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LEGAL NOTE ON THE CESSATION OF INTERNATIONAL PROTECTION AND REVIEW OF PROTECTION STATUSES IN EUROPE

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TABLE OF CONTENTS

I. INTRODUCTION

Cessation involves the revocation of international protection and possible return of a refugee to their home country. It is therefore considered a serious step to be taken by a decision-making authority.

A number of European states have systematically utilised cessation in the past 20 years.[1] The increased use of cessation in some states can be explained by a number of political and legal factors (including the development of national political agendas aimed at deterrence). As a legal issue, cessation in Europe is linked to the increased use of temporary residence permits rather than permanent residence. The 2011 Recast Qualification Directive allows EU Member States[2] to issue three-year residence permits to refugees[3] and one-year residence permits to holders of subsidiary protection.[4] The Directive also then allows States to review cases upon expiry of those permits and to revoke a person's international protection status and residence if circumstances in the country of origin have changed.[5]

The recently-adopted 2024 Qualification Regulation repeals the 2011 Qualification Directive with effect from 12 June 2026.[6] The Regulation, which must be fully applied by the Member States from 12 June 2026, contains similar cessation provisions to that of the 2011 Directive.[7] Given the 2026 application date of the 2024 Qualification Regulation, this revised Legal Note continues to analyse the 2011 Directive clauses, albeit with references to the changes brought about by the 2024 Qualification Regulation. Given that the cessation provisions in both instruments are very similar, case-law relating to the 2011 Qualification Directive is likely to continue to be relevant to the 2024 Qualification Regulation. The only notable exception to that is the amendment made to the internal protection alternative (IPA) provisions in Article 8 of the 2024 Qualification Regulation which now *oblige* Member States to apply an IPA in relation to applications for international protection, although only when states and the agents of states are not the actor of persecution. This will be of relevance to the interaction between cessation and the IPA discussed in Part IV (vi) below.

In terms of state practice of cessation in Europe, a number of countries have used cessation to revoke the international protection status of persons from various countries. For instance:

- Germany carried out cessation proceedings with respect to 14,000 Iraqi refugees between 2004 and 2007. In addition to this, Germany has also made significant use of so-called 'revocation examination procedures'[8] since 2017. Significantly, these procedures doubled in 2019. Although these procedures are instituted for a number of reasons, they specifically include cessation due to changed circumstances.[9]

1. These states include Germany (2004-2007; 2017-2019), Norway (2017-2018) and Denmark (2019 to date) who have instituted systemic cessation reviews in relation to specific groups of protection holders, see detail at footnotes 9 to 12 below. In addition, other European states (including the UK, France, Austria and Slovenia) have applied cessation to individual holders of international protection on a case-by-case basis (typically when the status holder has applied for an extension to their resident permit). See discussion of some of these national examples in Part V of this Legal Note.
2. EU Member States bound by the recast Qualification Directive and 2024 Qualification Regulation (i.e. all EU Member States except Denmark, Ireland).
3. 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), [2011] OJ L 337/9 (hereinafter '2011 Qualification Directive'). Article 24(1) obliges Member States to issue a three-year residence permit to refugees '[a]s soon as possible after their status has been granted …' and 'which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3)'.
4. 2011 Qualification Directive, Article 24(2).
5. 2011 Qualification Directive, Article 11(1)(e) and (f); Article 14.
6. Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council, OJ L, 22.5.2024 (hereinafter '2024 Qualification Regulation'). Article 41 of that Regulation provides that 'Directive 2011/95/EU is repealed with effect from 12 June 2026'.
7. The only notable difference appears to be the clarification set out in paragraph 64 of the Preamble to 2024 Qualification Regulation that '[w]here a decision is based on a cessation ground, it should not have a retroactive effect'.
8. These are preliminary examinations on whether a formal revocation is to be carried out or not. This revocation practice was triggered by a case which has become known as the 'Franco A. scandal' in 2017 (where a person was given international protection with a fake identity).
9. The Asylum Information Database (AIDA), *Asylum in Europe 2020: Country Report Germany*, 2019, p 13, https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_de_2019update.pdf: 'In 2019, the BAMF carried out 170,406 of these "revocation examination procedures", which doubles the number of such procedures recorded in 2018 (85,502) and marks an enormous increase compared to 2017 where only 2,527 revocation procedures were carried out. In the vast majority of the 2019 "revocation examination procedures", the BAMF found no reason to revoke or withdraw the protection statuses (96.7%). However, the total number of revocation or withdrawal decisions must not be underestimated as it concerned a total of 5,610 persons in 2019'.

- Norway commenced cessation proceedings with regard to approximately 1400 Somali refugees in 2017-18;
- Denmark has ended the protection of approximately 800 Somali refugees and has commenced proceedings in relation to approximately 900 Syrian subsidiary protection holders.[10] It has been reported that it has revoked residency permits for 150 Syrian nationals from Damascus.[11] These actions are supported by classifications of safe zones within Syria, with Danish governmental authorities classifying Damascus, Rif Damascus, Latakia, and Tartus as safe areas. In a statement released in 2023, Danish authorities stated that 'the conditions in Latakia remain serious and fragile, but that it no longer has such a character that there are grounds for assuming that anyone will be at real risk of being subjected to abuse under ECHR Article 3 solely as a result of the mere presence in the area'. It also made similar findings in relation to the area of Tartus.[12]

It is noteworthy that many of those who have had their international protection revoked using cessation are citizens of Iraq, Afghanistan, Somalia and Syria - countries which are either currently in an armed conflict or post-conflict situation. This raises legal issues as to the correct test to be used for cessation where the security situation in a country may continue to be uncertain or precarious.

Some states have also utilised cessation to revoke the refugee status of an individual where they have committed a serious crime.[13] This legal note does not focus on that aspect of revocation proceedings.

In terms of state practice, the primary provision utilised by states to cease international protection is Article 1C(5) of the Refugee Convention[14] (reflected in Articles 11 and 16 of the Qualification Directive).[15] This relates to changes in the circumstances in the refugee's country of origin. There are also five other recognised reasons for cessation under international and EU law. These primarily relate to voluntary actions undertaken by a refugee, such as re-availment of the protection of their country of nationality. Although there is some state practice of these cessation provisions in Europe, it is very limited in nature and most cessation procedures have utilised Article 1C(5). Thus, whilst this legal note briefly mentions those other clauses of Article 1C, it focuses primarily on Article 1C(5).

This legal note will set out the legal obligations relating to cessation under international and EU law, covering statutory provisions and the judgments of the CJEU, with a focus on the cessation provisions themselves. It also considers recent ancillary case law which may have implications for current caseloads.[16] The Note will then examine seven main legal issues which have been raised by the national state practice of cessation in Europe:

i. Is the test for cessation of refugee status similar to that for recognition of refugee status? Is it the 'mirror' of recognition?

ii. What is the standard of proof to be used for cessation?

iii. What procedural obligations are placed on a national status determination body and/or applicant to demonstrate eligibility for international protection where one of the statuses of international protection has been revoked?

10. Summarised in Nik Tan, 'The End of Protection: The Danish 'Paradigm Shift' and the Law of Cessation' (2021) 90 *Nordic Journal of International Law* 60-85 at 63.

11. 'Denmark deems Syrian province safe for returning refugees, worrying UNHCR', Reuters, 17 March 2023, https://www.reuters.com/world/middle-east/denmark-deems-syrian-province-safe-returning-refugees-worrying-unhcr-2023-03-17/.

12. See discussion in EuroMed Monitor, 'Denmark continues to withdraw temporary protection for Syrian refugees despite the UN, the EU, and NGOs deeming it unsafe and in violation of international law', 4 November 2023, https://euromedmonitor.org/en/article/5916/Denmark-continues-to-withdraw-temporary-protection-for-Syrian-refugees-despite-the-UN,-the-EU,-and-NGOs-deeming-it-unsafe-and-in-violation-of-international-law; and the statement (in Danish): 'URU, General part - 2022-23 (2nd session) - Final answer to question 77: Question on the submission of speech papers from the consultation of 20 April 2023 on the revocation of residence permits for Syrian refugees, cf. URU General part - consultation question D' https://www.ft.dk/samling/20222/almdel/uru/spm/77/svar/1953186/2699188/index.htm.

13. See eg the UK State practice, illustrated by *Secretary of State for the Home Department v MM (Zimbabwe),* [2017] EWCA Civ 797, 22 June 2017, www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2017/797.html> ('MM Zimbabwe'); *Secretary of State for the Home Department v MS (Somalia),* [2019] EWCA Civ 1345 www.bailii.org/ew/cases/EWCA/Civ/2019/1345.html.

14. 1951 Convention relating to the Status of Refugees, 189 *UNTS* 150, supplemented by the 1967 Protocol relating to the Status of Refugees, 606 *UNTS* 267, hereinafter 'Refugee Convention'.

15. Similar provisions are set out in Articles 11 and 16 of the 2024 Qualification Regulation (above n 6).

16. See eg *AH (C-608/22) & FN (C-609/22) v. Bundesamt für Fremdenwesen und Asyl* where the CJEU has confirmed that gender and nationality may constitute sufficient criteria for an EU member state to grant asylum to a particular group of women; and *SN, LN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (Case C-563/22) relating to the application of Article 1D of the 1951 Refugee Convention (and its EU Qualification Directive equivalent) to two stateless persons of Palestinian origin – discussed at Part III below.

iv. When will return to the country of origin or other acts of re-availment of the protection of the country of origin engage the cessation clauses?

v. Can non-state actors of protection provide 'protection' for the purpose of cessation?

vi. Does the existence of an international protection alternative (IPA) constitute a relevant change in circumstance which can give rise to cessation?

vii. How should the 'compelling circumstances' exception to cessation be applied?

viii. Does cessation require assessment of humanitarian considerations and, as part of this, what is the relationship between cessation and the ECHR?

One of the main questions which has been litigated in CJEU and national case law relates to Issue (i), that is, whether Article 1C(5) is the mirror image of Article 1A(2).[17] The question here is whether the test for cessation should simply be that the refugee no longer meets the definition of a refugee under the Refugee Convention, or whether it requires more than this. That is, is the criteria for cessation simply absence of persecution or a broader notion of 'effective protection' encompassing criteria such as human rights protections, operation of judicial and administrative structures, and the absence of armed conflict? Similar questions also apply to subsidiary protection where the question is whether the test for cessation is the same as that for recognition. Many of the other issues raised in CJEU and national jurisprudence (relating to non-state actors of protection and the interaction with IPA) are linked to this central question.

II. THE LEGAL OBLIGATIONS RELATING TO CESSATION OF INTERNATIONAL PROTECTION UNDER INTERNATIONAL AND EU LAW

The criteria for cessation of refugee status are set out in Article 1C of the 1951 Refugee Convention and reflected in Articles 11 and 16 of the 2011 Qualification Directive. It should be noted that European courts have considered a significant number of cases involving cessation of refugee status but there is comparatively little judicial consideration of cessation of subsidiary protection. Therefore, aspects of the criteria for cessation of subsidiary protection are somewhat undeveloped compared to refugee status.

CESSATION OF REFUGEE STATUS UNDER INTERNATIONAL LAW

Article 1C of the 1951 Refugee Convention permits cessation of refugee status on six recognised bases. The first four provisions focus on voluntary acts of the refugee, such as returning to their home country. Specifically, these include, voluntary re-availment of national protection, voluntary re-acquisition of nationality, acquisition of a new nationality, and voluntary re-establishment in the country in which persecution was feared.[18]

As noted above, Article 1C(5) is the focus of the present paper. It provides that the Convention shall cease to apply to the refugee if:

> (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

17. See eg Judgment of 2 March 2010, *Joined Cases- Salahadin Abdulla, Hasan, Adem and Rashi, Jama v Bundesrepublik Deutschland, C-175/08. C-176/08. C-178/08 and C-179/08,* ECLI:EU:C:2010:105, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=75296&doclang=EN> (hereinafter '*Abdulla*'); Judgment of 20 January 2021, *Secretary of State for the Home Department v OA*, C255/19, ECLI:EU:C:2021:36 <http://curia.europa.eu/juris/document/document.jsf?text=&docid=236682&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=666230> (hereinafter 'OA'); UK: *Secretary of State for the Home Department v MA (Somalia)* [2018] EWCA Civ 994 (Arden J) ('MA Somalia 2018'); Supreme Court of Norway judgment of 23 March 2018, HR-2018-572-A, (case no. 2017/1659), civil case, appeal against judgment: <www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2018-572-a.pdf>, paragraph 44 ('HR-2018 Supreme Court of Norway').

18. Article 1C(1)-(4) provides that refugee status shall cease where '(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 re-acquired 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.'

> Section 1A(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; . . . [19]

The placing of Article 1C(5) in relation to the refugee definition and the terms utilised in that clause are significant. First, Article 1C forms part of Article 1 in Chapter 1 (General Provisions) of the 1951 Convention which sets out the definition of the term 'refugee'. Thus, Article 1C is part of the *definitional* section of the 1951 Convention. Second, Article 1C(5) begins with the words 'This Convention *shall* cease to apply…' Thus, Article 1C is expressed in mandatory terms: it provides that the Convention 'shall cease' rather than 'may'. Third, Article 1C(5) explicitly applies where the 'circumstances in connection with which he has been *recognised* as a refugee have ceased to exist'. It is therefore generally understood that Article 1C applies to only those persons who have been formally *determined* to be a refugee.[20]

UNHCR has issued several guiding documents stating its position on key interpretative points relating to cessation.[21] For instance, it has underlined that there needs to be fundamental and durable changes in the country of origin, which may be indicated by democratic elections, significant reforms to the legal and social structure, amnesties, repeal of oppressive laws, dismantling of repressive security forces, and general respect for human rights. UNHCR recognises that observance of specific human rights need not be exemplary, but significant improvements and progress towards the development of national institutions to protect human rights are necessary. Significantly, UNHCR has emphasised on a number of occasions that Article 1C(5) can only be applied to a refugee where the protection of his or her country of origin is both 'effective and available' .[22] In a 2020 intervention in an appeal to the Norwegian Supreme Court dealing with cessation, UNHCR clearly stated its position that:

Such protection needs to include the existence of a functioning government and basic administrative structures, as evidenced for instance through a functioning system of law and justice and the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood, as evidenced by the general human rights situation in the country. [23]

CESSATION OF INTERNATIONAL PROTECTION UNDER EU LAW

Cessation of Refugee Status

Cessation of refugee status is provided for in Article 11 of the 2011 Qualification Directive, which sets out similar cessation provisions to that of the 1951 Refugee Convention.

Specifically, Article 11(1) to (4) of the 2011 Qualification Directive sets out cessation in terms which largely replicate Article 1C (1) to (4) of the 1951 Convention.

Article 11(1)(e) also sets out similar provisions to that of Article 1C(5):

> 1. A third country national or a stateless person shall cease to be a refugee, if he or she:
>
> . . .
>
> (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;

19. Similar provisions to Article 1C(5) are set out in Article 1C(6) which apply to refugees without a country of nationality.
20. See UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees', April 2019, HCR/1P/4/ENG/REV. 4, <www.refworld.org/docid/5cb474b27.html> ('UNHCR Handbook'), at paragraph 112: 'Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses'.
21. UNHCR Handbook, above n 20; 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', HCR/GIP/03/03, 10 February 2003 ('UNHCR Cessation Guidelines 2003'); UNHCR, 'UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive' (2008) www.unhcr.org/refworld/docid/48a2f0782.html '(UNHCR Cessation Statement 2008')
22. UNHCR Cessation Guidelines 2003, above n 21, pp 15–16; UNHCR Cessation Statement 2008, above n 21, pp 3, 8, 14, 17 ; UN High Commissioner for Refugees (UNHCR), *Amicus curiae of the United Nations High Commissioner for Refugees1 in case number 19-028135ASD-BORG/01 (represented by lawyer Arild Humlen) against the State/the Norwegian Appeals Board before the Borgarting Court of Appeal (Borgarting Lagmannsrett) on the interpretation of the 1951 Convention Relating to the Status of Refugees*, 10 April 2020, paragraph 20, www.refworld.org/docid/5f808ec04.html (hereinafter 'UNHCR Amicus Bogarting CA').
23. UNHCR Amicus Bogarting CA, above n 22, paragraph 20.

> 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.[24]

However, whilst broadly speaking, Article 11(1)(e) of the Qualification Directive (and the 2024 Qualification Regulation) replicates Article 1C(5) of the Refugee Convention, there are some significant differences. First, in considering cessation due to a change in circumstances, Article 11(2) of the Directive requires the relevant decision maker to:

> . . . 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.[25]

This is an important addition to the cessation criteria in the Directive, as such a requirement is not set out in the Refugee Convention. Rather, these criteria attempt to reflect UNHCR opinion on cessation which have stated that the standard for changes under Article 1C(5) must be 'fundamental, durable and stable'.[26] Further, Article 7(2) of the Qualification Directive provides that protection both against persecution or serious harm 'must be effective and of a non-temporary nature' and sets out further detail as to the criteria for such protection.[27]

Cessation of Subsidiary Protection

The criteria for cessation of subsidiary protection is set out in Article 16 of the 2011 Qualification Directive and is worded slightly differently to Article 11 on refugee protection:

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.[28]

The test for cessation of subsidiary protection is therefore slightly different to that for refugee status in two ways. First, Article 11(1) governing refugee status uses 'circumstances *in connection with which*' he or she has been recognised whereas Article 16(1) governing subsidiary protection uses the term 'circumstances which *have led to*' the granting of protection. Second, cessation of subsidiary protection under Article 16 of the 2011 Qualification Directive includes an additional basis for cessation, namely 'circumstances which… have changed to *such a degree* that protection is no longer required'.[29] Article 11 contains no such ground. Significantly, this wording is repeated in the 2024 Qualification Regulation.[30]

The practical implications of these differences in wording, including on the factual assessment of the change, have not yet been directly considered in jurisprudence. As to the first difference, the jurisprudence on the meaning of the term 'in connection with which' under Article 11 of the Qualification Directive has noted that

24. See also 2024 Qualification Regulation, above n 6, Article 11.
25. 2011 Qualification Directive, Article 11(2). See also 2024 Qualification Regulation, above n 6, Article 11(2)(b).
26. UNHCR, Executive Committee Conclusion No. 65, *General Conclusion on International Protection*, U.N. GAOR, 46th Sess., (q) (1991), *aff'd*, ExCom Conclusion No. 69.
27. Article 7(2) provides that 'Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.'
28. 2011 Qualification Directive, above n 3, Article 16 [emphasis added].
29. 2011 Qualification Directive, above n 3, Article 16 [emphasis added].
30. 2024 Qualification Regulation, above n 6, Article 16(1): 'A beneficiary of subsidiary protection status shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of that status have ceased to exist or have changed to such a degree that protection is no longer required'.

this connotes a wider set of considerations than whether the 'grounds' of refugee status have changed.[31] It may therefore be that the term 'circumstances which have *led to*' for subsidiary protection cessation connotes a slightly narrower set of considerations than that applicable to refugee status. As to the second difference, it has been noted by an academic expert that the inclusion of 'circumstances which… have changed to *such a degree'* in Article 16 'marginally lowers the bar for cessation between Convention refugees and complementary protection holders'.[32]

However, both Article 11(2) and Article 16(2) require that the change in circumstances must be of a 'significant and non-temporary nature' which may somewhat lessen the practical implications of the differences in wording in Articles 11(1) and 16(1) of the Directive on the factual assessment of the change.

III. CJEU DECISIONS ON CESSATION AND RELATED LEGAL ISSUES

This section of the legal note will discuss relevant CJEU decisions. First, those directly relating to cessation provisions of the Qualification Directive. Second, those handed down recently on legal issues which may be linked to cessation, namely gender and the exclusion provisions in Article 1D of the 1951 Refugee Convention.

CJEU DECISIONS ON CESSATION – ABDULLA AND OA

There are two important CJEU decisions on cessation under the Qualification Directive. The first is *Salahadin Abdulla, Hasan, Adem and Rashi, Jama v Bundesrepublik Deutschland* (*'Abdulla')* decided in 2010.[33] This will be the focus of discussion in this Legal Note as it is a foundational case which interpreted key principles of cessation and has been cited extensively by national courts. Reference will also be made to developments subsequent to *Abdulla*, including the CJEU decision in *OA* which considered the interaction of cessation and non-state actors of protection.[34]

THE CJEU DECISION IN ABDULLA, 2010

The CJEU decision in *Abdulla,* was a reference from the German Federal Administrative Court involving five cases which shared common facts: they all involved applicants from Iraq whose refugee status had been revoked by German authorities on the basis that they no longer feared persecution due to the overthrow of Saddam Hussein's regime.[35]

The central question asked of the CJEU concerned the relationship between cessation under Article 11(1)(e) of the 2004 Qualification Directive and recognition of refugee status under Article 2(c). Specifically, it asked whether Article 11(1)(e) was to be interpreted as meaning that refugee status ceases to exist if the refugee's well-founded fear of persecution (on the basis of which refugee status was granted), no longer exists and he has no other reason to fear persecution under Article 2(c). That is, whether Article 1C(5) is the 'mirror image' of Article 1A(2).

The German Federal Administrative Court then posed related questions that were to be answered in the

31. See eg UK Court of Appeal in *Secretary of State for the Home Department v KN* (DRC) [2019] EWCA Civ 1665 at paragraph 33: 'Those provisions in the Refugee Convention and Immigration Rules do not authorise the revocation of a refugee's status merely if the grounds on which the respondent was granted that status have changed but, rather, where "the circumstances in connection with which he has been recognised as a refugee have ceased to exist"'.
32. Discussed in Nik Tan, above n 10, at p 69: 'Where Article 11 QD, reflecting Article 1C of the 1951 Convention, requires that the circumstances for flight are entirely eradicated ('cease to exist'), Article 16 refers to significant, durable change in the country of origin that removes the need for protection'.
33. *Abdulla*, above n 17. This was the first time the CJEU had given a ruling on the issue of cessation. Note also the Opinion of Advocate General Mazák in *Abdulla:* Opinion of 15 September 2009, *Salahadin Abdulla and others*, *C-175/08, C-176/08, C-178/08 and C-179/08,* ECLI:EU:C:2009:551.
34. *OA*, above n 17.
35. *Bundesverwaltungsgericht* (Federal Administrative Court, Germany), *10 C 33.07*, 7 February 2008, available at (2009) 21 (3) *International Journal of Refugee Law*, 549*,* paragraph 23 ('*BVerwG 33.07*').

event that the CJEU held that something more than mere absence of persecution was required for cessation (Referral Questions 2(a)-(c) and 3). These were as follows:

- did cessation require the presence of an actor of protection under Article 7(1) of the 2004 Qualification Directive and would it be sufficient in that regard if protection can be assured only with the help of multinational troops?
- did cessation require that the refugee should not be threatened with serious harm under Article 15 of the 2004 Directive, which leads to the granting of complementary protection?
- did cessation require that the security situation be stable and the general living conditions ensure a minimum standard of living?
- what is the applicable standard of proof to be used to assess new circumstances giving rise to persecution, that is, those which are unrelated to the circumstances which gave rise to the initial grant of refugee status? Are new claims of persecution to be measured against the standard of probability applied for recognising refugee status or another standard, and are they to be assessed having regard to the 'facilitated' standard of proof under Article 4(4) of the Qualification Directive?

RECOGNITION AND CESSATION

In addressing the primary question as to the relationship between cessation and recognition of status, the CJEU interpreted cessation in Article 11(1)(e) of the Qualification Directive as the mirror of the recognition of refugee status; it then went on to make rulings on the standard of protection and human rights that should be present. The reasoning of the CJEU was that Article 11(1)(e) of the Qualification Directive (like Article 1C(5) of the Refugee Convention), provides that a person ceases to be classified as a refugee when 'he no longer qualifies for refugee status'.[36] Cessation therefore implies that 'the change in circumstances has remedied the reasons which led to the recognition of refugee status'.[37] It held that the term 'protection' used in Article 11(1)(e) of the Directive refers to protection against acts of persecution:

> In so far as it provides that the national "can no longer … continue to refuse" to avail himself of the protection of his country of origin, Article 11(1)(e) of the Directive implies that the "protection" in question is the same as that which has up to that point been lacking, namely protection against the acts of persecution envisaged by the Directive.[38]

In interpreting cessation in this manner, the CJEU noted that, pursuant to Article 7(2) of the 2004 Qualification Directive, the competent authorities must verify that the actor or actors of protection in the country of origin operate *inter alia*, 'an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection.'[39] The court then referred to what the competent authorities must assess including the conditions of operation of these actors of protection, in turn making a link to the assessment of facts and circumstances under Article 4(3) of the Directive - including the extent to which basic human rights are guaranteed in that country.[40] The inclusion by the CJEU of a reference to human rights guarantees in the country of reference reflects an approach which goes beyond consideration of persecution (see discussion below). As for the terms 'significant and non-temporary nature' under Article 11(2), the Court held that the change of circumstances will be considered to be that when the factors which formed the basis of the refugee's fear of persecution may be regarded as having been permanently eradicated.[41]

In using the term 'mirror image' here, I acknowledge that there are two different meanings of 'mirror image' which may have different consequences. The first meaning is a narrower one based on persecution (which I refer to as the 'mirror image' in this Note) and the second is a wider one which takes into account broader

36. *Abdulla*, above n 17, paragraph 65. See also the Court's findings at paragraph 66: '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', that article establishes, by its very wording, 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'.
37. *Abdulla*, above n 17, paragraph 69.
38. *Abdulla*, above n 17, paragraph 67. The Court noted further that: 'In that way, the circumstances which demonstrate the country of origin's inability or, conversely, its ability to ensure protection against acts of persecution constitute a crucial element in the assessment which leads to the granting of, or, as the case may be, by means of the opposite conclusion, to the cessation of refugee status': paragraph 68.
39. *Abdulla*, above n 17, paragraph 70.
40. *Abdulla*, above n 17, paragraph 71.
41. *Abdulla*, above n 17, paragraph 73. Key aspects of the CJEU's decision in *Abdulla* have been endorsed by the court in the case of *OA*, particularly its findings on cessation as the 'mirror' of recognition and the necessary requirements for 'protection' under cessation, see *OA,* above n 17, paragraph 38, 42, 44, 52, 57-58.

elements beyond a fear of persecution, such as the presence of actors of protection and the human rights situation in the country of reference (I refer to this as 'beyond the mirror image'). In relation to the narrower meaning – 'mirror image' – 'the starting point is that there is a well-founded fear of persecution and the mirror image in cessation is that there is an absence of the well-founded fear, or an absence of the reasons for the persecution. This interpretation is reflected in the approach of the UK Supreme Court discussed in this Legal Note at Part V. The broader interpretation, which requires something beyond the absence of a fear of persecution ('beyond the mirror image'), is reflected in the position taken by UNHCR, the CJEU decision in *Abdulla* and the jurisprudence of the Supreme Court of Norway. Under this approach, the fact that the circumstances in connection with which refugee status was granted have ceased to exist (the simple 'mirror image') is a necessary but not a *sufficient* condition of cessation. In addition, a state authority must also examine whether the refugee can effectively re-avail himself of the protection of the country of his nationality and the definition may encompass broader considerations such as the presence of actors of protection and human rights guarantees.

Cessation and Actors of Protection

The CJEU in Abdulla stated that the actors of protection referred to in Article 7(1) 'may comprise international organizations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory'.[42] It did not give any further guidance as to the nature of such a force (for instance, whether it should be present in the country for a defined period) or what its role should be (for example, whether forces undertaking peacekeeping or humanitarian functions would suffice or whether it had to be carrying out state-like functions relating to rule of law institutions within the country in question). It also did not specify whether it should be supported by a UN or other international mandate.

This is significant as Advocate General Mazák of the Court was asked to provide an advisory opinion in the case. On the issue of multi-national troops, Advocate General Mazák stated:

> In my view, where the assistance of multinational troops is employed by a State such employment could be viewed as a reasonable step to prevent persecution in the country of nationality of a refugee. I consider however that in order to comply with the terms of Article 7 of Directive 2004/83, a State may only rely on the assistance of multinational troops provided such troops operate under the mandate of the international community, for example under the auspices of the United Nations.[43]

Further, although the CJEU reiterated that cessation requires a 'significant and non-temporary' change in circumstances, pursuant to Article 11(2) of the Qualification Directive, it did not link this requirement with Article 7. That is, it did not specifically address the transitional nature of the occupation of Iraq by multinational forces and link that to the need to establish durability of change under the test for cessation. Some of these open questions have been addressed in national jurisprudence (discussed below). Further legal issues relating to non-state actors of protection and cessation have also been the subject of a decision of the CJEU in *OA* following a referral to the court from the UK Upper Tribunal (discussed below).[44]

The relationship between cessation and subsidiary protection

In response to the question of the interaction between cessation and subsidiary protection, the CJEU noted that the term 'international protection' used in the Qualification Directive governs 'two distinct systems of protection': refugee status and subsidiary protection status.[45] It also noted that this separation is reflected in Article 2(e) of the Directive which states that a person eligible for subsidiary protection is one 'who does not qualify as a refugee'.[46] It therefore held that the two regimes were separate and must be interpreted independently:

> Therefore … the cessation of refugee status cannot be made conditional on a finding that a person does not qualify for subsidiary protection status.[47]

42. *Abdulla*, above n 17, paragraph 101 (emphasis added). The Court also discussed this issue at paragraph 75.
43. Opinion of Advocate General Mazák in *Abdulla and others*, above n 33, paragraph 54.
44. See list of referral questions in *OA*, above n 17, paragraph 29.
45. Indeed, Article 2(a) of the Directive defines 'international protection' as 'the refugee and subsidiary protection status as defined in (d) and (f)'.
46. *Abdulla*, above n 17, paragraph 78. Article 2(e) of the 2004 Qualification Directive is now Article 2(f) of the Recast 2011 Directive. The wording of both provisions is the same.
47. *Abdulla*, above n 17, at paragraph 79. It further explains: 'Within the system of the Directive, the possible cessation of refugee status occurs without prejudice to the right of the person concerned to request the granting of subsidiary protection status in the case where all the factors, referred to in Article 4 of the Directive, which are necessary to establish that he qualifies for such protection under Article 15 of the Directive are present' (paragraph 80).

This finding is significant as this contradicts the stated position of UNHCR, which has held that the presence of a 'real risk of serious harm' which would form the basis for subsidiary protection under Article 18 of the Qualification Directive, would exclude the operation of the cessation provision under Article 11(1)(e).[48]

The relationship between the two regimes and the criteria for cessation of subsidiary protection is also discussed in the CJEU judgement in *Bilali*.[49] This case concerned the revocation of subsidiary protection where the applicant was found to have been given protection based on incorrect information. Here the Court noted that under Article 16(1) of the Qualification Directive, cessation of subsidiary protection will occur when the circumstances which led to the granting of subsidiary protection have ceased to exist or have changed to such a degree that protection is no longer required. Further, that the change in circumstances must, according to Article 16(2), be of such a significant and definitive nature that the person concerned no longer faces a real risk of serious harm, within the meaning of Article 15 of that Directive.[50] Significantly, the Court indicated that the test for cessation of subsidiary protection would be similar to that set out for refugee status in *Abdulla,* that is, the question will be whether the applicant's original fear of serious harm no longer appears to be well founded.[51]

In addition to the substantive legal relationship between the two international protection regimes (eg relating to the legal tests for eligibility), there is an important question about the *procedural* relationship between the two statuses. For instance, if a state applies cessation to a holder of international protection and refugee status is revoked but the protection holder has a strong subsidiary protection claim, does the protection holder have to make a new application in order for their subsidiary protection claims to be assessed? This is addressed in this Legal Note below in the discussions of national approaches to standard of proof.

The need for stable security situation and living conditions

The CJEU was asked to rule on whether cessation of refugee status under Article 11(1)(e) requires that the security situation in the refugee's country of nationality be stable and the general living conditions ensure a minimum standard of living (Question 2(c)). Unfortunately, the CJEU failed to answer this question, on the basis that having regard to the answer given on the 'mirror' issue, there was no need to answer that second question.'[52] This has therefore remained an open question which has been raised in national jurisprudence - discussed below in Part IV(vi).[53]

Standard of Proof

There are two main issues which arose in the CJEU ruling in *Abdulla*: the standard of proof for demonstrating a 'significant and non-temporary' change of circumstances under the Article 11(2) of the Qualification Directive and the way in which new claims for persecution should be assessed as part of the cessation procedure.

In terms of the standard of proof to be used for cessation, The CJEU in *Abdulla* interpreted the term 'significant and non-temporary' used in Article 11(2) of the 2004 Qualification Directive as imposing a very high standard of 'permanent eradication' of the source of persecution:

> The change of circumstances will be of a "significant and non-temporary" nature, within the terms of Article 11(2) of the Directive, when the factors which formed the basis of the refugee's fear of persecution may be regarded as *permanently eradicated*.[54]

Importantly, UNHCR has recommended that all developments which would appear to show significant and profound changes be given time to consolidate before any decision on cessation is made. In the Discussion

48. UNHCR Cessation Statement 2008, above n 21, p 17.
49. Judgement of 23 May 2019, *Mohammed Bilali v Bundesamt für Fremdenwesen und Asyl*, C720/17, ECLI:EU:C:2019:448, http://curia.europa.eu/juris/document/document.jsf?text=&docid=214394&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=22401170 (hereinafter '*Bilali'*).
50. *Bilali,* above n 49, paragraph 47.
51. *Bilali*, above n 49, paragraph 48: 'It follows… from the actual wording of Article 19(1) of Directive 2011/95 that there is a causal connection between the change in circumstances referred to in Article 16 of that directive, and the impossibility for the person concerned of retaining his status as beneficiary of subsidiary protection, in that his original fear of serious harm, within the meaning of Article 15 of that directive, no longer appears to be well founded (see, by analogy, judgment of 2 March 2010, Salahadin Abdulla and Others, C 175/08, C 176/08, C 178/08 and C 179/08, EU:C:2010:105, paragraph 66).'
52. *Abdulla*, above n 17, paragraph 77.
53. This has also been referred to in UNHCR's amicus intervention in a 2018 Norwegian case where UNHCR reiterated that states using cessation must consider issues such as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood: UNHCR Amicus Bogarting CA, above n 22, paragraph 20.
54. *Abdulla*, above n 17, paragraph 73 (emphasis added).

Note on the Application of the 'ceased circumstances' Cessation Clause in the 1951 Convention, UNHCR advocated that a period of twelve to eighteen months should elapse after the occurrence of profound changes before such a decision is made and that this period be regarded as a minimum for assessment purposes.[55] Recent applications of the cessation clause by UNHCR show that the average period is around four to five years from the time fundamental changes commenced.

In relation to the standard of proof for *new claims*, the CJEU held that consideration of whether there are any *other* circumstances which could justify a fear of persecution[56] attracts the same standard of probability as that applied when refugee status was granted.[57] Thus, if the ceased refugee makes new claims for persecution, then this is not assessed under cessation (Article 11(2)) but using the well-founded fear test for recognition of refugee status.[58]

It could be argued that the cessation process should include an assessment as to whether subsidiary protection applies even if refugee protection has been revoked. This is addressed in this Legal Note below in the discussions of national approaches to standard of proof.[59]

In making this finding, the CJEU did recognise that the more relaxed standard of proof under Article 4(4) of the Qualification Directive may apply where new claims of persecution, unrelated to the original basis of recognition of refugee status, are made:

. . . in so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of the Directive may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of the Directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee.[60]

However, the Court placed a proviso on this statement, indicating that this may usually only be the case 'when there are earlier acts or threats of persecution which are *connected* with the *reason* for persecution being examined at that stage'.[61]

EU LEGISLATIVE DEVELOPMENTS SINCE THE ABDULLA RULING

Since the ruling of the CJEU in *Abdulla* in 2010, the Qualification Directive has been recast and now provides further clarity on key points such as the criteria for recognition of non-state actors of protection. Specifically, Article 7 of the Recast 2011 Qualification Directive now provides that (amendments in italics):

> 1. Protection against persecution or serious harm can only be provided by:
>
> (a) the State; or (b) parties or organizations, including international organizations, controlling the State or a substantial part of the territory of the State *provided they are willing and able to offer protection in accordance with paragraph 2*.
>
> 2. *Protection against persecution or serious harm must be effective and of a non-temporary nature. Such* protection is generally provided when the actors mentioned *under points (a) and (b) of* paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.[62]

Article 7 of the 2024 Qualification Regulation retains the core test for non-state actors of protection. However, notably, it adds a requirement of stability, stating that actors of protection encompass States and

55. UNHCR, 'Discussion Note on the Application of the 'ceased circumstances' Cessation Clause in the 1951 Convention; (EC/SCP/1992/CRP.1), paragraphs 12, 20, <www.unhcr.org/en-au/excom/scip/3ae68ccf10/discussion-note-application-ceased-circumstances-cessation-clauses-1951.html>.
56. Either for the same reason as that initially at issue or for one of the other reasons establishing refugee status set out in Article 2(c) of the Directive.
57. *Abdulla*, above n 17, paragraph 91.
58. *Abdulla,* above n 17, paragraphs 83 and 88.
59. See below.
60. *Abdulla,* above n 17, paragraph 100.
61. *Abdulla,* above n 17, paragraph 100.
62. 2011 Qualification Directive, above n 3, Article 7 (emphasis added).

'*stable*, *established* non-State authorities, including international organisations, which control the State or a substantial part of the territory of the State' (emphasis added).[63] These provisions preclude the classification of certain actors as actors of protection for the purposes of the Regulation. For example, family or community groups would not meet the threshold.

THE CJEU DECISION IN OA, JANUARY 2021

This case concerned a Somali national who had been granted refugee status in 2003 on the basis of his membership of a minority clan persecuted by majority clans. His refugee status was revoked in 2016 due to a change in circumstances in Somalia. The UK government argued before the CJEU that there had been a non-temporary change of circumstances in the refugee's country of origin as minority clans are no longer subject to persecution by the majority clan in the Mogadishu region, and the State now offers effective protection in that region. Importantly, the referring court, in assessing the applicant's situation if returned to Mogadishu, found that he could seek financial support from family living in that city, from his sister who was residing in Dubai and from members of his clan (Reer Hamar) in the UK.[64] The refugee applicant disputed this, noting that the country information used in the cessation assessment was the result of a misunderstanding of State protection, since it was based in part on the availability of protection from family or other clan members, who are private, and not State, actors.[65] This was relevant because the referring court had recognised that if no financial or other form of support is provided by their family or clan, Somali nationals who return to Mogadishu 'have no real prospect of securing access to a livelihood on return [and] will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms'.[66]

In the Advocate General's opinion on this question, delivered in April 2020, AG Hogan suggested that purely private parties such as families would *not* meet the requirements of Article 7 as they cannot provide a functioning legal and policing system based on the rule of law:

> The protection envisaged by the 1951 Convention is fundamentally, in substance, the traditional protection offered by a State, namely, a functioning legal and policing system based on the rule of law. Non-State protection envisaged by Article 7(1)(b) of the Qualification Directive is not simply the protection which might be offered by purely private parties — such as, for example, that of a private security firm guarding a gated compound, but is rather that offered by non-State actors who control all or a substantial part of the territory of a state and who have also sought to replicate traditional State functions by providing or supporting a functioning legal and policing system based on the rule of law.'[67]
>
> I therefore consider that in accordance with Article 7(1) and Article 11(1)(e) of the Qualification Directive 'protection' can be provided by the State or, in the alternative, by non-State actors who control all or a substantial part of a State and who have also sought to replicate traditional State functions by providing or supporting a functioning legal and policing system based on the rule of law. Mere financial and/or material support supplied by non-State actors falls below the threshold of protection envisaged by Article 7 of the Qualification Directive.[68]

This was also the approach taken by the CJEU to this issue in its decision of 20 January 2021. Importantly, the Court confirmed its earlier approach to cessation in *Abdulla*, finding that the notion of 'protection' in the

63. Article 7 of the 2024 Qualification Regulation also adds an additional clause – Article 7(3) - which provides that '[w]hen assessing whether stable, established non-State authorities, including international organisations, control a State or a substantial part of its territory and provide protection within the meaning of paragraph 2, the determining authority shall take into account precise and up-to-date information on countries of origin obtained from relevant and available national, Union and international sources and, where available, the common analysis on the situation in specific countries of origin and the guidance notes referred to in Article 11 of Regulation (EU) 2021/2303': 2024 Qualification Directive, above n 6.
64. *OA*, above n 17, paragraph 28.
65. *OA*, above n 17, paragraphs 25-26.
66. UK Upper Tribunal (Referring Court) referral questions, cited in OA, above n 17, paragraph 29.
67. Opinion of Advocate General Hogan of 30 April 2020, *Secretary of State for the Home Department v OA (Request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom)),* C255/19, ECLI:EU:C:2020:342, http://curia.europa.eu/juris/document/document.jsf?text=&docid=226001&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6295619 paragraphs 78-79. (hereinafter 'AG Opinion in OA').
68. *AG Opinion in OA*, above n 67, paragraph 84.

cessation assessment must be the same as that for recognition of status.[69] It also held that the social or financial support provided by private actors, such as families or clans fall short of such 'protection' and is therefore irrelevant for both the assessment of recognition and of cessation, ruling that:

> Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, must be interpreted as meaning that any social and financial support provided by private actors, such as the family or the clan of a third country national concerned, falls short of what is required under those provisions to constitute protection and is, therefore, of no relevance either to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Article 7(1)(a) of that directive, or to the determination, under Article 11(1)(e) of that directive, read together with Article 2(c) thereof, of whether there continues to be a well-founded fear of persecution.[70]

IV. RECENT CJEU DECISIONS OF RELEVANCE TO CESSATION - GENDER PERSECUTION AND CESSATION OF ARTICLE 1D PROTECTION

There are two additional CJEU decisions which have been handed down recently on legal issues which may be linked to cessation, namely (i) gender persecution and (ii) the exclusion provisions in Article 1D of the 1951 Refugee Convention for Palestinian refugees.

i. Cessation and Persecution based on Gender

In addition to considering obligations under the 1951 Refugee Convention and ECHR when undertaking cessation decisions, states may also need to consider broader obligations under international law in certain cases. For instance, both a decision to grant international protection, and a decision to cease that protection, may encompass consideration of treaty obligations for *specific groups* such as women (under the Convention on the Elimination of Discrimination against Women - CEDAW). This is relevant to cessation as academic commentators have noted that it is often the case that profound political change will not represent a change in women's rights, for example where peace processes fail to include gender.[71]

This also illustrates that, regardless of the change in circumstances, strict scrutiny must still be applied in cases where the specific profile of the applicant might indicate a need for the continuation of status or the granting of a different type of protection. For instance, as a definitional issue, where persecution is based on membership of a particular social group, the analysis of changed circumstances must pay particular attention to the differential impact of the changes on different social groups. Further, the assessment should include application of guarantees for vulnerable groups, regardless of details of the grounds for persecution. The complexity of the change in circumstances assessment also provides a strong reason for states to exercise due caution and not apply cessation procedures prematurely after the apparent cessation of active hostilities. Instead, states should first understand how the new situation or regime is evolving.

Against this context, the 2024 CJEU decision in *AH, FN, v Bundesamt für Fremdenwesen und Asyl, C608/22 and C609/22* relating to standards for the granting of international protection in the context of gender may be relevant to cessation decisions.[72] In this case, involving female applicants from Afghanistan, the CJEU considered the meaning of 'persecution' in Article 9 of the 2011 Qualification Directive and the need to engage in an individual assessment of the claims under Article 4. The Court held that:

69. *OA*, above n 17, paragraph 64: 'Article 11(1)(e) of 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, must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in respect of the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof'.

70. *OA*, above n 17, paragraph 64.

71. See eg Natasha Yacoub, 'Women's Rights and the Criteria for Cessation of Refugee Status for 'Ceased Circumstances'', Refugee Law Initiative Blog, 5 January 2022, https://rli.blogs.sas.ac.uk/2022/01/05/womens-rights-and-the-criteria-for-cessation-of-refugee-status-for-ceased-circumstances/ As Yacoub notes, this change can be assessed through a gender prism, by drawing on Security Council resolutions under the agenda item of 'women, peace and security': see 'Peace agreements with a gender perspective are still an exception, not the rule', LSE Women, Peace and Security blog, <https://blogs.lse.ac.uk/wps/2021/06/18/peace-agreements-with-a-gender-perspective-are-still-an-exception-not-the-rule/>.

72. *AH, FN, v Bundesamt für Fremdenwesen und Asyl, C608/22 & C609/22*, ECLI:EU:C:2024:828, European Union: Court of Justice of the European Union, 4 October 2024 - Requests for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria).

> Article 9(1)(b) of Directive 2011/95 must be interpreted as meaning that an accumulation of discriminatory measures in respect of women – consisting, inter alia, in depriving them of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education, prohibiting them from taking part in sports and excluding them from political life – adopted or tolerated by an 'actor of persecution' within the meaning of Article 6 of that directive comes within the concept of 'act of persecution', since those measures, by their cumulative effect, undermine human dignity as guaranteed by Article 1 of the Charter.[73]

It also emphasised the importance of state authorities collecting specific country information about gender:

> … the competent national authorities must collect country of origin information that has relevance for the examination of applications made by women, such as the position of women before the law, their political rights, their social and economic rights, the cultural and social mores of the country and consequences for non-adherence, the prevalence of harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making such a claim.[74]

The Court pointed to country guidance on women in Afghanistan from UNHCR and concluded that:

> … regarding applications for international protection lodged by women who are Afghan nationals, the competent national authorities are entitled to consider that it is currently *unnecessary to establish*, in the *individual assessm*ent of the situation of an application for international protection, that there is a risk that she will actually and specifically be subject to acts of persecution if she returns to her country of origin, where the factors relating to her individual status, such as her nationality or gender, are established.
>
> Having regard to the foregoing considerations, the answer to the second question is that Article 4(3) of Directive 2011/95 must be interpreted as *not requiring* the competent national authority – in order to determine whether, having regard to the conditions in a woman's country of origin at the time of the assessment of her application for international protection, the discriminatory measures to which she has been or could be exposed to in that country amount to acts of persecution within the meaning of Article 9(1) of that directive – to take into consideration, in the *individual assessment* of her application for the purposes of Article 2(h) of that directive, factors particular to her personal circumstances other than those relating to her gender or nationality.[75]

Although this decision relates to the *grant* of international protection, rather than its cessation, it is relevant given that the test for the grant of international protection and the test for cessation have strong linkages (via consideration of persecution). It is important to emphasise that actors of protection must also be shown to provide protection *specifically for the group in question* (in this case, women) in line with the 'beyond the mirror image' principle for cessation discussed above in Part III.

This CJEU decision on gender is important for indicating that the above considerations may also need to be considered in cessation decisions by Member States involving gender, such as the need to utilise country information *specifically* relating to gender discrimination and other harm, and that there may be no requirement for national authorities to make an individual assessment of the existence of persecution in some circumstances (where the accumulation of discrimination and harm is of a sufficiently high level). It also indicates that a more gender-sensitive interpretation of the 2011 Qualification Directive may be taken in the future to other provisions in the Directive, such as the cessation provisions set out in Article 11.

ii. The interaction between Article 1C and Article 1D

Another recent CJEU case involving Article 1D of the Refugee Convention and Article 12 of the 2011 Qualification Directive - *SN, LN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* - may be of relevance to cessation of international protection under Article 1C. This case is important as it provides

73. *AH, FN, v Bundesamt für Fremdenwesen und Asyl, C608/22 & C609*/22, above n 72, paragraph 46, citing 'judgments of 16 January 2024, Intervyuirasht organ na DAB pri MS (Women victims of domestic violence), C621/21, EU:C:2024:47, paragraph 61, and of 11 June 2024, Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality), C646/21, EU:C:2024:487, paragraph 61'.
74. *AH, FN, v Bundesamt für Fremdenwesen und Asyl, C608/22 & C609*/22, above n 72, paragraph 53.
75. *AH, FN, v Bundesamt für Fremdenwesen und Asyl, C608/22 & C609*/22, above n 72, paragraphs 57-58 [emphasis added].

guidance as to the circumstances under which those applicants entitled to UNRWA's protection can obtain refugee status in the EU. This is also an important contemporary issue as Palestinians living in Syria and the assessment of their cases merits specific considerations in view of the way in which the change in circumstances in Syria may affect them in different ways than the general Syrian population. That assessment must be made in line with the most recent CJEU case law which we present here.

Before examining this decision, it is important to note two things about the operation of Article 1D of the Refugee Convention (and its Qualification Directive equivalent) in the European context.

First, Article 1D of the Refugee Convention states:

> 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.

This is reflected in Article 12(1)(a) of the 2011 Qualification Directive under which stateless persons of Palestinian origin registered with UNRWA are excluded from obtaining refugee status. However, that exclusion no longer applies if UNWRA's protection or assistance has 'ceased'.

Second, it is important to consider UNHCR's position on the applicability of Article 1D of the Refugee Convention to Palestinian refugees, particularly as this document refers to Article 1C several times. In essence, UNHCR considers that two groups of Palestinian refugees fall within the scope of Article 1D of the 1951 Convention:

(i) Palestinians who are "Palestine refugees" within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and other UN General Assembly Resolutions, who were displaced from that part of Palestine which became Israel, and who have been unable to return there.

(ii) Palestinians who are "displaced persons" within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly Resolutions, and who have been unable to return to the Palestinian territories occupied by Israel since 1967. For the purposes of the application of the 1951 Convention, both of these groups include persons who were displaced at the time of hostilities, plus the descendants of such persons.5 On the other hand, those individuals to whom *Articles 1C,* 1E or 1F of the Convention apply do not fall within the scope of Article 1D, even if they remain "Palestine refugees" and/or "displaced persons" whose position is yet to be settled definitively in accordance with the relevant UN General Assembly resolutions.[76]

It notes that a third category of Palestinian refugees includes individuals who are neither "Palestine refugees" nor "displaced persons", but who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the Palestinian territories occupied by Israel since 1967 and are unable or, owing to such fear, are unwilling to return there. It notes that such Palestinians do not fall within the scope of Article 1D of the 1951 Convention but qualify as refugees under Article 1A(2) of the Convention, 'providing that they have neither ceased to be refugees under *Article 1C* nor are excluded from refugee status under Articles 1E or 1F'.

Importantly, UNHCR notes that:

> If, however, the person is outside UNRWA's area of operations, he or she no longer enjoys the protection or assistance of UNRWA and therefore falls within paragraph 2 of Article 1D, providing of course that *Articles 1C,* 1E and 1F do not apply. Such a person is automatically entitled to the benefits of the 1951 Convention and falls within the competence of UNHCR. This would also be the

76. UNHCR, 'Applicability of Article 1D of the 1951 Refugee Convention to Palestinian Refugees – UNHCR Note Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees', 10 October 2002, https://www.un.org/unispal/document/auto-insert-197289/ [emphasis added; citations omitted].

case even if the person has never resided inside UNRWA's area of operations.[77]

Against this context, the CJEU was asked to consider the circumstances in which UNRWA's assistance or protection must be considered to have ceased vis-à-vis a stateless person of Palestinian origin under Article 12(1)(1) of the 2011 Qualification Directive in the 2024 decision of *SN & LN, v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*.[78]

This case concerned a stateless mother and child of Palestinian origin who lived in the Gaza Strip. In 2018, they fled Gaza due to unsustainable living conditions and lodged an asylum application in Bulgaria, basing their claims on several factors, including dire conditions and instability in the Gaza Strip. In response, the Bulgarian authorities rejected the applications, arguing that they would not incur a serious risk of death, torture or inhuman and degrading treatment as required by Article 15 of the 2011 Qualification Directive if returned to the Gaza Strip. That application was rejected and the applicants then lodged a second application submitting that UNRWA's assistance had ceased in relation to them and providing evidence relating to the dire living conditions in the Gaza Strip, arguing that it was not possible for them to live under dignified living conditions.[79]

In this case, the CJEU held that:

> The second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)'s protection or assistance, from which an applicant for international protection, a stateless person of Palestinian origin, benefits, must be considered to have ceased within the meaning of that provision when, (i) that body finds itself unable, for whatever reason, including by reason of the general situation in the sector of that body's area of operations, in which that stateless person had his or her habitual residence, to ensure to that stateless person, taking into account, where applicable, his or her state of vulnerability, *dignified living conditions, consistent with its mission, without him or her being required to demonstrate that he or she is specifically targeted by that general situation by reason of elements specific to his or her personal situation*, and (ii) that stateless person of Palestinian origin would find himself or herself, if he or she were to return to that sector, in a state of *serious insecurity*, taking into account, where applicable, his or her state of vulnerability, since the administrative and judicial authorities are required to carry out an individual assessment of each application for international protection based on that provision, within the framework of which the age of the person concerned may be relevant. UNRWA's assistance or protection must, in particular, be considered to have ceased vis-à-vis the applicant when, for whatever reason, that body is no longer able to provide to any stateless person of Palestinian origin staying in the sector of that body's area of operations where that applicant had his or her habitual residence, *dignified living conditions or minimum security conditions*.[80]

Thus, the CJEU decision indicates that there may be exceptional cases, such as the situation in the Gaza Strip (as of 2024), where applicants do not need to show they are personally targeted by risks generated from a general situation. In those cases, extreme poverty and generalised insecurity are sufficient to establish that UNRWA's assistance cannot meet anyone's basic needs.

This will be relevant to the ability of this caseload of applicants to *obtain* international protection and also, arguably, to state authorities wishing to apply *cessation* of international protection for those Palestinian applicants who have already been granted international protection. This is because such applicants may be able to claim protection from refoulement due to the lack of dignified living conditions or the security situation in the relevant territories.

77. UNHCR, 'Applicability of Article 1D of the 1951 Refugee Convention to Palestinian Refugees – UNHCR Note Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees. In a footnote, UNHCR states that 'For example, a descendant of a "Palestine refugee" or of a Palestinian "displaced person" may never have resided in UNRWA's area of operations, and also not fall under Articles 1C or 1E of the 1951 Convention' [emphasis added].

78. CJEU, Judgment of the Court (Fourth Chamber) of 13 June 2024 (request for a preliminary ruling from the Administrativen sad Sofia-grad – Bulgaria) – *SN, LN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (Case C-563/22).

79. *SN, LN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (Case C-563/22), above n 78, paragraphs 22-25.

80. CJEU, Judgment of the Court (Fourth Chamber) of 13 June 2024 (request for a preliminary ruling from the Administrativen sad Sofia-grad – Bulgaria) – *SN, LN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (Case C-563/22), paragraph 2.

V. NATIONAL PRACTICES AND CASE LAW ON CESSATION

National practices and case law have covered a number of different aspects of cessation. This legal note breaks analysis of cessation into those various legal issues as they relate to distinct aspects of the relationship between cessation and key aspects of international protection, such as non-state actors of protection and the IPA. We note that that this list is not exhaustive and that case law examples are a mere illustration of the types of issues which have been litigated in European national courts.[81]

(i) Is the test for cessation similar to that for recognition of refugee status (a mirror image?)

Although the CJEU in Abdulla held that the test for cessation is the 'mirror' of recognition, there has been some divergence in approach amongst national courts on this issue. On one hand, the superior courts in the **UK** and **Germany** have held that protection for the purposes of cessation means protection against persecution, that is, cessation is the 'mirror image' of recognition.[82] In the **UK,** the UK Court of Appeal in Secretary of State for the Home Department v MA (Somalia) explained its reasoning as follows:

> .. the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist. Thus, the relevant question is whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee. The recognising state does not in addition have to be satisfied that the country of origin has a system of government or an effective legal system for protecting basic human rights, though the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred.[83]

On the other hand, the Supreme Court of **Norway** held in a 2018 case that the cessation test is not simply the 'mirror image' of the assessment for recognition and so the test for cessation is not simply whether a person has a well-founded fear of persecution.[84] The rationale for this finding was that '[a] person who has been recognised as a refugee has obtained a slightly higher level of safety than a person who has not'.[85] Significantly, UNHCR has endorsed the approach in this case, noting in an amicus submission that '[t]he cessation analysis is not simply the "mirror image" of assessing whether a person has a well-founded fear of persecution and is unwilling or unable to avail her- or himself of the protection of her or his country of origin.[86] This approach can be viewed as a different, slightly-wider interpretation of the 'mirror image' principle set out in Abdulla – what I have termed 'beyond the mirror image' in this Note - but does not directly contradict the ruling in Abdulla on the relationship between recognition and cessation.

Another aspect of this question is certain state practice which adds further cessation 'triggers' to national legislation. An example of this is the state practice of **Bulgaria** which adds cessation criteria which is not provided for in either the Refugee Convention or Qualification Directive. As AIDA has reported, cessation procedures are initiated when authorities provide information indicating that status holders have either returned to their country of origin, obtained residence or citizenship in a third country, or have not renewed their Bulgarian identification documents for a period exceeding 3 years. As AIDA notes, '[t]his broadened interpretation of the recast Qualification Directive introduces de facto an additional cessation ground in violation of national and EU legislation'. [87]

The practical implications of the difference between recognition and cessation can also be clearly seen in the approach taken by some national courts to the treatment of family members and, in particular, aged-out children in cessation procedures which is discussed later in this Legal Note.

81. Please refer to the AIDA country reports for more information on cessation-related practices across Europe: https://asylumineurope.org/.
82. UK: *Secretary of State for the Home Department v MA (Somalia)* [2018] EWCA Civ 994 (Arden J); Germany: *A and R v Federal Republic of Germany*, 24 February 2011, 10 C 3.10, paragraph 16.
83. *MA Somalia* 2018, above n 17, paragraph 2.
84. HR-2018 Supreme Court of Norway, above n 17, paragraph 44. The Court held that 'the conditions for revoking a refugee status and residence permit pursuant to section 37 subsection 1 e, are not a direct mirroring of the conditions for granting the same pursuant to section 28'.
85. HR-2018 Supreme Court of Norway, above n 17, paragraph 44.
86. UNHCR Amicus Bogarting, Norway, above n 21, paragraph 26 (citing HR-2018 Supreme Court of Norway).
87. AIDA, Asylum in Europe – Country Report Bulgaria, 2019, p 79 https://asylumineurope.org/wp-content/uploads/2020/02/report-download_aida_bg_2019update.pdf.

(ii) Evidentiary standards in the assessment of cessation cases

As discussed above, Article 11(2) of the 2011 Qualification Directive provides that the changes in the country of origin must be of a 'significant and non-temporary nature'.

European countries took divergent or slightly different approaches to this issue. For instance, in a Supreme Court decision in **Norway** in 2018, the court held that:

> The condition that the circumstances that led to recognition as a refugee "are no longer present" – or "have ceased to exist" pursuant to the Convention – means that a change must have taken place that is so significant that protection can be enjoyed in the home country. In my opinion, this condition also implies that the change that has taken place must be *sufficiently consolidated*, so that the foreign national, who is prepared to stay in Norway, is not consigned to a life that may easily result in new flight and right to refugee status.[88]

In the **UK,** the Court of Appeal referred to the CJEU's findings in Abdulla on the need to show 'eradication' of the basis of the refugee's fear of persecution. In interpreting that finding, the UK Court of Appeal emphasised that general conditions in the country of origin are not the focus of cessation and so the absence of political and legal institutions will not obviate a finding of cessation:

> …. the Refugee Convention and the QD are not measures for ensuring political and judicial reform in the countries of origin of refugees. The risks which entitle individuals to protection are risks which affect them personally and individually. It is an *individualised* approach. Just as it is no answer to an asylum claim that there is a legal system which might in theory be able to protect them, so conversely the absence of such a system is not an answer to a cessation decision if it is shown that the refugee has sufficient, lasting protection in other ways or that the fear which gave rise to the need for protection has in any event been superseded and disappeared.[89]

Jurisprudence in **France** has also considered protection and cessation in relation to the best interests of the child principle. For instance, in a case concerning two girl applicants from Mali who claimed risk of FGM, the CNDA refused to apply cessation despite statements from the girls' mother that FGM had reduced in prevalence in Mali. In concluding that there was no change of circumstances, the Court relied on the best interests of the child principle set out in the Convention on the Rights of the Child, and the protection against FGM set out in Article L.752-3 Ceseda.[90]

ARMED CONFLICT AND SECURITY ISSUES

One specific question in national case law has been whether a change can be regarded as 'significant and non-temporary' if there is armed conflict or other security issues in the country of origin. In a cessation decision by the Immigration Appeals Board of Norway in 2017, a majority of the Grand Board found that 'significant' changes had taken place in Mogadishu and therefore cessation was applicable.[91] The majority of the board noted that the main security threats in Mogadishu are terrorist attacks carried out by al-Shabaab and that these terror threats are aimed at the authorities but are not directed at the civilian population. The minority, in contrast, found that a significant and 'permanent' change had not occurred. This was because it was not clear from the country information as to whether al-Shabaab constitutes a risk to the civilian population in Mogadishu and that a significant change must also have taken place in the democratic and human rights situation in the country of origin.[92]

More recently, in July 2022, the Administrative Jurisdiction Division of **The Netherlands** Council of State in State Secretary v Applicant 202101443/1/V2 set aside a withdrawal of an asylum residence permit by state

88. HR-2018 Supreme Court of Norway, above n 17, paragraph 39 (emphasis added).
89. *MA Somalia* 2018, above n 17, paragraph 49.
90. CNDA, Mme S and Mme F., Decision Nos 17038232 and 17039171, 26 November 2018, discussed in AIDA, Country Report, France, 2019, p 130 https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_fr_2019update.pdf.
91. Immigration Appeals Board of Norway ('Grand Board'), Decisions on Cessation, June 2017, www.une.no/kildesamling/stornemndavgjorelser/stornemnd---opphor-av-flyktningstatus/. It found that '[w]ith the help of AMISOM [the African Union Mission in Somalia], the Somali authorities regained control of the city in 2012, which has led to a gradual improvement in the security situation in Mogadishu, and that al-Shabaab is no longer deemed to constitute a real risk to the appellants'.
92. Ibid.

authorities.[93] The applicant, an Afghan national, had obtained refugee status but his temporary asylum residence permit was withdrawn in 2020 by the State Secretary for Justice and Security. The Council of State noted that a radical change of regime took place in Afghanistan in the summer of 2021 as the Taliban had come to power. It held that, in view of the radical change in the regime in Afghanistan, it was still unclear what consequences this may have for the appellant if he returns to Afghanistan. Therefore, the court held the decision-maker was under an obligation to investigate this matter further. As a result, the court declared the appeal well-founded and annulled the withdrawal decision of 8 July 2020, thus permitting the State Secretary to take a new decision considering the changed situation in Afghanistan.

PERSONAL CIRCUMSTANCES

A further issue is whether a change in personal circumstances can trigger cessation. This may include circumstances such as divorce, the reunification of a family, the 'ageing-out' of a child or other changes relating to a primary applicant which may affect an applicant who was given derivative status from that primary person.

Case law in **Norway**[94] and the **UK**[95] has held that a change of personal circumstances can trigger cessation. The 2017 **UK** Court of Appeal decision in MM (Zimbabwe) held that:

The circumstances in connection with which a person has been recognised as a refugee are likely to be a combination of the general political conditions in that person's home country and some aspect of that person's personal characteristics. Accordingly, a relevant change in circumstances for the purposes of Article 1C(5) might in a particular case also arise from a combination of changes in the general political conditions in the home country and in the individual's personal characteristics, or even from a change just in the individual's personal characteristics, if that change means that he now falls outside a group likely to be persecuted by the authorities of the home state.[96]

In this case, there were some changes in the general political situation in Zimbabwe since the applicant had left the country and there had also been some changes in his personal circumstances, in that he had not engaged in political activities for many years. *Both* were considered relevant by the Court in relation to the cessation assessment.

Family Relationship

Another issue in national practice concerns the application of cessation where an individual has been recognised as a refugee on the basis of their family relationship with a person who has already been granted refugee status, rather than any individualised fear of persecution in their home country. This can raise procedural complexities for cessation if such an applicant was given international protection based on a family relationship without having been an individual determination of whether they *themselves* had a well-founded fear of persecution.

In **France**, the Council of State [Conseil d'État], ruled that refugee status can end following divorce, when the status was obtained based on family unity.[97] In relation to children, however and an example of **best practice** is the finding of the CNDA in 2018 that, in line with the principle of family unity, a child benefitting from the same refugee status as his mother could not be subject to cessation by the mere fact of reaching the age of 18, as long as the mother maintained refugee status.[98]

In two 2019 cases in the **UK** - Secretary of State for the Home Department v KN (DRC)[99] and Secretary of

93. Council of State of The Netherlands (Afdeling Bestuursrechtspraak van de Raad van State), *State Secretary v Applicant*, 202101443/1/V2, ECLI:NL:RVS:2022:1664, 22 June 2022, <https://www.raadvanstate.nl/uitspraken/@132155/202007098-1-v2/>; Summary at: <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2638>.
94. HR-2018 Supreme Court of Norway, above n 17.
95. *MM (Zimbabwe)*, above n 13; *Secretary of State for the Home Department v KN (DRC),* above n 31.
96. *MM (Zimbabwe),* above n 13, paragraph 24.
97. Council of State [Conseil d'État], *M.A. (Russia) vs French Office for the Protection of Refugees and Stateless Persons (OFPRA),* 29/11/2019, <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1057>.
98. CNDA, M. O., Decision No 17013391, 31 December 2018, cited in AIDA, Asylum in Europe – Country Report France, 2019, p 129 <https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_fr_2019update.pdf>.
99. *Secretary of State for the Home Department v KN (DRC)*, above n 31.

State for the Home Department v JS (Uganda),[100] the court considered whether cessation can be applied to refugee status arising from a family relationship. In each of these cases, the applicants were **children** when they were recognised as a refugee and obtained refugee status via their parents. The argument was how this affected cessation when the children had turned 18 and therefore 'aged out' of a dependent category or lost any special protections that may be afforded to them as minors.

In *Secretary of State for the Home Department v KN (DRC),* the applicant had been recognised as a refugee in 1994 as a family reunion dependant of his father, who had fled political persecution in the Democratic Republic of Congo (DRC). The Upper Tribunal had allowed his appeal on the basis that he had not been recognised as a refugee in his own right but because his parents were recognised as refugees; and that, as a result, any political changes in the DRC had no bearing on the circumstances in connection with which he had been recognised as a refugee (meaning that cessation was not justified). However, the Secretary of State argued that the circumstances in the DRC that had led to the applicant's father being granted refugee status no longer applied and as a result, this also ceased the refugee status of the applicant. In that case, the Court of Appeal held that:

> In this case, the respondent was granted refugee status 25 years ago in 1994 at a time when, under the policy then in place, a member of a family of a person granted refugee status was himself automatically recognised as a refugee… His father's persecution by the regime in DRC, and well-founded fear of further prosecution were he to be returned to that country, were manifestly part of the circumstances in connection with which the respondent himself was recognised as a refugee.[101]

The Court therefore held that:

> given that the respondent has been granted refugee status, the onus of proving that the circumstances in connection with which he was recognised as refugee have ceased to exist lies on the Secretary of State. He must show that, if there were any circumstances which in 1994 would have justified the respondent fearing persecution in DRC, those circumstances have now ceased to exist and that there are no other circumstances which would now give rise to a fear of persecution for reasons covered by the Refugee Convention.[102]

In *Secretary of State for the Home Department v JS (Uganda),* the UK Court of Appeal addressed the issue more directly, giving stronger guidance on cessation. It found that the meaning of the term 'refugee' in Article 1A of the Refugee Convention, is a person who *themselves* have a 'well-founded fear of being persecuted'. Therefore, the applicant in this case, who was granted refugee status via his mother, was not considered a 'refugee'. Further, even if the applicant had been a Refugee Convention refugee, the Secretary of State would have been entitled to invoke Article 1C(5):

> … on its true construction, article 1C(5) requires consideration of *relationship* and *risk*. It follows .. that, in the language of article 1C(5) of the Refugee Convention, 'the circumstances in connexion with which [the applicant] has been recognised as a refugee… have ceased to exist', since his mother can no longer have a well-founded fear of persecution in Uganda.[103]

CHILDREN AGEING OUT (TURNING 18)

In addition to these cases involving derivative status, there is a more general question as to whether the fact that a child turns 18 and therefore 'ages out' should be a trigger for cessation. The issue here is whether the reason for recognition – being a minor or a dependent – no longer exists. For instance, it was the practice of decision-makers in **Slovenia** to grant subsidiary protection to unaccompanied minors from Afghanistan protection until they were 18 on the basis that a return of an UAM to Afghanistan would represent a risk of serious harm. However, upon those applicants 'ageing out' the authorities would refuse to extend their subsidiary protection because the initial reasons for the grant of protection (being a minor) no longer existed.[104]

100. *Secretary of State for the Home Department v JS (Uganda)* [2019] EWCA Civ 1670 www.bailii.org/ew/cases/EWCA/Civ/2019/1670.html.
101. *Secretary of State for the Home Department v KN (DRC*), above n 31, paragraph 34.
102. *Secretary of State for the Home Department v KN (DRC*), above n 31, paragraph 36.
103. *Secretary of State for the Home Department v JS (Uganda)*, above n 100, paragraph 172 (emphasis in original).
104. Discussed in EDAL summary of Constitutional Court of Slovenia, Constitutional Court of the Republic of Slovenia, Judgement U-I-U-I-189/14, Up-663/14, 15 October 2015, www.asylumlawdatabase.eu/en/case-law/slovenia-constitutional-court-republic-slovenia-15-october-2015-judgment-u-i-u-i-18914.

In such a scenario, a state may be under an obligation to consider the best interests of the child, their right to family life and obligations under European law in relation to family reunification (even where a child 'ages out').[105] Indeed, UNHCR's view is that the fact that a child turns 18 years of age should not routinely prompt the initiation of cessation procedures or discontinuation of residence permit. It states that the protection risks which gave rise to the granting of protection status do not necessarily end because childhood ends.[106]

NEW CLAIMS OF PERSECUTION

Another question which has arisen in national case law has been how new claims of persecution should be dealt with in cessation assessment procedures. This was the subject of consideration by the **German** Federal Administrative Court in 2011 in A and R v Federal Republic of Germany.[107] This case concerned husband and wife applicants from Iraq. The applicants were recognised as refugees by the German Federal Office in February 2002 on the basis that the Iraqi authorities viewed a mere application for asylum in another country as political opposition.[108] In 2005, the German Office revoked the applicants' refugee status following a finding that their fear of persecution had permanently ceased to exist due to the changed political conditions in Iraq. The applicants made new claims that the husband had been involved in the Democratic People's Party in Iraq prior to leaving the country. The German Federal Administrative Court held that there was a link between the new claims and the previous basis for recognition and thus the case could be assessed as a cessation decision (that is, whether there has been a non-temporary change in country conditions under Article 11(2)). The political party the applicant had been involved with was at that time in opposition to Saddam Hussein's regime and thus the Court viewed this as sufficiently linked to the previous claim for refugee status upon which the applicant had been granted refugee status:

> Although the recognition of his refugee status was not *founded* on this argument, it was nevertheless *connected* with opposition to the regime at the time – which was presumed by the Iraqi authorities because he had filed an application for asylum – and was therefore *connected* with political opinion as a reason for persecution.[109]

This is significant because the CJEU ruling in *Abdulla* required a 'connection' between the reason for persecution in the past and any claims about future persecution. The German Federal Administrative Court appears to have interpreted the 'connection' requirement quite widely here.

Having established that there was a connection between the applicant's previous claims and the new claims, the German Federal Administrative Court held that:

> If the Complainant is threatened with persecution in relation to his involvement with the 'Democratic People's Party', this would indeed need to be taken into account in the examination under Article 11(2) of Directive 2004/83/EC, with regard to the question of whether the established change in circumstances – specifically, the cessation of persecution by the Saddam Hussein regime and the establishment of a new government . . . is sufficiently significant that the Complainant's fear of persecution should no longer be considered well founded.[110]

This has also been considered as part of cessation of subsidiary protection by the Constitutional Court of **Slovenia**.[111] In this case, the Asylum authority had refused to examine new evidence which the applicant submitted in support for his request for an extension of his subsidiary protection status. The Authority argued, amongst other things, that if there were new circumstances the applicant should start a new procedure for international protection and that the findings in Abdulla were not applicable by analogy (because that case was about cessation of refugee status, not subsidiary protection). However, the Constitutional Court of Slovenia endorsed the application of Abdulla to subsidiary protection, finding that in assessing cessation of subsidiary protection status it is not enough to conclude that the circumstances based on which protection was granted ceased to exist but also that there are no circumstances that would

105. This is discussed in detail in the ECRE/ELENA Legal Note on Ageing Out and Family Reunification, June 2018, www.ecre.org/wp-content/uploads/2018/06/Legal-Note-4.pdf. The litigation on this issue is discussed below at [cross refer].

106. UNHCR Representation for Northern Europe, 'UNHCR recommendations to Sweden on strengthening refugee protection in Sweden, Europe and globally', May 2020, p 5 https://www.unhcr.org/neu/wp-content/uploads/sites/15/2020/06/UNHCR-recommendations-to-Sweden-on-strengthening-protection-of-refugees-May-2020.pdf.

107. German Federal Administrative Court, *BVerwG 10 C 3.10*.

108. German Federal Administrative Court, *BVerwG 10 C 3.*10, paragraph 2.

109. German Federal Administrative Court, *BVerwG 10 C 3.*10, paragraph 24.

110. German Federal Administrative Court, *BVerwG 10 C 3.*10, paragraph 24 (emphasis added).

111. Constitutional Court of the Republic of Slovenia, Judgement U-I-U-I-189/14, Up-663/14, 15 October 2015, www.asylumlawdatabase.eu/en/case-law/slovenia-constitutional-court-republic-slovenia-15-october-2015-judgment-u-i-u-i-18914.

justify the need for protection. Therefore, an applicant can make new claims for protection as part of the cessation procedure.

(iii) Procedural obligations for assessment of remaining international protection claims upon revocation of one status

One procedural issue which requires clarification is what obligations are placed on a national status determination body and/or applicant to demonstrate eligibility for international protection where one of the statuses of international protection has been revoked. Specifically, should an applicant subject to revocation of refugee status be obliged to make a subsequent application for international protection in order for their eligibility for subsidiary protection to be determined or should the state assess this as part of the cessation/ revocation procedure?

It is arguable that when state authorities are conducting a cessation of refugee status, they should consider the applicant's eligibility for subsidiary protection as part of that cessation assessment procedure, without obliging the applicant to make a fresh application for international protection. This obligation can be drawn from several provisions of EU instruments, including the EU Qualification Directive, EU Procedures Directive and various decisions of the CJEU.

Firstly, Article 2(f) of the 2011 Qualification Directive (recast) defines a 'person eligible for subsidiary protection' as one 'who does not qualify as a refugee'. Thus, there is a definitional link between the two international protection regimes and an ordering of assessment: refugee status is to be assessed first, and then subsidiary protection. The ordering of qualification for international protection set out in Article 2(f) of the Qualification Directive is also reflected in Article 10(2) of the Procedures Directive recast 2013 which provides that:

> 'When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.'[112]

This ordering is important as the implication of these provisions is that when assessing applications for international protection, the determination and grant of refugee status will necessarily mean that any eligibility of an applicant for subsidiary protection remains *unassessed* at that preliminary application stage (because the determination of subsidiary protection will only occur if refugee status is rejected). Although these provisions relate to the examination of *applications* for international protection (rather than revocation), they demonstrate that a person who has been granted refugee status may have in fact also had factual claims to underpin *subsidiary protection* at the application stage. However, due to the ordering of assessment, they will not have been assessed for eligibility of that status. Thus, a final decision on their original application for international protection has not in fact been carried out in full. This means that the need to make a 'subsequent application' as set out in the Procedures Directive, which is defined as a 'further application for international protection made after a final decision has been taken on a previous application[113] is not necessary. In summary, where a person has applied for international protection, has been granted refugee status and later had that refugee status withdrawn, legally the person's eligibility for subsidiary protection has not been established and any risk that could justify subsidiary protection has not been assessed.

Whilst acknowledging that the ordering of determination in the EU Qualification and Procedures Directives works to the advantage of the applicant at the original application stage, this does have implications for revocation of their refugee status. Arguably, the fact that in such a scenario, the person's possible eligibility for subsidiary protection at the recognition stage has not been assessed means that there should not be an obligation on the applicant to make a fresh, subsequent application for subsidiary protection in order to have their claims for subsidiary protection examined upon revocation of their refugee status.

Further guidance on this question of how the cessation procedure interacts with the ordering of examination

112. 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), OJ L 180, 29.6.2013 ('Procedures Directive (recast) 2013').

113. Procedures Directive recast 2013, above n 113, Article 2(q). See also Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, PE/16/2024/REV/1, OJ L, 2024/1348, 22.5.2024 ('2024 Procedures Regulation'), Article 3 (19): '"subsequent application' means a further application for international protection made in any Member State after a final decision has been taken on a previous application, including cases in which the application has been rejected as explicitly or implicitly withdrawn'.

of applications for international protection is provided by the CJEU in *Abdulla* which noted that:

> 'Within the system of the Directive, the possible cessation of refugee status occurs without prejudice to the right of the person concerned to *request the granting of subsidiary protection status* in the case where all the factors, referred to in Article 4 of the Directive, which are necessary to establish that he qualifies for such protection under Article 15 of the Directive are present.'[114]

The question is then whether the recognition of a right of a person to *request* the granting of subsidiary protection as stated in *Abdulla* means that the person must lodge a fresh application for international protection in order to *avail themselves* of that right.

In order to ascertain this, we must look at the Procedures Directive and guidance from the CJEU in relation to the adoption of a single procedure for granting and withdrawing international protection and principles of efficiency and good administration.

As a starting point, Recital (11) of the Procedures Directive (recast) 2013 states that:

> 'In order to ensure a comprehensive and *efficient assessment* of the international protection needs of applicants within the meaning of 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... the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a *single procedure*.[115]

The principle of efficiency, which is also emphasised in the 2024 Procedures Regulation,[116] should be read in light of the right to good administration in Article 41 of the Charter of Fundamental Rights of the European Union[117] – a provision cited in CJEU case law on revocation of refugee status.[118] Taken together, this supports the finding that a fresh application for subsidiary protection should not be required upon the revocation of refugee status (given the administrative burden and inefficiencies in procedure that this will entail). The aim of establishing a *single procedure* for granting and withdrawing international protection cited in Recital (11) above also underpins the argument that, procedurally, a revocation decision on refugee status should encompass consideration of the person's claim for subsidiary protection without the need for that applicant to make a fresh application for that status (given the interlinking of the two statuses within a single procedure framework).[119]

Further, Recital (49) of the Procedures Directive (recast) 2013 states that:

> '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'.[120]

Article 45 of the Procedures Directive Recast then states that persons subject to withdrawal of their international protection should be given the opportunity to 'submit… reasons as to why his or her

114. *Abdulla*, above n 17, paragraph 80 [emphasis added].
115. Procedures Directive (recast) 2013'), above n 113 [emphasis added].
116. See eg 2024 Procedures Regulation, above n 114, Recital (5): 'For a well-functioning CEAS, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) 2024/1347 of the European Parliament and of the Council ensuring the timeliness and effectiveness of the procedure'.
117. Article 41 of the Charter of Fundamental Rights of the European Union, which is entitled 'Right to good administration', provides in paragraphs 1 and 2: '1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

    2. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions.'
118. See eg CJEU, *Case C277/11, Reference for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 1 June 2011, in the proceedings M. M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, at paragraphs 82-83 which applied this in relation to the right to be heard in revocation proceedings.
119. I note that several Member States adopt a single procedure to applications including Germany, Ireland and The Netherlands.
120. Procedures Directive (recast) 2013, above n 113.

international protection should not be withdrawn.[121] A purposive reading of the term submission of a 'point of view' and 'reasons' in the context of revocation is directed at the right of a person to be heard in relation to the revocation. However, for the reasons set out above, this does not entail that this be done via the lodging of a fresh application.[122]

Therefore, the right of a person to *request* subsidiary protection after the revocation of refugee status (as noted by the CJEU in Abdulla discussed above) must be interpreted in line with the procedural rules in the Procedures Directive. In summary, the assessment of subsidiary protection upon revocation of refugee status should be undertaken as part of a reconsideration of status by the Member State, not via requiring the person to make a fresh application (particularly where the person's subsidiary protection status was not assessed at the first instance). Applicant's eligibility for subsidiary protection can be heard as part of their interview during the withdrawal procedure to the withdrawal of refugee status but it does not necessitate a fresh international protection claim.

This approach aligns with an interpretation of the Asylum Procedures Directive that recognises the fundamental importance of the rights protected under subsidiary protection status. The CJEU has emphasised that "*the procedure for examining applications for subsidiary protection is of particular importance inasmuch as it enables applicants for international protection to safeguard their most basic rights by the grant of such protection*."[123] In this light, procedural frameworks that unduly restrict access to subsidiary protection, for example by imposing additional administrative steps and delaying assessment until after the revocation of refugee status, risk being incompatible with the objective of the Asylum Procedures Directive.

(iv) When will obtaining a passport and return to the country of origin or other acts of re-availment of the protection of the country of origin engage the cessation clauses? (Articles 1C(1)-(4))

There are two issues which have arisen in the context of re-availment of the protection of the country of origin: re-availment via the application for/renewal of a home state passport; and a return to the country of origin.

Application for/renewal of a passport

There is some European state practice which indicates that an application for consular or diplomatic protection (via application for or renewal of a passport or other contact with home state authorities) may be considered as constituting formal re-availment of protection. This is demonstrated by the 2007 **UK** decision of RD (Algeria), where the UK Asylum and Immigration Tribunal noted that:

> ... a passport is very strong evidence that a person is a citizen of the country that issued the passport under consideration . . . Where a person obtains a passport it will be assumed that he or she intends to avail himself of the protection of the state that issued the passport.[124]

More recently, in 2020, the National Court of Asylum of **France** in M.S. (Russia) v French Office for the Protection of Refugees and Stateless Persons (OFPRA)[125] considered the application of cessation to a Russian national holding international protection in circumstances where the individual had obtained a Russian Federation passport. In this case, the Office française de protection des réfugiés et apatrides

121. See also Article 45(1) of Procedures Directive (recast) 2013, above n 113: '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.' (emphasis added). Article 45(3) adds that ' 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'. See similar wording in Article 66, 2024 Procedures Regulation, above n 114.

122. See also similar wording in the 2024 Procedures Regulation, above n 114, Recital (86) '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 that they are given the opportunity to submit their point of view, within a reasonable time, by means of a written statement and in a personal interview, before the authorities can take a reasoned decision to withdraw their status.'

123. CJEU, Judgment of 20 October 2016, *Danqua*, C 429/15, ECLI:EU:C:2016:789, paragraph 45.

124. *RD (Cessation - Burden of Proof - Procedure) Algeria v Secretary of State for the Home Department*, [2007] UKAIT 00066, paragraph 30.

125. France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.S. (Russia)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20012065, 28 December 2020; https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1606.

(OFPRA) terminated the individual's refugee status because he posed a threat to the security of the state and the applicant obtained a Russian Federation passport at the Strasbourg consulate after the grant to him of international protection. The Court concluded that the applicant had voluntarily been issued a passport by the authorities of the Russian Federation, without it being proven that it had been obtained by corruption or that compelling reasons or any coercion justified this approach, and that he had therefore placed himself under the protection of the Russian authorities. Consequently, it held that the cessation clause was applicable in this case and, in the absence of any other reasons to maintain the refugee status, the applicant's protection must cease accordingly.[126]

Return to the country of origin

In some cases, cessation rules are applied to refugees who return to their countries of origin, for brief or longer period, on one or multiple occasions.

The (limited) case law on this issue indicates that the courts will assess whether the act indicates an absence of a fear of persecution, including whether the person encounters difficulties entering the country of origin, or levels of attention.

For instance, in **Germany,** the 2016 decision of the Administrative Court at Aachen rejected an appeal by a Sri Lankan national against the revocation of subsidiary protection. In this case the German Federal Office for Migration and Refugees had revoked the appellant's protection status due to a change of circumstances, taking into account that the protection holder had applied for a passport and travelled back to Sri Lanka for several weeks for his (public) marriage celebration. The Court held that the issuance of a passport in 2009 and his marriage in the country of origin in December 2012 suggested that the security forces did not suspect him as an individual having LTTE contacts and thus these acts of the protection holder made it 'obvious', that the person in question 'was not facing persecution in his country of origin'.[127] In coming to this conclusion, the court noted that the plaintiff confirmed during the oral proceedings in court that he was able to smoothly enter and leave the country for his marriage via the airport at Colombo and that he had not mentioned that he had any problems with the authorities during the several weeks he stayed in his country of origin.[128]

For instance, in **Belgium**, the Conseil du Contentieux des Étrangers (CALL) held in the 2021 case of X v Commissaire général aux réfugiés et aux apatrides held that a return to the country of origin may indicate an absence of a fear of persecution. [129] In this case, the applicant who was a citizen of Burundi who belonged to the Tutsi ethnic group, had been granted refugee status in 2017 on grounds relating to political opinion. It was discovered that the protection holder had subsequently visited Burundi for his father's funeral and applied and obtained a Burundian passport. The Commissioner General for Refugees and Stateless Persons (CGRS) concluded that the refugee protection shall be withdrawn because his personal behaviour and return to his country of origin demonstrate the absence of any fear of persecution. The applicant appealed against the decision, but the CALL confirmed the withdrawal of protection. The CALL concluded that the applicant's behaviour, including his return and application for a passport, indicated an absence of fear of persecution.

It is also relevant to note that visits to the country of origin have been permitted by some states in relation to both Syrian and Ukraine without application of cessation procedures. For instance, Turkey has permitted short visits by Syrian refugees[130] and temporary protection beneficiaries have been permitted to visit Ukraine

126. *M.S. (Russia)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, above n 125.

127. Administrative Court (VG) of Aachen, Germany, 12 February 2016: 7 K 1690/14.A

128. Administrative Court (VG) of Aachen, Germany, 12 February 2016: 7 K 1690/14 A.

129. Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X* v *Commissaire général aux réfugiés et aux apatrides (CGRS)*, 252 746 , 14 April 2021.

130. For instance, tens of thousands of Syrian refugees were permitted by Turkey to visit Syria temporarily for the Islamic Eid al-Adha holiday in July 2021. ECRE reported that those visits did not have a cessation effect on the protection status those persons in Turkey: ECRE, *Policy Note 43: Movement to and from Ukraine under the Temporary Protection Directive*, January 2023, https://ecre.org/policy-note-movement-to-and-from-ukraine-under-the-temporary-protection-directive/. Further, an AIDA/ECRE report published in 2024 notes that 'In 2023, exceptionally Syrians under temporary protection who are registered and residing in the earthquake-affected provinces (Kahramanmaraş, Hatay, Gaziantep, Malatya, Kilis, Osmaniye, Diyarbakır, Adana, Adıyaman, Şanlıurfa) could temporarily return to Syria without losing their temporary protection status. The period was between 14 February and 15 September 2023, with staying maximum of six months. Syrians under temporary protection residing in one of these provinces could directly apply to local authorities at the border gate without obtaining a travel permit document from the province they reside in. The permission was extended by December 2023. There are statements indicating that more than 90% of Syrian who visited Syria with this permission returned back to Türkiye...': Asylum Information Database/European Council on Refugees and Exiles, 'Cessation of temporary protection – Turkey, 20/08/24, https://asylumineurope.org/reports/country/turkiye/temporary-protection-regime/qualification-temporary-protection/cessation-temporary-protection/#_ftn19.

without that status being withdrawn.[131]

(v) Cessation and Nonstate actors of protection

There are two main issues which have arisen in national state practice and jurisprudence which will be discussed below:

(a) Whether international organisations, multinational forces or militias can constitute 'actors of protection' for the purpose of cessation.

(b) Whether family members can constitute 'actors of protection for the purpose of cessation.

Multinational forces

As noted above, the CJEU ruling in *Abdulla* in 2010 left open some questions as to the features required of multinational forces as actors of protection. This is significant on a practical level given asylum host states have for some time been attempting to return asylum seekers to fragile states, such as Iraq and Afghanistan, on the basis that protection from persecution will be provided by statal or quasi-statal authorities with the assistance of multinational troops.

Decisions of authorities in France have differentiated between levels of protection provided by various UN forces. For instance, a number of decisions of the French *Commission de Recours* have held that there is a difference in protection provided by UN forces established under Chapter VI and Chapter VII of the UN Security Council. It has held that UN forces established under Chapter VI are *not* actors of protection, but that those established under Chapter VII *are.*[132] The rationale is that under Chapter VII of the UN Charter, UN missions have administrative and coercive powers.[133]

Family as actors of protection

The other legal issue arising from non-state actors is whether the presence of family members can be viewed as protectors for the purpose of cessation. This was considered by the **UK** Upper Tribunal in 2019 in a case involving an applicant from Mogadishu, Somalia. The Upper Tribunal found that the applicant had some close family in Mogadishu and that he could look to them for some financial support. He could also look for such support from his sister based in the United Arab Emirates and fellow clan members in the United Kingdom. However, it did not make a definitive ruling on this issue and referred a number of questions to the CJEU in Secretary of State for the Home Department v OA (Request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom)).[134] As discussed above (under Part I of this Legal Note), the CJEU's ruling in OA on this issue was that the social or financial support provided by private actors, such as families or clans falls short of 'protection' and is thus irrelevant in a cessation assessment. Moreover, Article 7 of the 2024 Qualification Regulation has added a requirement of stability for non-state actors of protection, stating that actors of protection encompass States and 'stable, established non-State authorities, including international organisations, which control the State or a substantial part of the territory of the State'.[135] These provisions preclude the classification of certain actors as actors of protection for the purposes of the Regulation and, relevantly, family members would not meet the threshold.

(vi) Cessation and Internal Protection Alternative (IPA)

The use of IPA in cessation decisions is contested. UNHCR has, on a number of occasions, cautioned against the use of Article 1C(5) in relation to part of a territory.[136] In its 2003 Guidelines on Cessation it states that cessation should not apply to regional safety:

> . . . . changes in the refugee's country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status. Refugee status can only come to an end if the basis for persecution is removed without the precondition that the refugee has to return to specific safe

131. See ECRE, *Policy Note 43: Movement to and from Ukraine under the Temporary Protection Directive*, January 2023, https://ecre.org/policy-note-movement-to-and-from-ukraine-under-the-temporary-protection-directive/; UNHCR, 'The Implementation of the Temporary Protection Directive - Six Months On', 17 October 2022, https://data.unhcr.org/en/documents/details/96266.
132. See ECRE, 'The Impact of the EU Qualification Directive on International Protection', October 2008, 95.
133. See *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Chapter VII.
134. *OA*, above n 11.
135. 2024 Qualification Directive, above n 6 [emphasis added].
136. UNHCR Cessation Guidelines 2003, above n 16, paragraph 17.

> parts of the country in order to be free from persecution. Also, not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental.[137]

It has also reiterated that position in *amicus curiae* submissions to European national courts in cessation cases.[138] This is relevant to national case law on this issue as some decisions of national courts have referred to the UNHCR position on cessation and IPA. In an intervention in an appeal in a Norwegian court, UNHCR has adopted a clear position against the use of an IPA in cessation assessments:

> UNHCR submits that the IFA[139] concept can be applied only in the context of assessments of eligibility for international protection within Article 1A (2) of the 1951 Convention, and not in the context of cessation of refugee status in accordance with Article 1C (5) and (6) of the 1951 Convention. The possibility of an IFA is part of the holistic test under Article 1A (2) of the 1951 Convention to establish whether a person has a well-founded fear of persecution and is unwilling or unable to avail her- or himself of the protection of her or his country of origin. In contrast, cessation on the basis of "ceased circumstances" requires an assessment of whether the situation in the country of origin in connection with the reasons for recognizing the person as a refugee has changed fundamentally and durably. Further, IFA is part of a forward-looking test, whereas cessation on the basis of "ceased circumstances" concerns an assessment of the extent or degree to which past circumstances have materially changed.[140]

There appears to be acceptance in a number of cases in national courts that the existence of an IPA can be a trigger for cessation and thus, 'partial cessation' will be sufficient for Article 1C(5).

In **Norway**, jurisprudence has established that cessation can be applied where there is an IPA:

- In 2017, a decision of the Grand Board of the Immigration Appeals Board in Norway found that cessation was satisfied in relation to two applicants from Somalia, on the basis of changes in *part* of that country. The majority of the Grand Board found that 'significant' changes had taken place in the capital (Mogadishu) since the time the applicant were granted refugee status and temporary residence permits. Specifically, 'the Somali authorities regained control of the city in 2012, which has led to a gradual improvement in the security situation in Mogadishu, and that al-Shabaab is no longer deemed to constitute a real risk to the appellants'.[141]
- In a 2020 decision of the Borgarting Appeals Court, the court held that IPA may be applied to cessation and there is no need to apply a reasonableness test. The court held that the 'significant and stable change' can hinge on relational factors and that the security situation in the IPA (Kabul) did not give rise to new grounds of refugee status.[142]
- In a 2021 decision of the Norwegian Supreme Court, the court also held that IPA could be considered as part of a cessation assessment. Here, the Immigration Appeals Board had decided to revoke the residence permit of a family from Afghanistan under s 37(1)(e) of the Immigration Act, directing the family to seek internal flight in their home country. In holding that IPA was a permissible aspect of the cessation decision, the Court noted that the wording of s37(1)(e) of the Immigration Act and Article 1C (5) of the Refugee Convention supported such an interpretation. Similarly, this was supported by the purpose of the Refugee Convention. In addition, the court noted that the assessment had to be based on the conditions prevailing at the time of the decision and not at the time of deportation to Afghanistan. There was no basis for departing from the main rule that administrative decisions must reflect the situation at the time of their making.[143]

Likewise, in **Denmark,** the 2021 decision the Refugee Appeals Board of **Denmark** [Flygtningenævnet] upheld the decision of the Danish Immigration Service, concluding that the general

137. UNHCR Cessation Guidelines 2003, above n 16, paragraph 17.

138. See UNHCR Amicus Bogarting CA, above n 21, paragraph 9: 'UNHCR submits that the IFA concept can be applied only in the context of assessments of eligibility for international protection within Article 1A (2), and not with regard to cessation of status within Article 1C (5) and (6) … and not in the context of a cessation assessment'.

139. UNHCR utilise the term 'IFA' Internal Flight Alternative rather than Internal Protection Alternative.

140. UNHCR Amicus Bogarting CA, above n 21, paragraph 25.

141. See eg decisions of the Grand Board of the Immigration Appeals Board of Norway, above n 85. I note that a majority of the Board disagreed with the majority, finding that a significant and permanent change had *not* taken place in the security situation in Mogadishu. However, the minority also seemed to be accepting and applying a 'partial' cessation test.

142. Case 19-028135ASD-BORG, summarised in UNHCR Amicus Bogarting CA, above n 21.

143. *A,B,C v ImmigrationAppeals Board (Utlendingsnemnda, UNE)*,Case no. 20-121835SIV-HRET, 3 February 2021, Norway, Supreme Court [Noregs Høgsterett], see https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2206 and https://www.domstol.no/en/supremecourt/rulings/2021/supreme-court-civil-cases/the-interpretation-of-the-immigration-acts-provisions-on-revocation-of-refugee-status/.

situation in Rif Damascus in Syria is no longer of such a nature that anyone will be at risk of being abused in violation of Article 3 of the European Convention on Human Rights solely due to the mere presence in the area. The Board found that according to available country information, Syrian authorities regained control of the majority of Rif Damascus in May 2018, including the area of Rif Damascus in which the applicant had lived. It also noted that the number of security incidents in Damascus and Rif Damascus had decreased significantly in 2020 compared to previous years, and that ISIL and other opposition groups no longer exist in Damascus and Rif Damascus. The country information relied upon by the Board also stated that a large number of residents travel from Rif Damascus to Damascus on a daily basis to work, train or receive medical treatment.[144]

In contrast, there has been a divergence of opinion on the applicability of the IPA to cessation decisions amongst authorities in the **UK.** In a 2018 decision of the **UK** Upper Tribunal in MS (Somalia), the tribunal held that the UK authorities were not entitled to cease the applicant's refugee status on the basis only of a change in part of the country.[145] In doing so, the Tribunal confirmed the correctness of the UNHCR Cessation Guidelines on that point (although emphasising that that it was not affording the UNHCR Cessation Guidelines 'a status of being determinative of the issue in question').[146]

However, this finding was reversed on appeal, with the UK Court of Appeal holding that in a case in which refugee status has been granted because the person *cannot* reasonably be expected to relocate, a cessation decision may be made if circumstances change such that the person *can* now reasonably be expected to relocate. The Court emphasised that this will suffice for application of cessation provided that the change in circumstances is 'significant and non-temporary' in accordance with the 2011 Qualification Directive.[147] As part of the cessation assessment, the Court held that the size of the area of relocation will be relevant to the reasonableness of being expected to relocate there and also to whether the change in circumstances is 'significant and non-temporary'. However, the Court did not accept that there is any requirement that it be a *substantial* part of the country.[148]

I note that the 2024 Qualification Regulation, which operates from 2026 onwards, *obliges* Member States to apply the IPA to applications for international protection but only when the state (or an agent thereof) is *not* the actor of persecution or serious harm.[149] Where the state or a state agent is the actor of persecution or serious harm, the authorities must presume that effective protection is not available anywhere in the territory and need not apply the IPA. Thus, further restrictions govern the use of the IPA in the 2024 Qualification Regulation, however the changes may increase the use of the IPA in cessation decisions.

(vii) The 'Compelling Reasons' Exception to Cessation

Article 1C(5) of the Refugee Convention sets out an exception or 'proviso' to the operation of cessation where there are 'compelling reasons' arising out of previous persecution. Specifically, Article 1C(5) provides that it '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'.[150] However, the proviso is phrased so as to be limited to *Article 1A(1)* of the Convention, that is, pre-1951 refugees. Despite this, UNHCR has consistently argued that the exception reflects a 'more general humanitarian principle' which should be applied to all Convention refugees.[151]

In an example of **best practice**, Article 11(3) of the recast 2011 EU Qualification Directive reflects this principle, setting out a compelling reasons exception for all refugees. It provides that cessation 'shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing

144. Refugee Appeals Board [Flygtningenævnet], *Applicant (Syria) v Danish Immigration Service (no. 2)* 17/02/2021, decision in Danish: https://fln.dk/-/media/FLN/Nyheder/180221-Afgoerelse-af-17-februar-2021-til-hjemmeside--Rif-Damaskus--Link-nr-3.pdf?la=da&hash=B900E21704D5D7B8892B5200154324BE02B1A5C7; Summary (in English): https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2881.

145. *MS (Art 1C(5)-Mogadishu) Somalia* [2018] UKUT 196 (IAC), 21 March 2018, paragraph 55-57 (Upper Tribunal Judge Kopieczek) ('*MS (Art 1C(5)-Mogadishu')*

146. *MS (Art 1C(5)-Mogadishu)*, paragraph 55-57 (Upper Tribunal Judge Kopieczek).

147. *MS (Somalia)* above n 12, paragraph 49.

148. *MS (Somalia*), above n 12*,* paragraph 50.

149. 2024 Qualification Regulation, above n 6, Article 8(1): 'Where the State or agents of the State are not the actors of persecution or serious harm, the determining authority shall examine, as part of the assessment of the application for international protection, whether an applicant is not in need of international protection because the applicant can safely and legally travel to and gain admittance to a part of the country of origin and can reasonably be expected to settle there and whether, in that part of the country, the applicant: (a) has no well-founded fear of being persecuted or does not face a real risk of suffering serious harm; or (b) has access to effective and non-temporary protection against persecution or serious harm.'

150. Refugee Convention, Article 1C(5).

151. UNHCR Handbook, above n 20, paragraph 136. See also UNHCR Cessation Guidelines 2003, above n 21, paragraph 31; UNHCR, *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004*, 28 January 2005, p 25.

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.[152] A similar provision is set out in Article 11 of the 2024 Qualification Regulation.[153]

As an illustration of European national practice (and not an exhaustive list), laws in **Belgium, France, Germany and Norway** have also interpreted the exception as applying broadly to all refugees.[154] For instance, Section 73 of the German Asylum Procedure Act provides that cessation shall not apply 'if the foreigner has compelling reasons, based on earlier persecution, for refusing to return to the country of which he is a citizen, or, if he is a stateless person, in which he had his usual residence.[155]

Another example of best practice, is a decision of the Council for Alien Law Litigation of **Belgium** in relation to a victim of domestic violence.[156] Here the Council held that where previous persecution is of such gravity that the applicant's fear was exacerbated to the point where a return to their country of origin would be unfeasible, the applicant may retain their refugee status despite a change in circumstances. The Council explained that this exacerbated fear should be assessed in light of the applicant's personal experience, their psychological structure and the extent of the physical and psychological consequences relevant to the case.

One question which seems to have led to some divergence in national practice is how trauma may be assessed as constituting a 'compelling reason'. This is important as the European Asylum Support Office (EASO) has indicated that 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.[157]

In **Germany**, the threshold for evidence of trauma appears to be quite high. For instance, the German Higher Administrative Court of Baden-Württemberg held that a diagnosis of Post-Traumatic Stress Disorder (PTSD) is, in and of itself, neither necessary nor sufficient to engage Article 11(3) of the Qualification Directive.[158]

In the **UK**, current policy guidance allows for the application of compelling circumstances when refugee status is revoked. However, the guidance puts the threshold for the exception at a very high level, stating that it 'applies to cases where refugees, or their family members, have suffered truly atrocious forms of persecution and it is unreasonable to expect them to return to their country of origin or former habitual residence'.[159] It sets out some examples of instances where the exception might apply: ex-camp or prison detainees; survivors or witnesses of particularly traumatic violence against family members, including sexual violence; and those who are severely traumatised.[160]

(viii) Cessation – Living Standards, Humanitarian Considerations and the European Convention on Human Rights (ECHR)

National case law has considered whether humanitarian considerations such as living standards should be relevant to the cessation assessment.

Before discussing this national jurisprudence, it is important to highlight two aspects of CJEU and ECHR case law by way of context.

First, as discussed Part III above, the CJEU in *Abdulla* held that in order for a decision-maker to find that a refugee's fear of being persecuted is no longer well founded as part of a cessation assessment, the decision-maker must verify (having regard to the refugee's individual situation and in line with Article 7(2) of the 2011

152. 2011 EU Qualification Directive, Article 11(3).
153. 2024 EU Qualification Regulation, above n 6, Article 11.
154. Norway: Immigration Act s 37; Germany: *Asylum Procedure Act* s 73(1); France: Refugee Appeals Commission (France), decision of 18 October 1999, *Molina*, No 336763.
155. *Asylum Procedure Act*, Germany, Section 73(1).
156. Council for Alien Law Litigation, Belgium, Case no.190 672, 17 August 2017, www.asylumlawdatabase.eu/en/case-law/belgium-council-alien-law-litigation-17-august-2017-n%C2%B0190-672
157. EASO *Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU) A Judicial Analysis*, pp 39-40 (citations omitted).
158. Higher Administrative Court of Baden-Württemberg (Germany), *A 6 S 1097/05*, paragraph 26, cited in EASO, above n 107, p 40.
159. UK Home Office, *Asylum Policy Guidance, Revocation of Refugee Status*, 19 January 2016, p 26.
160. *Asylum Policy Guidance,* above n 108. The guidance notes that 'The presumption is that such persons have suffered grave acts of persecution, including at the hands of elements of the local population, and therefore cannot reasonably be expected to return. Application of the 'compelling reasons' exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees and reflects a general humanitarian principle. As this provision is expected to apply only in the most exceptional of cases, any decision not to proceed with revocation on this basis must be taken by a senior caseworker'.

Qualification Directive) that the actor of protection has taken reasonable steps to prevent the persecution and that the person will have access to that protection.[161] The CJEU emphasised that *human rights considerations* can be a part of that assessment, specifically that 'authorities may take into account, inter alia,… the extent to which basic human rights are guaranteed in that country.'[162] The CJEU also highlighted the importance of human rights in the assessment of the significant and non-temporary nature of the change of circumstances, noting that this 'implies that there are no well-founded fears of being exposed to acts of persecution amounting to *severe violations of basic human rights* within the meaning of Article 9(1) of the Directive'.[163] The implication of these findings is that an actor of protection must be identified as part of the cessation assessment and this necessarily engages some discussion of human rights considerations and evidence about the organised and effective administration of any new actors of protection.

Second, there is a question as to how cessation interacts with the non-refoulement principle in Article 3 of the ECHR. This provides that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'.[164] There is some conflicting ECHR authority on the threshold for application of Article 3 to return decisions,[165] but there is a clear line of authority which suggests that a minimum baseline of humanitarian conditions must be in place in the country of origin. For instance, in *MSS* v. *Greece and Belgium,* the Court found that Belgium as a sending state was in breach of Article 3 of the ECHR due to the conditions of treatment of the transferred asylum-seeker in Greece. The Court found that the asylum-seeker's living conditions, including his experience of 'living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live' resulted in a breach of Article 3.[166]

Similarly, the ECtHR in *Sufi and Elmi v UK* held that return of individuals to a country where there was a reasonable likelihood that they would be placed in an internally displaced persons or refugee camp would place the UK in breach of Article 3 of the ECHR given the humanitarian conditions in those camps. In this case, the applicants were nationals of Somalia who submitted that if they were returned to Mogadishu there was at least a reasonable likelihood that they would be forced into IDP camps and that the dire humanitarian conditions in these camps and makeshift settlements therefore had to be taken into account in assessing compliance with Article 3.[167] In response, the UK government argued that humanitarian conditions would only reach the threshold of Article 3 if the circumstances obtaining in the receiving State were 'very exceptional', it was 'highly probable' that the applicant would not have access to the basic necessities of life, and that these deficiencies would result in an immediate threat to life or the impossibility of maintaining human dignity.[168] Ultimately, the court found that the applicable threshold was not as high as argued by the UK and found that '[w]here it is reasonably likely that a returnee would find himself in an IDP camp, such as those in the Afgooye Corridor, or in a refugee camp, such as the Dadaab camps in Kenya, the Court considers that there would be a real risk that he would be exposed to treatment in breach of Article 3 on account of the humanitarian conditions there.'[169]

It is also important to note that, in cases concerning destinations with difficult security situations, the Court normally also attaches importance to additional individual risk factors (such as membership of a vulnerable group).[170] This will be important in relation to the return of women to certain countries (see discussion of cessation and gender above at Part IV).

Furthermore, there is case law suggesting that there is an obligation under Article 3 to assess an applicant's claims of risks upon deportation even if that refugee status has been revoked. For instance, in *KI v France*

161. *Abdulla,* above n 17, paragraph 70.
162. A*bdulla*, above n 17, paragraph 71.
163. *Abdulla,* above n 17, paragraph 72.
164. Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS No. 005 ('ECHR'). This has also been considered by the CJEU in *OA,* above n 17, discussed earlier in this note.
165. For instance, in N. v. the United Kingdom*(Application no. 26565/05)*, the European Court of Human Rights held that humanitarian conditions would give rise to a breach of Article 3 of the Convention in very exceptional cases where the humanitarian grounds against removal were "compelling" (para 42). In contrast, the approach to Article 3 by the Court in *MSS v Belgium* is considered broader, see discussion in *Sufi and Elmi v. the United Kingdom*, Application nos 8319/07 and 11449/07, 28 June 2011 at paras 278-83.
166. *MSS v Belgium and Greece*, Application no. 30696/09, 21 January 2011, para 254. The Court found that 'such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention' (paragraph 263). In the later decision of Sufi and Elmi, the ECtHR interpreted *M.S.S. v. Belgium and Greece* as requiring it to 'have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame': *Sufi and Elmi v. the United Kingdom*, above n 165, para 283.
167. *Sufi and Elmi v. the United Kingdom*, above n 165, paragraph 254.
168. *Sufi and Elmi v. the United Kingdom*, above n 165, paragraph 259.
169. *Sufi and Elmi v. the United Kingdom*, above n 165, paragraph 296.
170. See eg case law concerning Syria: *M.D. and Others v. Russia*, *Applications nos. 71321/17 and 9 others,* 2021, paragraphs 104-111; and *O.D. v. Bulgaria*, (Requête no 34016/18), 2019, paragraphs 50-55.

the ECtHR found that there would be a violation of Article 3 of the ECHR if the applicant were returned to Russia without an assessment by the French authorities of the actual and current risk that he claimed to be facing in the event of his deportation.[171] In this case, the applicant's refugee status was revoked after he was convicted of a terrorism offence. The European Court of Human Rights found that in assessing the risks that the applicant faced on his return to Russia, the French authorities (both when his deportation was ordered and when it was reviewed by a court) had not specifically taken account of the fact that the applicant could be presumed to have remained a refugee in spite of the withdrawal of his status.

In terms of national case-law on this issue, the applicability of humanitarian standards to cessation and the role of Article 3 of the ECHR was considered in the **United Kingdom** in the 2017 decision of MM v Zimbabwe[172] and the 2018 decision of the UK Court of Appeal in Secretary of State for Home Affairs v MA (Somalia).[173] The question at issue in these cases was whether a decision-maker carrying out a cessation decision was also required to consider whether the refugee's rights under Article 3 of the ECHR would be violated if they were returned to their country of origin. Thus, the cases involved an analysis of whether humanitarian considerations formed part of the cessation criteria. In both of these cases, the Court held that the test for cessation of refugee status is different to that for assessment of ECHR non-refoulement arguments and does not encompass humanitarian considerations.[174]

In the more recent case, *MA Somalia*, the applicant claimed he would face significant humanitarian challenges if returned to his country of origin. A significant development in the case was that on 3 October 2014, the UK Upper Tribunal Court handed down a new country guidance decision for Somalia: *MOJ and others (Return to Mogadishu) (CG)*.[175] This held that ordinary civilians returning to Mogadishu were no longer at any risk from security forces, international forces or terrorist organisations and that such persons would normally look to their family or clans for support on return. The issue was whether such protection would be available and, if not, what implications this had for the living conditions of the applicant if returned. Ultimately, the UK Court of Appeal held, *inter alia*, that:

> The question whether Article 3 [of the ECHR] would be violated by the refugee's return to his country of origin is not part of the cessation decision but separate from it, and there is no violation by reason only of the absence of humanitarian living standards on return.

Article 3 is not normally violated by sending a refugee back to his country of origin where there is a risk that his living conditions will fall below humanitarian standards.[176]

Therefore, the court held that '[t]he verification necessary for a cessation decision under the QD would not, therefore, of itself include verification that the returning refugee would have the right to earn a living'.[177] Significantly, the UK Court of Appeal relied heavily on the findings of the CJEU in *Abdulla* in coming to this conclusion[178] and ultimately held that 'humanitarian standards are not the test for a cessation decision'[179]

VI. CONCLUSION

In conclusion, both the Refugee Convention and 2011 Qualification Directive set out clear criteria for the cessation of international protection based on a change of circumstances. UNHCR guidance (in the form of its Guidelines and amicus curiae submissions) has also attempted to ensure that European state practice is compliant with both the Refugee Convention and Qualification Directive.

EU case law discussed in this Legal Note has established that the test for cessation of international protection should be interpreted as the 'mirror' of recognition of protection but should also include matters *beyond* the narrow view of 'mirror image' which focuses solely on the absence of persecution. Thus, EU case law establishes that an approach to cessation should go beyond a narrow view of the mirror image and

171. *K.I. v France*, Application no. 5560/19, 15 April 2021.
172. *MM (Zimbabwe)*, above n 13.
173. *MA Somalia* 2018, above n 17.
174. *MM (Zimbabwe)*, above n 13, paragraph 34-35.
175. *MOJ and others (Return to Mogadishu) (CG)* [2014] UKUT 442.
176. *MA (Somalia)* 2018, above n 17, paragraph 2.
177. MA (*Somalia*) 2018, above n 17, paragraph 58.
178. *MA (Somalia)* 2018, above n 17, paragraphs 50 –54, referring to *Abdulla*.
179. *MA (Somalia)* 2018, above n 17, paragraph 56.

consider, amongst other things, the extent to which basic human rights are guaranteed in the country of reference. UNHCR takes a similar view but it has been more explicit, stating on many occasions that cessation is not merely the 'mirror' of recognition and that a consideration of the general human rights situation in the country of reference is required and may include an assessment of the right to a basic livelihood.

This has a number of implications for the way in which cessation decisions are made. Namely, there is a focus in some jurisdictions merely on the absence of persecution for the applicant rather than requiring more robust evidence of the positive availability of state protection. This can be mostly clearly seen in the state practice of cessation to countries still experiencing armed conflict or in a post-conflict situation, such as Afghanistan, Iraq, Somalia and Syria. Furthermore, the centrality of the 'mirror argument' has led states to apply the IPA – a recognition factor – to cessation procedures. Other complexities in this area include the consideration of non-state actors of protection and family reunification, as seen in the national case law discussed above.

Finally, it should be noted that cessation may end a person's international protection status but should not in all cases result in removal. The non-refoulement principle remains applicable following cessation and will need to be considered prior to removal. In addition to ECHR non-refoulement obligations, states will have broader obligations under international law in some instances. For instance, it may also encompass consideration of treaty obligations for specific groups such as women (under CEDAW) and children (under the Convention on the Rights of the Child).