the Court, M.Z argued that his trip was motivated by his wife's poor health and should be regarded as an absolute necessity, that his fear of persecution regarding Talibans was still current and that he should be granted, at a minimum, subsidiary protection pursuant to Article L 712-1 c) of the CESEDA (reflecting Article 15(c) QD) by reason of the high intensity of indiscriminate violence still prevailing in Afghanistan.</p> <p>The Court, after finding that the general director of the OFPRA had been correct to cease to recognise him as a refugee, examined the situation of the applicant regarding his claim for subsidiary protection and considered, after reviewing available public documentation, that the situation in the province of Logar and more specifically in the district of Pol-e-Alam, where the applicant is originally from, had to be qualified as one of indiscriminate violence resulting from an internal armed conflict and that he had therefore to be granted the benefit of subsidiary protection.</p>	
<p>IE High Court</p>	<p>Adegbuyi -v- Minister for Justice & Law Reform [2012] IEHC 484 1 November 2012</p>	<p>The Court held that the Minister had satisfied it that the applicant provided the asylum authorities with information which was false or misleading in a material particular, that there was a link between the falsity of the information and the grant of refugee status, and that he furnished the false information with the intention to mislead the authorities. The Court held that the evidence rendered the core of the applicant's claim for refugee status unsustainable. The appeal Judge undertook to re-assess all of the information before her and decided, upon the facts, that the initial refugee declaration was void ab initio therefore the individual was never entitled to protection. Consequently, the Court did not proceed to explore the option of cessation further.</p>	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
<p>PL Regional Administrative Court, Warsaw</p>	<p>IV SA/Wa 2684/12 16.5.2013</p>	<p>A foreigner shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. The relevant provision refers to two separate reasons that justify revoking subsidiary protection. The first is that the circumstances which led to the granting of such protection have ceased to exist. The second is that those circumstances have changed, although the change of circumstances must be of such a significant and non-temporary nature that the foreigner no longer faces a real risk of serious harm. Subsidiary protection cannot establish a right that is comparable to, for instance, the right to obtain permission for temporary stay or indefinite leave to remain.</p>	<p>Poland - Regional Administrative Court in Warsaw, 14.1.2010, V SA/Wa 1026/09</p>
<p>PL Regional Administrative Court, Warsaw</p>	<p>V SA/Wa 383/10 21.12.2010</p>	<p>This judgment overturned the decision of the Polish Refugee Board on revocation of refugee status. Adoption of state protection within the meaning of the law means that a foreigner benefits from the protection of the state of his nationality, that he is able to avail himself of this protection and that there exists no well-founded fear of persecution. Adoption of state protection means that the foreigner enjoys the genuine protection of his country of origin. In proceedings on revocation of refugee status, the authority determines whether there are other reasons to justify the foreigner's fear of persecution.</p>	<p>CIUJ - C-175/08, C-176/08, C-178/08 and C-179/08, <i>Aydin Salahadin Abdulla,</i> <i>Kamil Hasan, Ahmed Adem,</i> <i>Hamrin Mosa Rashi, Dier Jamal</i> <i>v Bundesrepublik Deutschland</i> Poland - Supreme Administrative Court, 8.9.2010, II OSK 189/10</p>
<p>FI Supreme Administrative Court</p>	<p>KHO:2008:88 12.12.2008</p>	<p>The applicant's refugee status was revoked due to a change in circumstances in the applicant's country of origin as per section 107 subsection 5 of the Aliens' Act, where the applicant's individual need of protection was assessed in light of the notable and established social change in Sudan. It was regarded that the societal conditions in Sudan, and in particular in South Sudan from where the applicant originates, had changed for the better in a significant and stable way since the applicant arrived in Finland. As a result, this had a bearing on the applicant's refugee status and could be seen to remove the fear of persecution on the grounds of his membership of the SPL and his religious activity</p>	
<p>UK House of Lords</p>	<p>Secretary of State for the Home Department, Ex parte Adan, [1998] UKHL 15 2.4.1998</p>	<p>Whilst a historic fear of persecution which no longer existed might not be irrelevant and might well provide evidence to establish present fear, it was the existence, or otherwise, of the present fear which was determinative under a proper construction of Art. 1A(2). Where a state of civil war existed, it was not enough for an asylum-seeker to show that he would be at risk if he were returned to his country. He must be able to show a „differential impact“. The term „persecution“ in the Convention could not be construed as encompassing fighting between factions in a civil war where the applicant was at no greater risk than fellow clan members. In the instant case, the applicant had failed to prove persecution in the context of civil war, as he had not established that he was subject to a greater risk of ill treatment than the other clan members if he returned to Somalia. Accordingly, the Secretary of State's appeal was allowed.</p>	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
DE Federal Administrative Court	BVerwGE 10 C 13.10 17.11.2011	The applicant's asylum status was revoked as a result of an improvement in the situation in the country of origin. When establishing the necessary 'density of danger' in an internal armed conflict within the meaning of Section 60 (7) (2) Residence Act/Art. 15 (c) Qualification Directive, it is not sufficient to quantitatively determine the number of victims in the conflict. It is necessary to carry out an 'evaluating overview' of the situation, which takes into account the situation of the health system. However, this issue was not decisive in the present case, as the applicant would only face a low risk of being seriously harmed.	Germany - Federal Administrative Court, 27.4.2010, 10 C 5.09 Germany - Federal Administrative Court, 8.9.2011, 10 C 14.10 Germany - Federal Administrative Court, 24.6.2008, 10 C 43.07 Germany – Federal Administrative Court, 14.7.2009, 10 C 9.08 ECtHR - <i>Saadi v Italy</i> , Application no. 37201/06
DE Federal Administrative Court	BVerwGE 10 C 7.11 1.3.2012	1. Changes in the home country are only considered to be sufficiently significant and non-temporary if the refugee's fear of persecution can no longer be regarded as well-founded. 2. Based on the jurisprudence of the European Court of Human Rights (ECtHR) which applies to the concept of 'real risk' according to Article 3 ECHR (European Convention on Human Rights), a uniform standard of probability is applied to assessing the likelihood of persecution in the context of refugee protection, this corresponds to the standard of substantial probability.	Germany – Federal Administrative Court, 7.7.2011, 10 C 26.10 Germany – Federal Administrative Court, 24.2.2011, 10 C 3.10 Germany - Federal Administrative Court, 1.6.2011, 10 C 25.10 CJEU - C-175/08, C-176/08, C-178/08 and C-179/08, <i>Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, Dier Jamal v Bundesrepublik Deutschland</i> Germany - Federal Administrative Court, 29.9.2011, 10 C 24.10
SK Regional Court, Bratislava	M. I. R. v Ministry of the Interior of the Slovak Republic 9 Szaz/16/2013 21.8.2013	The Respondent erred if, in a procedure on the extension of subsidiary protection, it failed to examine the threats to safety for repatriated Afghan nationals. The Respondent, within the context of finding the facts, had completely failed to examine evidence of the existence of serious harm within the meaning of Section 2(f)(2) of the Asylum Act (torture or inhuman or degrading treatment or punishment), and thus failed to address the question of whether, in the event of the Appellant returning (as a person who had left Afghanistan) to his country of origin, he would not also be at risk of this form of serious harm. The Respondent took no evidence in respect of this, which is contrary to the provisions of Section 13a of the Asylum Act. Moreover, its actions were thus contrary to its own established practice, whereby, in (standard) proceedings on applications for international protection, it routinely ascertains the behaviour of state authorities in relation to unsuccessful asylum applicants or other groups of repatriated persons returning to their country of origin.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
DE High Administrative Court, Saarland	3 A 356/11 26.9.2011	The standards of proof for the assessment of possible future persecution are identical for both the refugee status determination procedure and for the revocation procedure (change of legal opinion, following Federal Administrative Court, decisions of 1 June 2011, 10 B 10.10 and 10 C 25.10). The question of whether a change of circumstances in a country of origin is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded can only be answered after an individual assessment.	Germany - High Administrative Court Saarland, 25.8.2011, 3 A 34/10 Germany - High Administrative Court Saarland, 25.8.2011, 3 A 35/10 Germany - Federal Administrative Court, 24.2.2011, 10 C 5.10 Germany - Federal Administrative Court, 1.6.2011, 10 C 25.10 Germany - Federal Administrative Court, 01.6.2011, 10 C 10.10 CJEU - C-175/08; C-176/08; C-178/08 & C-179/08 <i>Salahadin Abdulla & Ors v Bundesrepublik Deutschland</i>
DE Federal Administrative Court	BVerwGE 10 C 26.10 7.7.2011	This case concerned the revocation of asylum and refugee status in the case of a former official of the Kurdistan Workers' Party (PKK) (following the European Court of Justice case of Federal Republic of Germany v B (C-57/09) and D (C-101/09), 09 November 2010).	
SE Migration Court of Appeal	UM 5495-10 13.6.2011	Refugee status was revoked when an individual applied for and received a new passport issued by his/her country of origin. The application for, and use of, the Iraqi passport was considered voluntary. The passport was not handed over to the Migration Board, which indicates that the applicant wished to continue his relationship with his country of origin. Acquiring the passport was not considered by the Court as a single, isolated contact with Iraqi authorities. That the applicant himself had not been directly in contact with them is of little consequence. His actions indicated an intent to re-avail himself of the protection of his country of origin and therefore he was no longer considered a refugee.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
IE High Court	Gashi v Minister for Justice, Equality and Law Reform, [2010] IEHC 436 1.12.2010	This case concerns a revocation decision, which turned on the meaning of Art 14(3)(b) of the Qualification Directive (in particular the word 'decisive' in that Article) in circumstances where the appellant had concealed relevant information. The Court considered that the misleading information went directly to the issue of credibility and held that the declaration of refugee status for the applicant was tainted by misrepresentation, and the original revocation decision was upheld. The applicant had argued that his concealment of the prior asylum claim in the UK (amongst other things) was not decisive to his successful asylum claim in Ireland. The court relied on an analysis of the French and Italian translations of Art 14(3), which the court felt were not worded as precisely as the English text. The court held that the key question is whether the application for asylum would have been determined differently had the information in question not been concealed. In this case, the court considered that the misleading information went directly to the issue of credibility. However, the court did not make a finding that the appellant was never a refugee to begin with. It stated that 'the revocation of an existing declaration on this ground is not a finding that the applicant is not now and never could be a refugee'.	
ES Supreme Court	1660/2006 22.10.2010,	This decision concerns an appeal lodged before the Supreme Court against the decision of the High National Court, confirming the Ministry of Interior's decision to revoke the refugee status of the appellant and her children. This revocation was issued following the voluntary return of the applicant's husband to Colombia, his country of origin.	
DE High Administrative Court Hessen,	5 A 1985/08.A 15.9.2010	This case concerned the revocation of refugee status as a result of the applicant having been convicted of criminal offences. Although the circumstances which led to the recognition of refugee status have not ceased to exist, the revocation of refugee status was deemed to be lawful, since the applicant was convicted of several criminal offences. It was also found that the corresponding provision of German law was in line with Art 14.4 (b) of the Qualification Directive.	
BE Council for Alien Law Litigation	Nr. 46.578 22.7.2010	The CALL was required to determine whether subsidiary protection status can be revoked on the basis of a 'serious crime' committed after status was granted, or if revocation is only possible on the basis of a serious crime committed before subsidiary protection was granted (but unknown at the time of the decision to grant status). The CALL ruled that the Qualification Directive, with reference to the grounds for revocation, clearly shows a difference between the various types of protection and that there is no indication that the Belgian legislator wished to deviate from this. Subsidiary protection can be revoked on the basis of a 'serious crime' committed after protection was granted.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
<p>EL</p> <p>The Council of State</p>	<p>441/2008</p> <p>5.2.2008</p>	<p>The case concerned deportation of a recognized refugee (Articles 32 and 33 of the 1951 Convention relating to the Status of Refugees) after a conviction for a criminal offence under common law. Final conviction for a particularly serious crime is not sufficient legitimate justification for an act of deportation.; instead, the Administration is required to issue a specific ruling that the convicted refugee, given the circumstances under which he committed the offence and his personality, is thereafter a risk to the community as a whole to such an extent that his stay in Greece is no longer tolerable and that his immediate removal from the country is required.</p> <p>A threat to the legal interests of public order does not constitute a reason to revoke refugee status as this is not explicitly referred to in the reasons for terminating refugee status in accordance with Article 1C of the 1951 Convention. Furthermore, it falls within the competence of the Council of State to annul a ruling, issued by relying on Articles 32 and 33 of the 1951 Convention relating to the Status of Refugees, which involves the deportation of an individual outside their country of origin or habitual residence who has been recognized as having refugee status under the said international Convention and who continues to have refugee status.</p>	<p>Greece - Court of Appeal, 24.3.2000, 846</p>
<p>EL</p> <p>The Council of State</p>	<p>495/2000</p> <p>15.9.2000</p>	<p>This case concerned deportation of a recognized refugee (Articles 32 and 33 of the 1951 Convention relating to the Status of Refugees) after a conviction for a criminal offence under common law.</p> <p>Immediate deportation would expose the applicant to the risk of suffering irreparable harm in the event that his application for annulment is successful. Because of the severity of that harm, moves to deport him must be given suspensive effect until there has been a final decision on his application for annulment, even though the decision to deport him was motivated by the protection of public order.</p>	
<p>FR</p> <p>National Court of Asylum Law</p>	<p>M.K., No. 10008275</p> <p>25.11.2011</p>	<p>In order to assess the change of circumstances where refugee status ceased to exist, the competent authorities must 'verify, having regard to the refugee's individual situation, that the actor or actors of protection[...] which may include international organisations controlling the State or a substantial part of the territory of the State, including through the presence of a multinational force in that territory, have taken reasonable steps to prevent persecution, that they therefore operate, in particular, an effective legal system for the detention, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status'. The Court considered that given the particularly significant and permanent changes that had occurred since he had secured his status (in particular Kosovo's declaration of independence and, with the assistance of international organisations and the EU, the establishment of democratic institutions and a State subject to the rule of law), the circumstances that had justified the Applicant's fears, based on his membership of the Albanian community in Kosovo and his commitment to the recognition of the rights of this community, in consequence of which his refugee status had been recognised, had ceased to exist.</p>	<p>CIEU - C-175/08, C-176/08, C-178/08 and C-179/08, <i>Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, Dier Jamal v Bundesrepublik Deutschland</i></p> <p>France – Council of State, 14.2.2013, n°365638</p>
<p>UK</p> <p>Upper Tribunal</p>	<p>RY (Sri Lanka) and Home Department</p> <p>[2016] EWCA Civ 81</p> <p>12.02.2016</p>		
<p>UK</p> <p>House of Lords</p>	<p>Hoxha & Anor v Secretary of State for the Home Department [2005] UKHL 19,</p> <p>10.3.2005</p>	<p>UK House of Lords decision arguing for a 'strict' and 'restrictive' approach to cessation clauses in general.</p>	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
AT Higher Administrative Court	VwGH No. 2001/01/0499 15.5.2003	Ruling that refugee's intent to normalise relations with country of origin is decisive in evaluating application for passport.	
CH Asylum Appeal Commission	ARK 2002 / 8 – 053 5 July 2002	The Commission invalidated the application of 'ceased circumstances' to a refugee from Kosovo and ruled that as long as the UN believes that an international protection force is required, there is no fundamental change.	
UK Court of Appeal	EN (Serbia) v SSHD & KC (South Africa) [2009] EWCA Civ 630 26.6.2009		
UK Upper Tribunal (Immigration and Asylum Chamber)	Dang (Refugee - Query- Revocation) [2013] UKUT 00043 17.1.2013		
IE High Court	Morris Ali v Minister for Justice Equality and Law Reform [2012] IEHC 149 1.3.2012	Revocation – Article 14(1) QD. Case dealt with 'serious crime'. Refugee status revoked as appellant was a person whose presence in the State posed a threat to national security or public policy. Appellant had received a conviction for the possession of drugs for sale and supply. The High Court found that the decision to revoke could not stand as it was not based on a fair an accurate summary of the admitted facts.	
IE High Court	Lukoki v Minister for Justice Equality and Law Reform Unreported, ex tempore, High Court 6.3.2008	Procedural aspect - in the context of a review of a revocation order, the Court considered that the matter came down to a very narrow issue namely whether or not the Minister was reasonable in making the particular decision. The Court could find nothing to suggest that the Minister had acted unreasonably.	
IE High Court	Abramov v Minister for Justice Equality and Law Reform [2010] IEHC 458 17.12.2010	If the presence of a refugee in a State's territory is intolerable the appropriate remedy is expulsion, not the revocation of refugee status. This could only occur when the refugee had been convicted by a final judgment of a particularly serious crime and constituted a danger to the community of the country of refuge. In this case the applicant had not ceased to be a refugee. If the Minister considered his presence in the State to be no longer tolerable, the appropriate course was expulsion, and that was only possible by means of a decision that he had been convicted of a particularly serious crime.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
<p>DE Federal Administrative Court</p>	<p>BVerwG 1 C 16.14 DE:BVerwG:2015:250315U1C16 31.1.2013</p>	<p>Subsidiary protection/right to stay; revocation; serious crime. Qualification of a serious crime by referring to the minimum and maximum penalty stipulated. Some references to the circumstances of the single case (sentence imposed, circumstances of criminal actions). The complainant cannot argue that the crimes committed dated far in the past and that he would not any more constitute a danger to security, because the national provision following Article 17(1)(b) covers cases in which a person is regarded as unworthy to a right to stay.</p>	
<p>DE Federal Administrative Court</p>	<p>BVerwG 10 C 2.10 DE:BVerwG:2011:310311U10C2.10.0 31.3.2011</p>	<p>Asylum; revocation; subsequent criminal actions; war crimes; terrorism; crimes against humanity; international criminal law; purposes and principles of the United Nations. Recognition of refugee status and of the entitlement to asylum shall be revoked if the individual concerned brings about reasons for exclusion after that recognition. Not only those who continue or initiate terrorist activities or their support from the Federal Republic of Germany (the 'terrorism reservation'), but also those who commit or support war crimes or crimes from humanity from here, are excluded from the right to asylum.</p>	
<p>BE Council for Alien Law Litigation</p>	<p>RVV 46.578 22.7.2010</p>	<p>Subsidiary protection; revocation; serious crime after granting decision. Subsidiary protection can be revoked on the basis of a 'serious crime' committed after protection was granted. The applicant claimed that the wording of the relevant national provision was more favourable than the Qualification Directive and implied that subsidiary protection status could only be revoked were it to transpire that the applicant should have been excluded from the status in the first place (on the basis of facts prior to granting status). As the provisions of Article 17(1) and (2) are imperative, the Council for Alien Law Litigation concluded that more favourable rules in national law could not be accepted. The CALL further found that the Qualification Directive gave no territorial or temporal indication regarding the crime. Therefore, and with regard to the intentions of the Belgian legislator, in the case of an application of Article 17(1) and (2) and Article 19(3)(a) and (b) no more favourable provisions could be found in the transposition into Belgian law.</p>	
<p>AT Constitutional Court</p>	<p>VfGH U 1769/10 16.12.2010</p>	<p>Subsidiary protection; revocation; serious crime after granting decision. The Austrian Constitutional Court by referring to Article 17 and 19 and the preparatory works of the Austrian legislator considered that under the specific Austrian provision only crimes committed after subsidiary protection had been granted can be taken into consideration for the revocation of subsidiary protection. See also: BVwG W196 1240593-3/2E, AT:BVWG:2015:W196.1240593.3.00, 29.4.2015; BVwG W221 2107575-1, AT:BVWG:2015:W221.2107575.1.00, 16.7.2015; BVwG W148 1411270-3, AT:BVWG:2015:W148.1411270.3.00, 29.5.2015; BVwG W136 1411996-2, AT:BVWG:2015:W136.1411996.2.00, 26.3.2015;</p>	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
AT Federal Administrative Court	BVwG W182 1315211-3/3E AT:BVVG:2015:W182.1315211.3.00 26.06.2015	Subsidiary protection; revocation; serious crime; conviction. Revocation of subsidiary protection because of conviction for serious crimes committed after subsidiary protection status was granted: armed robbery, drug crimes, theft as a member of a criminal organisation, attempted murder, people smuggling, pornographic presentation of minors.	BVwG W221 2107575-1 AT:BVVG:2015:W221.2107575.1.00 16.7.2015 BVwG W163 1410712-2 AT:BVVG:2014:W163.1410712.2.00 24.11.2014 BVwG W144 1407843-2 AT:BVVG:2015:W144.1407843.2.00 8.1.2015 BVwG W136 1411996-2
AT Constitutional Court	VfGH G 440/2015-14* 8.3.2016	Subsidiary protection; revocation; serious crime; conviction. The Austrian Constitutional Court while assessing the constitutionality of the relevant revocation provision in Austria's Asylum Act held that for the withdrawal of subsidiary protection because of commission of a 'serious crime' it was not particularly relevant, which sentence is imposed in the concrete case. The Austrian Criminal Code distinguishes between crimes and offences, by defining „crime' as an intentional criminal action subject to life-sentence or sentence of more than 3 years of imprisonment. In this sense the term 'serious crime' in Article 17(1)(b) is implemented in Austria by the term 'crime' as used in the Criminal Code. The Court considered that the revocation (withdrawal) provision remains within the general systematics of categorizing crimes according to their content of mischief, thus, allowing for additional adverse legal consequences. Therefore, as regards the sanction (revocation) less weight is given to the circumstances of the single case.	BVwG W 144 1407843-2 8.1.2015 AT:BVVG:2015:W144.1407843.2.00
AT Federal Administrative Court	BVwG W206 1259348-3 24.9.2015 AT:BVVG:2015:W206.1259348.3.00	Subsidiary protection; revocation; serious crime; conviction. It is not relevant that the individual had not been sentenced to heavy penalties or that prognosis is good.	
AT Federal Administrative Court	BVwG W136 1411996-2 26.3.2015 AT:BVVG:2014:W163.1410712.2.00	Subsidiary protection; revocation; serious crime; conviction. It is not relevant that the sentence was commuted according to special provisions for minors.	
AT Federal Administrative Court	BVwGW163 1410712-2 24.11.2014 AT:BVVG:2014:W163.1410712.2.00	Subsidiary protection; revocation; serious crime; conviction. The complainant cannot argue that he or she had been (in his or her opinion) falsely convicted.	
DE Federal Administrative Court	BVerwG 10 C 27.12 19.11.2013	Misinterpretation, omission of facts; intention to mislead the decision-maker.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
AT Asylum Court	AsylGH E10 314980-4/2010 16.08.2010	Revocation of subsidiary protection; misrepresentation. By referring to Article 19(3)(b) the Asylum Court held that subsidiary protection status is to be revoked, if the person concerned obtained this status by a misrepresentation of facts (threats by ex-partner).	
AT Federal Administrative Court	BVwG W190 1433049-2/14E 19.6.2015 AT:BVVG:2015:W190.1433049.2.00	Subsidiary protection; revocation; misrepresentation. The Austrian Federal Administrative Court, following a decision by the Austrian Asylum Court (AsylGH E10 314980-4/2010, 16.08.2010) referring to Article 19(3)(b), revoked a decision granting subsidiary protection status in the case of a Ukrainian national who had obtained subsidiary protection status by pretending that he was a Syrian national.	BVwG G306 2102912-1 AT:BVVG:2015:G306.2102912.1.00 4.9.2015 BVwG G307 1314138-2 AT:BVVG:2015:G307.1314138.2.00 26.5.2015 BVwG G307 1300085-2 AT:BVVG:2015:G307.1300085.2.00 26.5.2015 BVwG W103 2107198-1 AT:BVVG:2015:W103.2107198.1.01 22.10.2015
FR Council of State	No 198432, Gashi 8.11.2000	Asylum; revocation; conviction for particular serious crime. Revocation of asylum because of conviction in Austria for: armed robbery, attempted murder, rape, drug crimes, housebreaking.	
FR Council of State	No 187644, Bingol 29.3.2000	Obtained a passport through the Yugoslav embassy in Paris and thus re-availed himself of the protection of the country of nationality. The Council of State confirmed the Refugee Appeals Board's decision which held that the fact for a refugee to obtain a passport through the Yugoslav embassy in Paris indicates an intent to re-avail himself of the protection of the country of nationality since he could not justify of an absolute necessity which would have compelled him to obtain this passport, pursuant to Article 1(C)(1) of the Geneva Convention.	
FR Council of State	No 177013, Andoni B 31.3.1999	Travel back to country of origin to get married – re-availment of the protection of the country of origin. The Council of State confirmed the Refugee Appeals Board's decision which held that the fact for a Turkish refugee to have travelled back to Turkey in order to get married indicates an intent to re-avail herself of the protection of the country of nationality. Travel back to country of origin- re-availment of the protection of the country of origin. The Council of State confirmed the Refugee Appeals Board's decision which held that the fact for a Albanian refugee to travel back to Albania by plane indicates an intent to re-avail himself of the protection of the country of nationality and had to cease to recognise him as a refugee pursuant to Article 1(C)(1) of the Geneva Convention.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
FR National Court of Asylum Law	No 15011220, C Mitsaev 25.2.2016	Acquisition of a passport post granting of the refugee status. The OFPRA ended the refugee status of a Russian citizen from Chechen descent pursuant to article 1C(1) of the Geneva Convention as there were reasons to believe that that individual had been delivered a Russian passport after having been granted the refugee status and had travelled using that passport. The OFPRA held that the individual had thus voluntarily re-availed himself of the protection of the country of his nationality. The National Court of Asylum confirmed that decision as that individual was not able to prove that he was not in possession of a Russian passport delivered posterior to the granting of his refugee status and was not able to justify that he was still in fear of persecution in Russia.	
FR National Court of Asylum Law	No 14033523, C+ Zadran 5.10.2015	The cessation of the refugee status does not preclude the possibility to grant subsidiary protection. An Afghan citizen had been granted the refugee status by a decision of the OFPRA on the grounds of fear of persecution from the Taliban. When OFPRA found out that he had obtained an Afghan passport issued by the Afghan consular authorities in Paris and had travelled back to Afghanistan, a decision was taken, ceasing to recognise him as a refugee, despite of M. Z. motives for his return in Afghanistan, related to family matters and fears of persecution regarding Taliban which are current. The Court, after finding that the OFPRA had been correct to cease to recognise him as a refugee, examined the situation of the applicant regarding his claim for subsidiary protection and considered, after reviewing available public documentation, that the situation in the province of Logar, where the applicant is originally from, had to be qualified as one of indiscriminate violence resulting from an internal armed conflict and that he had therefore to be granted the benefit of subsidiary protection.	
FR National Court of Asylum Law	No 12006411, C+ M.S 10.9.2012	The claimant argued that a third person has maliciously asked to be delivered a Macedonian passport on his behalf but did not manage to prove it. A Macedonian citizen was granted refugee status. He argued before the OFPRA that he did not return to Macedonia and that he had not been delivered a Macedonian passport. But he did not manage to prove that a third individual had committed a malicious act towards him by delivering a passport on his behalf. The National Court of Asylum upheld the OFPRA's decision to end his refugee status for he had voluntarily re-availed himself of the protection of the country of nationality.	
FR National Court of Asylum Law	No 10010000, Kejani R 20.10.2011	Refugee travelled back to the country of origin that became independent before the return - issuance of a passport and national identity card- voluntary re-avallment of the protection of the country of origin. Refugee who travelled back to Kosovo since the independence of this entity and was delivered by the Kosovo authorities a passport and a national identity card. Voluntary re-avallment of the protection of the country of nationality, however, this country of origin changed its statute.	
FR National Court of Asylum Law	No 09017836 C, S.H. 23.12.2010	Travelled back to country of origin to get married – voluntary re-avallment of the protection of the country of origin. An Iraqi refugee who travelled back to Kurdish autonomous region to get married, attested by a marriage certificate. The National Court of Asylum found that the OFPRA had been correct to cease to recognise him as a refugee for he had voluntarily re-availed himself of the protection of the country of nationality.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
FR Refugee Appeals Commission	No 03025686, Ozuturk C+ 18.4.2005	The appellant did not manage to prove that his travel back to country of origin was justified by an absolute necessity thus voluntary re-availing himself of the protection of country of origin. A Turkish refugee of Kurdish descent who voluntarily travelled back to Turkey and stayed there for an undetermined amount of time. He could not prove that he travelled back to Turkey because of his depressive father following his divorce, furthermore, the applicant had claimed no longer having fears of persecution in Turkey. The Refugee Appeals Board held that he must be considered as having voluntarily re-availed himself of the protection of the country of nationality and found that the OFPRA had been correct to cease to recognise him as a refugee.	
FR Council of State	No 288747, Dundogdu 15.5.2009	Obtaining passports for his minor children through the consular authorities in France of his country of origin is justified by absolute necessity. The fact for a Turkish refugee to obtain passports for his minor children through the Turkish consular authorities in France in order to send them to Turkey in order to live with their mother should be considered as an absolute necessity and cannot be interpreted as intent to re-avail the protection of the country of nationality.	
FR Council of State	No 277258, Association d'accueil aux medecins et personnels de sante refugies en frances 8.2.2006	Procedure in the country of origin requested by French authorities is not an act of allegiance. The fact for a refugee to undertake a procedure before university authorities in his country of origin when this procedure is requested by French regulation in order to obtain a necessary certificate to exercise his or her profession in France cannot be considered as an act of allegiance.	
FR National Court of Asylum Law	No 12002308, L.M. C+ 24.7.2013	Extension of validity of a passport requested by French authorities in order to continue receiving indispensable treatments is an absolute necessity. A (DRC) Congolese refugee had the validity of his passport extended through the diplomatic authorities of his country. Though the procedure had been undertaken after an explicit request from the police prefecture. Exists an absolute necessity for the refugee to obtain an extension of passport in order to continue receiving indispensable treatments to keep alive.	
FR Refugee Appeals Commission	No 424035, Komurcu 15.3.2005	Undertaking administrative formalities at the Turkish consulate for family reunification is not considered to be an act of allegiance. A refugee went to the Turkish consulate in France to establish a certified proxy in order to his wife to join him in France with his children. This circumstance does not constitute an act of allegiance.	
FR Refugee Appeals Commission	No 406325, Omar 17.2.2006	The fact for a refugee to have travelled back in 1994 to the autonomous Kurdish region must be considered as a voluntary re-establishment in the country of origin even if this region has been placed under international protection after the 1991 events and benefits from a certain autonomy for which the existence is now recognized and ensured by article 113 of the Iraqi Constitution. The applicant, absent during the hearing, has expressed no fear of persecution in case of a return in Iraq, country where he has led a normal life, got married, had children and had a professional activity.	
FR Council of State	No 164682, Niangi 25.11.1998	The applicant had been granted the refugee status on the basis of family unity. The divorce judgment leads to the cessation of the circumstances which led to the granting of the refugee status.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
FR National Court of Asylum Law	No 10008275, R Kqira 25.11.2011	An individual was granted the refugee status in 1986 on the basis of fears towards the Yugoslav authorities. CNDA held that the changes had been significant and non-temporary with the dislocation of the Socialist Federal Republic of Yugoslavia, the Kosovo war, the OTAN intervention and the establishment of the United Nations interim administration mission in Kosovo in 1999, the declaration of independence of Kosovo on the 17 February 2008 and the establishment of democratic institutions and law-abiding state with international organizations and the European union. The situation which justified the fears of persecution has thus ceased to exist. Furthermore, the applicant invokes no compelling reasons arising out of previous persecutions for refusing to avail himself of the protection of the Kosovo.	
FR National Court of Asylum Law	No 487611, Damiean 17.2.2005	The Refugee Appeals Board held that the circumstances for which the refugee had been granted the refugee status have ceased to exist due to a change of political regime in Romania; the applicant can no longer refuse to avail himself of the protection of the country of nationality. The applicant invokes no compelling reasons arising out of previous persecutions for refusing to avail himself of the protection of Romanian authorities.	
FR National Court of Asylum Law	No 150317598, Shirma 8.4.2016	OFPPA, informed by the Home Office that a Nepalese asylum applicant had been granted refugee status under a forged Bhutanese identity and nationality, and formed a recourse before the Court for fraud. The Court confirmed misrepresentation founded on a misleading Bhutanese nationality, considering that its own decision of granting protection had been motivated by this very nationality and by the person's fears of persecution in case of return in this specific country. Then CNDA examined the application regarding the real country of origin of the applicant, Nepal.	
FR National Court of Asylum Law	No 12021083, Ahmed Ali 7.5.2013	Fraud submitted by OFPPA against a judicial grant of refugee status based on a EURODAC report that brought into light that the refugee's digital fingerprints had been recorded in three different European countries and three times in France, on a seven-year period of time. CNDA considered that submission of multiple asylum applications under various identities, the last one after the grant of protection, contravened the duty of cooperation and obligation of loyalty on the applicant pursuant to 1 CG and QD and 1 December 2005 Directive. Assuming that the identified misleading information would only concern a part of the itinerary or a part of the facts that led to a grant of protection, Article 14 does not create an obligation for the MS to demonstrate that the complete itinerary or the complete alleged facts are fraudulent. Multiple asylum applications, even after the grant of protection, questioned the applicants' sincerity and the truthfulness of the alleged facts, since he used misleading information at several times to get a protection, and is enough to characterise fraud.	
FR National Court of Asylum Law	No 10004319, S 1.3.2011	On the basis of information communicated by the Court to OFPPA during another's case ruling, administration argued that the concerned applicant was the partner of a woman who had herself benefited from the refugee status on the basis of the assassination of that specific partner. But the Court ruled that OFPPA was not able to demonstrate the fraud.	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
FR National Court of Asylum Law	622508 and 701681/090071008, T 8.10.2009	<p>OFPPA applied a plea before CNDA against a judicial decision that granted refugee status to a Russian citizen on the basis of his residency in Chechnya and because of the alleged persecutions that took place in 2006 and 2007 in this region he claimed to live at the time, motivated by his Russian ethnic origin and his Christian confession. OFPPA submitted information provided by the French consulate in Moscow, where attests that this person had been living in Stavropol from 2005 until his departure from Russia.</p> <p>The Court, after having established the reality of his stay in Stavropol at the time of the alleged facts, ruled that the allegations that led to the granting of the status were misleading, and that those manoeuvres were decisive in the decision. The Court dismissed the refugee's attempt at explaining why he forged documents, ruled that the person had voluntarily deceived the Court about his real situation, before cancelling its former decision. Then, the Court examined the asylum application: it refuted the applicant's presence in Chechnya at the time concerned, in accordance to the information provided by the consulate. It held that the misleading allegations concerning the applicant's location questioned the veracity of all his allegations. The documents that the refugee had submitted in order to prove his presence in Chechnya at the time concerned were thus considered forged.</p>	
FR National Court of Asylum Law	633282/08013386, G 24.9.2009	<p>OFPPA applied a plea before CNDA on the basis of information provided by a prefecture which attests that the concerned individual had submitted two other applications based on another Georgian identity and nationality, before the quarrelled judicial decision that granted him refugee status regarding Azerbaijan as the country of origin. The Court held that the refugee's allegations that led to the granting of the status and that the person had voluntarily deceived the Court about his real situation. Then the Court examined the applicant's fears of persecution regarding the litigated decision.</p>	
FR Council of State	No 363161,363162, Noor 30.12.2014,	<p>The fact of a Member State of the European Union granting subsidiary protection to a third country national is a declaratory act which produces effects until the beneficiary does not or no longer meets the necessary requirements enunciated in Articles 16, 17, 19 QD. Thus the fact that the concerned individual did not renew his residence permit is irrelevant to his right to benefit from the protection which has been given to him.</p>	
IE High Court	<i>Nz.N v Minister for Justice, Equality & Law Reform</i> [2014] IEHC 31 27.1.2014	<p>The case dealt with the issue of false and misleading information in the context of revocation of refugee status. There was strong evidence of studied deception at every stage of the appellant's stay in the host country. The evidence of a false and fraudulent claim was deemed to be strong. The appellant was found to be an unimpressive witness who became irretrievable tangled in a web of deception and lies. The appellant submitted false documentation, <i>inter alia</i>.</p>	
FR Refugee Appeals Commission	No 339803, Fosso 12.9.2005	<p>Where Article 1C Refugee Convention enumerates reasons which allow for the withdrawal of refugee status, it remains a possibility that protection can be ended in application of the principles governing withdrawal of administrative acts in cases where the application on the basis of which the refugee status was granted was tainted by fraud.</p>	

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
<p>FR Council of State</p>	<p>No 57214; 57789, Tshibangu 12.12.1986</p>	<p>Where Article 1C Refugee Convention enumerates reasons which allow for the withdrawal of refugee status, it remains a possibility that protection can be ended in application of the principles governing withdrawal of administrative acts in cases where the application on the basis of which the refugee status was granted was tainted by fraud. The court CRR limited itself in its considerations about the challenged decision that the fraud committed during Mr Tshibangu's second application had the effect of depriving the claimant of "any right to the benefit of the Geneva Convention", without examining whether or not his first application was itself tainted by fraud. In so finding, the court found that the lower-instance court did not provide sufficient legal basis for its decision and the applicant claim seeking its annulment was well-founded.</p>	
<p>EL Council of State</p>	<p>No 4059/2008 31.12.2008</p>	<p>The contested revocation decision, was issued under the cessation clause of Article 1(C)(5) Refugee Convention. The applicant did not substantiate his arguments that the Albanian authorities had imposed him a "grave imprisonment". Therefore, the Authorities were not obliged to examine his allegations.</p> <p>But, the Authorities had not considered the applicant's claims on strong family and economic ties, due to his prolonged stay in the country, as to which the applicant had provided evidence and which evidence would justify a failure to withdraw the refugee status. On the other hand, the Administration provided evidence that the applicant was convicted by a Greek Penal Court Judgment and was sentenced to imprisonment and fine because he was found guilty for occupying an illegal radio station band, and for carrying illegally weapons. But this sentence was not the basis of the contested revocation decision since it was not produced before the issuing authorities and it did not form the basis of withdrawing the recognition of refugee status. The application for annulment was accepted.</p>	
<p>PL Supreme Administrative Court</p>	<p>II OSK 189/10 8.09.2010</p>	<p>A non-national with refugee status since 1997 was deprived of it in 2009. It was argued that he had voluntarily re-taken the protection of the country of origin and, without experiencing any problems, he had travelled back to Guinea a few times in 2003. The main issue concerned the meaning of 'voluntary re-take of the protection' stipulated in Article 21.1.1 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland. The Supreme Administrative Court held that it shall be interpreted as meaning situations where the applicant obtained a real protection of the country of nationality and referred to the Article 11(1)(e) QD. A few cases of incidental travel in 2003 were found by the Court not to be sufficient to make an assessment that a non-national had made such a journey under the protection of his country. The authorities were found to have failed to consider the current situation in Guinea in 2009 and the possibility of real risk of persecution.</p>	<p>CJEU C-175/08, C-176/08, C-178/08 and C-179/08, <i>Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, Dier Jamal v Bundesrepublik Deutschland</i> 2.3.2010</p>

Member State/ Court	Case name/reference/date	Key words/relevance/main points	Cases cited
PL Supreme Administrative Court	Joined cases: II OSK 1492/14, II OSK 1561/14, II OSK 1562/14 23.02. 2016	In 2013, a married couple and their children from Chechnya were deprived of subsidiary protection that had been granted to them in 2008 because of the dangerous situation in their country of origin at that time. In 2011 and 2012, they had travelled to Grozny and back without any problems arising. In June 2012, the couple's youngest child was born in hospital in Grozny, where the mother had been staying for some time. A birth certificate was issued by the registry office and the personal data of the child were included in the mother's passport by the Office of the Federal Migration Service in Grozny. These facts along with the current stable situation in Chechnya led to the conclusion that there had been such an essential and long-lasting change in the circumstances, when compared to 2008, that protection was no longer needed (Article 22.1.1. of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland). The Supreme Administrative Court held that the return of the Chechen family to Chechnya would not expose them to risk of serious harm.	
CZ Supreme Administrative Court	No. 1 Azs 3/2013-27 18 April 2013	Not every false information or omission of facts by the applicant before granting of refugee status constitutes a ground for the revocation of the refugee status according to Article 14(3)(b) QD. Only such objectively false information or omission of objectively existing facts without which the refugee status would not have been granted can act as the basis for such a ground.	
CZ Supreme Administrative Court	No. 7 Azs 21/2011-57 29 June 2011	Subsidiary protection status may be revoked for the grounds set out in Articles 19(1) and 16 QD only if the circumstances which led to the granting of the subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. The revocation based on the above mentioned provisions cannot be therefore applied in cases where the administrative authority comes to a conclusion that subsidiary protection should not have been ever granted and endeavours by the revocation of the subsidiary protection status to revise its original decision.	

International Jurisprudence

Court	Case name/reference/date	Key words/relevance/main points	Cases cited
Australia High Court	Minister for Immigration and Multi-Cultural and Indigenous Affairs v QAAH of 2004 [2006] HCA 53 15.11.2006	Immigration – Refugees – Application for permanent protection visa – Statute requiring Minister to be satisfied Australia owes protection obligations to the applicant under the Convention – Applicant previously granted temporary protection visa for a specified period – Whether previous grant of temporary protection visa entitles applicant on application for a new visa to a presumption of being owed protection obligations under the Convention – Construction of Migration Act 1958 (Cth), s 36 – Construction of the Convention. Words and phrases – „refugee“, „protection obligations“, „cessation“.	

Court	Case name/reference/date	Key words/relevance/main points	Cases cited
Australia Federal Court of Australia	Seyed Hamid Rezaei and Zahra Ghanbarnezhad v Minister for Immigration and Multicultural Affairs [2001] FCA 1294 14.9.2001	<p>The first applicant (the husband) was a refugee and was a person to whom Australia owed protection obligations under the Act. The second applicant (who made no claims to be a refugee in her own right) was recognised as being entitled to the protection of Australia as a member her husband's family unit. On 7 April 1998 the applicants were granted protection visas. On 15 and 21 July 1998, each of the applicants was issued with a new Iranian passport issued by the Iranian embassy in Canberra. On 1 and 2 December 1998, protection visa labels were placed in the applicants' new Iranian passports. On 9 December 1998, both applicants left Australia for Iran where they have remained ever since. While in Iran they adopted a child by a lawful process involving the Iranian legal system. Towards the end of 2000, they applied to the Australian authorities to sponsor a child for migration and return to Australia). The court held that the delegate's finding that the applicant's husband had re-established himself was clearly open, having regard to the fact that the applicants had returned to Iran for a period of two years, and had adopted a child through the Iranian legal system.</p>	

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