Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**272**
Land:	Diverse emner
Kilde:	EASO
Titel:	Ending International Protection
Udgivet:	4. november 2021
Optaget på baggrundsmaterialet:	16. marts 2022

EASO

Judicial analysis

Ending international protection

Second edition

EASO Professional Development Series for members of courts and tribunals

Updated by IARMJ-Europe under contract to EASO

2021

EASO professional development materials have been created in cooperation with members of courts and tribunals. The titles include:

- Article 15(c) Qualification Directive (2011/95/EU) (2014);
- Introduction to the Common European Asylum System for courts and tribunals (2016);
- Qualification for international protection (Directive 2011/95/EU) (2016);
- Evidence and credibility assessment in the context of the Common European Asylum System (2018);
- Asylum procedures and the principle of *non-refoulement* (2018);
- Country of origin information (2018);
- Detention of applicants for international protection in the context of the Common European Asylum System (2019);
- Reception of applicants for international protection (Reception Conditions Directive 2013/33/EU) (2020);
- Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU) (2020, second edition);
- Vulnerability in the context of applications for international protection (2021);
- Ending international protection (2021, second edition).

The Professional development series comprises judicial analyses, judicial trainers' guidance notes and compilations of jurisprudence for each topic covered, besides country of origin information, which comprises a judicial practical guide accompanied by a compilation of jurisprudence. All materials have been developed in English. For more information on publications, including on the availability of different language versions, please visit https://www.easo.europa.eu/asylum-support-training/courts-and-tribunals

Judicial analysis

Ending international protection

Second edition

EASO Professional Development Series for members of courts and tribunals

Updated by IARMJ-Europe
under contract to EASO

2021

Manuscript completed in May 2021

Neither the European Asylum Support Office (EASO) nor any person acting on behalf of the EASO is responsible for the use that might be made of the following information.

Luxembourg: Publication Office of the European Union, 2021

Print	ISBN 978-92-9465-543-1	doi:10.2847/40	BZ-01-21-334-EN-C
PDF	ISBN 978-92-9465-540-0	doi:10.2847/240254	BZ-01-21-334-EN-N

European Asylum Support Office

The European Asylum Support Office (EASO) is an agency of the European Union that has a mandate to support the enhancement of quality standards and strive for consistency in the implementation of the legal instruments of the Common European Asylum System. To that end, EASO contributes to the development and consistent implementation of the Common European Asylum System, promotes practical cooperation among Member States on asylum, and supports Member States that are subject to particular pressures.

Article 6 of the EASO founding regulation (1) specifies that the agency must establish and develop training available to members of courts and tribunals in the Member States. For this purpose, EASO is to take advantage of the expertise of academic institutions and other relevant organisations, and take into account the EU's existing cooperation in the field with full respect for the independence of national courts and tribunals. EASO, as the EU centre for expertise in the field of international protection, therefore supports the development of judicial training materials and activities. These are available to members of courts and tribunals of the EU and its associated countries, and beyond.

International Association of Refugee and Migration Judges

The International Association of Refugee and Migration Judges (IARMJ) (2) is a transnational, non-profit association that seeks to foster recognition that protection from persecution on account of race, religion, nationality, membership of a particular social group, or political opinion is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law. Since the foundation of the association in 1997, it has been heavily involved in the training of members of courts and tribunals around the world dealing with asylum cases. The European Chapter of the IARMJ (IARMJ-Europe) is the regional representative body for judges and tribunal members within Europe. One of the chapter's specific objectives under its constitution is 'to enhance knowledge and skills and to exchange views and experiences of judges on all matters concerning the application and functioning of the Common European Asylum System (CEAS)'.

Contributors

Editorial team of judges and tribunal members

In order to ensure the integrity of the principle of judicial independence, and that the EASO Professional development series for members of courts and tribunals is developed and delivered under judicial guidance, an editorial team composed of serving or recently retired judges and tribunal members, with extensive experience and expertise in the field of asylum law, was selected under the auspices of a joint monitoring group. The joint monitoring group is composed of representatives of the contracting parties, EASO and IARMJ-Europe. The editorial team reviewed drafts, gave detailed guidance to the drafter, drafted amendments and was the final decision-making body on the scope, structure, content and design of the work. Its work was undertaken through regular electronic/telephone communication.

The members of the editorial team were judges and tribunal members: **Hugo Storey** (United Kingdom, Chair), **Liesbeth Steendijk** (Netherlands, Deputy Chair), **Hilkka Becker** (Ireland), **Jakub Camrda** (Czechia), **Katelijne Declerck** (Belgium), **Harald Dörig** (Germany), **Catherine Koutsopoulou** (Greece) and **Florence Malvasio** (France). The editorial team was supported and assisted in its task by the project manager, **Clara Odofin**.

The editorial team bears overall responsibility for the final product.

(1) Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [2010], OJ L 132/11.

(2) IARMJ (https://www.iarmj.org) was formerly known as the International Association of Refugee Law Judges.

Drafter

Majella Twomey, International Protection Appeals Tribunal, Ireland, was the drafter. Consultants, **Frances Nicholson** and **Claire Thomas**, provided editorial and didactic support respectively.

Acknowledgements

Comments were received from Judge **Lars Bay Larsen** and **Yann Laurans**, a legal secretary, both of the Court of Justice of the European Union, and from the Judge **Jolien Schukking** and the lawyer A**gnes van Steijn** of the European Court of Human Rights in their personal capacities. The Office of the United Nations High Commissioner for Refugees also expressed its views on the draft text. All these comments were taken into consideration by the editorial team in finalising the text for publication. The members of the editorial team and EASO are grateful to all those who have made comments, which have been very helpful in finalising this judicial analysis.

The methodology adopted for the production of this judicial analysis is set out in Appendix C: Methodology.

This judicial analysis will be updated, as necessary, by EASO, in accordance with the methodology for the EASO Professional development series for members of courts and tribunals.

Contents

List of abbreviations

APD	Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
APD (recast)	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
CEAS	Common European Asylum System
CESEDA	*Code de l'entrée et du séjour des étrangers et du droit d'asile* (Code on the entry and stay of foreigners and the right of asylum, France)
CJEU	Court of Justice of the European Union
CNDA	*Cour nationale du droit d'asile* (National Court of Asylum Law, France)
DRC	Democratic Republic of the Congo
EASO	European Asylum Support Office
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EMN	European Migration Network
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union plus Norway and Switzerland
EWCA	Court of Appeal of England and Wales (United Kingdom)
GC	Grand Chamber (of both the CJEU and the ECtHR)
Geneva Convention	See Refugee Convention
IAC	Independent Appeals Committee (Greece)
IARMJ	International Association of Refugee and Migration Judges
IEHC	Irish High Court
JTGN	judicial trainers' guidance note
OFPRA	*Office français de protection des réfugiés et apatrides* (French Office for the Protection of Refugees and Stateless Persons)
QD	Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
QD (recast)	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
Refugee Convention	Convention relating to the Status of Refugees (1951), as amended by its Protocol (1967) (referred to in EU asylum legislation as 'the Geneva Convention')
RVV/CCE	*Raad voor Vreemdelingenbetwistingen / Conseil du contentieux des étrangers* (Council for Aliens Law Litigation, Belgium)
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

Preface

The scope of this updated judicial analysis encompasses the law on ending international protection in relation to refugee status and subsidiary protection status, in the context of Article 14 read in conjunction with Articles 11 and 12, and Article 19 read in conjunction with Articles 16 and 17 qualification directive (recast) (Directive 2011/95/EU) (QD (recast)) ([3]). It also includes within its scope Articles 44, 45 and 46 of the asylum procedures directive (recast) (Directive 2013/32/EU) (APD (recast)) ([4]), which deal with procedural matters relating to ending international protection. However, ending temporary protection is outside the scope of this judicial analysis.

This updated judicial analysis focuses primarily on case-law from the Court of Justice of the European Union (CJEU) with respect to the Common European Asylum System (CEAS), along with case-law from EU+ countries ([5]). The case-law of EU+ countries cited is intended to be illustrative of the way in which the original qualification directive (Directive 2004/83/EC) (QD) ([6])) and the QD (recast) have been transposed and interpreted. This judicial analysis has been updated with relevant case-law as of April 2021.

In order to ensure uniformity and consistency, this judicial analysis uses the wording of Articles 11, 12, 14, 16, 17 and 19 QD (recast) without paraphrase. Accordingly, it uses the terms 'cessation' to mean ceasing to be a refugee or to be eligible for subsidiary protection and 'exclusion' to mean being excluded from being a refugee or from being eligible for subsidiary protection in line with the QD (recast). In general, the phrase 'ending international protection' is used as an all-encompassing term to denote revocation of, ending of or refusal to renew refugee or subsidiary protection status. Some national legislation uses different terminology ([7]). Furthermore, some national courts and tribunals and the United Nations High Commissioner for Refugees (UNHCR) use the terms 'cancellation', 'revocation' and 'cessation' ([8]). The APD (recast) uses the term 'withdrawal of international protection' to mean 'the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with [the QD (recast)]' (Article 2(o) APD (recast)). Given this, the term 'withdrawal of international protection' is also sometimes used in this judicial analysis.

Unless otherwise indicated, the term 'refugee status', as used throughout this judicial analysis, refers to 'refugee status' within the meaning of Article 2(e) QD (recast). In accordance with Article 2(e), '"refugee status" means the recognition by a Member State of a third-country national or stateless person as a refugee'. The term thus

([3]) Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, or a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011], OJ L 337/9. Unless otherwise indicated, any reference to 'Article(s)' cited in this judicial analysis should be taken as referring to the QD (recast). All Member States are bound by the QD (recast), except for Denmark and Ireland. Denmark is not bound by the qualification directive (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 [2004], OJ L 304/12) (QD) or QD (recast), as it does not take part in the adoption of measures based on Article 78 of the Consolidated version of the Treaty on the Functioning of the European Union (2016/C 326/47) (TFEU). Ireland and the United Kingdom did not take part in the adoption of the QD (recast). Ireland is currently bound by the QD. Although it has not opted into the QD (recast), Sections 9 and 11 of the International Protection Act 2015 (Ireland), concerning the cessation of refugee status and of subsidiary protection, both use language that is almost identical to that of the QD (recast). The 2015 Act refers, however, to 'a person' rather than to 'a third-country national or stateless person'. The United Kingdom, although no longer a Member State, was bound by the QD until 31 December 2020.

([4]) 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) [2013], OJ L 180/60 (APD (recast)). Particular attention should be paid to recitals 49 and 50 APD (recast). All Member States are bound by the APD (recast), except for Denmark and Ireland. Denmark is not bound by the asylum procedures directive (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status) (APD) or APD (recast), as it does not take part in the adoption of measures based on Article 78 TFEU. Ireland and the United Kingdom did not take part in the adoption of the APD (recast). Ireland is currently bound by the APD. The United Kingdom, although no longer a Member State, was bound by the APD until 31 December 2020.

([5]) Member States of the European Union plus Norway and Switzerland. Although the United Kingdom is no longer an EU Member State, a number of UK cases on ending international protection have been, and are currently being, dealt with by the CJEU, and these are included in the judicial analysis.

([6]) Qualification Directive 2004/83/EC of 29 April 2004 on the 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 [2004], OJ L 304/12.

([7]) For example, in Poland, Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, Article 21, uses one term, 'deprived of refugee status' or 'deprived of subsidiary protection', which includes all reasons for ending protection. In Germany, the Asylum Law (as well as courts) only uses the terms 'revocation' (*Widerruf*), when conditions have changed, that is, there is no longer a well-founded fear of persecution or a real risk of serious harm, when there is no more persecution, and 'withdrawal' (*Rücknahme*), when the recognition of international protection was based on incorrect facts from the beginning; see Asylgesetz (AsylG), 1992 as updated to 9 October 2020, Sections 73 and 73b concerning refugee and subsidiary protection status respectively (English translation).

([8]) UNHCR uses the term 'cancellation' to refer to 'the decision to invalidate a refugee status recognition which should not have been granted in the first place', either because the individual concerned did not meet the inclusion criteria of Article 1A(2) Convention relating to the Status of Refugees (1951), as amended by its Protocol (1967) (Refugee Convention), or because an exclusion ground should have been applied to him or her at the time. It uses the term 'revocation' to refer to the 'withdrawal of refugee status in situations where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the 1951 Convention after having been recognised as a refugee' and the term 'cessation' to refer to 'the ending of refugee status pursuant to Article 1C of the 1951 Convention because international protection is no longer necessary or justified on the basis of certain voluntary acts of the individual concerned or a fundamental change in the situation prevailing in the country of origin'. See UNHCR, 'Note on the cancellation of refugee status', 22 November 2004, para. 1, set out in Figure 4 'Conditions for loss of refugee status under international refugee law' in Section 1.5 below.

refers to the status granted through formal recognition by a Member State in light of the criteria set out in the QD (recast), with the result that the person concerned is 'entitled to all the rights and benefits laid down in Chapter VII of that directive' (9). In accordance with Article 2(g) QD (recast), the term '"subsidiary protection status" means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection'.

Figure 1 sets out the terminology used in the QD (recast) in respect of ending international protection.

Figure 1: Terminology used in QD (recast) in respect of ending international protection

	Relevant articles:	Protection ended:
Revocation	14(1), 14(2), 14(3) and 14(4)	Refugee status
	19(1), 19(2), 19(3) and 19(4)	Subsidiary protection status
Ending	14(1), 14(2), 14(3) and 14(4)	Refugee status
	19(1), 19(2), 19(3) and 19(4)	Subsidiary protection status
Refusal to renew	14(1), 14(2), 14(3) and 14(4)	Refugee status
	19(1), 19(2), 19(3) and 19(4)	Subsidiary protection status
Exclusion	14(3)(a) and 12	Refugee status
	19(2) and 17(3)	Subsidiary protection status
	19(3), 17(1) and (2)	Subsidiary protection status
Cessation	14(1), 14(2) and 11	Refugee status
	19(1), 19(4) and 16	Subsidiary protection status

Readers should bear in mind that 'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive' (Article 3 QD (recast)). The CJEU has said that 'the clarification contained in Article 3, according to which all more favourable standards must be compatible with [the QD (recast)], means that those standards must not compromise the general scheme or objectives of that directive' (10). With regard to exclusion specifically, the CJEU has held that, as the purpose underlying the grounds for exclusion is to maintain the credibility of the protection system, the reservation in Article 3 'precludes Member States from introducing or retaining provisions granting refugee status under [the QD (recast)] to persons who are excluded from that status pursuant to Article 12(2)' (11).

In recent years, the CJEU has handed down a number of judgments dealing with the subject matter of ending international protection. The meaning of 'serious crime' in the context of exclusion from subsidiary protection

(9) Court of Justice of the European Union (CJEU) Grand Chamber (GC), judgment of 14 May 2019, *M* v *Ministerstvo vnitra and X, X* v *Commissaire général aux réfugiés et aux apatrides*, joined cases C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paras 79–92, especially para. 91. This judgment is discussed in more detail in Part 5 below.

(10) CJEU, judgment of 4 October 2018, *Ahmedbekova and Ahmedbekov* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-652/16, EU:C:2018:801, paras 8, 69 and 71.

(11) CJEU, judgment of 9 November 2010, *Bundesrepublik Deutschland* v *B and D*, joined cases C-57/09 and C-101/09, EU:C:2010:661, para. 115.

was discussed in *Ahmed* [12]. The issue of danger to security or public order was examined in the case of *Commission* v *Poland, Hungary and Czechia* [13]. The case of *Bilali* [14] dealt with circumstances in which the Member State made an error of fact in relation to the grant of subsidiary protection, and the court assessed whether this situation could lead to ending international protection. The case of *M, X and X* [15] clarified the interrelationship between Article 14(4)–(6) QD (recast), the Refugee Convention [16] and the EU Charter [17]. Finally, issues pertaining to protection in the context of ceased circumstances pursuant to Article 11(1) QD (recast) were dealt with in *OA* [18].

Where there are no CJEU decisions in relation to particular aspects of ending international protection, the judicial analysis refers to EU+ country case-law. This case-law should be taken not as settled law on the topic but as an indication of how different EU+ countries deal with different aspects of ending international protection.

While this judicial analysis deals primarily with various aspects of the QD (recast), readers should be aware that some Member States have not opted into this directive. Denmark does not take part in the adoption of measures based on Article 78 TFEU [19] and is therefore not bound by the QD or the QD (recast) [20]. Ireland has not opted into the QD (recast) but has opted into the QD [21] and is bound by that directive. Furthermore, Ireland has not opted into the APD (recast) but has opted into the asylum procedures directive (Council Directive 2005/85/EC) (APD) and is bound by that directive. The United Kingdom, like Ireland, had also only opted into the QD and APD, but, because the United Kingdom has left the EU, since 1 January 2021 it is no longer bound by any of the CEAS instruments [22].

Research showed that the volume of relevant available case-law varies greatly among Member States. Furthermore, the topic of ending international protection has, in some Member States, arisen periodically and not always been subject to examination by national courts on a continuing or ongoing basis. It is also clear from an overall assessment and evaluation of the cases on ending international protection that, in many Member States, such provisions are not engaged as often as some other provisions of the QD (recast). Consequently, some cases recur throughout the judicial analysis.

[12] CJEU, judgment of 13 September 2018, *Shajin Ahmed* v *Bevándorlási és Menekültügyi Hivatal*, C-369/17, EU:C:2018:713.

[13] CJEU, judgment of 2 April 2020, *Commission* v *Poland, Hungary and Czech Republic*, joined cases C-715/17, C-718/17 and C-719/17, EU:C:2020:257, para. 157.

[14] CJEU, judgment of 23 May 2019, *Mohammed Bilali* v *Bundesamt für Fremdenwesen und Asyl*, C-720/17, EU:C:2019:448.

[15] CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above).

[16] Convention relating to the Status of Refugees, 189 UNTS 150, 28 July 1951 (entry into force: 22 April 1954) (1951 Refugee Convention), and Protocol relating to the Status of Refugees, 606 UNTS 267, 31 January 1967 (entry into force: 4 October 1967), referred to in EU asylum legislation as 'the Geneva Convention'.

[17] Charter of Fundamental Rights of the European Union of 18 December 2000 (EU Charter or Charter), as adopted in 2007, [2012] OJ C 326/391 (entry into force: 1 December 2009).

[18] CJEU, judgment of 20 January 2021, *Secretary of State for the Home Department* v *OA*, C-255/19, EU:C:2021:36.

[19] Article 78(1) TFEU states: 'The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.'

[20] Protocol No 22 on the position of Denmark, annexed to the TFEU in [2012] OJ C 326/299.

[21] Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TFEU in [2012] OJ C 326/295. Note, however, that in Ireland certain provisions of the QD (recast) are incorporated into domestic law through the International Protection Act 2015, which came into force on 31 December 2016.

[22] The Withdrawal Agreement between the United Kingdom and the EU provided a transitional period up until the end of 2020 during which EU law still applied in the United Kingdom.

The judicial analysis is broadly divided into seven parts, set out in Table 1.

Table 1: Structure of this judicial analysis

Key questions

This judicial analysis aims to provide members of courts and tribunals of EU+ countries with an overview of the topic of ending international protection. It endeavours to answer the following main questions.

1. On what grounds can refugee status and subsidiary protection status be ended? (Sections 1.2 and 1.3)
2. What circumstances establish voluntary re-availment of the protection of an individual’s country of nationality? (Section 2.1)
3. What factors might a court or tribunal consider when assessing whether a refugee has genuinely re-established themselves in the country of origin? (Section 2.4)
4. What is the meaning of ‘significant and non-temporary’ in the context of cessation, in particular in the consideration of whether circumstances have ceased to exist? (Sections 3.1.2 and 6.2.2)
5. Under what circumstances can an individual be excluded from refugee status under Article 14(3)(a)? (Section 4.2)
6. In what circumstances will misrepresentation or omission of facts lead to the ending of refugee status or subsidiary protection status? (Sections 4.3 and 6.4)
7. Must there be an intention to mislead in terms of revocation based on misrepresentation? (Section 4.3.1)
8. What are the circumstances that give rise to a refugee or beneficiary of subsidiary protection being deemed to be a danger to the security of a Member State? (Sections 5.2 and 6.3.2)
9. What are the circumstances that give rise to a refugee or beneficiary of subsidiary protection being deemed to be a danger to the community? (Sections 5.3 and 6.3.2)
10. How are the grounds for ending subsidiary protection status similar to those for ending refugee status, and how do they differ? (Part 6)
11. What procedural guarantees apply to the withdrawal of international protection? (Section 7.2)
12. What is the standard and burden of proof applicable in the context of ending international protection? (Section 7.4)

Part 1. Ending international protection: an overview

The QD (recast) not only sets out the standards for qualification as a beneficiary of international protection; it also sets out the criteria for revoking, ending or refusing to renew refugee status and subsidiary protection status ([23]). A person who has been granted refugee status or subsidiary protection status under the QD (recast) may have that status revoked or ended, or that status may not be renewed, if certain criteria set out in the directive are met. Member States must or may revoke, end or refuse to renew refugee status pursuant to Article 14. Article 14(1) must be read in conjunction with Article 11 QD (recast); and Article 14(3)(a) must be read in conjunction with Article 12 QD (recast). In the case of subsidiary protection status, Member States must or may revoke, end or refuse to renew that status pursuant to Article 19. Article 19(1) must be read in conjunction with Article 16 QD (recast); Article 19(2) in conjunction with Article 17(3) QD (recast); and Article 19(3)(a) in conjunction with Article 17(1) and (2) QD (recast).

Table 2 sets out which articles of the QD (recast) act together to make the ending of refugee status or subsidiary protection status either mandatory or discretionary.

Table 2: Mandatory and discretionary articles of the QD (recast) concerning the ending of refugee status or subsidiary protection status

Grounds	Article in QD (recast)	Mandatory	Discretionary
Cessation (refugee status)	Article 14(1) and Article 11	✓	
Exclusion (refugee status)	Article 14(3)(a) and Article 12	✓	
Misrepresentation or omission of facts (refugee status)	Article 14(3)(b)	✓	
Danger to security of Member State (refugee status)	Article 14(4)(a)		✓
Danger to community of Member State (refugee status)	Article 14(4)(b)		✓
Cessation (subsidiary protection)	Article 19(1) and Article 16	✓	
Exclusion (subsidiary protection)	Article 19(2) and Article 17(3)		✓
Exclusion (subsidiary protection)	Article 19(3)(a) and Article 17(1)–(2)	✓	
Misrepresentation or omission of facts (subsidiary protection)	Article 19(3)(b)	✓	

This part of the judicial analysis aims to introduce the circumstances in which refugee status and subsidiary protection status must or may be revoked or ended or the renewal of such status be refused. In addition, it gives a brief overview of the significance of the EU Charter and the Refugee Convention in the context of revoking, ending or refusing to renew international protection, as well as the consequences of ending international protection.

([23]) In accordance with Article 2(a) QD (recast), 'international protection' means refugee status and subsidiary protection status as defined in points (e) and (g). The QD (recast) defines 'beneficiary of international protection' as 'a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g)' (Article 2(b)); 'refugee status' as 'the recognition by a Member State of a third-country national or a stateless person as a refugee' (Article 2(e)); and 'subsidiary protection status' as 'the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection' (Article 2(g)).

Part 1 has five sections as set out in Table 3.

Table 3: Structure of Part 1

1.1. Introduction

International protection, which means refugee status and subsidiary protection status as defined in Article 2(e) and (g) QD (recast), can be revoked or ended, or renewal refused, on the grounds set out in Figure 2.

Figure 2: Grounds for revoking, ending or refusing to renew refugee status and subsidiary protection status

Cessation	• When the circumstances that led to the granting of international protection have either ceased to exist or changed to such a degree that protection is no longer required
Exclusion	• When the beneficiary of international protection should have been or is excluded from being a refugee and/or from being eligible for subsidiary protection on specific grounds set out in the QD (recast)
Misrepresentation or omission of facts	• When the beneficiary of international protection misrepresented or omitted facts, including the use of false documents, which was decisive for the granting of refugee status or subsidiary protection status
Danger to security of Member State	• When the beneficiary of international protection is considered a danger to the security of the Member State in which he or she is present in accordance with the criteria set out in the QD (recast)
Danger to community of Member State	• When the beneficiary of international protection is considered a danger to the community of the Member State in accordance with the criteria set out in the QD (recast)

The **rationale behind cessation** is that international protection exists only for people who are genuinely in need of it. The CJEU stated in *Abdulla*:

> refugee status ceases to exist where the national concerned no longer appears to be exposed, in his country of origin, to circumstances which demonstrate that that country is unable to guarantee him protection against acts of persecution against his person for one of the five reasons listed in Article 2(c) of the Directive. Such a cessation thus implies that the change in circumstances has remedied the reasons which led to the recognition of refugee status (24).

(24) CJEU (GC), judgment of 2 March 2010, *Aydin Salahadin Abdulla v Bundesrepublik Deutschland*, joined cases C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, para. 69.

Following on from the judgment in *Abdulla*, the German Federal Administrative Court stated that a person ceases to be classified as a refugee when the circumstances on the basis of which they were recognised as such have ceased to exist; in other words, when the conditions for the granting of refugee status are no longer present ([25]).

The CJEU stated in *Bilali*, citing *M'Bodj* ([26]):

> the Court has already held that it would be contrary to the general scheme and objectives of Directive 2011/95 to grant refugee status and subsidiary protection status to third-country nationals in situations which have no connection with the rationale of international protection (see, to that effect, judgment of 18 December 2014, *M'Bodj*, C-542/13, EU:C:2014:2452, paragraph 44) ([27]).

With regard to the **rationale behind the ground of misrepresentation or omission of facts**, it can be deduced that the situation of an individual who has obtained international protection on the basis of incorrect information, without ever having met the conditions for obtaining that status, has no connection with the rationale for international protection ([28]).

There are **two rationales behind the grounds for exclusion from refugee status**.

The first is that persons falling within those grounds **do not need refugee status**. This is either because they are already receiving protection or assistance from organs or agencies of the UN other than UNHCR – in particular the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – or because the country in which they have taken up residence treats them equivalently to its own nationals.

The second rationale is that persons falling within those grounds **do not deserve refugee status** ([29]). This is the case when there are serious reasons for considering that they are individually responsible for grave crimes or for acts contrary to the purposes and principles of the UN. Those grounds for exclusion were – like the corresponding articles in the Refugee Convention – established with the dual aim of:

- excluding from refugee status individuals deemed to be undeserving of the protection that refugee status entails;
- ensuring that the granting of refugee status does not enable the perpetrators of certain serious crimes to escape criminal liability ([30]).

Consequently, exclusion on those grounds is not dependent on 'the existence of a present danger to the host Member State' ([31]).

The CJEU held in *K and HF* that the crimes and acts listed in Article 12(2) QD (recast) and Article 1F Refugee Convention 'seriously undermine both fundamental values such as respect for human dignity and human rights, on which … the European Union is founded, and the peace which it is the Union's aim to promote' ([32]).

In its *Ahmed* judgment, the CJEU held that **the purpose underlying the grounds for exclusion from subsidiary protection** is, like the grounds for exclusion from refugee status in Article 12(2) QD (recast), 'to exclude from subsidiary protection status persons who are deemed to be undeserving of the protection which that status entails and to maintain the credibility of the Common European Asylum System' ([33]). This purpose similarly underlies the grounds of **danger to the security and/or community of the Member State**.

Figure 3 sets out the grounds and relevant provisions of the QD (recast) for ending international protection.

([25]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 1 June 2011, 10 C 25.10, para. 18. See also Court of Appeal (England and Wales, United Kingdom), judgment of 2 May 2018, *Secretary of State for the Home Department* v *MA (Somalia)*, [2018] EWCA Civ 994, para. 47, stating that 'there is no necessary reason why refugee status should be continued beyond the time when the refugee is subject to the persecution which entitled him to refugee status or any other persecution which would result in him being a refugee, or why he should be entitled to further protection'.

([26]) CJEU, judgment of 18 December 2019, *Mohamed M'Bodj* v *État belge*, C-542/13, EU:C:2014:2452.

([27]) CJEU, 2019, *Bilali* (fn. 14 above), para. 44.

([28]) Ibid., para. 44. See also CJEU, 2019, *M'Bodj*, op. cit. (fn. 26 above).

([29]) CJEU, 2010, *B and D*, op. cit. (fn. 11 above), para. 104; CJEU (GC), judgment of 2 May 2018, *K* v *Staatssecretaris van Veiligheid en Justitie and HF* v *Belgische Staat*, joined cases C-331/16 and C-366/16, EU:C:2018:296, para. 50.

([30]) CJEU, 2018, *K and HF*, op. cit. (fn. 29 above), para. 50. See also CJEU, 2010, *B and D*, op. cit. (fn. 11 above), para. 104.

([31]) CJEU, 2018, *K and HF*, op. cit. (fn. 29 above), para. 50.

([32]) Ibid., para. 46.

([33]) CJEU, judgment of 13 September 2018, *Shajin Ahmed* v *Bevándorlási és Menekültügyi Hivatal*, C-369/17, EU:C:2018:713, para. 51.

Figure 3: Articles of the QD (recast) dealing with the ending of refugee status and subsidiary protection status

Grounds	Refugee status provision	Subsidiary protection status provision
Cessation	Article 14(1) together with Article 11	Article 19(1) together with Article 16
Exclusion	Article 14(3)(a) together with Article 12	Article 19(2) and 19(3)(a) together with Article 17
Misrepresentation or omission of facts	Article 14(3)(b)	Article 19(3)(b)
Danger to security of Member State	Article 14(4)(a)	Article 19(3)(a) together with Article 17(1)(d)
Danger to community of Member State	Article 14(4)(b)	Article 19(3)(a) together with Article 17(1)(d)

The CJEU has, however, ruled that, given the potentially serious consequences 'relating to the integrity of the person and to individual liberties' if international protection is wrongly ended, the 'assessment of the extent of the risk must … be carried out with vigilance and care' (34).

When an individual has been granted international protection, they are entitled to all the rights and benefits accompanying their status. Therefore, a decision to revoke, end or refuse to renew that status will require good reasons for doing so. This was alluded to by the House of Lords (United Kingdom) in *Hoxha,* when the court stated:

> Once an asylum application has been formally determined and refugee status officially granted, with all the benefits both under the Convention and under national law which that carries with it, the refugee has the assurance of a secure future in the host country and a legitimate expectation that he will not henceforth be stripped of this save for demonstrably good and sufficient reason (35).

Given the serious consequences that can flow from revoking, ending or refusing to renew international protection, Member States must ensure that the fundamental rights of the individual concerned, as set down in the EU Charter, are protected. In this respect, recital 16 QD (recast) expressly refers to the fact that the directive 'seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members' (36). It is clear, therefore, that:

> revocation of refugee status is not to be undertaken lightly, not only because of the possibility that a refugee returning to his or her country of nationality may be exposed to real risk but also because, having once been granted refugee status, it is harsh in itself to expect a refugee in a new host country to rebuild a life for him or herself under the constant threat of removal to the original country of nationality (37).

(34) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(35) House of Lords (United Kingdom), judgment of 10 March 2005, *R (Hoxha)* v *Special Adjudicator,* [2005] UKHL 19, para. 65.

(36) For further information, see Section 1.4 'Ending international protection and the EU Charter of Fundamental Rights'.

(37) Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom), judgment of 24 November 2017, *ES* v *Secretary of State for the Home Department*, Appeal No RP/00039/2016, para. 8. See also UNHCR, Guidelines on International Protection: Cessation of refugee status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'ceased circumstances' clauses), 10 February 2003, HCR/GIP/03/03 (hereafter UNHCR, Guidelines on International Protection: No 3), para. 7: 'Cessation of refugee status terminates rights that accompany that status. It may bring about the return of the person to the country of origin and may thus break ties to family, social networks and employment in the community in which the refugee has become established. As a result, a premature or insufficiently grounded application of the ceased circumstances clauses can have serious consequences. It is therefore appropriate to interpret the clauses strictly and to ensure that procedures for determining general cessation are fair, clear, and transparent'. See also Part 7 'Matters relating to procedures and proof' for further information; for more on the consequences of ending international protection, see Section 1.6.

1.2. Ending refugee status

Article 14 QD (recast) concerns the revocation of, ending of or refusal to renew refugee status.

> **Article 14 QD (recast)**
> **Revocation of, ending of or refusal to renew refugee status**
>
> 1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.
>
> 2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.
>
> 3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:
>
> (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
>
> (b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.
>
> 4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:
>
> (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
>
> (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.
>
> 5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.
>
> 6. Persons to whom paragraphs 4 or 5 apply [sic] are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

According to Article 14(1), 'Member States **shall** revoke, end or refuse to renew the refugee status of a third-country national or a stateless person [who] has ceased to be a refugee in accordance with Article 11'. Article 14(1) is thus mandatory in nature and must be invoked in conjunction with Article 11 QD (recast).

Article 11 QD (recast) deals with cessation. It is evident from Article 11 that refugee status is not, in principle, a permanent status and that a third-country national or a stateless person will cease to be a refugee in certain circumstances ([38]). The six cessation clauses in Article 11(1) cover two types of situations: circumstances relating to changes in the personal situation of the refugee ((a)–(d)) and those relating to changes in the country of origin ((e)–(f)). For more on ending refugee status on the cessation grounds set out in Article 11(1)(a)–(d), see Part 2; for further information on the grounds set out in Article 11(1)(e)–(f), see Part 3.

Pursuant to Article 14(2), without prejudice to the duty of the refugee in accordance with Article 4(1) QD (recast) to disclose all relevant facts and provide all relevant documentation at their disposal, it is for the Member State that has granted refugee status 'on an individual basis [to] demonstrate that the person concerned has ceased to

([38]) Opinion of Advocate General Mazák of 15 September 2009, *Aydin Salahadin Abdulla* v *Bundesrepublik Deutschland, Kamil Hasan* v *Bundesrepublik Deutschland, Ahmed Adem and Hamrin Mosa Rashi* v *Bundesrepublik Deutschland, Dler Jamal* v *Bundesrepublik Deutschland*, joined cases C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2009:551, para. 45.

be or has never been a refugee' in accordance with Article 14(1) ([39]). For more on procedural aspects relating to an assessment 'on an individual basis', as required by Article 14(2), and matters relating to proof, see Section 7.4.

Article 14(3) is a mandatory clause that obliges Member States to revoke, end or refuse to renew refugee status in certain other circumstances.

Such an obligation can arise pursuant to Article 14(3)(a), if it has been established that the third-country national or stateless person 'should have been or is excluded from being a refugee in accordance with Article 12' ([40]). Article 12, which reflects the exclusion grounds set out in Article 1(D), (E) and (F) Refugee Convention ([41]), applies to the following categories of persons:

- persons who are in receipt of 'protection or assistance from organs or agencies of the United Nations other than [UNHCR]' ([42]);
- persons who have been 'recognised by the competent authorities of the country in which [they have] taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those' ([43]); and
- persons who are undeserving of international refugee protection because there are serious reasons for considering that they have 'committed a crime against peace, a war crime, or a crime against humanity, […] [or] a serious non-political crime outside the country of refuge prior to [their] admission as a refugee, […] [or are] guilty of acts contrary to the purposes and principles of the United Nations' ([44]).

Article 14(3)(b) provides that refugee status must be revoked or ended, or renewal refused, if the refugee's 'misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status'. For more on Article 14(3), see Part 4.

Article 14(4) differs from Article 14(1) and (3) in that it is not a mandatory provision. Member States **may** 'revoke, end or refuse to renew' refugee status where 'there are reasonable grounds for regarding [the refugee] as a danger to the security of the Member State in which he or she is present', pursuant to Article 14(4)(a) QD (recast). Article 14(4)(b) also permits this when a refugee 'having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'. For further analysis on Article 14(4)–(6), see Part 5.

If refugee status is revoked or ended, or renewal is refused, the person concerned may fulfil criteria for the grant of subsidiary protection status ([45]). Note that the CJEU, in *Abdulla*, stated that, when refugee status ceases, this is without prejudice to the right of the person concerned to request subsidiary protection ([46]).

([39]) Article 4(1) QD (recast) states that 'Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.'

([40]) Article 12 deals with exclusion. See generally, EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020.

([41]) For the wording of these articles, see Appendix A. Selected international provisions. Note that Article 12(1)(a) QD (recast) and Article 1(D) Refugee Convention contain both an exclusion and an inclusion clause. See EASO, *Exclusion*, op. cit. (fn. 40 above), Section 2.2.2.

([42]) Article 12(1)(a) QD (recast). See also Article 1D Refugee Convention, cited in Appendix A. Selected international provisions.

([43]) Article 12(1)(b) QD (recast). See also Article 1E Refugee Convention, cited in Appendix A. Selected international provisions.

([44]) Article 12(2) QD (recast). See also Article 1F Refugee Convention, cited in Appendix A. Selected international provisions. It is important to note that the exclusion ground provided for in Article 12(2)(b) and Article 1F(b) Refugee Convention is subject to temporal and geographical restrictions and may thus not form the basis for ending refugee status that was correctly granted. Further guidance on the interpretation and application of the exclusion provisions in Articles 12 and 17 can be found in EASO, *Exclusion*, op. cit. (fn. 40 above).

([45]) National Court of Asylum Law (CNDA, France), judgment of 5 October 2015, *M. Z.*, No 14033523 C+. Member States may have different procedural requirements relating to the examination of qualification for subsidiary protection status when refugee status is revoked or ended or renewal is refused.

([46]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24): 'the cessation of refugee status cannot be made conditional on a finding that a person does not qualify for subsidiary protection status'.

1.3. Ending subsidiary protection status

Article 19 QD (recast) sets out the circumstances in which Member States may or must revoke, end or refuse to renew subsidiary protection status.

Article 19 QD (recast)
Revocation of, ending of or refusal to renew subsidiary protection status

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

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

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

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

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

Article 19(1) is a mandatory provision, which obliges Member States to revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person if that person has ceased to be eligible for subsidiary protection in accordance with Article 16.

Article 16 deals with the cessation of subsidiary protection. Article 16(1) states that a 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'. Article 16(2) requires 'the change in circumstances [to be] of such a significant and non-temporary nature that the person … no longer faces a real risk of serious harm' ([47]).

It is the wording of Article 19(1) in conjunction with Article 16(1) that obliges Member States to revoke, end or refuse to renew subsidiary protection when the conditions therein are satisfied, except in cases covered by Article 16(3). Article 16(3) refers specifically to 'compelling reasons' and states that Article 16(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' ([48]). For further analysis of Article 19(1) and Article 16 QD (recast), see Section 6.2.

Article 19(2), however, is not mandatory. It permits Member States to 'revoke, end or refuse to renew subsidiary protection status [if the individual] should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3)'. For further analysis of Article 19(2) together with Article 17(3), see Section 6.3.

([47]) The words 'significant and non-temporary' are also used in CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24) and concluding ruling.

([48]) 'Compelling reasons' in relation to subsidiary protection are dealt with in Section 6.2.4.

Article 19(3)(a) obliges Member States to revoke, end or refuse to renew subsidiary protection, if the beneficiary 'should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2)' ([49]). For further analysis of Article 19(3)(a) together with Article 17(1) and (2), see Section 6.3.

Article 19(3)(b) requires Member States to revoke, end or refuse to renew this protection, if there has been 'misrepresentation or omission of facts, including the use of false documents, [which] was decisive for the granting of subsidiary protection status'. Article 19(3)(b) is dealt with in more depth in Section 6.4.

1.4. Ending international protection and the EU Charter of Fundamental Rights

Recital 16 of the preamble to the QD (recast) states as follows.

Recital 16 QD (recast)

This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

As is apparent from recital 16, the provisions of the QD (recast) must be interpreted in a manner that respects fundamental rights and the principles recognised by the EU Charter.

In *Abdulla*, Advocate General Mazák stated that Article 11(1)(e) QD, concerning ceased circumstances, should be interpreted 'in a cautious manner, fully respecting human dignity', which is referred to in Article 1 EU Charter ([50]). The CJEU in *Abdulla* expressly referred to the Charter and stated that 'Those provisions must also, as is apparent from recital 10 [now recital 16 QD (recast)] in the preamble to the Directive, be interpreted in a manner which respects the fundamental rights and the principles recognised in particular by the Charter' ([51]).

The EU Charter contains several articles that expressly illustrate its significance in the context of decisions to end international protection. Article 19(2) EU Charter, for example, provides guarantees that are important for beneficiaries of international protection whose status is being withdrawn. It states: 'No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment' ([52]). Article 18 EU Charter, which enshrines the right to asylum in primary EU law in accordance with the Treaty on European Union and the TFEU, provides: 'The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention … and … Protocol'.

Article 14(4)–(6) QD (recast) deals with the revocation of, ending of or refusal to renew refugee status when 'there are reasonable grounds for regarding [a refugee] as a danger to security of the Member State' or if a refugee, 'having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'. Before 2019, there was considerable divergence of opinion on whether Article 14(4)–(6) QD (recast) was in conformity with the Refugee Convention and, in particular, Article 18 EU Charter. The question was dealt with by the CJEU in *M, X and X* ([53]). In its judgment, the Grand Chamber of the CJEU found that 'Article 14(4) to (6) [QD (recast)] has disclosed no factor of such a kind as to affect the validity of those provisions in the light of Article 78(1) TFEU and Article 18 of the Charter' ([54]).

([49]) Further guidance on the interpretation and application of Article 17 can be found in EASO, *Exclusion*, op. cit. (fn. 40 above), Part 4.

([50]) CJEU, Opinion of Advocate General Mazák, 2009, *Abdulla*, op. cit. (fn. 38 above), para. 45. Article 1 EU Charter states: 'Human dignity is inviolable. It must be respected and protected.'

([51]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24) QD states: 'This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.'

([52]) Moreover, Article 4 EU Charter provides: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.' For more on procedural guarantees in the context of ending international protection, see Part 7 below.

([53]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above).

([54]) Ibid., para. 112.

Considering the court's ruling in this case, it is apparent that any decision to end international protection should be taken against the backdrop of the protections provided by the EU Charter. The CJEU expressly stated that the application of Article 14(4)–(6) QD (recast):

> is without prejudice to the obligation of the Member State concerned to comply with the relevant provisions of the Charter, such as those set out in Article 7 thereof, relating to respect for private and family life, Article 15 thereof, relating to the freedom to choose an occupation and the right to engage in work, Article 34 thereof, relating to social security and assistance, and Article 35 thereof, relating to health protection ([55]).

The CJEU's express reference in *M, X and X* to several specific rights underlines the significance of the EU Charter in the context of asylum law and ending international protection, and the guarantees that flow from it.

1.5. Ending international protection and the Refugee Convention

In *M, X and X*, the CJEU found that, although the EU is not a contracting party to the Refugee Convention, Article 78(1) TFEU and Article 18 EU Charter 'nonetheless require it to observe the rules of that convention' ([56]). In order to fully understand the relationship between the Refugee Convention and the QD (recast), it is necessary, therefore, to refer to Article 78(1) TFEU and Article 18 EU Charter.

Article 18 EU Charter provides that 'The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention … and in accordance with the [TFEU]'. Article 78(1) TFEU states as follows.

Article 78(1)
Treaty on the Functioning of the EU

The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

The CJEU in *Bilali* referred to this provision in the context of developing asylum and subsidiary protection in line with the Refugee Convention. It stated that:

> it is apparent from Article 78(1) TFEU that the common policy which the European Union is to develop on asylum, subsidiary protection and temporary protection must be in accordance with the Geneva Convention (judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 37). In addition, it follows from recital 3 of Directive 2011/95 that, drawing on the Conclusions of the Tampere European Council, the EU legislature intended to ensure that the European asylum system, to whose definition that directive contributes, is based on the full and inclusive application of the Geneva Convention (judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 30) ([57]).

Recital 3 QD (recast) notes that 'the European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*' ([58]). Recital 4 expressly states that 'The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.' In addition, it is apparent from recitals 23 and 24 that the provisions of the QD (recast) were 'adopted to guide the competent authorities of the Member States in the application of [the Refugee] Convention on the basis of common concepts and criteria in order to recognise applicants for asylum as having refugee status for the purposes of Article 1 of that convention' ([59]). Thus, although the QD (recast) 'establishes a system of rules including concepts and criteria

([55]) Ibid., para. 109.
([56]) Ibid., paras 74–75.
([57]) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 54, referring also to CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above), para. 37.
([58]) See also Tampere European Council, Presidency Conclusions, 15–16 October 1999, para. 13.
([59]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 81.

common to the Member States and thus peculiar to the European Union, it is nonetheless based on the [Refugee] Convention and its purpose is, inter alia, to ensure that Article 1 of that convention is complied with in full' ([60]).

Although the Refugee Convention contains provisions on cessation in its Article 1C and on exclusion in Article 1D, 1E and 1F, it does not contain a specific provision on the revocation of, ending of or refusal to renew refugee status. Nevertheless, refugee status may be ended under the Refugee Convention.

According to UNHCR, under international refugee law, a person who was recognised as a refugee by a state under the Refugee Convention and/or its 1967 Protocol may lose refugee status only if certain conditions as set out in Figure 4 are met.

Figure 4: Conditions for loss of refugee status under international refugee law

Cancellation	• [A] decision to invalidate a refugee status recognition which should not have been granted in the first place. Cancellation affects determinations that have become final, that is, they are no longer subject to appeal or review. It has the effect of rendering refugee status null and void from the date of the initial determination (*ab initio* or *ex tunc* – from the start or from then).
Revocation	• [W]ithdrawal of refugee status in situations where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the 1951 Convention after having been recognised as a refugee. This has effect for the future (*ex nunc* – from now).
Cessation	• [T]he ending of refugee status pursuant to Article 1C of the 1951 Convention because international protection is no longer necessary or justified on the basis of certain voluntary acts of the individual concerned or a fundamental change in the situation prevailing in the country of origin. Cessation has effect for the future (*ex nunc*).

Source: UNHCR, 'Note on the cancellation of refugee status', op. cit. (fn. 8 above), para. 1.

The cessation clauses in Article 1C Refugee Convention have been incorporated in the QD (recast) through Article 11(1) and (3) ([61]). Article 14(1) QD (recast) refers to Article 11 as a basis for revoking, ending or refusing to renew refugee status.

With regard to revocation of, ending of or refusal to renew refugee status on exclusion grounds, Article 14(3)(a) QD (recast) covers situations both where the refugee **should have been** excluded on account of conduct **before** the grant of refugee status ('cancellation' in the terminology of UNHCR) and where the refugee **is** excluded on account of conduct **after** the grant of refugee status ('revocation' in the terminology of UNHCR). Article 14(3) states:

> Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:
>
> (a) he or she **should have been excluded or is excluded** from being a refugee in accordance with Article 12 ([62]).

The grounds for exclusion from qualification as a refugee that are set out in Article 12 QD (recast) correspond to the grounds for exclusion in Article 1D, 1E and 1F Refugee Convention ([63]). Article 12(1)(a) QD (recast) reflects the

([60]) Ibid., para. 83.

([61]) See Appendix A. Selected international provisions for the full text of Article 1C.

([62]) Emphasis added.

([63]) See Appendix A. Selected international provisions for the full text of these provisions.

two subparagraphs of Article 1D Refugee Convention ([64]). Article 12(1)(b), (2) and (3) QD (recast) corresponds to the grounds laid out in Article 1E and 1F Refugee Convention respectively, albeit with some differences ([65]).

Article 1F Refugee Convention is not limited to such an examination occurring after the individual has been granted refugee status. Article 1F states that the provisions of the Convention 'shall not apply to any person' with respect to whom there are serious reasons for considering that they fall within the criteria set down in Article 1F(a)–1F(c). Both Article 1F and Article 12 QD (recast) refer to 'serious reasons for considering' as the standard of proof.

Article 14(3)(b) QD (recast) provides that Member States must revoke, end or refuse to renew refugee status if it is established that a misrepresentation or omission of facts was decisive for the granting of refugee status. Under the Refugee Convention, such a decision to end refugee status, which was incorrectly granted, can be the subject of what is referred to by UNHCR as 'cancellation'. Cancellation has the effect of rendering refugee status null and void from the date of the initial determination ([66]).

Note that the Refugee Convention does not contain explicit 'cancellation' clauses. However, if it is established that an individual was wrongly granted refugee status, the invalidation of the initial recognition and withdrawal of refugee status is consistent with international refugee law and general legal principles. The CJEU referred to this situation in *Bilali*, when it stated that:

> Although there is nothing in [the Geneva] convention that expressly provides for loss of refugee status if it subsequently emerges that that status should never have been conferred, the UNHCR nevertheless considers that, in such a situation, the decision granting refugee status must, in principle, be annulled ([67]).

The question of whether Article 14(4)–(6) QD, which deals with revocation of, ending or refusal to renew refugee status, 'infringes Article 1 of the Geneva Convention' ([68]) was clarified by the CJEU in *M, X and X*. The court had to ascertain 'whether the provisions of Articles 14(4) to (6) of Directive 2011/95 can, in accordance with the requirements of Article 78(1) TFEU and Article 18 of the Charter, be interpreted in a way that ensures that the level of protection guaranteed by the rules of the Geneva Convention is observed' ([69]).

In carrying out its assessment of whether Article 14(4)–(6) is compatible with the Refugee Convention, the court found:

> Article 14(6) of Directive 2011/95 must, in accordance with Article 78(1) TFEU and Article 18 of the Charter, be interpreted as meaning that a Member State which uses the powers provided for in Article 14(4) and (5) of that directive must grant a refugee covered by one of the scenarios referred to in those provisions and present in the territory of that Member State, as a minimum, the rights enshrined in the Geneva Convention expressly referred to in Article 14(6) of that directive and the rights provided for by that convention which do not require a lawful stay, without prejudice to any reservations which may be made by that Member State under Article 42(1) of that convention ([70]).

The court concluded that 'the interpretation of Article 14(4) to (6) of Directive 2011/95 thus applied ensures that the minimum level of protection laid down by the Geneva Convention is observed, as required by Article 78(1) TFEU and Article 18 of the Charter' ([71]).

The CJEU also clarified in *M, X and X* that a decision to revoke refugee status does not necessarily mean that an individual is not a refugee under the Refugee Convention. The court found that it might be the case that persons may, in a particular Member State, receive a decision revoking their refugee status or a decision refusing to grant that status, but that:

> the adoption of such decisions cannot alter the fact of their being refugees where they satisfy the material conditions necessary to be regarded as being refugees for the purposes of Article 2(d) [QD (recast)],

([64]) See CJEU (GC), judgment of 9 December 2012, *Mostafa Abed El Karem El Kott and Others* v *Bevándorlási és Állampolgársági Hivatal*, C-364/11, EU:C:2012:826, para. 18.

([65]) Ibid., para. 21. For a detailed analysis of these provisions, see EASO, *Exclusion*, op. cit. (fn. 40 above).

([66]) UNHCR, 'Note on the cancellation of refugee status', op. cit. (fn. 8 above), para. 1; see also Figure 4 above.

([67]) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 58. See also 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*, 1979, reissued February 2019, HCR/1P/4/ENG/REV. 4 (hereafter UNHCR, *Handbook*), para. 117.

([68]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 76.

([69]) Ibid., para. 78.

([70]) Ibid., para. 107.

([71]) Ibid., para. 111.

> read in conjunction with the provisions of Chapter III thereof and, accordingly, Article 1(A) of the Geneva Convention (72).

For a more detailed analysis of *M, X and X*, see Sections 5.1, 5.4 and 5.5.

Although the system laid down by the Refugee Convention applies only to refugees and not to beneficiaries of subsidiary protection, it is important to note that the requirements arising under the Refugee Convention must also be taken into account for the purpose of interpreting Article 19 QD (recast) on revocation of, ending of or refusal to renew subsidiary protection status. The CJEU in *Bilali* set out the basis for this principle and stated that:

> recitals 8, 9 and 39 of Directive 2011/95 state that the EU legislature intended, in responding to the call of the Stockholm Programme, to establish a uniform status for all beneficiaries of international protection and that it accordingly chose to afford beneficiaries of subsidiary protection the same rights and benefits as those enjoyed by beneficiaries of refugee status, with the exception of derogations which are necessary and objectively justified (see, to that effect, judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraphs 31 and 32) (73).

The court developed this point, stating that Article 19 has similarities to Article 14, which deals with revocation of, ending of or refusal to renew refugee status. In this respect, the court noted that:

> the EU legislature drew on the rules applicable to refugees in order to define the causes of loss of subsidiary protection status. The wording and the structure of Article 19 of Directive 2011/95, concerning the loss of subsidiary protection status, have similarities with Article 14 of that directive, relating to the loss of refugee status, which in turn draws on Article 1(C) of the Geneva Convention (74).

It is clear, therefore, from a reading of the text of Article 78(1) TFEU and Article 18 EU Charter coupled with the jurisprudence of the CJEU, that decisions made by Member States, pursuant to Articles 11, 12, 14, 16, 17 and 19 QD (recast), must be made in a manner that is compatible with the Refugee Convention.

1.6. Consequences of ending international protection

A decision on ending international protection under the QD or QD (recast), which means a decision to end a person's refugee status or subsidiary protection status, is not, in and of itself, decisive for whether the person concerned can be removed or expelled from the territory of the Member State.

In the context of revocation of subsidiary status, the CJEU stated in *Bilali* that the loss of subsidiary protection status 'does not imply the adoption of a position on the separate question as to whether the person concerned loses any right of residence in the Member State concerned' (75). The court went on to state that:

> it is clear from the closing words of Article 2(h) [QD (recast)] that the directive … does allow, therefore, for host Member States to be able to grant, in accordance with their national law, national protection which includes rights enabling individuals who do not enjoy subsidiary protection status to remain in the territory of the Member State concerned (76).

If, given the wording of Article 2(h) QD (recast), the individual is not entitled to refugee or subsidiary protection status, the same principle that applied in *Bilali* above would, it seems, also apply to revocation of refugee status (77).

When international protection is ended, international law and/or national law may still protect against removal or expulsion from the country of refuge. Article 3 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (78) provides an absolute bar to removal when this would result in torture, or

(72) Ibid., para. 110.

(73) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 55.

(74) Ibid., para. 56. The CJEU ruled at para. 57 that 'the requirements arising under the Geneva Convention must be taken into account for the purpose of interpreting Article 19 [QD (recast)]'.

(75) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 59.

(76) Ibid., para. 61.

(77) '"application for international protection" means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately'.

(78) European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 222, ETS No 005, 4 November 1950 (entry into force: 3 September 1953).

inhuman or degrading treatment or punishment. Article 4 EU Charter also prohibits torture, and inhuman or degrading treatment or punishment, and Article 19(2) EU Charter prohibits removal, expulsion or extradition to 'a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'. Furthermore, *refoulement* is prohibited under, inter alia, Article 21 QD (recast) (79).

The CJEU in *M, X and X* referred to the prohibition on expulsion and stated that:

> Member States may not remove, expel or extradite a foreign national where there are substantial grounds for believing that he will face a genuine risk, in the country of destination, of being subjected to treatment prohibited by Article 4 and Article 19(2) of the Charter (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 86 to 88, and of 24 April 2018, *MP (Subsidiary protection of a person previously a victim of torture)*, C-353/16, EU:C:2018:276, paragraph 41) (80).

It is clear from the dicta of the court that a Member State must respect the principles in Articles 4 and 19(2) EU Charter and may not deviate from its responsibilities in relation to the principle of *non-refoulement*.

If refugee status is ended on the grounds set out in Article 14(4) QD (recast), then pursuant to Article 14(6) QD (recast) the person is entitled, as a minimum, to certain rights set out in the Refugee Convention, including Article 33, which contains a prohibition of expulsion or return (*refoulement*). The court in *M, X and X* concluded:

> Thus, where the refoulement of a refugee covered by one of the scenarios referred to in Article 14(4) and (5) and Article 21(2) of Directive 2011/95 would expose that refugee to the risk of his fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed, the Member State concerned may not derogate from the principle of non-refoulement under Article 33(2) of the Geneva Convention (81).

The European Court of Human Rights (ECtHR) judgment in the case of *K.I.* (82) illustrates the significance of the principle of *non-refoulement* in the context of ending international protection. *K.I.* concerned a Russian national of Chechen origin, whose refugee status had been revoked by the French determining authority – a decision upheld by the National Court of Asylum Law. The decision was based on provisions incorporating Article 14(4)(b) QD (recast) into domestic law, on the ground that he constituted a danger to the community of the Member State, as he had been convicted and sentenced for terrorist offences. An order was subsequently issued by the French authorities for his deportation to Russia. The matter came before the ECtHR, which found that the French authorities, when they had decided to deport the appellant, had not considered that he remained a refugee under the Refugee Convention although his refugee status under the QD (recast) had been revoked. The court referred to the CJEU judgment in *M, X and X*, which had ruled that, if Article 14(4) QD (recast) applies, third-country nationals may be denied refugee status and, thus, will not or will no longer be entitled to all the rights and benefits set out in Chapter VII of that directive, those rights and benefits being associated with that status. However, as long as the asylum conditions are met, the person concerned retains the status of refugee, and benefits from the rights guaranteed by the Refugee Convention, as explicitly provided for in Article 14(6) QD (recast) (83). This provision states that persons to whom Article 14(4) or (5) QD (recast) applies are entitled to certain rights under the Refugee Convention.

The ECtHR, citing its earlier judgment in *Saadi* (84), recalled that the protection provided by Article 3 Convention is absolute in character. For a planned forcible expulsion to be in breach of the Convention, it is necessary – and sufficient – for substantial grounds to have been shown for believing that there is a real risk that the person concerned will be subjected in the receiving country to treatment prohibited by Article 3, even when the person is considered to represent a threat to the national security of the contracting state (85). The court stated in *K.I.* that, in reaching an assessment on Article 3, it is not necessary to examine the assertions that an appellant was

(79) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), paras 90, 94 and 95; Article 21 QD (recast) and Article 33 Refugee Convention both concern 'refugees' 'for the purposes of Article 2(d) QD (recast) and Article 1(A) of the Geneva Convention', which is 'not dependent on formal recognition thereof through the granting of "refugee status" as defined in Article 2(e) of that directive' (para. 90). While they both affirm the principle of *non-refoulement* as well as exceptions to that principle, the CJEU also held that Article 21(2) QD (recast) 'must, as is confirmed by recital 16 thereof, be interpreted and applied in a way that observes the rights guaranteed by the Charter, in particular Article 4 and Article 19(2) thereof, which prohibit in absolute terms torture and inhuman or degrading punishment or treatment irrespective of the conduct of the person concerned, as well as removal to a State where there is a serious risk of a person being subjected to such treatment' (para. 94).

(80) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 94.

(81) Ibid., para. 95.

(82) ECtHR, judgment of 15 April 2021, *K.I.* c *France*, No 5560/19.

(83) Ibid., para. 76, referring to CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), paras 92, 94, 95 and 99.

(84) ECtHR, judgment (GC) of 27 February 2008, *Saadi* v *Italy*, No 37201/06, para. 137.

(85) ECtHR, 2021, *K.I.* c *France*, op. cit. (fn. 82 above), para. 119.

involved in terrorist activities, because this aspect of the matter is not relevant under Article 3 [86]. The court also noted that an assessment of the risk of treatment contrary to Article 3 ECHR requires a complete and *ex nunc* (from now) evaluation of the situation before any expulsion [87]. The court unanimously concluded that there would be a violation of Article 3 ECHR, under its procedural aspect, if the appellant were returned to Russia without a full *ex nunc* assessment by the French authorities of the risk he claimed he would incur if the removal order were to be enforced [88].

For further discussion on the principle of *non-refoulement* and the procedural guarantees provided by the EU Charter, see Section 5.5, as well as the EASO judicial analysis on asylum procedures and the principle of *non-refoulement* [89].

Accordingly, the decision to expel a person from the territory of the Member State is separate from the decision to end international protection, and Member States must respect the principle of *non-refoulement* and other fundamental rights in accordance with their international obligations.

In the ECtHR case of *Krasniqi*, the court considered the issue of whether the expulsion of an individual, subsequent to the withdrawal of his subsidiary protection status on the ground of his conviction for serious crimes, amounted to a violation of Article 8 ECHR concerning the right to family life. The court concluded that his expulsion was not a violation of Article 8 ECHR in the light of, in particular, the repeated, partly violent and hence serious nature of his criminal offences and the resulting threat to public order and security, the fact that he came to Austria as an adult and still had cultural and linguistic ties with his home country, the possibility of his family staying in contact with him, and the fact that he was able to apply for leave to return to Austria less than 5 years after his expulsion [90].

[86] Ibid. See also ECtHR, judgment of 10 October 2019, *O.D.* c *Bulgarie*, No 34016/18, para. 46, and ECtHR, judgment of 11 October 2011, *Auad* v *Bulgaria*, No 46390/10, para. 100.

[87] ECtHR, 2021, *K.I.* c *France*, op. cit. (fn. 82 above), para. 120.

[88] Ibid., para. 146.

[89] EASO, *Asylum Procedures and the Principle of* Non-refoulement – *Judicial analysis*, 2018.

[90] ECtHR, judgment 25 April 2017, *Krasniqi* v *Austria*, No 41697/12. See also ECtHR, decision of 14 January 2014, *Y.A.* v *the Netherlands*, No 15439/09, concerning an Afghan, whose permanent residence permit was withdrawn and on whom an exclusion order was imposed based on Article 1F Refugee Convention, as it was found that he had held the rank of lieutenant colonel in the Afghan security services and on the basis of this position must be held partly responsible for the crimes committed by this organisation. The applicant claimed that expulsion to Afghanistan would constitute a violation of the prohibition of torture and inhuman treatment contained in Article 3 ECHR and the right to family life in Article 8. The ECtHR held that, since the Dutch government was not planning to expel him to Afghanistan for the time being, he could not claim to be a victim of an alleged violation of the ECHR and his claim was inadmissible. See also ECtHR, decision of 8 June 2017, *M.M. and Others* v *Netherlands*, No 15993/09.

Part 2. Grounds for ending refugee protection I – cessation resulting from individual action(s): Article 11(1)(a)–(d)

Article 14 QD (recast) sets out the grounds for the revocation of, ending of or refusal to renew refugee status. The first ground, set out in Article 14(1), requires Member States to revoke, end or refuse to renew refugee status if a third-country national or a stateless person has ceased to be a refugee in accordance with Article 11 QD (recast).

> **Article 14(1) QD (recast)**
> **Revocation of, ending of or refusal to renew refugee status**
>
> Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

Article 14(1) must, therefore, be read in conjunction with Article 11 QD (recast). Article 11(1)(a)–(d) sets out four grounds for cessation resulting from individual actions.

> **Article 11(1)(a)–(d) QD (recast)**
> **Cessation**
>
> 1. A third-country national or a stateless person shall cease to be a refugee if he or she:
>
> (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
>
> (b) having lost his or her nationality, has voluntarily re-acquired it; or
>
> (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
>
> (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; […]

The main premise underpinning the application of Article 11(1)(a)–(d) is that international protection should not be granted where it is no longer necessary or justified ([91]).

Note that the provisions in Article 11(1)(a)–(c) all refer to 'nationality'. Note also that, whereas Article 11(1)(a), 11(1)(b) and 11(1)(d) all use the word 'voluntarily', Article 11(1)(c) does not require the action to be voluntary.

With respect to Article 11(1)(a)–(d), in general, courts and tribunals must assess the material facts and circumstances that led to the cessation decision and the withdrawal of refugee status. It must then be determined whether these facts and circumstances are sufficient to demonstrate that the person concerned no longer has a well-founded fear of persecution in their country of nationality or, in the case of Article 11(1)(d), the country of origin, and that international protection is no longer required.

Each of the provisions in Article 11(1)(a)–(d) is assessed in the four sections that follow, as set out in Table 4.

([91]) Kraft, I., 'Article 11, Qualification Directive 2011/95/EC', in Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016, p. 1191, para. 1, (hereafter Kraft, 'Article 11 QD (recast)', and Hailbronner and Thym, *EU Immigration and Asylum Law*, respectively).

Table 4: Structure of Part 2

Section	Title	Page
2.1	Voluntary re-availment of the protection of the country of nationality: Article 11(1)(a)	27
2.2	Voluntary re-acquisition of nationality: Article 11(1)(b)	31
2.3	Acquisition of a new nationality: Article 11(1)(c)	32
2.4	Voluntary re-establishment in the country of origin: Article 11(1)(d)	34

2.1. Voluntary re-availment of the protection of the country of nationality: Article 11(1)(a)

The first ground for cessation is set out in Article 11(1)(a) QD (recast). It provides that 'A third-country national or stateless person shall cease to be a refugee if he or she: (a) has voluntarily re-availed himself or herself of the protection of the country of nationality'.

Article 11(1)(a) reflects the wording of Article 1C(1) Refugee Convention, which states that the Convention will cease to apply to a refugee who 'has voluntarily re-availed himself of the protection of the country of his nationality'.

Article 11(1)(a) applies when a refugee who, while living outside their country of nationality, voluntarily takes steps indicative of re-availment of national protection. Article 11(1)(a) denotes a change in the situation of the refugee that has been brought about by the refugee of their own volition. When a refugee takes certain steps, it can be presumed that voluntary re-availment of the protection of the country of nationality has taken place.

This situation requires cessation because, if a refugee voluntarily carries out such acts and has thereby 're-availed himself or herself of the protection of the country of nationality', international protection is no longer necessary. As Article 11(1)(a) expressly refers to a person's country of nationality, it does not apply to stateless persons.

Article 11(1)(a) contains two criteria, as set out in Figure 5 and analysed in the two subsections that follow.

Figure 5: The criteria set out in Article 11(1)(a)

1 **The refugee must voluntarily re-avail himself or herself of protection**

2 **The protection must be provided by the country of nationality**

2.1.1. The refugee must voluntarily re-avail himself or herself of protection

For the purposes of Article 11(1)(a) QD (recast), re-availment of 'the protection of the country of nationality' refers both to protection provided in the country of nationality and to protection provided by its diplomatic or consular representations outside the country. A refugee may return to their country of nationality and this act may bring them within the realm of the domestic protection of their country of nationality. Many cases in which Article 11(1)(a) QD (recast) is invoked involve situations in which a refugee seeks some form of diplomatic or consular protection from the authorities of their country of nationality ([92]). It may apply when the refugee has contacted or visited official authorities such as consulates or embassies in the host Member State in order to

([92]) Kraft, 'Article 11, QD (recast)', op. cit. (fn. 91 above), p. 1194, para. 8; Hathaway, J. C. and Foster, M., *The Law of Refugee Status*, 2nd edn, Cambridge University Press, Cambridge, 2014 (hereafter Hathaway and Foster, *The Law of Refugee Status*), pp. 469–470.

obtain or renew a passport or other official documents. Such an act may indicate that, if the refugee were to return, they could also expect protection from the country of nationality.

The act of re-availment of national protection must be voluntary, which suggests there must be an intention to re-avail oneself of state protection ([93]). When a refugee contacts the official authorities of their country of origin to, for example, request official documents, such an act may imply an intention to re-avail themselves of the protection of the country of nationality ([94]).

As several courts and tribunals have found, steps taken to obtain a passport from the official authorities of the country of nationality may be viewed as indicative of an intent to re-avail oneself of the protection of that country ([95]). The mere act of contacting the authorities of one's country of nationality does not, however, automatically imply intention, and an individual assessment must be undertaken in this respect.

The German Federal Administrative Court took the view that acceptance or renewal of a national passport does not necessarily mean that refugee status is automatically terminated in every case. The court found that, while this behaviour was an indication that the person concerned wished to place himself under the protection of his home country again, this inference can be invalidated by the circumstances of the individual case. The court emphasised that the individual circumstances of the case must be considered and that it must be questioned whether the behaviour of the person entitled to asylum can be evidence that the issue of the passport was not intended as a means of regaining full diplomatic protection. The court stated that 'the mere use of a service provided by the diplomatic mission of the home country to overcome bureaucratic obstacles cannot be sufficient to cause the loss of rights. Determinations on the associated purpose and the individual circumstances have to be made' ([96]).

The French courts take the view that certain acts by a refugee, such as contacting embassies or consulates of the country of nationality in France, are 'acts of allegiance' indicative of a re-availment of protection that may render continued international protection unnecessary. However, the facts and circumstances must be assessed in the light of other factors, which may indicate that this is not the case ([97]).

Steps taken by a refugee may have been motivated by necessity or because the refugee was required to take such steps by the host Member State (such as a requirement by the state of refuge that the refugee obtain travel documents) ([98]). UNHCR, interpreting Article 1C(1) Refugee Convention, which is reflected in Article 11(1)(a) QD (recast), clarifies that the refugee may:

> be constrained, by circumstances beyond his control, to have recourse to a measure of protection from his country of nationality. He may, for instance, need to apply for a divorce in his home country because no other divorce may have the necessary international recognition. Such an act cannot be considered to be a 'voluntary re-availment of protection' and will not deprive a person of refugee status ([99]).

([93]) UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 120, with reference to the interpretation of Article 1C(1) Refugee Convention.

([94]) European Migration Network (EMN), *Beneficiaries of international protection travelling to and contacting authorities of their country of origin: challenges, policies and practices in the EU Member States, Norway and Switzerland: EMN Synthesis,* November 2019, p. 18.

([95]) Migration Court of Appeal (*Migrationsöverdomstolen*, Sweden), judgment of 13 June 2011, UM 5495-10, MIG 2011:13 (English summary). The same principle is applied by the Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 31 January 2019, Ra 2018/14/0121, AT:VWGH:2019:RA2018140121.L01. Similarly, it is applied by the Asylum and Immigration Tribunal (United Kingdom), judgment of 28 June 2007, *RD (Cessation, burden of proof, procedure) Algeria*, [2007] UKAIT 66, para. 30. The tribunal held: 'Passports are not ornamental adornments or collectors' items … 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. It is of course open to the appellant to rebut the inference'.

([96]) Unofficial translation of Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 27 July 2017, 1 C 28.16, DE:BVerwG:2017:270717 U1C28.16.0.

([97]) Council of State (*Conseil d'état*, France), judgment of 13 January 1989, 78055, FR:CESSR:1989:78055.19890113, finding that simply making contact with the authorities of the country of origin cannot constitute a conclusive presumption and that an examination of all the particular circumstances is required. UNHCR states that, 'If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality. On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a re-availment of protection' (UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 121). UNHCR also states, however, that the refugee may rebut the implication and 'There may be cases where obtaining or renewing a national passport should not be considered as indicative of an intention to re-avail of the protection of the country of nationality. The key issue is the purpose or reason for which the passport was obtained or renewed' (UNHCR, *The Cessation Clauses: Guidelines on their application*, 26 April 1999, para. 10). Hathaway and Foster find this approach problematic, as it shifts the burden onto the refugee (Hathaway and Foster, *The Law of Refugee Status*, op. cit. (fn. 92 above), pp. 467–468). See also EMN, *Beneficiaries of international protection travelling to and contacting authorities of their country of origin: challenges, policies and practices in the EU Member States, Norway and Switzerland: EMN Synthesis*, November 2019.

([98]) UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 119, sets out a framework for the consideration of such cases, identifying three essential factors for analysis of cases arising under Article 1(C)(1): voluntariness, intent and actual re-availment.

([99]) Ibid., para. 120.

In such cases, an assessment should be made of whether the interaction with the 'country of nationality' was merely to fulfil a requirement imposed upon the refugee by the regulations and procedures of the host state, and 'attention to the facts of each particular case is vital' ([100]).

The French Council of State has held that a refugee of Turkish nationality who obtained passports from a consulate for his minor children to enable them to return to their mother in Turkey did so as a matter of necessity and not a voluntary act of re-availment ([101]). In another case, in which a refugee contacted university authorities in his country of nationality in order to obtain the necessary certificate to work in his profession in France, as required by French regulations, this was found to be not an act of allegiance and, therefore, not a voluntary act of re-availment ([102]). Similarly, another French case concerned a refugee who renewed her passport at the embassy of her country of nationality in Paris, at the express request of the French police as a condition of her continued entitlement to medical treatment necessary for her survival. In its reasoning, the National Court of Asylum Law took this into account, as well as the fact that the renewal was obtained by a third person, the refugee's vulnerability, her medical and psychological condition, and the complex administrative situation. The court held that the requirement of necessity was met, so that her refugee status was maintained ([103]). This can be contrasted with another French case in which the refugee status of an ethnic Chechen refugee was ceased because he had renewed his passport at a Russian consulate in Strasbourg. The National Court of Asylum Law found that the refugee had acted voluntarily and the passport was not obtained by corruption or for any compelling reasons or with compelling justification ([104]).

In relation to return trips to the country of nationality, the Federal Administrative Court in Germany found that trips made by a refugee to his country of nationality do not necessarily lead to the assumption that the refugee wished to voluntarily re-avail themselves of the protection of their country of nationality, and an individual assessment must be conducted ([105]). In Bulgaria, the Supreme Administrative Court determined that the return of a refugee for a parent's funeral was not considered a reason for ending international protection under Article 11(1)(a), as it did not view this as a voluntary act ([106]).

Conversely, reasons given for return to the country of origin may be found not to justify the retention of refugee status. For instance, the Dutch Council of State upheld a decision to end the refugee status of an individual who had travelled to Azerbaijan three times, using her refugee passport and visas acquired from the Azerbaijani embassy. It found that the length of her visits did not relate to the reasons given for them, which were determined to constitute 'regular visits to that country spent on holidays' ([107]). As a result, the Council of State concluded that she had voluntarily placed herself under the protection of the Azerbaijani authorities and had obtained that protection .

In France, the National Court of Asylum Law confirmed the cessation decision relating to the refugee status of an Afghan refugee who had spent 2 months in his country of nationality to celebrate his marriage. The court found that he had voluntarily re-availed himself of the protection of his country of nationality. However, considering the situation in Afghanistan at that time, he was granted subsidiary protection ([108]). Another French case concerned a Vietnamese national, who returned to Vietnam for 4 weeks. In this case, the same court found that he had re-availed himself of the protection of his country of nationality. It held that a medical certificate relating to the health of his elderly father, aiming to justify a family reason for his return, but which he had held for 9 months before travelling, established no absolute grounds for his urgent departure. Finally, it noted that he had not tried to apply for a safe conduct pass from the French authorities. The court thus found that his re-availment of national protection was voluntary ([109]).

([100]) E. Fripp, *Nationality and statelessness in the international law of refugee status,* Bloomsbury, 2016 (hereafter Fripp, *Nationality and Statelessness*), p. 335.

([101]) Council of State (*Conseil d'état*, France), judgment of 15 May 2009, *OFPRA* c *M. A.*, No 288747, FR:CESSR:2009:288747.20090515.

([102]) Council of State (*Conseil d'état*, France), judgment of 8 February 2006, *Association d'accueil aux médecins et personnels de santé réfugiés en France*, No 277258, FR:CESSR:2006:277258.20060208.

([103]) National Court of Asylum Law (CNDA, France), judgment of 24 July 2013, *Mlle L. M.*, No 12002308 C+, in CNDA, *Contentieux des réfugiés, Jurisprudence du Conseil d'État et de la Cour nationale du droit d'asile, Recueil 2013*, pp. 121–122.

([104]) National Court of Asylum Law (CNDA, France), judgment of 28 December 2020, *M. S.*, No 20012065 C+.

([105]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), 2017, 1 C 28.16, op. cit. (fn. 96 above).

([106]) Supreme Administrative Court (Bulgaria), judgment of 19 July 2017, case No 9661.

([107]) Council of State (*Raad van State*, Netherlands), judgment of 15 June 2016, 201508135/1/V3 (English summary), NL:RVS:2016:1773, para. 7.

([108]) National Court of Asylum Law (CNDA, France), 2015, *M. Z.*, No 14033523 C+, op. cit. (fn. 45 above). Contrast, however, Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 2 December 1991, 9 C 126/90, which held that a marriage ceremony before the consulate of the country of origin was a singular act that was irrelevant to the relationship to that country, so the need for international protection did not cease to exist. NB: the latter case predated the QD (recast) and did not involve return to the country of origin.

([109]) National Court of Asylum Law (CNDA, France), judgment of 6 July 2017, *M. Q.*, No 16032301 R.

Similarly, the Belgian Council for Aliens Law Litigation found that the reasons given by an Afghan refugee, relating to his brother's medical condition, for his return to Kabul were not credible and showed that he no longer needed international protection. The court determined that the mere fact he had sought permission from the Pakistani authorities and Afghan embassy to travel through the country to Kabul did not detract from this finding ([110]). Furthermore, the same court, in the case of an individual who returned to Iraq, using an Iraqi passport issued by the Iraqi embassy in France, found that he had voluntarily acquired an Iraqi passport. The court found that this indicated that he no longer had a well-founded fear of persecution vis-à-vis the authorities ([111]).

When contact with the authorities of the country of nationality is occasional or incidental, however, such contact may not be considered an act of voluntary re-availment of national protection. For example, the National Court of Asylum Law found that a Bangladeshi refugee in France had not re-availed himself of the protection of his country of nationality when he obtained a Bangladeshi driving licence. The court found that a driving licence was a regular employment requirement and the refugee had only communicated with the authorities by phone, while he was in France, in order to find out how a third person could obtain the licence on his behalf. Moreover, the fact that his wife had had to bribe the Bangladeshi authorities for the document further persuaded the court that the refugee was not actually demonstrating an intention to re-avail himself of the protection of his country of nationality ([112]).

UNHCR states:

> In determining whether refugee status is lost in these circumstances, a distinction should be drawn between actual re-availment of protection and occasional and incidental contacts with the national authorities. If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality. On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a re-availment of protection ([113]).

Some other circumstances will not amount to a re-availment of national protection. It may be that an individual cannot manifest or has not explicitly manifested a will to re-avail themselves of the protection of the country of nationality and therefore that the re-availment is not voluntary. The re-availment may, for example, have been undertaken by a child, by someone unable to make the decision to re-avail himself or herself of protection ([114]), or by a third person without the consent of the refugee.

2.1.2. The protection must be provided by the country of nationality

The next matter to be considered in relation to Article 11(1)(a) is whether the protection is provided by the refugee's country of nationality. According to the International Court of Justice, nationality is a 'legal bond having at its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties' ([115]). Generally, each state determines who is (and who is not) a national through its nationality laws ([116]). A person's nationality may be acquired by descent (*jus sanguinis*) or by birth (*jus soli*). Nationality can also be acquired by naturalisation based on long-term residence or might also be acquired through cession or annexation ([117]).

When someone has been granted refugee status, the relevant national authority, court or tribunal will have concluded what that refugee's nationality (or lack thereof) was, for the purpose of assessing their qualification for international protection. Consequently, when a Member State seeks to revoke, end or refuse to renew that status, a refugee's nationality will already have been determined, unless the refugee status was granted based on a misrepresentation and/or false documents relating to their nationality. Even in such circumstances, however, the Member State will most likely have discovered the true nationality of the person concerned at that stage, hence

(110) Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 9 May 2018, No 203.723.

(111) Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 6 February 2020, No 232.289.

(112) National Court of Asylum Law (CNDA, France), judgment of 14 September 2018, *M. H.*, No 16029914.

(113) UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 121.

(114) Article 11(1)(a) QD (recast). Contrast, however, Federal Court (Canada), judgment of 13 March 2019, *Nana Abechkhrishvili* v *Minister of Citizenship and Immigration*, 2019 FC 313, in which the refugee argued that her mental state meant she was not acting rationally in returning to Georgia and thus did not intend to re-avail herself voluntarily of the protection of Georgia. The court found that her diagnosed anxiety disorder was not sufficient to demonstrate she acted involuntarily. Her well thought-out plans and extended stay in Georgia on two occasions suggested that her trips were intentional and planned.

(115) International Court of Justice, judgment of 6 April 1955, *Nottebohm Case (Liechtenstein* v *Guatemala)* (second phase), [1955] ICJ Reports 4, p. 23.

(116) Foster, M. and Lambert, H., *International refugee law and the protection of stateless persons*, Oxford University Press, New York, 2019 (hereafter Foster and Lambert, *International refugee law and the protection of stateless persons*), p. 53.

(117) Ibid.

the requirement to apply Article 14(3)(b) in such cases ([118]). A refugee who is stateless but returns to a country of former habitual residence or makes contact with the authorities there and who does not have the nationality of that country, will, therefore, not fall under Article 11(1)(a), as they will not fulfil the 'nationality' criterion.

It is clear from the foregoing that, in situations involving possible voluntary re-availment of the protection of the country of nationality, an individualised assessment must be undertaken in each case in order to determine whether a refugee has obtained the protection of their country of nationality, as opposed to a country of former habitual residence, for example.

2.2. Voluntary re-acquisition of nationality: Article 11(1)(b)

The second ground for cessation is set out in Article 11(1)(b) QD (recast). This provision applies to a refugee who is no longer in need of international protection because they have re-acquired their former nationality. It provides that 'a third-country national or stateless person shall cease to be a refugee if he or she: […] (b) having lost his or her nationality, has voluntarily re-acquired it'. Article 11(1)(b) reflects the wording of Article 1C(2) Refugee Convention, which provides that the Convention will cease to apply to any refugee if 'Having lost his nationality, he has voluntarily re-acquired it'. It applies to a person who, at some point (either before or after they were recognised as a refugee), lost their nationality and has since voluntarily re-acquired it. Nationality is dealt with in Section 2.1.2 above.

The loss may have occurred as a result of deprivation of nationality by the government concerned, or by an act of the refugee resulting in loss of nationality through operation of law. A refugee may have been released from their nationality by a decision taken by the state following a request by the individual, or they may have renounced their nationality ([119]). Furthermore, a refugee may have been deprived of their nationality for reasons including treason, prolonged residence abroad, evasion of military service or taking the nationality of another state ([120]).

The word 're-acquired' uses the past tense and, therefore, it appears that the provision only applies once the individual has re-acquired the nationality in question, not when they have begun to contemplate re-acquisition or even when an application has been filed ([121]).

Article 11(1)(b) requires a voluntary act on the part of the refugee before the provision can be invoked. As has been noted: 'Unlike re-availment of national protection, re-acquisition of nationality may be initiated by the State of origin, where a nationality law of broad application is adopted, rather than by the refugee' ([122]). The granting of nationality by operation of law or by decree does not imply voluntary re-acquisition, unless the nationality has been expressly or impliedly accepted by the refugee. However, if such former nationality is granted by operation of law, subject to an option to reject, it will be regarded as a voluntary re-acquisition, if the refugee, with full knowledge, has not exercised the option to reject. An exception would be if they are able to invoke special reasons showing that it was not in fact their intention to re-acquire their former nationality. It has been suggested that there is 'a burden on refugees to signal their rejection of an offer of restored nationality, if they have full knowledge that it will operate automatically unless they opt out' ([123]).

In other cases, a person might have acquired a new nationality on marriage, which was subsequently lost on the death of a spouse or because of divorce. The individual might then voluntarily apply to re-acquire a lost nationality following such an event ([124]). UNHCR takes the view that, as long as the refugee has, of their own free will, re-acquired the lost nationality, the intent to obtain the protection of their government may be presumed ([125]).

([118]) See Section 4.3 below.

([119]) Fripp, *Nationality and statelessness*, op. cit. (fn. 100 above), p. 30.

([120]) Ibid., p. 30.

([121]) Ibid., pp. 335–336.

([122]) Fitzpatrick, J. and Bonoan, R., 'Cessation of refugee protection', in Feller, E., Türk, V. and Nicholson, F. (eds), *Refugee Protection in International Law: UNHCR's global consultations on international protection*, Cambridge University Press, Cambridge, 2003, pp. 491–544 (hereafter Fitzpatrick and Bonoan, 'Cessation of refugee protection'), p. 525.

([123]) Ibid., p. 526, summarising, UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 128.

([124]) For example, according to Article 987 Civic Code of the Islamic Republic of Iran: 'An Iranian woman marrying a foreign national will retain her Iranian nationality unless according to the law of the country of the husband the latter's nationality is imposed by marriage upon the wife. But in any case, after the death of the husband or after divorce or separation, she will re-acquire her original nationality together with all rights and privileges appertaining to it by the mere submission of an application to the Ministry of Foreign Affairs, to which should be annexed a certificate of the death of her husband or the document establishing the separation.' See Immigration and Refugee Board of Canada, 'Iran: Requirements and procedures for a former Iranian citizen by birth, who renounced their citizenship, to reacquire Iranian citizenship, including circumstances that may bar someone from re-acquiring Iranian citizenship (2015-August 2017)', 22 August 2017, IRN105961.E.

([125]) UNHCR, *The Cessation Clauses*, op. cit. (fn. 97 above), para. 13; UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 121.

However, as has been noted:

> Where a refugee has the option of re-acquiring a lost nationality, (whether the loss was due to State disintegration or punitive deprivation of citizenship), and he declines to do so (because he prefers to build a new life in the State of refuge, or he fears that return to the State of origin may be traumatic or that political conditions might worsen there), Article 1C(2) [Refugee Convention] does not permit cessation. The element of voluntary re-acquisition is absent ([126]).

2.3. Acquisition of a new nationality: Article 11(1)(c)

The third ground for cessation is set out in Article 11(1)(c) QD (recast). It provides that 'A third-country national or stateless person shall cease to be a refugee if he or she: […] (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality'. Article 11(1)(c) QD (recast) reflects the wording of Article 1(C)(3) Refugee Convention, which provides that the Convention will cease to apply to any refugee if 'He has acquired a new nationality, and enjoys the protection of the country of his new nationality'.

In this context, the French Council of State has determined that, when a refugee has acquired a new nationality and fully enjoys the protection of their new country of nationality, this can constitute a legitimate reason for terminating the status from which they benefit ([127]).

The requirement for cessation under Article 11(1)(c) does not require voluntary acquisition of the new nationality by the refugee. As the word 'acquired' uses the past tense, the provision can only apply when an individual has the nationality in question and not at an earlier point ([128]). There must, however, be conclusive evidence to regard the refugee as a national of another country, taking into account both the applicable law and actual administrative practice. The possession of the passport of another country may, in itself, be insufficient evidence ([129]).

Likely ways of acquiring a new nationality include naturalisation, reintegration (where the law provides for resumption of nationality by persons who had lost it) and annexation ([130]). A person might also, for example, have voluntarily acquired their spouse's nationality or have automatically acquired it upon marriage, even though they took no steps to acquire it other than the marriage itself. Cessation due to a new nationality being acquired happens most commonly when a refugee becomes the national of the country of refuge. Furthermore, if a refugee acquires the nationality of their country of refuge, this may also end the refugee status of their spouse, where the spouse's refugee status was dependent on that of their husband or wife ([131]).

Cessation due to a new nationality being acquired can also apply to acquisition of the nationality of another country ([132]). The French National Court of Asylum Law, for example, upheld the decision of the asylum authority to cease the refugee status of a Yugoslav refugee, who had returned to Kosovo after it had declared its independence and had obtained a passport and identity card from the Kosovo authorities ([133]).

Ordinarily, the granting of nationality by the host Member State that granted refugee status and, in some cases, the granting of nationality by another EU Member State, which did not itself grant refugee status, leads to cessation and the automatic revocation of refugee status ([134]). In terms of the procedures required, the French

([126]) Fitzpatrick and Bonoan, 'Cessation of refugee protection', op. cit. (fn. 122 above), p. 526.

([127]) Council of State (*Conseil d'état*, France), judgment of 1 July 2020, *OFPRA* c *M. D.*, No 423272 A, FR:CECHR:2020:423272.20200701. UNHCR states that 'Where refugee status has been ended due to the acquisition of a new nationality, and such new nationality has been lost, depending on the circumstances of such loss, refugee status may be revived'; UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 132.

([128]) Fripp, *Nationality and Statelessness*, op. cit. (fn. 100 above)., p. 336.

([129]) UNHCR, *The Cessation Clauses*, op. cit. (fn. 97 above), para. 16.

([130]) Fripp, *Nationality and Statelessness*, op. cit. (fn. 100 above), p. 29.

([131]) Council of State (France), 2020, *OFPRA* c *M. D.,* No 423272 A, op. cit. (fn. 127 above). The case involved a husband who had obtained refugee status on a derivative basis and in keeping with the principle of family unity, as his wife had suffered persecution due to her being a Serbian of Roma ethnicity. When his wife acquired French nationality, the question arose whether this terminated her husband's refugee status. It was found that it was up to OFPRA and, where appropriate, the CNDA, to assess, taking into account this change and having regard to all the circumstances of the case, whether the person concerned must continue to benefit from the protection which had been granted to him. The Council of State therefore annulled the decision of the CNDA that had ruled that his refugee status should be maintained.

([132]) UNHCR, *The Cessation Clauses*, op. cit. (fn. 97 above), para. 16. See also UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 130. In Ireland, for instance, Section 9(1)(c) of the International Protection Act 2015 distinguishes between the acquisition of the nationality of the country of refugee and another nationality. Thus, it has slightly different wording from Article 11(1)(c) QD (recast) in that it states: 'A person shall cease to be a refugee if he or she […] (c) has acquired a new nationality (**other than as an Irish citizen**), and enjoys the protection of the country of his or her new nationality' (emphasis added).

([133]) National Court of Asylum Law (CNDA, France), judgment of 20 October 2011, *M. K.*, No 10010000 R.

([134]) For example, according to Section 18(b) of Czech Act No 325/1999 Coll. on Asylum, international protection status ceases to exist (*ex lege*) by the grant of citizenship by Czechia or by another EU Member State.

Council of State made the distinction between naturalisation by a third country and naturalisation by France. The court stated that, if the person has protection in a country of naturalisation other than France, the French authorities should initiate the procedure to terminate the refugee status of the person. If the refugee has become a French citizen, however, and enjoys all the rights attached to this, including the protection of France, this naturalisation terminates refugee status automatically, without any need for the French authorities to make a decision or to comply with this procedure ([135]).

The Court of Appeal (England and Wales, United Kingdom) has stated unequivocally that 'it is plain that a recognised refugee who thereafter obtains the citizenship of his host country, whose protection he then enjoys, loses his refugee status' ([136]).

Article 11(1)(c) expressly refers to the fact that not only must the refugee have acquired a new nationality, but the refugee must also enjoy 'the protection of the country of his or her new nationality'. The enjoyment of the protection of the country of new nationality is the crucial factor that must be determined.

The term 'effective nationality' sometimes arises in the context of Article 11(1)(c). The case-law and commentary, however, show a high level of doubt and disagreement about the content of the term ([137]).

In its 1999 guidelines, UNHCR stated that the new nationality 'must be effective, in the sense that it must correspond to a genuine link between the individual and the State; and … the refugee must be able and willing to avail himself or herself of the protection of the government of his or her new nationality' ([138]). With regard to acquisition of a spouse's nationality, UNHCR stated, in the same guidelines, that the question of whether protection is available in such a case 'depend[s] on whether or not a genuine link has been established with the spouse's country' with the result that 'Where the effective protection of the country of the spouse is available and the refugee avails himself or herself of such protection, the cessation clause would apply' ([139]). However, this position has not been endorsed by subsequent UNHCR publications addressing nationality and statelessness. For instance, UNHCR's 2004 *Handbook on Protection of Stateless Persons* states: 'There is no requirement of a "genuine" or an "effective" link implicit in the concept of "national" in Article 1(1) [of the 1954 Convention]' ([140]). The UK Upper Tribunal (Immigration and Asylum Chamber) in *KK* preferred to set aside the term 'effective nationality' and instead focused on whether South Korean nationality provided a sufficient level of protection ([141]).

([135]) Council of State (*Conseil d'état*, France), 2020, *OFPRA* c *M. D.*, No 423272 A, op. cit. (fn. 127 above), para. 7.

([136]) Court of Appeal (England and Wales, United Kingdom), judgment of 18 December 2008, *DL (DRC)* v *Entry Clearance Officer; ZN (Afghanistan)* v *Entry Clearance Officer*, [2008] EWCA Civ 1420, para. 29. This case involved family reunification. The sponsor had been granted asylum and later acquired the nationality of the country of asylum. The case was appealed to the Supreme Court in a judgment of 12 May 2010, *ZN (Afghanistan) (FC) and Others (Appellants)* v *Entry Clearance Officer (Karachi) (Respondent) and Another*, [2010] UKSC 21. The Supreme Court case turned on the construction of the relevant immigration rules relating to family reunion for refugees. The court held that the construction of rules designed to implement policy was a more flexible exercise than the interpretation of a statutory instrument, so it allowed itself to consider the intentions of the Secretary of State. The court held 'The fact that British citizenship has been granted to the spouse or parent does not change the fact that the spouse or parent is a person granted asylum or a person who has been granted asylum' (para. 37). However, it is important to note that this case is specific to the issue of family reunification as opposed to ending refugee status. In that respect, the court stated: 'The fact that, by Article 1F, the Refugee Convention does not apply to an applicant where there are serious reasons for considering that he or she has committed a serious crime of the kind identified in sub-paras (a) or (b) or has been guilty of acts contrary to the purposes and principles of the United Nations within the meaning of (c), is not, in the opinion of the Court, relevant to the question whether a sponsor is no longer a "refugee" within the meaning of para 352A or para 352E or whether he is a "parent who has been granted asylum" within the meaning of para 352D' (para. 32). See also paras 29–31. See also Supreme Court (Ireland), judgment of 19 June 2020, *M. A. M. (Somalia)* v *Minister for Justice and Equality and K. N. (Uzbekistan) and Others* v *Minister for Justice and Equality,* [2020] IESC 32.

([137]) Contrast Goodwin-Gill, G. S. and McAdam, J., *The Refugee in International Law*, 3rd edn, Oxford University Press, New York, 2007 (hereafter Goodwin-Gill and McAdam, *The Refugee in International Law*), p. 138, and Hathaway and Foster, *The Law of Refugee Status*, op. cit. (fn. 92 above), p. 57, (who endorse the notion) with Fripp, *Nationality and Statelessness*, op. cit. (fn. 100 above), p. 54 (1.104–107), Foster and Lambert, *International refugee law and the protection of stateless persons*, op. cit. (fn. 116 above), p. 112, Piotrowicz, R., '*Lay Kon Tji and Minister for Immigration and Ethnic Affairs*: the function and meaning of effective nationality in the assessment of applications for asylum', *International Journal of Refugee Law*, Vol. 11, No 3, 1999, p. 544, at p. 551, and Storey, H., 'Nationality as an element of the refugee definition and the unsettled issues of "inchoate nationality"' and "effective nationality" – Part 1: "'inchoate nationality"', *Ref|Law*, University of Michigan Law School, 11 June 2017, who reject it. Fripp, *Nationality and Statelessness*, op. cit. (fn. 100 above), p. 52 (1.104), considers that 'the phrase "effective nationality" arises in several contexts in different areas of international law. It bears a number of meanings some of which are contested, and its language is extremely wide, which may tend to obscure rather than enhance the clarity of any underlying concept'.

([138]) UNHCR, *The Cessation Clauses*, op. cit. (fn. 97 above), para. 17.

([139]) Ibid.

([140]) UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 54.

([141]) Upper Tribunal (Immigration and Asylum Chamber, United Kingdom), judgment of 21 February 2011, *KK and others (Nationality: North Korea) Korea CG*, [2011] UKUT 92(AC), para. 90.

2.4. Voluntary re-establishment in the country of origin: Article 11(1)(d)

The fourth ground for cessation is set out in Article 11(1)(d) QD (recast). It provides that 'a third-country national or stateless person shall cease to be a refugee if he or she: […] (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution'. Article 11(1)(d) is directly linked to Article 1C(4) of the Refugee Convention, which provides that the Convention shall cease to apply to any refugee if 'He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution'. It reflects a change in the personal situation of the refugee that has been brought about voluntarily.

Article 11(1)(d) has two requirements, as set out in Figure 6.

Figure 6: Criteria set out in Article 11(1)(d)

1. **Voluntarily re-established**
2. **In the country which he or she left or outside which he or she remained owing to fear of persecution**

The rationale behind this cessation clause is that, in cases where voluntary return amounts to re-establishment in the country of origin, the refugee no longer needs international protection, since they have secured national protection.

The CJEU has not yet interpreted this cessation clause. The available case-law is sporadic and limited, as well as being, in most cases, merely illustrative of a certain practice or interpretive approach. This case-law, taken together with the Conclusions on International Protection of UNHCR's Executive Committee ([142]), as well as UNHCR's *Handbook on procedures and criteria for determining refugee status* and subsequent Guidelines on International Protection ([143]), is nonetheless a valuable tool when assessing the application of the cessation clauses. Given that this cessation clause is based on acts of the refugee that result in altering their personal circumstances, its applicability presupposes that it is ensured that the refugee concerned is not unlawfully deprived of the right to international protection.

The language of Article 11(1)(d) departs somewhat from that of Article 11(1)(a)–(c), in that it does not refer to 'country of nationality'. Rather, it refers more generally to the 'country which he or she has left or outside which he or she remained'. Thus, the cessation clause in Article 11(1)(d) applies to both refugees who have a nationality and to stateless refugees.

Re-establishment refers to a return on a sustained or permanent basis to the country that the person had left. It implies a certain stability and not just a short return trip for compelling family reasons ([144]). The return of a refugee to their country of origin, alone, is not sufficient to satisfy Article 11(1)(d). The refugee must not just be physically inside the country of origin, but must have 're-established himself or herself' there ([145]). Generally speaking, there is no longer a need for refugee status if a refugee voluntarily goes home for a prolonged period and accesses the services and facilities of the state ([146]). Consistent, regular return visits to the country of origin over a period of time could amount to re-establishment, particularly if the refugee takes advantage of the benefits and facilities of that country or carries out their civic duties ([147]). An example of the latter might be the payment of taxes.

([142]) See UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 7th edn, June 2014, notably those listed on pp. 81–82.

([143]) UNHCR, *Handbook*, op. cit. (fn. 67 above), and notably UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37).

([144]) Kraft, 'Article 11 QD (recast)', op. cit. (fn. 92 above), p. 1195, para. 14. See also Federal Court (Canada), judgment of 19 January 2012, *Sandra Luz Cadena Cabrera and Miguel Angel Camacho Cabrera* v *Minister of Public Safety and Emergency Preparedness*, 2012 FC 67, upholding a decision to cease the refugee status of a woman who returned to Mexico shortly after having been granted status and stayed 4 years. The court found that 'The reason provided to justify this action [that she hoped to bring her husband to Canada] does not alter the voluntariness of the act.'

([145]) Hathaway and Foster, *The Law of Refugee Status*, op. cit. (fn. 92 above), p. 473.

([146]) Ibid., p. 476.

([147]) European Commission, 'Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection', 12 September 2001, COM(2001) 510 final, 2001/0207 (CNS), p. 23.

When carrying out the assessment of whether someone has 're-established himself or herself' in the country of origin or not, the authorities should look at the objective facts on a case-by-case basis ([148]). Although there are no definite accepted criteria for when a person can be considered as having 're-established himself or herself', Member States' courts and tribunals have given some indications of how the provision might be interpreted.

For instance, the Irish High Court found that there was clearly a voluntary re-establishment on a permanent basis when an individual returned to Nigeria and benefited from the protection of state institutions such as the police and judicial system. He also then obtained a passport from the Nigerian authorities while resident there ([149]).

A case before the Refugee Appeals Commission in France concerned a Kurdish Iraqi refugee, who returned to the autonomous region of Kurdistan (which had since come under the control of the international community) and had no evident intention of leaving. The commission found that settlement on this more permanent basis could constitute re-establishment. It found that he had returned voluntarily, and had lived, worked, married and had children there, for a number of years ([150]).

A report on Member State practice by the European Migration Network, without expressly referring to Article 11(1)(d), found that most European states considered travel to the country of origin to be an indication that cessation of refugee status could apply, but that the act alone would not automatically lead to cessation ([151]). The same study found that other factors that Member States considered in assessing such cases were the reasons for travel, the length of stay, the frequency of the journeys, the location, the mode of entry, and the time between the grant of refugee status and the return journey ([152]).

According to UNHCR, the length of stay and 'the sense of "commitment" which the refugee has in regard to the stay in the country of origin' are factors for determining 're-establishment' ([153]). The cessation clause may be invoked where 'a refugee visits the country of origin frequently and avails himself or herself of the benefits and facilities in the country normally enjoyed by citizens of the country' ([154]).

By contrast, UNHCR's *Handbook* states that a 'temporary visit by a refugee to his former home country, not with a national passport but, for example, with a travel document issued by his country of residence, does not constitute "re-establishment"' ([155]). Furthermore, Member States of UNHCR's Executive Committee agreed that, when refugees visit their country of origin in order to gather information and assess the prospect of voluntary repatriation, this should not automatically involve loss of refugee status ([156]).

Under the terms of the QD (recast) and in line with the Refugee Convention, for this cessation clause to be applicable, the re-establishment must have been voluntary.

The Supreme Administrative Court of Bulgaria held that the return of a refugee to Iraq for his father's funeral could not be considered a reason for ending international protection pursuant to Article 11(1)(d) ([157]). The court highlighted the fact that what is required for cessation in this respect is that the individual must voluntarily settle or voluntarily establish himself in the state in which he had been persecuted. The court found that there was no evidence of voluntary establishment in Iraq in that case.

([148]) Kraft, 'Article 11 QD (recast)', op. cit. (fn. 92 above), p. 1195, para. 14.

([149]) High Court (Ireland), judgment of 1 November 2012, *Adegbuyi* v *Minister for Justice and Law Reform*, [2012] IEHC 484, para. 51.

([150]) Refugee Appeals Commission (*Commission des recours des réfugiés*, France), decision of 17 February 2006, *M. O.*, No 02008530/406325 R.

([151]) EMN, *Beneficiaries of international protection travelling to and contacting authorities of their country of origin: challenges, policies and practices in the EU Member States, Norway and Switzerland: EMN Synthesis*, November 2019, p. 7. One exception is Hungary, where any trip to the country of origin could be considered sufficient reason to presume that the individual had re-availed himself or herself of the protection of the country of origin.

([152]) Ibid.

([153]) UNHCR, *The Cessation Clauses*, op. cit. (fn. 97 above), para. 21.

([154]) UNHCR, 'Note on cessation clauses', 30 May 1997, EC/47/SC/CRP.30, para. 12.

([155]) UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 134.

([156]) UNHCR Executive Committee, Conclusion No 18 Voluntary Repatriation (XXXI), 1980, para. (e), recognising that in order to facilitate voluntary repatriation of refugees, 'visits by individual refugees … to their country of origin to inform themselves of the situation there – without such visits automatically involving loss of refugee status – could also be of assistance'.

([157]) Supreme Administrative Court (Bulgaria), judgment of 19 July 2017, No 9661.

Whether a refugee has acted voluntarily depends on the circumstances of each case [158]. When the refugee returned to their country voluntarily, but the stay was not voluntary, such as because of imprisonment, then cessation may not be applicable [159]. However, should the refugee have initially returned to their country of origin involuntarily, but nonetheless settled down without problems and resumed a normal life for a prolonged period before leaving again, the cessation clause may still apply [160].

Note that any mandated return may amount to a breach of the host state's duty to respect the principle of *non-refoulement* under Article 21 QD (recast) and Article 33 Refugee Convention [161].

[158] UNHCR, 'Note on cessation clauses', op. cit. (fn. 154 above), para. 12.

[159] UNHCR, *The Cessation Clauses*, 1999, op. cit. (fn. 97 above), para. 20.

[160] UNHCR, 'Note on cessation clauses', op. cit. (fn. 154 above), para. 21.

[161] Hathaway, J. C., 'The right of states to repatriate former refugees', *Ohio State Journal on Dispute Resolution*, Vol. 20, No 1, 2005, pp. 175–216, at p. 176. See also Sections 1.5 and 1.6.

Part 3. Grounds for ending refugee protection II – cessation due to ceased circumstances: Article 11(1)(e)–(f), (2) and (3)

Article 14(1) QD (recast) requires Member States to end refugee status if a third-country national or a stateless person 'has ceased to be a refugee in accordance with Article 11 [QD (recast)]' ([162]). Whereas Article 11(1)(a)–(d) covers circumstances in which a person ceases to be a refugee as a result of their actions or consent, Article 11(1)(e)–(f) covers situations in which a third-country national or stateless person ceases to be a refugee 'because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist'. Voluntary acts or consent by the refugee are, therefore, not required for the provisions of Article 11(1)(e)–(f) to be invoked.

Article 11 QD (recast)
Cessation

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; or

(f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

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

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

Article 11(1)(f) is the equivalent of Article 11(1)(e) but involves the cessation of the refugee status of stateless persons. For them, the issue is return to the country of former habitual residence and not re-availment of the protection of the country of nationality. Article 11(2) refers to the fact that the change in circumstances must be 'significant and non-temporary'. Article 11(3) states that Article 11(1)(e) and (f) will not apply and the person concerned will not cease to be a refugee if they can 'invoke compelling reasons arising out of previous persecution'.

Table 5 sets out the structure of this part.

Table 5: Structure of Part 3

Section	Title	Page
3.1	Ceased circumstances in country of nationality: Article 11(1)(e) and (2)	38
3.2	Ceased circumstances in country of habitual residence: Article 11(1)(f) and (2)	46
3.3	Compelling reasons: Article 11(3)	47

([162]) Article 14(1) QD (recast) states: 'Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.'

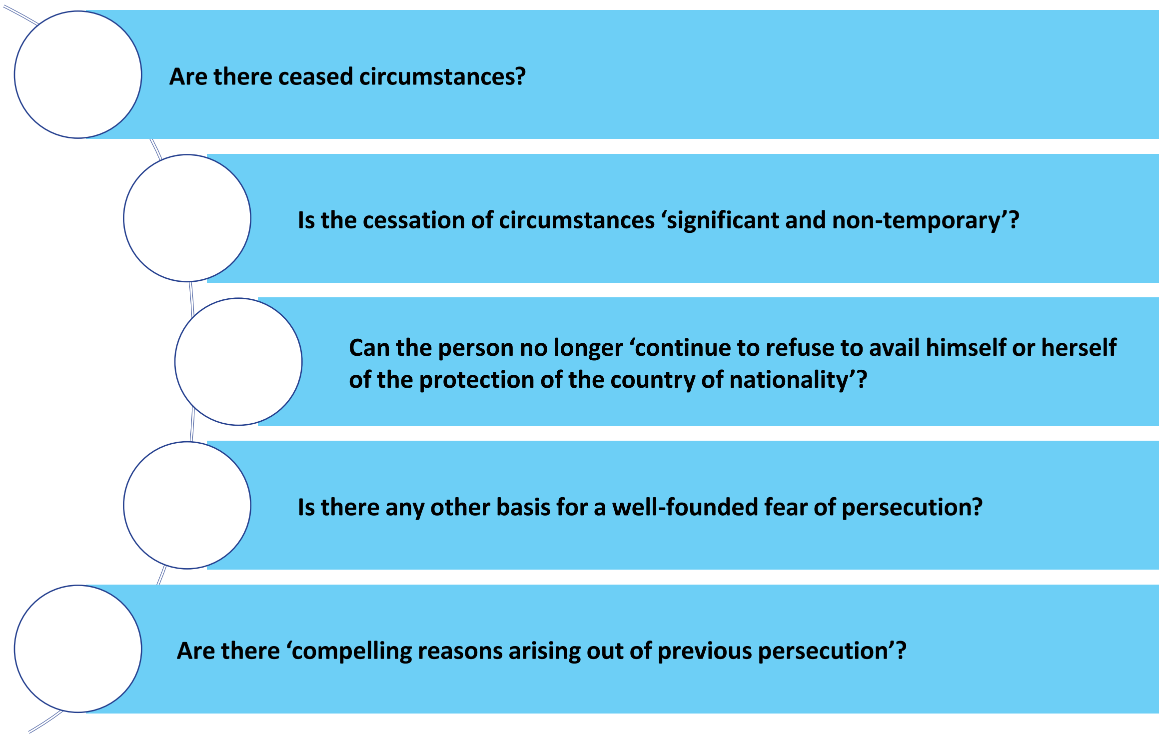
3.1. Ceased circumstances in country of nationality: Article 11(1)(e) and (2)

Article 11(1)(e), which deals with ceased circumstances in the country of nationality, is the equivalent of Article 1C(5) Refugee Convention. The latter states that the Convention shall cease to apply to any person if 'He can no longer, because the circumstances in connexion 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'. The CJEU has stated in *OA*:

> Article 11(1)(e) of that directive [QD (recast)], in the same way as Article 1(C)(5) of the Geneva Convention, provides that a person is to cease to be classified as a refugee when the circumstances as a result of which he or she was recognised as such have ceased to exist, that is to say, in other words, when the conditions for the grant of refugee status are no longer met ([163]).

Figure 7 sets out the questions that need to be answered prior to ending refugee status on account of ceased circumstances under Article 14(1) in conjunction with Article 11(1)(e) QD (recast).

Figure 7: Criteria for ending refugee status on account of ceased circumstances



These issues are addressed in the subsections that follow, and the question of compelling reasons arising out of previous persecution is covered in Section 3.3.

3.1.1. Are there ceased circumstances?

For Article 11(1)(e) to apply, there must be a change such that 'the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist'. These ceased circumstances usually relate to the situation in the country of nationality, such as a change in government or a regime change ([164]).

([163]) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 35.

([164]) National Court of Asylum Law (CNDA, France), judgment of 17 October 2018, *M. K. S.*, No 18001386 C+. In this case, the court found that, while there had been a change in circumstances in the Democratic Republic of the Congo (DRC), the change was not significant and non-temporary. UNHCR states that 'circumstances in a country are inter-linked, be these armed conflict, serious violations of human rights, severe discrimination against minorities, or the absence of good governance'; therefore, all relevant factors must be taken into consideration (UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 11).

Examples of ceased circumstances may occur where there are changes in government, including changes in security services and/or the legal system, and where there are amnesties or elections ([165]). In addition, UNHCR states that 'Large-scale spontaneous repatriation of refugees may be an indicator of changes that are occurring or have occurred in the country of origin', unless 'the return of former refugees would be likely to generate fresh tension' ([166]).

It is also possible, however, to ground cessation under this provision on a development relating to the personal circumstances of an individual refugee, as well as the objective situation in the country of nationality.

In *MM (Zimbabwe),* the Court of Appeal of England and Wales (United Kingdom) discussed changed circumstances in the context of Article 1C(5) Refugee Convention and stated:

> Article 1C(5) is framed more widely than this, and requires examination of whether there has been a relevant change in 'the circumstances in connexion with which [a person] has been recognised as a refugee'. 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. The relevant change must in each case be durable in nature ([167]).

This was approved by the Court of Appeal of England and Wales (United Kingdom) in the case of *KN (DRC)*, in which the court stated:

> 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'. As acknowledged by this court in *MM (Zimbabwe)*, this involves a wider examination ([168]).

In this respect, the Court of Appeal (England and Wales, United Kingdom) stated in *JS (Uganda)*:

> the Court in *MM (Zimbabwe)* took a similar view that the word 'circumstances' in Article 1C(5) required a wide construction, embracing circumstances which included (a) the general political conditions in the individual's home country and (b) relevant aspect of his personal characteristics ([169]).

In this context, the French Council of State, for example, found that the acquisition of a new nationality by a refugee, whose husband had been granted refugee status derived from hers in keeping with the principle of family unity, may constitute a change in circumstances for her husband ([170]). Another example of a change in personal circumstances is when a refugee has given up their involvement with a political party or acquired a new religion ([171]). Furthermore, the French Council of State also ruled that divorce constitutes a change in circumstances that can end refugee status, when the status was obtained based on family unity ([172]). Another change of personal circumstances might arise when a child who has the benefit of refugee status due to a parent's status reaches the age of 18. In such a case, however, the French National Court of Asylum Law found

([165]) Fitzpatrick and Bonoan, 'Cessation of refugee protection', op. cit. (fn. 122 above), p. 495; Goodwin-Gill and McAdam, *The Refugee in International Law*, 2007, op. cit. (fn. 137 above), pp. 140–141; Kraft, 'Article 11 QD (recast)', op. cit. (fn. 92 above).

([166]) UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 12.

([167]) Court of Appeal (England and Wales, United Kingdom), judgment of 22 June 2017, *Secretary of State for the Home Department* v *MM (Zimbabwe)*, [2017] EWCA Civ 797, para. 24.

([168]) Court of Appeal (England and Wales, United Kingdom), judgment of 9 October 2019, *Secretary of State for the Home Department* v *KN (DRC)*, [2019] EWCA Civ 1665, para. 33.

([169]) Court of Appeal (England and Wales, United Kingdom), judgment of 10 October 2019, *Secretary of State for the Home Department* v *JS (Uganda)*, [2019] EWCA Civ 1670, para. 164, referring to Court of Appeal (England and Wales, United Kingdom), 2017, *MM (Zimbabwe)*, op. cit. (fn. 167). Note that, at the time of writing, a leave application to appeal against the decision to the UK Supreme Court was pending. Moreover, UNHCR highlights the importance of assessing the overall position of the refugee, and states that there may be 'ongoing well-founded fear of persecution, despite the changes in the country of origin. In this regard, for example, a change in official attitudes may not be sufficient to relieve the refugee of the fear of persecution'; UNHCR, 'Discussion note on the application of the "'ceased circumstances" cessation clauses in the 1951 Convention', 20 December 1991, para. 15(i). UNHCR also takes the view that 'changes in the refugee's country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status'; UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 17.

([170]) Council of State (France), 2020, *OFPRA* c *M. D.*, No 423272 A, op. cit. (fn. 127 above), para. 7.

([171]) Federal Administrative Court (*Bundesverwaltungsgericht*, Austria), judgment of 24 July 2014, G307 1406174-1, AT:BVWG:2014:G307.1406174.1.00. See also Higher Administrative Court Lower Saxony (*Niedersächsisches Oberverwaltungsgericht*, Germany), judgment of 11 August 2010, 11 LB 405/08, para. 44.

([172]) Council of State (*Conseil d'état*, France), judgment of 29 November 2019, *M. K.*, No 421523, FR:CECHR:2019:421523.20191129.

that a child benefiting 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 her refugee status (173).

A ceased circumstance may arise if the authorities of the Member State acquire new information or knowledge about the case of the person concerned. The CJEU, in *Bilali*, in the context of changed circumstances relating to ending subsidiary protection pursuant to Article 19(1) and 16 QD (recast), stated that 'a change in the host Member State's state of knowledge of the personal situation of the individual concerned' can amount to a change of circumstances (174).

It should be noted that in *Bilali* the CJEU was dealing with a case where subsidiary protection should not have been granted in the first place. However, as there was no misrepresentation or omission of relevant facts by the individual, subsidiary protection status could not be revoked under Article 19(3)(b). It is significant that, while the court held that, in these circumstances, the ending of subsidiary protection status would follow from a finding of a ceased circumstance, this scenario is very different from what this cessation ground is generally applied to.

The CJEU judgment in *Bilali* is analysed in more detail in Sections 6.2.2 and 6.4, which deal with revoking, ending or refusing to renew subsidiary protection status.

3.1.2. Is the change of circumstances 'significant and non-temporary'? Article 11(2)

Article 11(2) QD (recast) provides that 'the change of circumstances' recorded by the Member State must be of 'such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded' (175).

In terms of what 'significant and non-temporary' practically means, the CJEU stated in *Abdulla*:

> 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 having been permanently eradicated. The assessment of the significant and non-temporary nature of the change of circumstances thus 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 (176).

Applying this guidance, the German Federal Administrative Court dismissed an appeal in the case of an Iraqi national and his wife after the fall of Saddam Hussein in Iraq. The protection provided by the Iraqi government was found to be appropriate insofar as the individuals concerned no longer needed to fear persecution due to their application for asylum abroad (177).

In a subsequent case, the same court found that, when there is not a complete change in the political regime but there is liberalisation within a formerly persecutory system, as could be seen in Algeria in that case, stricter criteria apply. Furthermore, in such a case, a careful examination of whether the political changes are permanent should be conducted (178).

The question of whether a change in circumstances, in the case of a Sri Lankan national of Tamil origin, was significant and non-temporary was also examined by the French National Court of Asylum Law. The court found that, while the changes in Sri Lanka might be significant, as documented in the country of origin information, such changes could not yet be characterised as significant and lasting. It was found that serious violations of human rights that constitute persecution, particularly against the Tamil community, continued there. The court also found that appropriate measures, such as an effective judicial and policing system to permanently eliminate the factors that led to the person's fear of persecution, had not been put in place (179).

(173) National Court of Asylum Law (CNDA, France), judgment of 31 December 2018, *M. O.*, No 17013391, para. 10. See also Court of Appeal (England and Wales, United Kingdom), 2019, *JS (Uganda)*, op. cit. (fn. 169 above), para. 172, finding that, 'in the language of Article 1C(5) of the Refugee Convention, "the circumstances in connection with which [JS] 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'.

(174) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 49. For further information on this case, please see Section 6.2.

(175) See also CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(176) Ibid., para. 73.

(177) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 24 February 2011, 10 C 3.10, para. 20.

(178) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), 2011, 10 C 25.10, op. cit. (fn. 25 above), para. 24.

(179) National Court of Asylum Law (CNDA, France), judgment of 25 May 2018, *M. A. L.*, No 17047809 C+ (in CNDA, *Contentieux des réfugiés – Jurisprudence du Conseil d'État et de la Cour nationale du droit d'asile, Recueil 2018*, pp. 206–210).

The Supreme Administrative Court in Finland, in assessing whether there was a change of circumstances in the Democratic Republic of the Congo, found that the requirement for significant and lasting change had not been fulfilled, as it had not been established that the circumstances in which the appellant became a refugee had ceased to exist. It determined that the immigration service's decision had not stated that the ethnic grounds that had led to the grant of refugee status had ceased to exist, and that his coming of age and good health, referred to in the decision, were irrelevant in assessing cessation of refugee status. It therefore concluded that it must be considered established that there had been no significant and permanent change in the security situation in the appellant's home territory ([180]).

The issue of ceased circumstances was considered by the Court of Appeal of England and Wales (United Kingdom) in *MA (Somalia)*, in which the court referred to *Abdulla* and stated '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' ([181]). The court observed that 'The QD does not refer to changes in circumstances being "durable" (the phrase used in Refugee Convention jurisprudence) but to their being "non-temporary"' ([182]).

The Supreme Court in Norway 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 Refugee Convention – means that a change must have taken place that is so significant that protection can be enjoyed in the home country. The court found that this condition also implies that the change that has taken place must be sufficiently consolidated, so that the person is not consigned to a life that may easily result in new flight and the right to refugee status ([183]).

The importance of a cautious approach and individualised assessment in relation to decisions regarding ceased circumstances is illustrated in *Abdulla*. The CJEU stated that 'the assessment relates to the same question of whether or not the established circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution' ([184]). The court ruled that 'The assessment of the extent of the risk must, in all cases, be carried out with vigilance and care, since what are at issue are matters relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the Union' ([185]).

Following this approach, the Court of Appeal of England and Wales (United Kingdom) in *MA (Somalia)* remarked that 'it would be inconsistent with the purposes of refugee status, whether under the Refugee Convention or the QD, if protection could be too easily ceased while a person was still in need of international protection or it was not reasonably clear that the need for it had gone' ([186]).

([180]) Supreme Administrative Court (*Korkein hallinto-oikeus*, Finland), judgment of 25 November 2020, KHO:2020:130.

([181]) Court of Appeal (England and Wales, United Kingdom), 2018, *MA (Somalia)*, op. cit. (fn. 25 above), para. 2(1).

([182]) Ibid., para. 48.

([183]) Supreme Court (*Norges Høyesterett*, Norway), judgment of 23 March 2018, *Immigration Appeals Board v A, B, and C*, HR-2018-572-A, No 2017/1659 (English translation). See also Supreme Court (*Norges Høyesterett*, Norway), judgment of 3 February 2021, *A, B, C and Norwegian Organisation for Asylum Seekers (NOAS)* v *Immigration Appeals Board (Office of the Attorney General)*, HR-2021-203-A, (Case No 20-121835SIV-HRET) (English summary). The judgment found that an internal flight alternative could be considered in the assessment of revocation of refugee status. For more on these issues in the context of subsidiary protection, see Section 6.2.2 below.

([184]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

([185]) Ibid., para. 90. See also Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), 2011, 10 C 25.10, op. cit. (fn. 25 above), para. 24.

([186]) Court of Appeal (England and Wales, United Kingdom), 2018, *MA (Somalia)*, op. cit. (fn. 25 above), para. 47.

3.1.3. Can the person no longer 'continue to refuse to avail himself or herself of the protection of the country of nationality'?

Article 11(1)(e) QD (recast) states that 'a third-country national or stateless person shall cease to be a refugee if he or she: […] 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'.

In terms of the meaning to be attributed to protection for the purposes of Article 11(1)(e) QD, which is the same as Article 11(1)(e) QD (recast), the CJEU in *OA* stated that 'the "protection" in question is the same as that which was up to that point lacking, namely protection from acts of persecution for at least one of the five reasons specified in Article 2(c) of that directive [Article 2(d) QD (recast)]' (187). Cessation thus implies that the change in circumstances has remedied the reasons which led to the recognition of refugee status (188). The court stated:

> Article 11(1)(e) [QD] must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in relation to 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 [Article 2(d) QD (recast)], read together with Article 7(1) and (2) thereof (189).

The assessment to be carried out of whether 'protection' pursuant to Article 11(1)(e) exists is parallel to that carried out during the examination of an initial application for the grant of refugee status. The court referred to this in *OA* and stated:

> Given the parallelism established by [QD] between the granting and the cessation of refugee status, the requirements to be met by the protection which may preclude that status, in the context of Article 2(c) of that directive, or bring about its cessation, pursuant to Article 11(1)(e) thereof, must be the same as those which arise from, in particular, Article 7(1) and (2) of that directive (190).

The court reinforced this point relating to parallelism later in the judgment and stated:

> Since the conditions specified in Article 2(c) of that directive dealing with fear of persecution and protection from acts of persecution are … intrinsically linked, their examination cannot be subject to a separate criterion of protection; their assessment must be made in the light of the requirements laid down in, inter alia, Article 7(2) of that directive (191).

Article 7(1) QD is almost identical in wording to Article 7(1) QD (recast). Article 7(1) QD states that 'Protection can be provided by: (a) the State; or (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.' Article 7(1) QD (recast) has an additional qualification stating 'provided they are willing and able to offer protection in accordance with paragraph 2' (192).

The wording in Article 7(2) QD states:

> Protection is generally provided when the actors mentioned in 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.

Although the wording in Article 7(2) QD (recast) is similar to that in Article 7(2) QD, it also states that 'Protection against persecution or serious harm must be effective and of a non-temporary nature' and that the person must have 'access to such protection'.

(187) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 35, referring to CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24). Note that the *OA* judgment concerned the interpretation of the relevant provisions of the QD rather than the QD (recast). The case concerned a request for a preliminary ruling by the Upper Tribunal (Immigration and Asylum Chamber, United Kingdom) regarding the interpretation of Article 2(c), Article 7 and Article 11(1)(e) QD, by which the United Kingdom was then bound, rather than QD (recast). These provisions correspond to Article 2(d), Article 7 and Article 11(1)(e) QD (recast) respectively, albeit Article 7 contains some significant changes in wording, as explained below.

(188) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 36.

(189) Ibid., para. 39.

(190) Ibid., para. 37.

(191) Ibid., para. 61. See also CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(192) Paragraph 2 meaning, Article 7(2) QD (recast).

Thus, according to the CJEU:

> the protection required by Article 11(1)(e) [QD], read together with Article 7(2) of that directive, refers to the ability of the third country of which the person concerned is a national to prevent or to punish acts of persecution within the meaning of that directive … Further, Article 7(2) refers to steps taken to prevent acts of persecution and the existence of an effective legal system for the detection, prosecution and punishment of such acts (193).

The court also considered the factors to be verified in assessing whether there is effective protection in the context of Article 11(1)(e). In that respect, the court stated:

> In order to arrive at the conclusion that the fear of persecution of the refugee concerned is no longer well founded, the competent authorities, in the light of Article 7(2) [QD], must verify, having regard to that refugee's individual situation, that the actor or actors in question who are providing protection, within the meaning of Article 7(1), have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the third country national concerned will, if he or she ceases to have refugee status, have access to that protection (194).

In terms of matters that should be assessed in deciding whether there is effective protection, note that the CJEU stated in *Abdulla* that:

> the competent authorities must assess, in particular, the conditions of operation of, on the one hand, the institutions, authorities and security forces and, on the other, all groups or bodies of the third country which may, by their action or inaction, be responsible for acts of persecution against the recipient of refugee status if he returns to that country. In accordance with Article 4(3) of the Directive, relating to the assessment of facts and circumstances, those authorities may take into account, inter alia, the laws and regulations of the country of origin and the manner in which they are applied, and the extent to which basic human rights are guaranteed in that country (195).

The Court of Appeal of England and Wales, in *MA (Somalia)*, referred to *Abdulla* and said that the CJEU 'makes it clear the protection is to be considered on an individualised basis: the recognising state does not have to consider whether the institutions achieve a particular standard for all purposes' (196).

Significantly, the CJEU stated in *OA* that 'the existence of protection from acts of persecution in a third country can permit the inference that there is no well-founded fear of persecution within the meaning of that provision only if that protection satisfies the requirements arising, in particular, from Article 7(2) of that directive' (197).

The actor or actors of protection is or are those mentioned in Article 7(1) QD (recast). In addition to the state, this comprises 'parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State; provided they are willing and able to offer protection'. A multinational force is therefore a possible actor of protection (198).

The question of whether protection of the country of nationality within the meaning of Article 11(1)(e) is to be understood as state protection has now also been clarified by the CJEU in *OA* (199).

The CJEU noted that the referring court sought, in essence, to ascertain:

> whether Article 11(1)(e) [QD], read together with Article 7(2) of that directive, must be interpreted as meaning that social and financial support that may be provided by private actors, such as the family or clan of the third country national concerned, constitutes protection that meets the requirements arising from those provisions and whether such support is of relevance 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,

(193) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 44, referring to CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(194) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 38, referring to CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(195) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(196) Court of Appeal (England and Wales, United Kingdom), 2018, *MA (Somalia)*, op. cit. (fn. 25 above), para. 53.

(197) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 60.

(198) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24); High Court (England and Wales, United Kingdom), judgment of 22 November 2000, *R* v *Special Adjudicator ex parte Azizi*, CO/3493/2000 (unreported), para. 15.

(199) CJEU, 2021, *OA*, op. cit. (fn. 18 above).

> 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 (200).

The CJEU clarified that the protection in Article 11(1)(e) must be capable of preventing acts of persecution or of detecting, prosecuting and punishing such acts. The court found:

> Mere social and financial support, such as that mentioned in the request for a preliminary ruling, which is made available to the third country national concerned, is inherently incapable of either preventing acts of persecution or of detecting, prosecuting and punishing such acts and, therefore, cannot be regarded as providing the protection required by Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive (201).

As the protection referred to in Article 11(1)(e) must be read in conjunction with Article 7(2), the court went on to state that 'it follows that such social and financial support is of no relevance to the assessment of the effectiveness or the availability of the protection provided by the State within the meaning of Article 7(1)(a) [QD]' (202).

The court emphasised that 'mere economic hardship cannot, as a general rule, be classified as "persecution", within the meaning of Article 9 [QD]' and that 'consequently such social and financial support intended to remedy such hardship should not, as a general rule, have any bearing on the assessment of the adequacy of State protection from acts of persecution' (203).

On whether clans might 'provide protection in terms of security' and whether 'such protection may be taken into account in order to ascertain whether the protection provided by the State meets the requirements that arise, in particular, from Article 7(2) [QD]', the CJEU recalled that:

> for the purposes of determining whether a refugee's fear of persecution is no longer well founded, the actor or actors of protection with respect to which the reality of a change of circumstances in the country of origin is to be assessed are, in accordance with Article 7(1)(a) and (b) of that directive, either the State itself, or the parties or organisations, including international organisations, controlling the State or a substantial part of the territory of that State (204).

The referring court in *OA* also asked the CJEU:

> whether the existence of social and financial support provided by the family or the clan of the third country national concerned may nonetheless be taken into account for the purposes of determining, pursuant to Article 11(1)(e) [QD] read together with Article 2(c) of that directive, whether there continues to be a well-founded fear of persecution (205).

The court clarified that 'To adopt an interpretation to the effect that the protection existing in that third country may rule out a well-founded fear of persecution even though that protection does not satisfy those requirements would be liable to call into question the minimum requirements laid down by Article 7(2)' (206).

The CJEU concluded by reiterating 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) [QD], 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 (207).

(200) Ibid., para. 40.

(201) Ibid., para. 46.

(202) Ibid., para. 48.

(203) Ibid., para. 49.

(204) Ibid., para. 52, referring to CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(205) CJEU, 2021, *OA*, op. cit. (fn. 18 above), para. 54.

(206) Ibid., para. 62.

(207) Ibid., para. 63.

3.1.4. Is there any other basis for a well-founded fear of persecution?

When it has been established that the circumstances on the basis of which refugee status was granted have ceased to exist, then, depending on the personal situation of the person concerned, the CJEU has clarified in *Abdulla* that it may become necessary to verify 'whether there are other circumstances which may give rise to a well-founded fear of persecution'. Only if this question is answered in the negative can refugee status be ended ([208]).

That verification therefore 'implies an assessment analogous to that carried out during the examination of an initial application for the granting of refugee status' ([209]). In both of those stages of the examination, 'the assessment relates to the same question of whether or not the established circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution' ([210]). The relevant facts are to be established afresh, the findings of fact in the original decision granting refugee status having no binding force in this context ([211]). The question is whether there are any other reasons for a fear of persecution on a forward-looking basis.

Notwithstanding this, it should be noted that in some circumstances the historical position may be relevant to assessing future risk. Article 4(4) QD (recast) states:

> The fact that an applicant has already been subject to persecution or serious harm … is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

The CJEU in *Abdulla* considered Article 4(4) QD, which is identical to Article 4(4) QD (recast). In terms of a refugee relying upon a new ground for persecution, the court found that:

- 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;

- however, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage ([212]).

Therefore, Article 4(4) may be applicable if, for example, 'prior to [the applicant's] initial application for international protection, he suffered acts or threats of persecution on account of that other reason, but did not then rely on them' and/or if 'he suffered acts or threats of persecution for that reason after he left his country of origin and those acts or threats originate in that country' ([213]).

The CJEU continued:

> By contrast, where the refugee, relying on the same reason for persecution as that accepted at the time when refugee status was granted, submits to the competent authorities that the cessation of the facts which gave rise to the granting of that status was followed by the occurrence of other facts which gave rise to a fear of persecution for that same reason, the assessment to be carried out will normally be covered, not by Article 4(4) of the Directive, but by Article 11(2) thereof ([214]).

Where the refugee asserts a reason for persecution different from that originally accepted, the question is whether facts have been established that bring the person under the definition of 'refugee' in Article 2(d) QD (recast).

([208]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24). See also Regional Administrative Court Warsaw (Wojewódzki Sąd Administracyjny w Warszawie, Poland), judgment of 21 December 2010, V SA/Wa 383/10 (English summary).

([209]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24); CJEU, 2021, *OA*, op. cit. (fn. 18 above), paras 37 and 61.

([210]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

([211]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 22 November 2011, 10 C 29.10, DE:BVerwG:2011:221111U10C29.10.0, para. 20.

([212]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24 above).

([213]) Ibid., paras 96–97.

([214]) Ibid., para. 98.

Although not a case concerning the ending of international protection, the CJEU case of *MP*, which dealt with qualification for subsidiary protection, can be referred to here by analogy. This states:

> the fact that the person concerned has in the past been tortured by the authorities of his country of origin is not in itself sufficient justification for him to be eligible for subsidiary protection when there is no longer a real risk that such torture will be repeated if he is returned to that country (215).

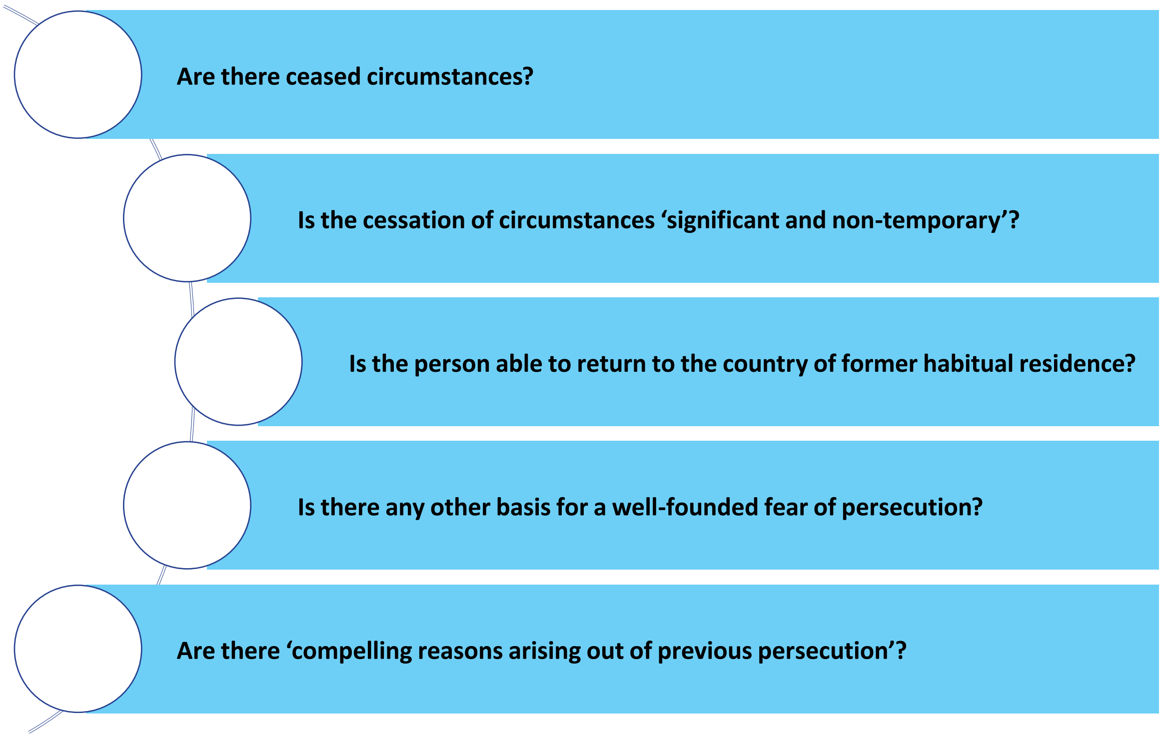
However, the court in *MP* went on to state that an individual will be eligible for subsidiary protection if they have in the past been tortured by the authorities of their country, even if they no longer face a risk of being tortured on return. This is the case if their 'physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of … suicide due to trauma resulting from the torture'. There must, however, be 'a real risk of [the person] being intentionally deprived, in [their] country of origin, of appropriate care for the physical and mental after-effects of that torture'. That would be 'a matter for the national court to determine' (216). The same principle would probably apply to the possible revocation of refugee status in circumstances where the refugee would be intentionally deprived, for a reason set out in Article 10 QD (recast), of medical treatment for the after-effects of past persecution.

The Court of Appeal (England and Wales, United Kingdom), with reference to past persecution, stated that 'there is no proper basis for the assertion that past refugee status (of itself) raises a presumption of article 3 [ECHR] ill-treatment on return' (217).

3.2. Ceased circumstances in country of habitual residence: Article 11(1)(f) and (2)

For refugees who are stateless, Article 11(1)(f) QD (recast) contains a provision equivalent to Article 11(1)(e) QD (recast). Figure 8 sets out the questions that need to be answered before ending the refugee status of stateless persons because of ceased circumstances under Article 11(1)(f) in conjunction with Article 14(1).

Figure 8: Criteria for ending the refugee status of stateless persons because of ceased circumstances in the country of former habitual residence



(215) CJEU (GC), judgment of 24 April 2018, *MP* v *Secretary of State for Home Department*, C-353/16, EU:C:2018:276, para. 30.

(216) Ibid., para. 58.

(217) Court of Appeal (England and Wales, United Kingdom), judgment of 12 February 2016, *RY (Sri Lanka)* v *Secretary of State for the Home Department* [2016] EWCA Civ 81, para. 43.

In principle, what has been said on Article 11(1)(e) also applies to this ground for cessation, and the reader is referred to Section 3.1 above. The CJEU briefly examined the ceased circumstances clause in Article 11(1)(f) in the case of *El Kott and Others*. This case concerned the circumstances in which a stateless Palestinian, who had left the area of operations of UNRWA, might qualify for protection as a refugee. Although the court was dealing with Article 12(1)(a), it also referred to Article 11(1)(f), stating:

> Article 11(f) [QD], read in conjunction with Article 14(1) thereof, must be interpreted as meaning that the person concerned ceases to be a refugee if he is able to return to the UNRWA area of operations in which he was formerly habitually resident because the circumstances which led to that person qualifying as a refugee no longer exist (218).

The term 'country of former habitual residence', describes a factual situation. According to the German Federal Administrative Court, the habitual residence of a stateless person does not need to have been lawful (219). Habitual residence can be sufficient when a stateless person did not merely spend a short time in a country, but their life was centred in that country (220). The same court stated that in such a case it is also necessary for the authorities of that country not to have taken measures to terminate their residence (221).

The assessment should consider the duration of the stay in that country, how recent it was and the connection of the person to the country. A stateless person can have more than one country of former habitual residence (222).

The person concerned must be able to return to the country of former habitual residence. This requires an assessment not only that effective protection against the original persecution has become available, but also that the refugee will be legally able to enter the country of former habitual residence. This occurs when the person concerned is still (or again) in possession of a valid entry permit, but not where they are subject to a still valid expulsion order or have applied for readmission and been turned down (223).

3.3. Compelling reasons: Article 11(3)

Article 11(3) QD (recast) provides for an exception to the application of the provisions in Article 11(1)(e)–(f). It is mandatory and states that Article 11(1)(e)–(f)

> shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Refugee status will thus be retained if the refugee can invoke compelling reasons arising out of previous persecution. The provision is modelled on Article 1C(5) and (6) Refugee Convention (224). Article 11(3) is part of the QD (recast) only and not part of the original QD and thus does not apply to all Member States (225).

In the absence of any CJEU case-law on 'compelling reasons', the interpretation of Article 11(3) is far from clear. However, the reference to 'previous persecution' in Article 11(3) suggests that it differs from the ordinary forward-looking approach in refugee law in that a present fear of persecution need not be established. The notion of compelling reasons looks backwards to past persecution (226) and combines this with a prognosis of the

(218) CJEU (GC), 2012, *El Kott*, op. cit. (fn. 64 above), para. 77, referring by analogy to CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

(219) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 26 February 2009, BVerwG 10 C 50.07 (English summary), BVerwG:2009:260209U10C50.07.0, paras 31–33. See also Council of State (*Conseil d'état*, France), judgment of 18 June 2014, *M. B.*, No 362703, FR:CESJS:2014:362703.20140618, confirming the rejection of an application for international protection, when the applicant had claimed a fear of persecution as an ethnic Armenian in Azerbaijan but the lower authorities had decided that he did not have Azerbaijani nationality but nevertheless had effective nationality of the Russian Federation, by application of that country's 1991 nationality law concerning persons from the former Soviet Union; EASO, *EASO Practical Guide: Qualification for international protection*, April 2018, p. 14; EASO, *Qualification for International Protection (Directive 2011/95/EU) – A judicial analysis*, December 2016, p. 26.

(220) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), 2009, BVerwG 10 C 50.07, op. cit. (fn. 219 above).

(221) Ibid., para. 34.

(222) EASO, *Practical Guide: Qualification for international protection*, op. cit. (fn. 219 above).

(223) Kneebone, S. and O'Sullivan, M., 'Article 1(C)', in Zimmermann, A. (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, Oxford University Press, New York, 2011 (hereafter Kneebone and O'Sullivan, 'Article 1(C)'), p. 481, para. 88.

(224) These provisions are quoted in full in Appendix A. Selected international provisions.

(225) The QD (recast) does not apply in Denmark or Ireland, although Sections 9 and 11 of the International Protection Act 2015 (Ireland) concerning the cessation of refugee and subsidiary protection status both use language that is almost identical to that of the QD (recast).

(226) House of Lords (United Kingdom), 2005, *R (Hoxha)*, op. cit. (fn. 35 above), para. 14; Kneebone and O'Sullivan, 'Article 1(C)', op. cit. (fn. 223 above), p. 530, para. 199.

consequences flowing from that persecution should the person concerned be required to return to their country of origin.

In the context of Article 11(3), the previous persecution relied upon is likely to be that upon which the grant of refugee status was based. There may, however, be cases where the previous persecution relied on differs from that on which the recognition was based.

Member State jurisprudence, although not definitive on the subject, shows how national courts have dealt with the subject. The Federal Administrative Court in Germany has stated that what is required for the compelling reasons exception to apply is hardship that goes significantly beyond what former refugees might ordinarily experience if required to return to their country of origin. Article 11(3) may be directed towards the exceptional psychological situation of refugees who have suffered particularly grave persecution with long-term after-effects and for this reason cannot reasonably be expected to return to the state where the persecution took place even a long time afterwards and even though circumstances have changed ([227]). According to the court, compelling reasons can only be invoked by people who have suffered a particularly severe, persistent persecution and for whom it would be unreasonable to return to the former persecuting state. A return to the home country must be unreasonable for the compelling reasons ([228]).

Psychological trauma arising from past persecution is often a factor in considering whether compelling reasons apply ([229]). The Irish High Court has referred to psychological trauma in the context of compelling reasons and referred to, inter alia, a Canadian case to the effect that consideration under the compelling reasons clause needs to be given to 'the extent of travail of the inner soul to which the [refugee] would be subjugated' ([230]).

The Refugee Appeal Commission (France), in a case prior to the entry into force of the QD (recast), considered the application of compelling reasons in a decision involving a Chilean refugee who had suffered very severe persecution and whose brother died as a result of torture applied by servicemen ([231]).

Possible reasons for refusing to avail oneself of the protection of the country of origin may arise from the circumstances of the original persecution, as well as from the consequences that a return to the country might have. A factor to consider may be the probable attitude of the local population towards the returnee. For example, the Higher Administrative Court of Baden-Württemberg in Germany considered the case of an ethnic Albanian woman whose status had been ceased on the ground that she could return to Kosovo. In upholding her appeal, the court took into consideration the fact that, during the conflict in the former Yugoslavia, she had been raped by a policeman while in custody and while 7 months pregnant. As a result, she suffered a miscarriage, was forcibly subjected to a hysterectomy, and suffered post-traumatic stress disorder and social exclusion. It also took into account the shame she felt and the ostracism she would face if returned ([232]).

In a case relating to a victim of domestic violence from Albania, the Council for Aliens Law Litigation in Belgium held that, when the previous persecution is of such gravity that the individual's fear was exacerbated to the point at which a return to their country of origin would be unfeasible, the person may retain refugee status notwithstanding a change in circumstances. In this case, the woman had been abducted in 1997 by an armed man, who burned her right arm, which later had to be amputated. The abductor forced her to live with him in an abandoned house for 17 years and regularly raped her. The court stated that this exacerbated fear should be assessed in the light of the refugee's personal experience, the psychological make-up of the individual, and the extent of the physical and psychological consequences ([233]).

Other examples of compelling reasons arising out of the circumstances of persecution include situations in which refugees have escaped genocide or severe maltreatment at the hands of the local population with whom they

([227]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 1 November 2005, 1 C 21.04, DE:BVerwG:2005:011105U1C21.04.0, para. 38.

([228]) Ibid., paras 37 and 38.

([229]) See Section 6.2.4 below for more on Article 16(3).

([230]) High Court (Ireland), judgment of 15 March 2019, *P.A.F. (Nigeria)* v *International Protection Appeals Tribunal and the Minister for Justice and Equality* [2019] IEHC 204, para. 21, referring to Hathaway and Foster, *The Law of Refugee Status*, op. cit. (fn. 92 above), p. 494, which quotes Federal Court (Canada), judgment of 12 August 2004, *Suleiman* v *Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125, [2005] 2 FCR 26, para. 19.

([231]) Refugee Appeals Commission (*Commission des recours des réfugiés*, France), decision of 18 October 1999, Molina, No 336763. See by contrast, Council of State (*Conseil d'état*, France), judgment of 30 July 2003, *Mlle X.*, No 220082, FR:CESJS:2003:220082.20030730 (finding a Romanian national had not provided compelling reasons and justifying the cessation of her refugee status).

([232]) Higher Administrative Court Baden-Württemberg (*Verwaltungsgerichtshof Baden-Württemberg*, Germany), judgment of 5 November 2007, A 6 S 1097/05, para. 24. See also Goodwin-Gill and McAdam, *The Refugee in International Law*, op. cit. (fn. 137 above), p. 146, and cases cited there.

([233]) Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 17 August 2017, No 190.672. The case concerned an appeal against the refusal of refugee status, which had relied on improvements in the situation in Albania, but the analysis of 'compelling reasons' is also relevant in the context of cessation.

would have to live together if they returned [234]. The loss of close relatives through persecution may also be relevant [235], as may be experiences in camps or prisons [236].

As mentioned above, Article 11(3) QD (recast) mirrors Article 1C(5) and (6) Refugee Convention. With regard to Article 1C(5) and (6), UNHCR states that 'This exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence' [237]. UNHCR provides examples of:

> 'ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons. It is presumed that such persons have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return' [238].

International jurisprudence suggests that relevant considerations for a decision-maker in relation to compelling reasons are the level of atrocity of the acts inflicted upon the person, the repercussions upon their physical and mental state, and whether this experience alone would constitute a compelling reason not to return them to their country [239].

If there is an ongoing fear of persecution because there has been no cessation of circumstances, compelling reasons do not arise. The UK House of Lords referred to this and determined that it is necessary to consider whether the facts constitute a basis for a present fear of persecution, in which case the woman and her family concerned would still be refugees and the compelling reasons clause would not fall to be considered [240].

For further discussion on compelling reasons in the context of ending subsidiary protection status and Article 16(3), see Section 6.2.4.

[234] Higher Administrative Court Baden-Württemberg (*Verwaltungsgerichtshof Baden-Württemberg*, Germany), 2007, A 6 S 1097/05, op. cit. (fn. 232 above), para. 25; UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 136.

[235] Goodwin-Gill and McAdam, *The Refugee in International Law*, op. cit. (fn. 137 above), p. 147, and cases cited there.

[236] Higher Administrative Court Lower Saxony (*Niedersächses Oberverwaltungsgericht*, Germany), judgment 11 August 2010, 11 LB 405/08, para. 57; UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 20.

[237] UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 20.

[238] UNHCR Study, 'Daunting prospects minority women: obstacles to their return and integration', Sarajevo, Bosnia and Herzegovina, April 2000 cited in UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 20.

[239] Federal Court Trial Division (Canada), judgment of 15 February 1995, *Shahid* v *Canada (Minister of Citizenship and Immigration*, 28 Imm. L.R (2D) 130, 89 F. T. R. 106 (TD).

[240] House of Lords (United Kingdom), 2005, *R (Hoxha)*, op. cit. (fn. 35 above), paras 30–38. The case concerned the assessment of the appellants' applications for asylum rather than cessation of refugee status, but the analysis is relevant in the latter context as well. The appellants were ethnic Albanians who had suffered 'appalling' ill-treatment at the hands of the Serbian authorities in Kosovo, but the situation in Kosovo had changed before their claims had been finally assessed. The judgment states that 'earlier persecution of one sort may lead to later persecution of a different sort', notably in the context of 'a particularly brutal and dehumanising rape', which would lead to ostracism and rejection by the community if those concerned were returned and 'the sort of cumulative denial of human dignity which … is quite capable of amounting to persecution' (paras 30 and 36).

Part 4. Grounds for ending refugee protection III – exclusion, misrepresentation or omission of facts: Article 14(3)

Part 4 deals with the grounds for ending refugee status pursuant to Article 14(3) QD (recast). It has three sections, as indicated in Table 6.

Table 6: Structure of Part 4

4.1. Introduction to Article 14(3)

Article 14(3)(a)–(b) is a mandatory provision that deals with the revocation of, ending of or refusal to renew the refugee status of a third-country national or a stateless person on exclusion grounds or owing to misrepresentation or omission of facts that were decisive for the granting of refugee status [241].

Article 14(3) QD (recast)
Revocation of, ending of or refusal to renew refugee status

Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.

Article 14(3) makes it clear that the grounds for revoking, ending or refusing to renew refugee status in subsections (a) and (b) must be 'established'. There must therefore be evidence on which a decision to end, revoke or refuse to renew refugee status is based. The onus to show that the relevant criteria are met lies with the Member State [242].

Article 14(3)(a) and (b) are mandatory provisions, as is evidenced by the use of the word 'shall' in the text. The Irish High Court observed in *Adegbuyi* that the Irish legislative provision incorporating Article 14(3)(b) had the effect of removing ministerial discretion when revoking refugee status on the basis of this provision [243].

[241] In UNHCR's terminology, Article 14(3)(a) QD (recast) covers scenarios that constitute 'cancellation' or 'revocation', while Article 14(3)(b) covers scenarios that constitute 'cancellation'.

[242] Article 44 APD (recast) states: 'Member States shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection claim.' See also Part 7 below.

[243] High Court (Ireland), 2012, *Adegbuyi* v *Minister for Justice and Law Reform*, op. cit. (fn. 149 above), para. 41; see also National Court of Asylum Law (CNDA, France), judgment of 8 October 2009, *M. T.*, No 701681/09007100.

4.2. Exclusion: Article 14(3)(a) and Article 12

Article 14(3)(a) QD (recast) requires Member States to revoke, end or refuse to renew refugee status if, after this status has been granted, it is established by the Member State that the individual 'should have been or is excluded from being a refugee in accordance with Article 12'. The grounds for exclusion contained in Article 1D, 1E and 1F Refugee Convention ([244]) are reflected, to some extent, in Article 12 QD (recast), which is the key provision relating to mandatory exclusion from refugee status ([245]). The wording in Article 12 is not, however, identical to that of Article 1D, 1E and 1F Refugee Convention ([246]).

Article 12 excludes certain categories of persons as follows:

- Article 12(1)(a) excludes persons who fall within the scope of Article 1D Refugee Convention and who are in receipt of 'protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees';
- Article 12(1)(b) excludes persons who have been 'recognised by the competent authorities of the country in which [they] have taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country or rights and obligations equivalent to those' ([247]).

Article 12(2) states as follows.

Article 12(2) QD (recast)
Exclusion

A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

Exclusion from being a refugee due to involvement in criminal conduct **after** recognition is applicable only on the grounds of Article 12(2)(a) and (c), which is not subject to temporal or geographic limitations. Article 12(2)(b), however, deals with exclusion in circumstances in which the individual has committed a serious non-political crime outside the country of refuge **prior** to their admission as a refugee. This exclusion ground can thus only result in ending of refugee status in situations where it is determined that a refugee 'should have been excluded' when that status was granted in the first place.

The provision under Article 12(2)(c) QD (recast) excluding persons considered to be guilty of acts contrary to the purposes and principles of the UN was considered by the National Court of Asylum Law in France in 2019. The judgment found that a Nigerian refugee involved at a high level in an international sex-trafficking network had

([244]) For the full wording of these provisions, see Appendix A. Selected international provisions.

([245]) For more on exclusion from refugee status, see EASO, *Exclusion*, op. cit. (fn. 40 above).

([246]) Particularly with regard to the scope of the exclusion ground 'serious non-political crimes' in Article 12(2)(b). Article 12(2)(b) QD (recast) is broader than Article 1F(b) Refugee Convention. Article 1F(b) refers to exclusion when there are serious grounds for considering a refugee 'has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee'. Article 12(2)(b) is broader and states that 'particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes'. Furthermore, Article 12(2)(b) states that 'his admission to that country as a refugee' means 'the time of issuing a residence permit based on the granting of refugee status'. For more on the differences between Article 12 QD (recast) and Article 1D, 1E and 1F Refugee Convention, see UNHCR, 'UNHCR comments on the European Commission's proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)511, 21 October 2009)', 29 July 2010, pp. 12–13, and UNHCR, 'UNHCR annotated comments on the EC Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304/12 of 30.9.2004)', 28 January 2005, pp. 27–28.

([247]) This is in summary. For a full analysis of the exclusion clauses in Article 12 QD (recast), see EASO, *Exclusion*, op. cit. (fn. 40 above), Parts 2 and 3.

committed acts contrary to the purposes and principles of the UN, after his recognition as a refugee. The court thus upheld the first instance decision ending his refugee status [248].

Exclusion from refugee status and subsidiary protection status is dealt with more generally and in more depth in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020.

4.3. Misrepresentation or omission: Article 14(3)(b)

The refugee status of a third-country national or a stateless person must be revoked or ended, or renewal must be refused, 'if, after he or she has been granted refugee status, it is established by the Member State concerned that […] his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status' (Article 14(3)(b)).

Article 14(3)(b) provides for the loss of refugee status only where there has been a misrepresentation or omission of facts by the person concerned that was decisive for the granting of refugee status. Although there has been no decision from the CJEU on Article 14(3)(b), its judgment in *Bilali* is relevant. This is so, even though the case concerns the ending of subsidiary protection status rather than refugee status [249].

Article 19(3)(b) QD (recast) on ending subsidiary protection status corresponds to Article 14(3)(b), which deals with ending refugee protection. The wording and structure of Article 19(3)(b) mirror those of Article 14(3)(b). Like Article 14(3)(b), Article 19(3)(b) provides for the loss of subsidiary protection status when there has been a misrepresentation or omission by the person concerned that was decisive for the granting of that status. The facts in *Bilali* differ from cases in which the applicant for international protection makes the misrepresentation or omission, since it was the Member State that had made the error of fact. No other provision of the QD (recast) expressly states that subsidiary protection status must or may be withdrawn if, as was the case in *Bilali*, the decision granting that status was taken on the basis of incorrect information, without any misrepresentation or omission by the person concerned [250].

It is clear, however, from the judgment in *Bilali*, that a Member State must end refugee status if it granted that status when the conditions for granting it were not met and it relied on facts that have subsequently been revealed to be incorrect. This is so notwithstanding the fact that the person concerned could not be accused of having misled the Member State on that occasion.

The CJEU in *Bilali* cited the UNHCR *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* and stated:

> Although there is nothing in that convention that expressly provides for loss of refugee status if it subsequently emerges that that status should never have been conferred, the UNHCR nevertheless considers that, in such a situation, the decision granting refugee status must, in principle, be annulled [251].

The paragraph in the UNHCR *Handbook* referred to by the CJEU addresses the topic of what UNHCR refers to as 'cancellation', that is, the invalidation of refugee status that was wrongly granted in the first place. It states:

> Circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place; e.g. if it subsequently appears that refugee status was obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the exclusion clauses would have applied to him had all the relevant facts been known. In such cases, the decision by which he was determined to be a refugee will normally be cancelled [252].

The subject of cancellation is dealt with more fully in Section 1.5 above. *Bilali* is analysed further in the context of changed circumstances in Section 3.1.1 and on ending subsidiary protection in Section 6.2.1.

Figure 9 sets out the two elements that are relevant when applying Article 14(3)(b). These two criteria are examined in the two subsections that follow.

---

(248) National Court of Asylum Law (CNDA, France), judgment of 30 August 2019, *M. A.*, 18052314 C+.

(249) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above).

(250) Ibid., para. 41.

(251) Ibid., para. 58.

(252) UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 117. NB: the terms 'cancelled' and 'cancellation' are not used in either the QD or the QD (recast).

Figure 9: Criteria for the application of Article 14(3)(b)

1. **Did the refugee misrepresent or omit facts?**
2. **Was the misrepresentation or omission decisive for the granting of refugee status?**

4.3.1. Did the refugee misrepresent or omit facts?

Regarding the first criterion, there may be instances when misrepresentation or omission comes to light through police or consular documents, via the International Criminal Police Organization, or during the examination of another application for international protection. It is for the Member State to establish that the refugee has misrepresented or omitted facts. The misrepresentation or omission may be established by objective evidence, for example by proving that the refugee was not present in the country of origin at the time asserted.

In this context, the French National Court of Asylum Law, for example, relied on evidence given by a French consulate that a refugee had not been living in Chechnya since 2005, contrary to his own statement. The court found that the refugee was to be regarded as having knowingly attempted to mislead the court (253). In another case, the same court found there was misrepresentation based on misleading evidence of Bhutanese nationality in circumstances in which the decision granting refugee status had been based on a fear of persecution faced in Bhutan (254). The Irish High Court in *Gashi*, which is dealt with more fully in Section 4.3.2, held that concealing the fact that an application for refugee protection had been made in another country could amount to information that was false or misleading (255).

Article 14(3)(b) does not contain any particular reference to the requirement of an intention to misrepresent or deliberately omit facts. Practice among Member States diverges on whether this element is necessary to end international protection due to misrepresentation or omission.

The German Federal Administrative Court has stated that an intention to mislead is unnecessary (256). Other German courts have also adopted the position that it is immaterial whether the incorrectness of the original statement was known to the applicant or whether in omitting a circumstance they were subjectively at fault (257).

Conversely, the French National Court of Asylum Law has indicated that an intention to mislead is necessary to end international protection due to misrepresentation or omission (258), in particular when fraud is being relied upon. Furthermore, in *Adegbuyi*, the High Court in Ireland, while not stating that an intention to misrepresent is necessary, did expressly refer to intent. The court stated that it was 'more than satisfied' that the applicant had provided the authorities with false and misleading information regarding passport documents and travel, that there was a link between the falsity and the grant of refugee status, and that the information was furnished with the intention of misleading the authorities (259).

Fraud is not explicitly mentioned in Article 14 QD (recast), and the CJEU has not expressly referred to the issue of fraud. Some national courts have, however, referred to fraud when making decisions on ending international protection.

(253) National Court of Asylum Law (CNDA, France), 2009, *M. T.*, No 701681/09007100, op. cit. (fn. 243 above). See also Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 7 December 2020, No 245.482, where information (e.g. Facebook profile) came to light showing that the individual had been working as a cultural attaché in several embassies and also in the Somali embassy in Ankara (Turkey) at the time that he was supposedly in Somalia.

(254) National Court of Asylum Law (CNDA, France), judgment of 8 April 2016, *M. S.*, No 15031759.

(255) High Court (Ireland), judgment of 1 December 2010, *Gashi* v *Minister for Justice, Equality and Law Reform*, [2010] IEHC 436, para. 11. For further discussion of this judgment see Section 4.3.2 below.

(256) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 19 November 2013, 10 C 27.12, MN 17, DE:BVerwG:2013:191113U 10C27.12.0.

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

(258) National Court of Asylum Law (CNDA, France), 2009, *M. T.*, No 701681/09007100, op. cit. (fn. 243 above).

(259) High Court (Ireland), November 2012, *Adegbuyi*, op. cit. (fn. 149 above), para. 42.

The Council of State, in France, addressed a situation in which an application on the basis of which refugee status was conferred was tainted with fraud. The court found that, in such cases, it must then be assessed whether the person who had been recognised as a refugee on the basis of fraudulent declarations can still put forward sufficiently credible elements relating to their personal background, and the threats likely to affect them in the event of their return to their country, to be able to maintain refugee status ([260]).

In a case in which the refugee had, in addition to his successful claim as an Azerbaijani citizen, submitted two other previous applications pretending to be a Georgian citizen, the French National Court of Asylum Law referred to and recognised the presence of fraud ([261]).

The same court ruled that a national of Kosovo who had alleged persecution in his country of origin at a time when he was, in fact, resident in Switzerland, and who received refugee status as a result, showed evidence of a fraudulent intention ([262]).

In *Nz.N.* v *Minister for Justice and Equality* ([263]), the Irish High Court found that the refugee had provided false and misleading information to the authorities regarding her name, nationality, level of education, claim of persecution and possession of a work visa. The court concluded that 'The evidence of a false and fraudulent claim was strong' and upheld the decision to revoke refugee status ([264]).

UNHCR expressly states:

> Where fraud is considered as the ground for cancellation, States' legislation and jurisprudence consistently require the presence of all three of the following elements:
>
> (a) objectively incorrect statements by the applicant;
> (b) causality between these statements and the refugee status determination; and
> (c) intention to mislead by the applicant ([265]).

4.3.2. Was the misrepresentation or omission decisive for the granting of refugee status?

On the second criterion for the application of Article 14(3)(b), Member States have found that it must be objectively demonstrated that the refugee's misrepresentation or omission was decisive for the grant of refugee status. In other words, without the misrepresentation or omission, refugee status would not have been granted ([266]).

In this respect, the French National Court of Asylum Law found that the false statements of a couple, who had applied for international protection using fake identities and who had concealed their affiliation to an Islamic radical group and their participation in funding terrorist activities, had been decisive in the grant of refugee status. As a result, the court upheld the asylum authority's decision to end refugee status ([267]). In a Greek case, in which an applicant had been granted refugee status on the grounds that he was Iraqi but subsequently filed a petition asking to correct his age and his nationality to Egyptian, the Independent Appeals Committee found that he had misrepresented facts. It ruled that the misrepresentation was decisive for the granting of refugee status, since his nationality and age were crucial factors in assessing his fear ([268]). Similarly, the Irish High Court found that 'blatant untruths' told by two applicants from Nigeria had made a 'material difference' to the decision to grant refugee status. The court therefore upheld the revocation of refugee status ([269]).

The Irish High Court's earlier decision in *Gashi* illustrates that the omission or misrepresentation must have been decisive in relation to the grant of refugee status ([270]). The court found that the word 'decisive' should not be

([260]) Council of State (*Conseil d'état*, France), judgment of 28 November 2016, *M. C. B.*, No 389733, FR:CECHR:2016:389733.20161128.

([261]) National Court of Asylum Law (CNDA, France), judgment of 24 September 2009, *OFPRA* c *G.*, 633282/08013386 (in CNDA, *Contentieux des réfugiés – Jurisprudence du Conseil d'État et de la Cour nationale du droit d'asile*, 2009, pp. 20–21.

([262]) National Court of Asylum Law (CNDA, France), judgment of 31 January 2019, *M. Z.*, No 18014132 C+.

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

([264]) Ibid., para. 42.

([265]) UNHCR, 'Note on the cancellation of refugee status', op. cit. (fn. 8 above), para. 20.

([266]) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), judgment of 18 April 2013, No 1 Azs 3/2013-27, *V. P.* v *Ministry of the Interior*.

([267]) National Court of Asylum Law (CNDA, France), judgment of 28 June 2019, *M. T. alias S. et Mme K. épouse T.*, Nos 18024910–18024911 C. See also National Court of Asylum Law (CNDA, France), 2009, *OFPRA* c *G.*, 633282/08013386, op. cit. (fn. 261 above), in which an applicant's false statements about his nationality had been decisive in the decision to grant refugee status. See CNDA, *Contentieux des réfugiés*, op. cit. (fn. 261 above).

([268]) Independent Appeals Committee (IAC, Greece), 19th IAC, judgment of 23 February 2021, No 212103/2021.

([269]) High Court (Ireland), judgment of 29 July 2016, *T.F. (Nigeria)* v *Minister for Justice and Equality and Another*, [2016] IEHC 551, paras 78, 79 and 87.

([270]) High Court (Ireland), 2010, *Gashi*, op. cit. (fn. 255 above), para. 25.

narrowly construed and stated that the term '"decisive for the granting of refugee status" is used so as to require refugee status to be revoked where it is clear that the decision to grant it would not have been made had the true full facts been known' ([271]).

The High Court, in that case, observed that:

> the use of that term [i.e. 'decisive'] in the English text of the Qualification Directive is not so precisely reflected in other language versions. The misrepresentation or omission of facts is, for example, qualified in the French text in the phrase: 'ont joué un role determinant dans la decision d'octroyer le statut de refugié' [sic]. The corresponding phrase in the Italian text has the same sense: 'ha costituito un fattore determinante per l'ottenimento dello status di rifugiato' ([272]).

The court also highlighted the duty of an applicant pursuant to Article 4(1) QD to 'submit as soon as possible all the elements needed to substantiate the application for international protection'. It held that 'the decision to grant or refuse refugee status is based upon such information' and, therefore, that 'The information in question forms the basis on which the decision is made and is "decisive" in that sense' ([273]). The court concluded that the appellant's failure to inform the authorities that he had made an asylum application in the United Kingdom, the fact that he gave a false name and that he had been in the United Kingdom for longer than he had previously admitted were all decisive factors in the granting of refugee status. The court, therefore, upheld the decision to revoke refugee status on these grounds.

Following on from the ruling in *Gashi*, the Irish High Court found in another case, *Hussein*, that, if the authorities had discovered that a Sudanese national was using a false identity when applying for asylum, he would have been refused refugee status. The court found that such a conclusion would also have been merited in relation to other facts, had they been known. These facts were that he held, contrary to his assertions, a Sudanese passport and that he had obtained a honeymoon visa to enter the United Kingdom immediately before seeking asylum in Ireland ([274]).

UNHCR states that, when there have been only minor omissions, particular care should be taken in deciding if they were decisive ([275]). It notes further:

> In all cases, evidence for the purpose of cancellation must be information that is related to elements which were material to the initial positive determination. Such information must establish the existence of a ground for rejection or exclusion at the time of the original assessment of the claim ([276]).

Once the misrepresentation or omission is established as having been decisive in the grant of refugee status and that status is revoked, the Member State is not precluded from further examining issues related to other forms of international protection.

Thus, the Irish High Court has found that revocation of refugee status for misrepresentation may not preclude the person concerned from 'seeking to make a new application for refugee status' ([277]).

([271]) Ibid., para. 23.

([272]) Ibid., para. 25.

([273]) Ibid., para. 24.

([274]) High Court (Ireland), judgment of 18 March 2014, *Hussein* v *Minister for Justice and Law Reform*, [2014] IEHC 130, para. 48.

([275]) UNHCR, 'Note on burden and standard of proof in refugee claims', 16 December 1998, para. 9. See also EASO, *Evidence and credibility assessment in the context of the Common European Asylum System – Judicial analysis*, 2018, p. 149.

([276]) UNHCR, 'Note on the cancellation of refugee status', op. cit. (fn. 8 above), para. 31.

([277]) High Court (Ireland), 2010, *Gashi*, op. cit. (fn. 255 above), para. 28.

Part 5. Grounds for ending refugee protection IV – danger to the security or the community of the Member State: Article 14(4)–(6)

Unlike Article 14(3) QD (recast), which is mandatory, Article 14(4) is a discretionary provision. Article 14(4)(a) allows Member States to 'revoke, end or refuse to renew the status granted to a refugee' when 'there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present'. Article 14(4)(b) allows the revocation or ending of, or refusal to renew, the status granted to a refugee when 'he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'. The main aim, therefore, of Article 14(4)(a) and (b) is the protection of the security and the community of the Member State.

In such situations and on the same grounds as provided for in Article 14(4)(a) and (b), Article 14(5) allows Member States to 'decide not to grant status to a refugee, where such a decision has not yet been taken'. Finally, Article 14(6) guarantees certain enumerated rights set out in, or similar to those enumerated in, Articles 3, 4, 16, 22, 31, 32 and 33 Refugee Convention to persons to whom Article 14(4) or (5) applies, 'in so far as they are present in the Member State'.

This part deals with the requirements relating to Article 14(4)–(6) and is structured as laid out in Table 7.

Table 7: Structure of Part 5

5.1. Article 14(4)–(6) and the Refugee Convention

Article 14(4)–(5) permits the revocation of, ending of or refusal to renew refugee status in order to protect the security and community of the Member State. The application of Article 14(4)–(5) cannot, however, interfere with that person's entitlement to certain rights referred to in Article 14(6), which are enshrined in the Refugee Convention.

Article 14(4)–(6) QD (recast)
Revocation of, ending of or refusal to renew refugee status

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

(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

The wording of Article 14(4)(a) and (b) corresponds in essence with the wording in Article 33(2) Refugee Convention, albeit with some differences. Whereas Article 33(1) Refugee Convention prohibits the expulsion or return (*refoulement*) of 'a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion', Article 33(2) states as follows.

Article 33(2) Refugee Convention

The benefit of the present provision [prohibition of expulsion or *refoulement*] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Whereas Article 33(2) Refugee Convention deals with exceptions to the prohibition of *refoulement* under international refugee law, Article 14(4)(a) QD (recast) allows for the status granted to a refugee under the provisions of the QD (recast) to be ended in circumstances where 'there are reasonable grounds for regarding him or her as a danger to the security of the Member State'. Similarly, Article 14(4)(b) allows for the status granted to a refugee under the directive to be ended when 'he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'. Furthermore, Article 33(2) Refugee Convention refers to 'country', whereas Article 14(4)(a) and (b) QD (recast) refers to 'Member State'.

According to the CJEU in *M, X and X*, the circumstances referred to in Article 14(4)–(5) 'correspond, in essence ..., to those in which Member States may refoule a refugee under Article 21(2) of that directive and Article 33(2) of the [Refugee] Convention' ([278]).

Article 21(2) QD (recast) provides as follows.

Article 21(2) QD (recast)
Protection from *refoulement*

Where not prohibited by the international obligations mentioned in paragraph 1 [to respect the principle of *non-refoulement*], Member States may *refoule* a refugee, whether formally recognised or not, when:

(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

The question of whether the provisions in Article 14(4)–(6) QD (recast) are compatible with the Refugee Convention and the EU Charter was referred to the CJEU in *M, X and X*. The reference concerned three sets of proceedings in two Member States. The first case concerned a man from Chechnya who had been granted refugee status in Czechia. Subsequently, he received a 9-year custodial sentence for repeat offences of robbery and extortion. His refugee status was revoked and it was decided that he should not be granted subsidiary protection, as he had been convicted by a final judgment of a particularly serious crime and it was found that he represented a danger to the security of the state. The question that the Supreme Administrative Court of Czechia referred to the CJEU was: 'Is Article 14(4) and (6) of [Directive 2011/95] invalid on the grounds that it infringes

([278]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 93.

Article 18 of [the Charter], Article 78(1) [TFEU] and the general principles of EU law under Article 6(3) [Treaty on European Union]?' ([279]).

The second case in *M, X and X* related to an Ivorian national in Belgium who had received a partly suspended custodial sentence of 30 months for intentional assault and battery, possession of a bladed weapon without proper reason and possession of a prohibited weapon. In addition, he was sentenced to 4 years' imprisonment for, inter alia, rape of a minor. In view of the particularly serious nature of those offences and the fact that they were repeat offences, he was refused refugee status and subsidiary protection on the basis that he constituted a danger to the community. The Council for Aliens Law Litigation referred a number of questions to the CJEU, including 'Must Article 14(5) [QD (recast)] be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of that directive and, consequently, from Article 1(A) [Refugee] Convention?' Furthermore, it asked the CJEU 'is Article 14(5) [QD (recast)], thus interpreted, compatible with Article 18 [EU Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention …?' ([280]).

The third case involved a national of the Democratic Republic of the Congo who had been granted refugee status in Belgium and who had subsequently been sentenced to 25 years' imprisonment for homicide and aggravated robbery in that Member State. Refugee status was withdrawn on the ground, inter alia, that, in light of the particularly serious nature of the offences committed, he constituted a danger to the community. The Council for Aliens Law Litigation also referred this case and asked similar questions to those in the previous case, albeit in respect of Article 14(4) as opposed to Article 14(5).

In its judgment, the CJEU emphasised the significance of the Refugee Convention and stated that:

> although Directive 2011/95 establishes a system of rules including concepts and criteria common to the Member States and thus peculiar to the European Union, it is nonetheless based on the Geneva Convention and its purpose is, inter alia, to ensure that Article 1 of that convention is complied with in full ([281]).

The court highlighted:

> The fact that being a 'refugee' for the purposes of Article 2(d) [QD (recast)] and Article 1(A) [Refugee] Convention is not dependent on formal recognition thereof through the granting of 'refugee status' as defined in Article 2(e) of that directive is, moreover, borne out by the wording of Article 21(2) of that directive, which states that a 'refugee' may, in accordance with the condition laid down in that provision, be refouled 'whether formally recognised or not' ([282]).

In relation to the questions raised regarding Article 14(4)–(5), the court took the view that, even if a person falls within these provisions, they 'are, or continue to be entitled to a certain number of rights laid down in the [Refugee] Convention', which confirms that they are, or continue to be, refugees for the purposes of, inter alia, Article 1(A) Refugee Convention, in spite of that revocation or refusal ([283]). The court concluded:

> the provisions of Article 14(4) to (6) [QD (recast)] cannot be interpreted as meaning that the effect of the revocation of refugee status or the refusal to grant that status is that the third-country national or the stateless person concerned who satisfies the material conditions of Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof, is not a refugee for the purposes of Article 1A [Refugee] Convention and is thus excluded from the international protection which, under Article 18 [EU] Charter, he must be guaranteed in compliance with that convention ([284]).

Similarly, with regard to Article 14(6), the court found:

> Article 14(6) [QD (recast)] must, in accordance with Article 78(1) TFEU and Article 18 [EU] Charter, be interpreted as meaning that a Member State which uses the powers provided for in Article 14(4) and (5) of that directive must grant a refugee covered by one of the scenarios referred to in those provisions and present in the territory of that Member State, as a minimum, the rights enshrined in the [Refugee]

([279]) Ibid., para. 52.

([280]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 61.

([281]) Ibid., para. 83.

([282]) Ibid., para. 90.

([283]) Ibid., para. 99.

([284]) Ibid., para. 100.

> Convention expressly referred to in Article 14(6) of that directive and the rights provided for by that convention which do not require a lawful stay [285].

The court concluded, therefore, that 'the interpretation of Article 14(4) to (6) [QD (recast)] thus applied ensures that the minimum level of protection laid down by the [Refugee] Convention is observed, as required by Article 78(1) TFEU and Article 18 [EU] Charter' [286]. The validity of Article 14(4)–(6) in relation to Article 78(1) TFEU and Article 18 EU Charter was, consequently, upheld.

Following the CJEU's ruling in *M, X and X*, the National Court of Asylum Law in France addressed the question of the ending of refugee status of a Chechen refugee who had been sentenced to 10 years' imprisonment for threatening a civil servant. The refugee had also shown public support for terrorism and was subsequently convicted of illegal possession of firearms. Citing the CJEU judgment in *M, X and X*, the court upheld the decision to end his refugee status, but found that ending refugee status pursuant to Article 14(4) does not imply that the individual ceases to be a refugee, since refugee status is declaratory as indicated, inter alia, in recital 21 QD (recast), and the person continues to benefit from certain rights provided by the Refugee Convention, interpreted and applied in light of the EU Charter [287].

Following that case, the French Council of State adopted the CJEU's reasoning in four other decisions in 2020 and set out how the National Court of Asylum Law should deal with such cases. The Council of State ruled that, in revocation cases under Article 14(4) QD (recast), the issues on which the court must base its decision are the grounds for revocation of status, and not the characteristic of being a refugee, as the person still benefits from the latter [288].

5.2. 'Danger to the security of the Member State': Article 14(4)(a)

Article 14(4)(a) QD (recast) permits Member States to 'revoke, end or refuse to renew the status granted to a refugee' if 'there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present'. The criteria required for Article 14(4)(a) are set out in Figure 10.

Figure 10: Criteria for the application of Article 14(4)(a)

Reasonable grounds
A danger to the security of the Member State in which present

The circumstances referred to in Article 14(4)(a) correspond in essence to the first exception to the prohibition of *refoulement* of a refugee provided for in Article 33(2) Refugee Convention, that is, cases in which there are reasonable grounds for regarding the refugee as a (current or future) danger to the host country [289]. The provision aims to protect the state itself.

Article 14(4)(a) refers to the 'security of the Member State' but does not expand further upon its meaning. Recital 37 QD (recast), however, states: 'The notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.' The definition of 'security' is not developed further in the QD (recast).

In *H. T.*, the CJEU recognised that neither the concept of 'national security' nor that of 'public order' is defined in the QD. In that case, the court found that those concepts should be interpreted taking into account the

[285] Ibid., para. 107.

[286] Ibid., para. 111.

[287] National Court of Asylum Law (CNDA, France), judgment of 26 July 2019, *M. T.*, No 17053942 C+, para. 8.

[288] Council of State (*Conseil d'état*, France), judgments of 19 June 2020, *OFPRA* c *M. A.C.*, Nos 416032 and 416121 A, FR:CECHR:2020:416032.20200619, stating in para. 8 that the possibility of refusing refugee status or of terminating it, in application of Article L. 711-6 of the Code on the entry and stay of foreigners and the right of asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) version as last modified on 10 June 2019), has no effect on the fact that the person concerned has or retains the status of refugee; *M. A.B.*, No 422740 C, FR:CECHR:2020:422740.20200619, para. 5; and *M. B.A.*, No 425231, and *M. A.C.B.*, No 428140 B, FR:CECHR:2020:425231.20200619, para. 6 (confirming CNDA decision No 17021629).

[289] The full wording of Article 33(2) is provided in Section 5.1 above.

interpretations it made of the concepts of 'public security' and 'public order' in Articles 27 and 28 citizenship directive (290). The court determined:

> While [the citizenship directive] pursues different objectives to those pursued by [the QD] and Member States retain the freedom to determine the requirements of public policy and public security in accordance with their national needs, which can vary from one Member State to another and from one era to another …, the extent of the protection a society intends to afford to its fundamental interests cannot vary depending on the legal status of the person that undermines those interests (291).

The CJEU noted that it had previously held that the concept of 'public security' in Article 28(3) citizenship directive:

> covers both a Member State's internal and external security … and that, consequently, a threat to the functioning of the institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security (292).

The CJEU also noted that it had previously held that the concept of 'public policy' in Articles 27 and 28 citizenship directive presupposes, 'in addition to the perturbation of the social order which any infringement of the law involves, [the existence] of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society' (293).

The CJEU dealt with the issue of danger to national security and public order in the context of asylum law in the case of *Commission* v *Poland, Hungary and Czech Republic* (294). The case concerned the compliance of Poland, Hungary and Czechia with Council Decisions 2015/1601 and 2015/1523 ('the relocation decisions') (295). These were adopted after the 'emergency situation characterised by a sudden inflow of nationals of third countries' to Greece and Italy in 2015 (296).

The CJEU made a number of points in its judgment regarding the duties of Member States in relation to decisions pertaining to national security and public order concerns in the context of relocation decisions and asylum law. Although Article 14(4)(a) QD (recast) deals with revocation of, ending of or refusal to renew refugee status when there are reasonable grounds for considering that a refugee poses a danger to the security of the Member State, the judgment of the CJEU is nonetheless useful, as it provides guidance on the term 'national security or public order' in the asylum context. Significantly, the CJEU emphasised: 'The scope of the requirements relating to the maintenance of law and order or national security cannot therefore be determined unilaterally by each Member State, without any control by the institutions of the European Union' (297).

The court also drew a useful distinction between 'reasonable grounds' and 'serious grounds' in the context of national security decisions. It noted that Article 14(4)(a) expressly refers to 'reasonable grounds'. Furthermore, the judgment highlighted the difference between a danger to national security and public order, on the one hand, and a serious crime already committed or a serious non-political crime committed outside the country of refuge before the person concerned was admitted, on the other. In this respect, the CJEU found:

> As to the so-called 'reasonable' grounds for regarding the applicant for international protection as a 'danger to national security or public order' in the territory of the Member State of relocation in question, … those grounds, since they must be 'reasonable' and not 'serious' and do not necessarily relate to a serious crime already committed or a serious non-political crime committed outside the country of refuge before the person concerned was admitted as a refugee but only require evidence of a 'danger to national security or public order', clearly leave a wider margin of discretion to the Member States of

(290) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004], OJ L 158/77, amended by (consolidated version) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (codification).

(291) CJEU, judgment of 24 June 2015, *H. T.* v *Baden-Württemberg*, C-373/13, EU:C:2015:413, para. 77.

(292) Ibid., para. 78

(293) Ibid., para. 79.

(294) CJEU, 2020, *Commission* v *Poland, Hungary and Czech Republic*, op. cit. (fn. 13 above).

(295) Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

(296) Decision 2015/1601, recital 1, quoted in CJEU, 2020, *Commission* v *Poland, Hungary and Czech Republic*, op. cit. (fn. 13 above), para. 8.

(297) CJEU, 2020, *Commission* v *Poland, Hungary and Czech Republic*, op. cit. (fn. 13 above), para. 146.

> relocation than the serious reasons for applying the exclusion provisions contained in Articles 12 and 17 of Directive 2011/95 ([298]).

On the basis of this judgment, it would appear that Member States have a wider margin of discretion in determining whether an individual poses a 'danger to the national security' of the country, including under Article 14(4), than would apply if the Member State were deciding whether there were serious reasons for applying the exclusion provisions.

Significantly, the CJEU stated that:

> the concept of 'danger to … national security or public order' within the meaning of the provisions of Decisions 2015/1523 and 2015/1601 [the relocation decisions] must be interpreted more broadly than it is in the case-law in relation to persons enjoying the right of free[dom] of movement. That concept may cover inter alia potential threats to national security or public order ([299]).

Following *M, X and X*, the Supreme Administrative Court of Czechia found that the security of the state may only be endangered by very serious conduct that directly or indirectly threatens the independence, fulfilment, integrity or constitutional order of the state. Examples the court cited were espionage, military sabotage and terrorist activities. It found that general crimes, even if falling under the category of particularly serious crimes, cannot in themselves constitute a danger to the security of the state ([300]).

In a case decided before the CJEU judgment in *Commission* v *Poland, Hungary and Czech Republic*, the Austrian Supreme Administrative Court stated that the question of whether a refugee constitutes a danger to the security of the Member State requires an assessment of their overall behaviour. This assessment, it found, does not presuppose that the individual has already been criminally convicted. The court, in that case, found that the asylum authority should assess on its own initiative whether a member of a radical Islamist association, which ran a mosque where, according to police reports, young people were radicalised, constituted a danger to the security of the host country ([301]).

In France, the Council of State found that the mere fact that an individual was on state records as someone who was wanted in order to prevent serious threats to public security did not, in itself, mean they fulfilled the criteria set out in Article 14(4)(a). Rather, it found that it was necessary to engage in an inquisitorial process and collect all the relevant information in the possession of the Minister for the Interior, which the court could summon to adduce evidence in relation to circumstances and reasons for that person being on the list ([302]).

The National Court of Asylum Law in France upheld a decision to end the refugee status of a fundamentalist preacher on the ground that he constituted a danger to the security of the state. According to French counterterrorism and intelligence services, he delivered radical speeches and had connections with terrorist-funding activities ([303]).

In another French case, the National Court of Asylum Law upheld a decision ending the refugee status of a serial offender, who had committed over 70 offences over a 3-year period. The court found there were serious reasons for considering him to be a threat to the security of the state and the community. While in prison, he showed signs of allegiance to jihadist terrorism. Furthermore, his active and threatening proselytism towards other inmates led some of them to request a transfer to other prisons. He had made incessant verbal and physical attacks on prison staff and regularly shown his support for the Islamic State ([304]).

By contrast, in Greece, in the case of a refugee who had been sentenced to 5 months' imprisonment for drug use, the Independent Appeals Committee ruled that the individual had been convicted of 'supply and possession of drugs for his own use only' and not of drug trafficking. Given this, it did not accept that this behaviour constituted

([298]) Ibid., para. 156.

([299]) Ibid., para. 157. For more on security in the context of the citizens' rights directive (Directive 2004/38/EC), see CJEU (GC), judgment of 2 May 2018, *K.* v *Staatssecretaris van Veiligheid en Justitie and H. F.* v *Belgische Staat*, joined cases C-331/16 and C-366/16, EU:C:2018:296; CJEU, judgment of 4 April 2017, *Fahimian* v *Bundesrepublik Deutschland*, C-544/15, EU:C:2017:255, para. 40; and CJEU, judgment of 12 December 2019, *Staatssecretaris van Justitie en Veiligheid* v *E. P.*, C-380/18, EU:C:2019:1071, paras 29 and 32.

([300]) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), judgment of 23 April 2020, *M.* v *Ministry of the Interior*, No 5 Azs 189/2015-127.

([301]) Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 4 April 2019, Ro 2018/01/0014, AT:VWGH:2019:RO2018010014.J00.

([302]) Council of State (*Conseil d'état*, France), judgment of 30 January 2019, *OFPRA* c *M. A.C.B.*, No 416013 A, FR:CECHR:2019:416013.20190130, para. 18.

([303]) National Court of Asylum Law (CNDA, France), judgment of 28 September 2018, *M. K.*, No 17021629 C+. This decision was upheld in Council of State (*Conseil d'état*, France), 2020, *M. B. A.,* No 425231, and *M. A.C.B*, No 428140 B, op. cit. (fn. 288 above).

([304]) National Court of Asylum Law (CNDA, France), judgment of 31 December 2018, *M. O.*, No 17013391, para. 18.

a risk to national security, and determined that the offence was in no way related to the nature and seriousness of national security issues (305).

5.3. 'Danger to the community' of the Member State: Article 14(4)(b)

Article 14(4)(b) QD (recast) permits refugee status to be ended if a refugee, 'having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'. Article 14(4)(b) is discretionary in nature.

Figure 11 sets out the criteria for the application of Article 14(4)(b).

Figure 11: Criteria for the application of Article 14(4)(b)

Convicted of a particularly serious crime

Convicted by final judgment

Danger to the community of the Member State

Unlike Article 14(4)(a), for Article 14(4)(b) to apply, the refugee in question must have been convicted by a final judgment of a particularly serious crime (306). Several convictions for minor crimes will not suffice (307).

The CJEU case of *Ahmed*, although concerned with Article 17(1)(b) QD (recast) on exclusion from subsidiary protection on the ground that the beneficiary has 'committed a serious crime', is nevertheless helpful to understand the factors to be considered when deciding whether someone has been convicted of a '**particularly** serious crime' under Article 14(4)(b) (308).

The CJEU noted that, like the concept of 'serious crime' in Article 17(1)(b), the concept of 'particularly serious crime' in Article 14(4)(b) QD (recast) 'is not defined in that directive, nor does that directive contain any express reference to national law for the purpose of determining the meaning and scope of that concept' (309).

The court found that 'the penalty provided for a specific crime under the law of that Member State' cannot be 'the sole criterion' for evaluating its seriousness (310). Rather, the court emphasised: 'It is for the authority or competent national court ruling on the [matter] to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned' (311).

In conducting this individualised assessment, the Member State may consider the following criteria: 'the nature of the act at issue, the consequences of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided and … whether most jurisdictions also classify the act at issue as a serious crime' (312). For further analysis of *Ahmed,* see Section 6.3.2.

The Austrian Supreme Administrative Court, following *Ahmed,* identified four cumulative conditions to be satisfied before refugee status pursuant to Article 14(4)(b) may be ended:

1. the refugee must have committed a particularly serious crime;
2. they must have been convicted by final decision by a criminal court;

(305) Independent Appeals Committee (IAC, Greece), 3rd IAC, judgment of 26 November 2020, No 7591/20.

(306) Immigration Appeal Tribunal (United Kingdom), judgment of 7 February 2005, *SB (cessation and exclusion) Haiti*, [2005] UKIAT 36, para. 70 (in relation to Article 33(2) Refugee Convention).

(307) Ibid., stating 'Incorrigible criminality and danger to the community do not suffice of themselves.'

(308) CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above).

(309) Ibid., paras 33–34.

(310) Ibid., para. 58.

(311) Ibid. See also CJEU, 2020, *Commission* v *Poland, Hungary and Czech Republic*, op. cit. (fn. 13 above), para. 159, reiterating the need in such cases to carry out an 'overall examination of all the circumstances of the individual case concerned'.

(312) CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above), para. 56.

3. they must constitute a danger to the community; and
4. the danger to the host country must outweigh the interests of the refugee in being protected.

The court went on to state that only offences that objectively violate particularly important legal interests can be considered particularly serious. Examples of these were stated to be murder, rape, child abuse, drug trafficking and armed robbery. The court also referred to the necessity of carrying out an individual assessment ([313]).

The Irish High Court dealt with the issue of a particularly serious crime in the case of *Morris Ali* ([314]). In that case, refugee status had been revoked on the basis that the refugee, having been convicted by a final judgment of a particularly serious crime, constituted a danger to the community of the state. The revocation letter stated that he had been sentenced to 18 months' imprisonment for the sale/supply of crack cocaine with a street value of EUR 70. The decision to revoke his status also stated that 'it is also suggested he was in possession of drug making equipment which implies he is a serious player in the drug scene' ([315]). The court found, on the facts, that there was no evidence of involvement with crack cocaine as opposed to cocaine. Further, the decision to revoke refugee status referred to convictions even though there was only one conviction. Finally, the refugee was never charged with having drug-making equipment. The High Court found that the competent authority 'should have considered the separate constituents of the phrases "serious crime" and "particularly serious crime" based on an informed and correct version of the facts' ([316]). The court concluded that the decision to revoke refugee status on the grounds of having been convicted of a particularly serious crime could not stand, as it was not based on a fair and accurate summary of the admitted facts ([317]).

Furthermore, the refugee must have been convicted by a final judgment. The conviction must be in a criminal court. Therefore, merely being charged with a crime, or alternatively having been found not guilty in a criminal trial, will not bring a refugee within the scope of Article 14(4)(b).

Finally, the individual in question must be a danger to the community of the Member State, having been convicted by final judgment of a particularly serious crime. The refugee must constitute a danger to the community because of the particular crime that they have committed and not their general behaviour. In *RY (Sri Lanka)*, the Court of Appeal (England and Wales, United Kingdom) upheld a finding by the Upper Tribunal (Immigration and Asylum Chamber) that a refugee had been convicted of a particularly serious crime and constituted a danger to the community in circumstances where he had caused the death by dangerous driving of a woman who was 30 weeks pregnant, following which he absconded to Germany while on bail ([318]).

In contrast to the Court of Appeal case of *RY (Sri Lanka)*, the French National Court of Asylum Law, in determining whether a refugee constituted a real and present danger to the community, considered issues beyond the risk of the person reoffending and based its finding on many factors, not just the particular crime. In that case, the court ended a Chechen's refugee status under the provision in national legislation incorporating Article 14(4)(b) QD (recast) as a result of his conviction for a crime punished by a period of imprisonment of 10 years, along with other crimes. This was coupled with the fact, satisfying the separate condition in national law, that he constituted a real and present danger to the community. The court referred to the fact that the documents on file showed he was a person who was menacing, paranoid and unstable and who made radical religious remarks ([319]).

The Supreme Administrative Court of Czechia raised the question of whether the final conviction for a particularly serious crime and danger to the community are two separate conditions, which must be fulfilled cumulatively, or whether the fulfilment of the former automatically implies the fulfilment of the latter. It did not, however, reach a conclusion in this respect ([320]). Nevertheless, on this point, an older case from the Court of Appeal (England and Wales, United Kingdom) stated: 'So far as "danger to the community" is concerned, the danger must be real,

([313]) Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 29 August 2019, Ra 2018/19/0522, AT:VWGH:2019:RA2018190522.L01. See also Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 25 October 2018, Ra 2018/20/0360, AT:VWGH:2018:RA2018200360.L01.

([314]) High Court (Ireland), judgment of 1 March 2012, *Morris Ali* v *Minister for Justice, Equality and Law Reform*, [2012] IEHC 149.

([315]) Ibid., paras 20–21.

([316]) Ibid., para. 40.

([317]) Ibid., para. 38.

([318]) Court of Appeal (England and Wales, United Kingdom), judgment of 12 February 2016, *RY (Sri Lanka)* v *Secretary of State for the Home Department*, [2016] EWCA Civ 81.

([319]) National Court of Asylum Law (CNDA, France), 2019, *M. T.*, No 17053942 C+, op. cit. (fn. 287 above), para. 12, referring to the refugee as constituting 'une menace réelle et actuelle pour la société'. The provision in the French code (CESEDA) incorporating the QD (recast), op. cit. (fn. 288 above), requires a consideration of both conditions separately. See also text at fn. 287 above for more on this case, and the text at fn. 329 below for more on another case involving a serious danger to the community.

([320]) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), 2020, No 5 Azs 189/2015-127, *M.* v *Ministry of the Interior*, op. cit. (fn. 300 above).

but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community' (321).

There is a clear distinction between danger to the community and danger to the security of a Member State. The Supreme Administrative Court of Czechia highlighted the difference between these two terms. Although the case in question concerned the application of Article 14(4)(b), dealing with danger to the community, the national legislature implemented this provision of the directive incorrectly and used the same expression (danger to the security of the state) for the criminal cases falling under Article 14(4)(b). Consequently, the court quashed the decision of the administrative authority on the withdrawal of refugee status and sent the case back to be assessed again (322).

5.4. Discretion not to grant refugee status: Article 14(5)

Article 14(5) permits Member States to use the grounds set out in Article 14(4)(a) and (b) as a reason not to grant refugee status. It states that, in situations described in Article 14(4), 'Member States may decide not to grant status to a refugee, where such a decision has not yet been taken'. The provision is thus optional.

In the CJEU case of *M, X and X*, the issue arose of whether Article 14(5) introduces a new ground for exclusion from refugee status that is not provided for in the Refugee Convention. The court first clarified the distinction between the meaning of 'refugee' pursuant to Article 2(d) QD (recast) and refugee status pursuant to Article 2(e) QD (recast). The court noted that 'regarding the term "refugee", Article 2(d) [QD (recast)] reproduces, in essence, the definition set out in Article 1(A)(2) of the Geneva Convention' and that Chapter III of the directive provides 'clarification regarding the material conditions' to be fulfilled for recognition as a refugee. As for Article 2(e) QD (recast), defining 'refugee status', it noted that recital 21 of the directive clarifies that 'recognition is declaratory and not constitutive of being a refugee' (323). The court continued:

> Regarding the circumstances, referred to in Article 14(4) and (5) [QD (recast)], in which Member States may revoke or refuse to grant refugee status, those circumstances correspond, in essence ..., to those in which Member States may refoule a refugee under Article 21(2) of that directive and Article 33(2) [Refugee] Convention (324).

The court went on to state that the application of Article 14(4) or (5) concerns 'refugee status' as per Article 2(e) (325). Thus, as provided for in Article 14(6), the person remains eligible to benefit from certain rights of refugees under the Refugee Convention, for as long as they are in the territory of the Member State (326). The court clarified that:

> the fact that the person concerned is covered by one of the scenarios referred to in Article 14(4) and (5) ... in no way means that he or she ceases to satisfy the material conditions, relating to a well-founded fear of persecution in his or her country of origin, on which his or her being a refugee depends (327).

The court emphasised that, if refugee status is revoked or refused under Article 14(4)–(5), this does not mean that the individual concerned 'is not a refugee for the purposes of Article 1A [Refugee] Convention and is thus excluded from the international protection which, under Article 18 of the Charter, he must be guaranteed in compliance with that convention' (328).

Note that, before the CJEU judgment in *Ahmed*, the National Court of Asylum Law in France applied Article 14(5) in combination with Article 14(4)(b), in the case of an applicant for international protection who had several serious convictions, including having received a sentence of 12 years' imprisonment for acts of torture and rape of a vulnerable minor. Although she was found to come within the refugee definition, she was deemed to constitute a genuine, present and sufficiently serious threat to society, and refugee status was not granted to her. Factors the court took into account when assessing the seriousness of the threat to society in the case were the applicant's behaviour; the nature and seriousness of the crimes of which she had been convicted; her personal

(321) Court of Appeal (England and Wales, United Kingdom), judgment of 26 June 2009, *EN (Serbia)* v *Secretary of State for the Home Department*, [2009] EWCA Civ 630, para. 45.

(322) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), 2020, No 5 Azs 189/2015-127, *M.* v *Ministry of the Interior*, op. cit. (fn. 300 above).

(323) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), paras 84–85.

(324) Ibid., para. 93.

(325) Ibid., para. 96.

(326) Ibid., para. 99.

(327) Ibid., para. 98.

(328) Ibid., para. 100. See also ECtHR, 2021, *K.I.* c *France*, op. cit. (fn. 82 above), and Section 1.6 above.

implication in these crimes/acts; possible extenuating factors; the length of time that had passed since the commission of these crimes/acts; and whether her behaviour was likely to persist and thereby significantly harm the fundamental interests of society (329). The criteria that the court used in this case are broadly in line with those set out in *Ahmed*. An individualised assessment was carried out and the court did not rely solely upon the term of imprisonment as the reason for deciding upon the issue of 'particularly serious crime'.

5.5. Entitlement to certain rights under the Refugee Convention: Article 14(6)

Article 14(6) provides some protection for persons to whom Article 14(4) or (5) applies. This article states that such persons 'are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State'. These Convention rights that continue to apply are enumerated in Figure 12.

Figure 12: Entitlement to Refugee Convention rights under Article 14(6) QD (recast)

These enumerated rights under the Refugee Convention concern:

- Non-discrimination (Article 3)
- Religious freedom (Article 4)
- Access to the courts and legal representation (Article 16)
- Equal treatment in relation to education (Article 22)
- Non-penalisation for illegal entry and safeguards relating to restrictions on freedom of movement (Article 31)
- Procedural safeguards in cases of expulsion (Article 32)
- Procedural safeguards for loss of protection against *refoulement* (Article 33)

The CJEU in *M, X and X* has provided clarification on the interpretation of Article 14(6). On the meaning of 'or similar [rights]' in Article 14(6), the court first stated that the word 'or' must be used in the cumulative as opposed to the alternative sense. The court explained this by stating:

> Regarding, first of all, the conjunction 'or' used in Article 14(6) [QD (recast)], that conjunction may, linguistically, have an alternative or a cumulative sense and must consequently be read in the context in which it is used and in light of the objectives of the act in question (see, by analogy, judgment of 12 July 2005, *Commission* v *France*, C-304/02, EU:C:2005:444, paragraph 83). In the present case, having regard to the context and objective of [the QD (recast)] as set out in recitals 3, 10 and 12 thereof, and taking account of the case-law cited in paragraph 77 above, that conjunction must, in Article 14(6) of that directive, be understood in a cumulative sense (330).

In terms of the context and objective of the QD (recast), as referred to by the court, note that recital 3 affirms the principle of *non-refoulement,* while recital 10 seeks to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards. In addition, recital 12 states:

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

(329) National Court of Asylum Law (CNDA, France), judgment of 12 March 2019, *Mme B.*, No 17028590 C+, paras 20–21. Article 711-6-2 CESEDA, op. cit. (fn. 288 above), provides for the refusal or ending of refugee status in situations where 'the person concerned has been convicted by a final judgment in France of a crime that either is an act of terrorism or punished by 10 years of imprisonment and whose presence constitutes a serious threat to society'; in French, 'La personne concernée a été condamnée en dernier ressort en France … soit pour un crime, soit pour un délit constituant un acte de terrorisme ou puni de dix ans d'emprisonnement, et sa présence constitue une menace grave pour la société'. See also National Court of Asylum Law (CNDA, France), 2019, *M. T.*, No 17053942 C+, op. cit. (fn. 287 above), which also concerned someone found to represent a serious threat to society.

(330) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 102.

The court then moved on to assess how the phrase 'similar [rights]' should be interpreted, and it found:

> Regarding, next, the scope of the expression 'similar [rights]' contained in that provision, it should be noted that, as the Advocate General emphasised in point 110 of his Opinion, the application of Article 14(4) or (5) [QD (recast)] has the consequence, inter alia, of depriving the person concerned of the residence permit which Article 24(1) of that directive attaches to having refugee status as defined in that directive ([331])

Consequently, the court found that 'a refugee concerned by a measure taken on the basis of Article 14(4) or (5) [QD (recast)] may, for the purpose of determining the rights that he or she must be granted under the [Refugee] Convention, be regarded as not or no longer staying lawfully in the territory of the Member State concerned' ([332]).

Considering that the individual concerned is no longer lawfully in the territory of the Member State, the court found that, when implementing Article 14(4) or Article 14(5), Member States are:

> in principle, required to grant refugees who are present in their respective territories only the rights expressly referred to in Article 14(6) of that directive and the rights set out in the [Refugee] Convention that are guaranteed for any refugee who is present in the territory of a Contracting State and do not require a lawful stay ([333]).

It is, however, significant that the court went on to emphasise that Article 14(6) does not affect a person's rights under the Refugee Convention, if they have another legal ground for remaining in the Member State lawfully. The court stated that:

> despite being denied the residence permit attached to refugee status under [the QD (recast)], a refugee covered by one of the scenarios referred to in Article 14(4)–(5) thereof may be authorised, on another legal basis, to stay lawfully in the territory of the Member State concerned (see, to that effect, judgment of 24 June 2015, *H. T.*, C-373/13, EU:C:2015:413, paragraph 94). In such a situation, Article 14(6) of that directive in no way prevents that Member State from guaranteeing that the person concerned is entitled to all the rights which the [Refugee] Convention attaches to 'being a refugee' ([334]).

The court affirmed that, if a Member State invokes Article 14(4) and (5) against an individual who is present in the state, that person must, at a minimum, be guaranteed the protection of the rights in the Refugee Convention as set out in Article 14(6). The court stated:

> Article 14(6) [QD (recast)] must, in accordance with Article 78(1) TFEU and Article 18 [EU] Charter, be interpreted as meaning that a Member State which uses the powers provided for in Article 14(4) and (5) of that directive must grant a refugee covered by one of the scenarios referred to in those provisions and present in the territory of that Member State, as a minimum, the rights enshrined in the [Refugee] Convention expressly referred to in Article 14(6) of that directive and the rights provided for by that convention which do not require a lawful stay, without prejudice to any reservations which may be made by that Member State under Article 42(1) of that convention ([335]).

The court clearly emphasised that, besides the rights that the persons concerned must be guaranteed by Member States pursuant to Article 14(6), 'there is no way of interpreting that provision as having the effect of encouraging those States to shirk their international obligations as resulting from the [Refugee] Convention by restricting the rights that those persons derive from that convention' ([336]).

The importance of the Charter was also highlighted in the context of Article 14(6). The court stated:

> In any event, … the application of Article 14(4) to (6) of that directive is without prejudice to the obligation of the Member State concerned to comply with the relevant provisions of the Charter, such as those set out in Article 7 thereof, relating to respect for private and family life, Article 15 thereof, relating to the freedom to choose an occupation and the right to engage in work, Article 34 thereof, relating to social security and social assistance, and Article 35 thereof, relating to health protection' ([337]).

([331]) Ibid., para. 103.
([332]) Ibid., para. 104.
([333]) Ibid., para. 105.
([334]) Ibid., para. 106.
([335]) Ibid., para. 107. See also ECtHR, 2021, *K I. c France*, op. cit. (fn. 82 above), para. 76.
([336]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 108.
([337]) Ibid., para. 109.

The Czech Supreme Administrative Court, in its final judgment in *M*, identified the rights that do not require a lawful stay, stemming from the following articles in the Refugee Convention, apart from those expressly mentioned in Article 14(6) QD (recast): Articles 13, 20, 25, 27 and 29. The court ruled that a refugee whose refugee status has been withdrawn or denied in accordance with Article 14(4) or (5), and who is not removed from the territory, is still entitled to the rights set out in Article 14(6), as interpreted by the CJEU in *M, X and X*. The court termed such a person a 'light refugee' ([338]).

It should be noted that Article 14(6) expressly refers to guarantees under Article 33 Refugee Convention. Article 33(1) provides for the prohibition of expulsion or return to persecution (*refoulement*). Article 33(2) states that the benefit of Article 33(1) 'may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country' ([339]).

The obligation of *non-refoulement* arising from Article 3 ECHR, which is affirmed in Articles 4 and 19(2) EU Charter, must, however, be respected in the context of such decisions ([340]). Furthermore, Article 21(1) QD (recast) obliges Member States to respect the principle of *non-refoulement* in accordance with their international obligations ([341]).

Article 21(1) and (2) QD (recast) state as follows.

Article 21(1) and (2) QD (recast)
Protection from refoulement

1. Member States shall respect the principle of *non-refoulement* in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may *refoule* a refugee, whether formally recognised or not, when:

(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

In *H. T.*, the CJEU reaffirmed, with reference to Article 21(2) QD, which is identical to Article 21(2) QD (recast), that Member States must respect the principle of *non-refoulement* in accordance with their international obligations ([342]).

Article 21(2) must, as is confirmed by recital 16 QD (recast), be:

> interpreted and applied in a way that observes the rights guaranteed by the Charter, in particular Article 4 and Article 19(2) thereof, which prohibit in absolute terms torture and inhuman or degrading punishment or treatment irrespective of the conduct of the person concerned, as well as removal to a State where there is a serious risk of a person being subjected to such treatment ([343]).

([338]) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), 2020, No 5 Azs 189/2015-127, *M.* v *Ministry of the Interior*, op. cit. (fn. 300 above).

([339]) See Section 5.1 above for the full text of this provision.

([340]) Article 4 EU Charter prohibits torture, and inhuman or degrading treatment or punishment, and Article 19(2) EU Charter prohibits removal, expulsion or extradition to 'a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'.

([341]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), paras 90, 94 and 95. Article 21 QD (recast) and Article 33 Refugee Convention both concern 'refugees' 'for the purposes of Article 2(d) QD (recast) and Article 1(A) of the Geneva Convention', which is 'not dependent on formal recognition thereof through the granting of "refugee status" as defined in Article 2(e) of that directive' (para. 90). Both provide for the principle of *non-refoulement* as well as exceptions to that principle.

([342]) CJEU, 2015, *H. T.* v *Baden-Württemberg*, op. cit. (fn. 291 above), para. 42.

([343]) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 94.

The principle of *non-refoulement* is, therefore, guaranteed as a fundamental right by Article 19(2) EU Charter (344).

> Therefore, Member States may not remove, expel or extradite a foreign national where there are substantial grounds for believing that he will face a genuine risk, in the country of destination, of being subjected to treatment prohibited by Article 4 and Article 19(2) of the Charter (345).
>
> Thus, where the refoulement of a refugee covered by one of the scenarios referred to in Article 14(4) and (5) and Article 21(2) [QD (recast)] would expose that refugee to the risk of his fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed, the Member State concerned may not derogate from the principle of non-refoulement under Article 33(2) of the Geneva Convention (346).

As outlined in Section 5.1 above, the CJEU has clarified that Article 14(4)–(6) does not contravene the Refugee Convention, Article 18 EU Charter or Article 78 TFEU. In addition, the court expressly stated in *M, X and X* that 'the application of Article 14(4) to (6) [QD (recast)] is without prejudice to the obligation of the Member State concerned to comply with the relevant provisions of the Charter' (347). The court developed this point by stating that:

> while, under the [Refugee] Convention, the persons covered by one of the scenarios described in Article 14(4) and (5) [QD (recast)] are liable, under Article 33(2) of that convention, to a measure whereby they are refouled or expelled to their country of origin, even though their life or freedom would be threatened in that country, such persons may not, by contrast, under Article 21(2) of that directive, be refouled if this would expose them to the risk of their fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed (348).

Given this, the CJEU ruled that 'EU law provides more extensive international protection for the refugees concerned [under Article 14(4) and (5)] than that guaranteed by that convention' (349). Note also that the ECtHR in *K.I.* referred in its judgment to the CJEU's Grand Chamber judgment in *M, X and X.* Referring to that judgment, the ECtHR noted the CJEU ruling that the fact of being a 'refugee' is not dependent on the formal recognition of that fact through the granting of 'refugee status' and that Member States may not remove, expel or extradite a refugee who has lost status, on the basis of Article 14(4) QD (recast), when there are serious grounds for believing that the individual will be at risk of treatment prohibited by Articles 4 and 19 EU Charter on return (350). The ECtHR further noted that the CJEU had ruled in *M, X and X* that, as long as the conditions for asylum are fulfilled, the person concerned remains a refugee and benefits from the rights guaranteed by the Refugee Convention, as explicitly provided for in Article 14(6) QD (recast). In such a case, the ECtHR recalled that the protection provided by Article 3 ECHR is absolute in character and it cannot be derogated from even in cases of a public emergency threatening the life of the nation (351). See Section 1.6 above for further discussion of *K.I.* and for more on the principle of *non-refoulement* and procedural guarantees.

Further guidance on the substance of the term 'danger to security' and 'danger to the community' can be found in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Section 4.2.5 'Danger to the community or to the security of the Member State (Article 17(1)(d))'. It is also worth bearing in mind that Articles 44 and 45 of the APD (recast) on procedural guarantees for the withdrawal of international protection apply (352).

(344) CJEU, 2015, *H. T.* v *Baden-Württemberg*, op. cit. (fn. 291 above), para. 65.

(345) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 94. With regard to Article 3 ECHR, see ECtHR, 2021, *K.I.* c *France*, op. cit. (fn. 82 above); ECtHR, judgment of 30 October 1991, *Vilvarajah and Others* v *United Kingdom*, Nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87; ECtHR, judgment of 7 July 1989, *Soering* v *United Kingdom*, No 14038/88, para. 88.

(346) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 95. See also ECtHR, 2021, *K.I.* c *France*, op. cit. (fn. 82 above).

(347) CJEU (GC), 2019, *M, X and X*, op. cit. (fn. 9 above), para. 109.

(348) Ibid., para. 110.

(349) Ibid., para. 96.

(350) ECtHR, 2021, *K.I.* c *France*, op. cit. (fn. 82 above), para. 76.

(351) Ibid., para. 119.

(352) 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). For further information, see Part 7 below.

Part 6. Grounds for ending subsidiary protection – Article 19

Article 19 QD (recast) deals with the revocation of, ending of or refusal to renew the subsidiary protection status of a third-country national or a stateless person. Such a situation may occur if the circumstances that led to the granting of subsidiary protection have ceased to exist or have changed to such a degree that subsidiary protection is no longer required pursuant to Article 16 QD (recast). It may also arise if a beneficiary of subsidiary protection should have been excluded pursuant to Article 17(3) or should have been or is excluded pursuant to Article 17(1) and (2). Furthermore, Article 19 is triggered when there is misrepresentation or omission of facts by the beneficiary of subsidiary protection, which was decisive for the granting of that status [353].

This part deals with the requirements for ending subsidiary protection status pursuant to Article 19 QD (recast). It contains four sections, as set out in Table 8.

Table 8: Structure of Part 6

6.1. Article 19 QD (recast)

Article 19 QD (recast) sets out the circumstances in which Member States may or must revoke, end or refuse to renew subsidiary protection status.

Article 19 QD (recast)
Revocation of, ending of or refusal to renew subsidiary protection status

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

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

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

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

[353] Article 19(3)(b) QD (recast).

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

Article 19 bears some similarities to Article 14, which deals with revocation of, ending of and refusal to renew refugee status. It does not, however, wholly replicate the provisions of Article 14. There are some significant differences.

Article 19(1) read with Article 16(1) addresses the ending of subsidiary protection status on grounds of cessation and differs from the corresponding Article 14(1) read together with Article 11(1), which deals with the ending of refugee status on grounds of cessation. Unlike Article 11(1), Article 16(1) does not set out six grounds upon which a person will cease to be eligible for subsidiary protection. Article 16(1) does not contain provisions like those in Article 11(1)(a)–(d), which cover acts by a refugee whereby they may be determined to have 're-availed himself or herself of the protection of the country of nationality', re-acquired 'his or her nationality' or 'acquired a new nationality', or 're-established him or herself in the country which he or she left or outside which he or she remained owing to a fear of persecution' ([354]). Even if it is not explicitly provided for in the QD (recast), national courts have nevertheless taken re-establishment into account when assessing whether qualification for subsidiary protection has ceased ([355]). See Section 3.1.1 above for an overview of the circumstances in which a person will cease to be a refugee.

Article 19(2) in conjunction with Article 17(3) allows for the revocation of, ending of or refusal to renew subsidiary protection, if after having been granted subsidiary protection status, it emerges that the beneficiary should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3). Article 17(3) permits Member States to exclude an individual from eligibility for subsidiary protection if 'he or she, prior to his or her admission … has committed one or more crimes … punishable by imprisonment … and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes'. Neither Article 14 by itself nor Article 14 read in conjunction with Article 12 contains a corresponding provision.

Article 14(4) provides that Member States may revoke, end or refuse to renew the status granted to a refugee if 'there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present [or] he or she, having been convicted by final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'. The corresponding Article 19(3)(a) does not expressly use this language. Rather, it cross-refers to the exclusion clauses in Article 17 QD (recast). Article 19(3)(a) provides for the ending of subsidiary protection status if the beneficiary should have been or is excluded on grounds set out in Article 17(1) and (2). Article 17(1)(b) addresses situations where there are serious reasons for considering that the person 'has committed a serious crime', while Article 17(1)(d) concerns a person who 'constitutes a danger to the community or to the security of the Member State in which he or she is present'.

Another difference is that Article 14(4) QD (recast) is an optional provision whereas Article 19(3)(a) is mandatory. Moreover, if refugee status is withdrawn pursuant to Article 14(4), the person concerned nevertheless remains a refugee and is entitled to certain rights under the Refugee Convention. By contrast, if a beneficiary of subsidiary protection status is considered to constitute a danger to the community or to the security of the Member State, they are instead **excluded** from being eligible for subsidiary protection under Article 17(1)(d) and their status is ended under Article 19(3)(a). Thereby, they are not entitled to any of the benefits provided in the QD (recast). For further discussion on this, see Section 6.3.2.

The cross-reference in Article 19(3)(a) to Article 17(1) and (2) has similarities with the reference in Article 14(3)(a) to Article 12 (for exclusion, Article12(2)), except there is a difference in wording in relation to the exclusion grounds 'serious non-political crime' (in Article 12(2)(b)) and 'serious crime' (in Article 17(1)(b)). Another point of difference is that Article 12(2)(b) refers to the commission of 'a serious non-political crime outside the country of refuge prior to his or her admission as a refugee', whereas Article 17(1)(b) has no temporal or geographical

([354]) Please refer to Part 2 for more on Article 11(a)–(d).

([355]) Supreme Administrative Court (Naczelny Sąd Administracyjny, Poland), judgment of 23 February 2016, joined cases II OSK 1492/14, II OSK 1561/14, II OSK 1562/14; Regional Administrative Court Warsaw (Poland), judgment of 16 May 2013, IV SA/Wa 2684/12 (English summary). See also Circuit Court (*Ringkonnakohtud*, Estonia), judgment of 22 April 2020, *X, Y, Q and W (Afghanistan)* v *Police and Border Guard Board (Politsei- ja Piirivalveameti)* (English summary). The case concerned an Afghan beneficiary of subsidiary protection, whose status was ceased when the authorities learned that he had returned once to Afghanistan. An administrative court had overturned this decision on the grounds that one return flight to Afghanistan was not a solid basis for cessation of status. The court upheld the lower court's decision, but on different grounds, stating that the authorities should have considered the best interests of the children in the family and their integration and social ties in Estonia.

limitation. The scope of Article 17(1)(b) QD (recast) is thus broader than that of Article 12(2)(b) QD (recast), since it is limited neither territorially nor temporally, nor by the condition that the crime at issue be 'non-political'. For further discussion on this, see Section 6.3.2.

Article 19(3)(b) and the corresponding Article 14(3)(b) are both mandatory provisions and require the revocation of, ending of or refusal to renew subsidiary protection or refugee status where the beneficiary of subsidiary protection or refugee respectively has misrepresented or omitted facts, including the use of false documents, which were decisive for the granting of status.

To the extent that the provisions of Article 19 correspond to those of Article 14, the case-law on Article 14 has analogous application (356).

The burden of proof lies with the Member State to demonstrate, on an individual basis, that the beneficiary has ceased to be or is not eligible for subsidiary protection (357). This is, nevertheless, without prejudice to the duty of the individual concerned to disclose all relevant facts and provide all relevant documentation at their disposal, in accordance with Article 4(1) QD (recast) (358).

Note that, whereas Article 14(4)(a) refers to 'reasonable grounds for regarding' a refugee as being a danger to the security of the Member State, Article 19(3)(a) in conjunction with Article 17(1)(d) refers to 'serious reasons for considering' that a beneficiary of subsidiary protection constitutes a danger to the community or security of the Member State. Matters relating to proof are further addressed in Section 7.4.

6.2. Cessation: Article 19(1) and Article 16

Of the circumstances in which a Member State must revoke, end or refuse to renew subsidiary protection status, the first is set out in Article 19(1).

Article 19(1) QD (recast)
Revocation of, ending of or refusal to renew subsidiary protection status

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

Article 19(1) QD (recast) must, therefore, be read in conjunction with Article 16. This reads as follows.

Article 16 QD (recast)
Cessation

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

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

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

(356) See Part 4 and Part 5 above. See also Storey, H., 'Article 19, Qualification Directive 2011/95/EC', in Hailbronner and Thym, *EU Immigration and Asylum Law*, op. cit. (fn. 91 above), p. 1248, para. 1.

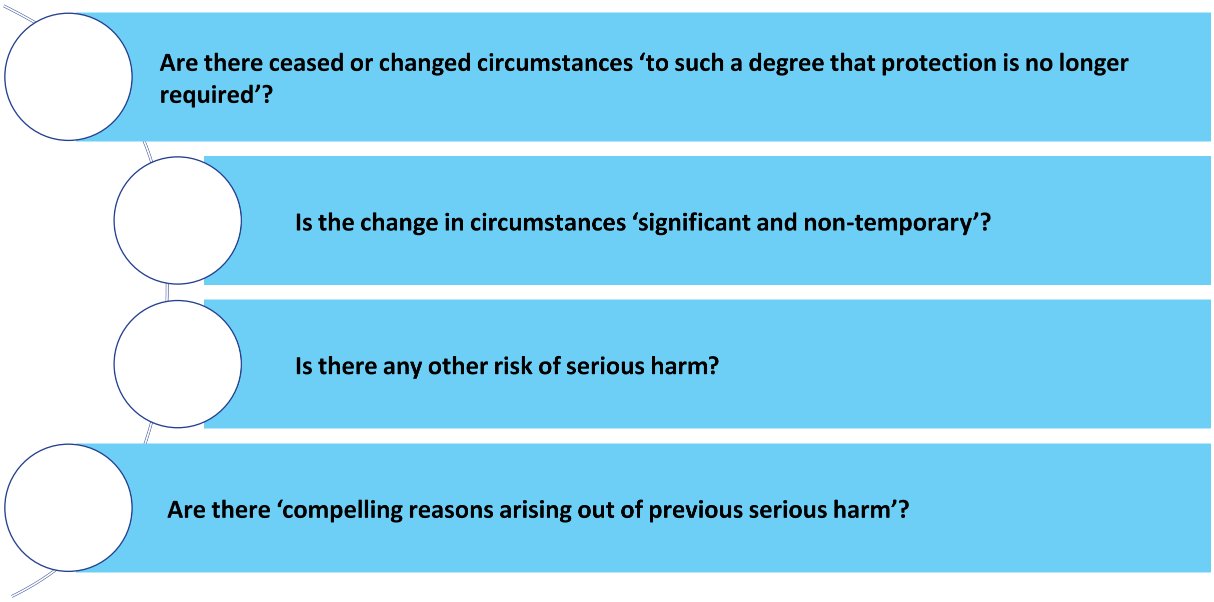
(357) Article 19(4) QD (recast).

(358) Ibid.

Thus, Article 19(1), in conjunction with Article 16, obliges Member States to revoke, end or refuse to renew subsidiary protection status on the grounds of cessation.

Figure 13 sets out the requirements for cessation in the context of subsidiary protection.

Figure 13: Requirements for cessation in the context of subsidiary protection



6.2.1. Are there ceased or changed circumstances ‘to such a degree that protection is no longer required’?

Article 19 QD (recast), read in conjunction with Article 16, concerns the ending of subsidiary protection status. Subsidiary protection status, as defined in Article 2(g) QD (recast), means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection. It is granted to a third-country national or a stateless person who is eligible for subsidiary protection, as defined in Article 2(f) read in conjunction with Article 15 QD (recast). It concerns cases where the person does not qualify as a refugee but substantial grounds have been shown for believing that the person concerned would face a real risk of suffering serious harm if returned to their country of origin. Article 15 defines ‘serious harm’ as:

(a) the death penalty or execution; or
(b) torture or inhuman or degrading treatment or punishment of an individual applicant in the country of origin; or
(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16(1) states that a beneficiary of subsidiary protection will cease to be eligible for that status when the circumstances that 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.

There is a distinction in Article 16(1) between circumstances that ‘have ceased to exist’ and circumstances that ‘have changed to such a degree that protection is no longer required’. An example of circumstances that have ceased to exist might be the abolition of the death penalty in the individual’s country of origin. A situation whereby circumstances have changed to such a degree that protection is no longer required might be when there has been a significant and non-temporary decrease in the intensity in the level of indiscriminate violence. The ceased or changed circumstances may be personal to the individual concerned or related to the situation in the country of origin, or both.

Article 16(1) establishes a causal connection between the change in circumstances and the need for subsidiary protection. Therefore, the change must be such that subsidiary protection is no longer required. The CJEU in *Bilali* referred to the link between changed circumstances and the fact that there is no longer a well-founded fear in relation to the original serious harm:

> 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 ([359]).

In *Bilali*, the authorities had mistakenly determined what was assumed to be the nationality of the person concerned and granted subsidiary protection status on the basis of an incorrect nationality. This status was later revoked as a result of information that came to the attention of the Member State.

The question referred to the CJEU in *Bilali* was:

> Do the provisions of EU law, in particular Article 19(3) of [QD (recast)], preclude a national provision of a Member State concerning the possibility of revocation of subsidiary protection status pursuant to which subsidiary protection status may be revoked without a change in the factual circumstances themselves which are relevant for the purpose of granting that status, but rather only where the state of knowledge of the authority in this regard has undergone a change, and, in that context, without either a misrepresentation or an omission of facts on the part of the third-country national or stateless person having been a determinant factor in the granting of the subsidiary protection status? ([360])

In answering the question referred, the CJEU underlined the principle that 'it would be contrary to the general scheme and objectives of [the QD (recast)] to grant refugee status and subsidiary protection status to third-country nationals in situations which have no connection with the rationale of international protection' ([361]). The court made it clear that subsidiary protection exists only for individuals who are in need of such protection, and stated: 'The situation of an individual who has obtained subsidiary protection status on the basis of incorrect information without ever having met the conditions for obtaining that status has no connection with the rationale of international protection' ([362]). Consequently, 'loss of subsidiary protection status in such circumstances is, therefore, consistent with the purpose and general scheme of [the QD (recast)], and in particular with Article 18 thereof, which provides for subsidiary protection status to be granted only to persons who meet those conditions' ([363]).

The court clarified that 'If the Member State concerned was not entitled legally to grant that status, it must, *a fortiori*, be obliged to withdraw it when its mistake is discovered' ([364]). The court acknowledged:

> While that adjustment generally arises from a change in the factual circumstances in the third country, that change having remedied the reasons which led to subsidiary protection status being granted, the fact remains that Article 16 [QD (recast)] does not expressly provide for its scope of application to be limited to such a situation and, moreover, a change in the host Member State's state of knowledge of the personal situation of the individual concerned can, in the same way, result in that person's original fear of serious harm, within the meaning of Article 15 of that directive, no longer appearing to be well founded, in the light of the new information in that Member State's possession ([365]).

However, in order for subsidiary protection to be revoked or ended or the renewal to be refused in this situation, 'the new information at the host Member State's disposal [must entail] a sufficiently significant and definitive change in the state of its knowledge as to whether the person concerned qualifies for the granting of subsidiary protection status' ([366]).

The court ultimately found that a combined reading of Articles 16 and 19(1), in the light of the general scheme and purpose of that directive, meant that:

> where the host Member State has new information which establishes that, contrary to its initial assessment of the situation of a third-country national or of a stateless person to whom it granted subsidiary protection, based on incorrect information, that person never faced a risk of serious harm, within the meaning of Article 15 of that directive, that Member State must conclude from this that the circumstances

([359]) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 48.
([360]) Ibid., para. 30.
([361]) Ibid., para. 44.
([362]) Ibid., para. 44.
([363]) Ibid., para. 45.
([364]) Ibid., para. 45.
([365]) Ibid., para. 49.
([366]) Ibid., para. 50.

underlying the granting of subsidiary protection status have changed in such a way that retention of that status is no longer justified ([367]).

Significantly, the court found that 'the fact that the error made by the host Member State when granting that status is not attributable to the person concerned cannot alter the finding that that person was never in fact a "person eligible for subsidiary protection"' ([368]).

Following the ruling of the CJEU, the Austrian Supreme Administrative Court ruled that it was lawful to revoke subsidiary protection in circumstances in which the asylum authority became aware that the person concerned did not come from the country originally assumed and did not need subsidiary protection in relation to their country of origin ([369]).

In terms of other national case-law, on the issue of whether changed circumstances may be personal to the individual concerned and/or relate to the situation in the country of origin, the Austrian Supreme Administrative Court found that subsidiary protection may no longer be required as a result of different developments, which may be both personal to the individual and related to the situation in their home country ([370]). The Finnish Administrative Supreme Court upheld the cessation of subsidiary protection of an Iraqi who had returned to his own country and remained there for 4 years. The appellant claimed he could not be returned to his home country on account of his mental illness. The court stated that his experience of rejection due to his mental illness was not by itself sufficient to establish a need for international protection. The evidence showed that he had received medical assistance during his previous stay and that he had relatives there. The court found that his personal circumstances had changed in a significant and permanent way such that protection was no longer required ([371]).

6.2.2. Is the change in circumstances 'significant and non-temporary'?

Article 16(2) requires the change in circumstances to be 'significant and non-temporary'. In relation to the nature of the change, the CJEU said in *Bilali* that the change in circumstances must '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' ([372]).

Particular care must be taken to assess whether new laws are adhered to in practice and whether any positive legal developments are indeed sustainable. There may, for instance, be democratisation, changes within the legal system or administrative structures, an improvement of prison conditions or an amnesty ([373]). Where the risk arose out of indiscriminate violence in a situation of armed conflict, the level of violence may have diminished because of political or military developments ([374]).

The Austrian Supreme Administrative Court, in the context of Article 19, stated that a significant change is only present if the circumstances have changed so substantially and not just temporarily that an entitlement to subsidiary protection no longer exists ([375]).

The Warsaw Regional Administrative Court in Poland found that there were ceased circumstances in the case of a woman who had travelled to her country of origin and given birth to a child. She had remained there for 3 years and obtained passports for herself and her children. The court found that, although the situation was still unstable, it was no longer possible to speak of an armed conflict that would put the entire population in

([367]) Ibid., para. 51.

([368]) Ibid., para. 52.

([369]) Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 14 August 2019, Ra 2016/20/0038, AT:VWGH:2019:RA2016200038.L02.

([370]) Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 27 May 2019, Ra 2019/14/0153, AT:VWGH:2019:RA2019140153.L00.

([371]) Supreme Administrative Court (*Korkein hallinto-oikeus*, Finland), judgment of 25 November 2020, KHO:2020:129.

([372]) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 47.

([373]) ECtHR, judgment of 15 November 2011, *Al Hanchi* v *Bosnia and Herzegovina*, No 48205/09, paras 42–45, finding that the change of circumstances in Tunisia was such that 'While it is true that cases of ill-treatment are still reported, those are sporadic incidents' and therefore that there would be no risk of treatment contrary to Article 3 ECHR if the person concerned were returned to that country.

([374]) See, for example, Regional Administrative Court Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie*, Poland), 2013, IV SA/Wa 2684/12 (English summary), op. cit. (fn. 355 above).

([375]) Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), 2019, Ra 2019/14/0153, op. cit. (fn. 372 above), ruling that a change in circumstances may arise from the fact that the individual concerned now has internal protection that they did not have before. UNHCR states that the cessation clauses should be 'interpreted restrictively' and internal protection can be applied only in the context of assessments of eligibility for international protection within Article 1A(2) Refugee Convention (see further UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 116). Nevertheless, in Court of Appeal (England and Wales, United Kingdom), judgment of 29 July 2019, *Secretary of State for the Home Department* v *MS (Somalia)*, [2019] EWCA civ 1345, the court analysed the UNHCR guidance and gave reasons, applying EU law, for disagreeing with UNHCR on this point. See also Upper Tribunal (Immigration and Asylum Chamber, United Kingdom), judgment of 1 November 2019, *SB (refugee revocation; IDP camps) Somalia*, [2019] UKUT 358. For more on these issues in the context of cessation of refugee status, see Section 3.1.2 above.

danger or of the use of mass terror or the persecution of civilians. It found that there had been a change in the circumstances that had led to the granting of subsidiary protection (376). Thus, the revocation of subsidiary protection was justified.

If there is a significant and durable decrease in the intensity of an armed conflict, this may lead to the revocation, ending or non-renewal of subsidiary protection (377). The Supreme Administrative Court of Czechia found, for example, that the situation in the Zaporizhian region in Ukraine, which adjoins the 'war region' of Donetsk, had stabilised and was under the full control of the Ukrainian authorities. Therefore, there was no longer a threat to civilians in terms of Article 15(c) QD (recast) (378).

By contrast, in the case of an Iraqi family, the National Court of Asylum Law in France found that the security situation in the province of Al Anbar was of an intensity comparable to that existing at the time of the granting of subsidiary protection, which would not make it possible to characterise the situation as a change in circumstances likely to lead to the ending of subsidiary protection status (379).

In assessing whether there is no longer a real risk of serious harm by reason of indiscriminate violence in situations of international or internal conflict pursuant to Article 15(c), a sliding scale approach applies. This means that, the more the beneficiary of subsidiary protection can show that they continue to be at risk of serious harm from indiscriminate violence by reason of factors particular to their personal circumstances, the lower is the level of indiscriminate violence required for qualification for subsidiary protection (380). Similarly, an individual whose subsidiary protection is being revoked, ended or refused renewal might argue that, while circumstances have changed to such a degree that protection from serious harm is no longer required for most people, they have not changed to that degree for him or her, given his or her own particular circumstances.

6.2.3. Is there any other risk of serious harm?

Taking a line through the CJEU's analysis of the analogous provisions of Article 11 on cessation of refugee status (381), it appears that subsidiary protection status can only be ended if there is no real risk of serious harm within the meaning of Article 15 QD (recast) arising out of circumstances different from those that led to the original grant of subsidiary protection status (382).

In terms of assessing whether there is any other form of serious harm, it is useful to refer to the CJEU judgment in *MP*. Although this is a case that deals with qualification for subsidiary protection as opposed to ending subsidiary protection, it illustrates the matters that might be considered in deciding whether there is any other risk of serious harm. In that case, the court determined:

> Articles 2(e) and 15(b) [QD], read in the light of Article 4 [EU] Charter, must be interpreted as meaning that a third country national who in the past has been tortured by the authorities of his country of origin and no longer faces a risk of being tortured if returned to that country, but whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of trauma resulting from the torture he was subjected to, is eligible for subsidiary protection if there is a real risk of him being intentionally deprived, in his country of origin, of appropriate care for the physical and mental after-effects of that torture, that being a matter for the national court to determine (383).

Thus, according to the CJEU, even though the risk of serious harm that resulted in the grant of subsidiary protection may no longer exist, a beneficiary may still qualify for subsidiary protection, if there is a new risk of

(376) Regional Administrative Court Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie*, Poland), 2013, IV SA/Wa 2684/12 (English summary), op. cit. (fn. 355 above).

(377) An example of this is the armed conflict in south-eastern Ukraine. See Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), judgment of 8 March 2018, No 10 Azs 341/2017-54, *V. N. and A. N.* v *Ministry of the Interior*; Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), judgment of 16 May 2018, No 7 Azs 169/2018-23, *V. S.* v *Ministry of the Interior*; Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), judgment of 10 December 2020, No 5 Azs 297/2018-51, *A. M.* v *Ministry of the Interior*.

(378) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), judgment of 14 February 2018, No 1 Azs 402/2017-48, *A. N.* v *Ministry of the Interior*.

(379) National Court of Asylum (CNDA, France), judgment of 21 December 2018, *Messrs A et Mmes A.*, Nos 17010844, 17010847, 17010845, 17010848, 18044574, 18044573, 18044575 and 18044576C.

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

(381) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24 above), paras 81–82.

(382) See Section 3.1.4 above; Constitutional Court of the Republic of Slovenia (*Ustavno sodišče*, Slovenia), judgment of 15 October 2015, U-I-U-I-189/14, Up-663/14 (English summary); Supreme Court of the Republic of Slovenia (*Vrhovno sodišče*, Slovenia), judgment of 5 September 2013, I Up 309/2013 (English summary).

(383) CJEU (GC), 2018, *MP*, op. cit. (fn. 215 above), para. 58.

serious harm on return. By way of analogy, in the context of ending international protection, an individual might rely on different grounds unrelated to the initial protection claim or on grounds that stem from but are different from the original serious harm, as was the case in *MP,* to show why subsidiary protection should not be ended.

6.2.4. Are there 'compelling reasons arising out of previous serious harm'?

Article 16(3) QD (recast) provides an exception to the application of Article 16(1). It is a mandatory provision, which states that Article 16(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 [origin]'. Article 16(3) is only in the QD (recast), not the original QD.

In general, given that this provision is closely aligned to that in Article 11(3) QD (recast), its interpretation should be in line with that of Article 11(3) ([384]), except in so far as Article 16(3) refers to 'previous serious harm' rather than 'previous persecution'. For a fuller analysis of compelling reasons in the context of Article 11(3), see Section 3.3.

The phrase 'compelling reasons' has its origins in Article 1C(5) and (6) Refugee Convention, which 'contain an exception to the cessation provision, allowing a refugee to invoke "compelling reasons arising out of previous persecution" for refusing to re-avail himself or herself of the protection of the country of origin' ([385]). The focus of an assessment pursuant to Article 16(3) is on 'previous serious harm'.

Case law on compelling reasons in the context of Article 16(3) is sparse. There have been no references to the CJEU on the matter and Member State case-law is sporadic.

The CJEU case of *MP* does, however, deal with the issue of 'previous serious harm', albeit in the context of qualification for subsidiary protection as opposed to the invocation of compelling reasons when the ending of such protection is under consideration. Nevertheless, the case is useful in terms of illustrating what constitutes 'previous serious harm'. The individual, in that case, had been tortured in his country of origin but was no longer at risk of serious harm from the authorities if returned. He continued, however, to suffer the after-effects of torture, severe post-traumatic stress disorder and serious depression. He also showed suicidal intent. The medical evidence suggested that the after-effects of the torture would be substantially aggravated and lead to a serious risk of suicide if he were returned to his country of origin. Further, the post-traumatic after-effects were likely to be significantly and permanently exacerbated, to the point of endangering his life, if he was returned ([386]).

The court referred to the importance of assessing the particular vulnerabilities of the individual in the context of Article 4 EU Charter, coupled with the effect that a return to the country of origin might have on a person who has already suffered serious harm. The court stated that:

> given the fundamental importance of the prohibition of torture and inhuman or degrading treatment laid down in Article 4 of the Charter, particular attention must be paid to the specific vulnerabilities of persons whose psychological suffering, which is likely to be exacerbated in the event of their removal, is a consequence of torture or inhuman or degrading treatment in their country of origin ([387]).

By way of analogy, when assessing whether or not compelling reasons exist in the context of 'previous serious harm' for the purposes of Article 16(3), it would seem that an individualised assessment taking into account the specific vulnerabilities of the person against the background of the previous serious harm is required. Furthermore, such an assessment might consider how a person's mental or psychological health would deteriorate as a result of this previous past serious harm, if they had to return to their country of nationality or country of former habitual residence.

As Article 16(3), albeit concerned with subsidiary protection, mirrors Article 1C(5) and (6) Refugee Convention, it is relevant to refer to UNHCR's position. This states: 'This exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence' ([388]). Given this, the Irish High Court has stated that the harm must be atrocious to fall within the ambit of compelling reasons. The court stated that 'There is no

([384]) Federal Administrative Court (*Bundesverwaltungsgericht*, Austria), judgment of 27 March 2014, W127 1401780-2, AT:BVWG:2014:W127.1401780.2.00. Please also refer to Section 3.3.

([385]) UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 20.

([386]) CJEU (GC), 2018, *MP*, op. cit. (fn. 215 above).

([387]) Ibid., para. 42.

([388]) UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 20.

mathematical equation whereby reasons can be demonstrated as either compelling or not compelling. Nor is there a mechanical process for determining whether a form of persecution is, or is not, atrocious' [389].

6.3. Exclusion: Article 19(2), Article 19(3)(a) and Article 17

Article 19(2) and (3) QD (recast) states as follows.

Article 19(2) and (3) QD (recast)
Revocation of, ending of or refusal to renew subsidiary protection status

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

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

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

Thus, while Article 19(2) is not mandatory, Article 19(3) is mandatory.

Article 19(2) and (3) is inextricably linked to Article 17, which deals with exclusion.

Article 17 QD (recast)
Exclusion

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

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious crime;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

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

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

[389] High Court (Ireland), judgment of 27 January 2017, *B. A. and Others* v *International Protection Appeals Tribunal*, [2017] IEHC 36, para. 37. Note that UNHCR refers to compelling reasons arising out of 'atrocious past persecution', giving examples of ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons (UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 20). See also UNHCR, *Handbook*, op. cit. (fn. 67 above), para. 136, stating: 'It is frequently recognized that a person who – or whose family – has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.'

For more information concerning the content of Article 17 refer to EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020.

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

Article 19(2) covers fugitives from justice. Subsidiary protection status may be ended if it comes to light that the person concerned, after having been granted subsidiary protection status, should have been excluded from being eligible for this protection pursuant to Article 17(3). The exclusion grounds provided in Article 17(3) lay down a non-mandatory ground for exclusion from subsidiary protection, so it may not be applied by a Member State that has not incorporated this article into its national law.

Note that Article 17(3) refers simply to '**one or more crimes**', as opposed to a '**serious**' crime as referred to in Article 17(1)(b) and '**particularly serious**' crimes as referred to in Article 14(4)(b). The word 'solely' indicates that a person whose reasons for flight were mixed and not merely a way of avoiding sanctions does not fall under this provision [390].

The CJEU has not yet ruled on the interpretation of Article 17(3). It is clear, however, that the grounds for exclusion laid down in that provision may be applied only if:

- the person concerned left their country of origin 'solely' in order to avoid sanctions resulting from one or more crimes outside the scope of Article 17(1); and
- the person committed those crimes prior to their admission to the Member State assessing their eligibility for subsidiary protection; and
- the crimes would be punishable by imprisonment had they been committed in the said Member State.

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

Article 19(3)(a) is a mandatory provision. It provides for the revocation, of ending of or refusal to renew subsidiary protection status when there are serious reasons for considering that the exclusion grounds in Article 17(1) and (2) apply.

Like Article 14(3)(a), Article 19(3)(a) applies to cases in which the person concerned should never have been granted subsidiary protection status, as well as to cases in which the grounds for exclusion have arisen after that grant of protection [391].

Article 17(1) sets out four grounds for exclusion, the main elements of which are in Figure 14.

[390] Storey, H., 'Article 17, Qualification Directive 2011/95/EC', in Hailbronner and Thym, *EU Immigration and Asylum Law: A Commentary*, op. cit. (fn. 93 above) (hereafter Storey, 'Article 17 QD (recast)'), p. 1246, para. 7.

[391] Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 31 March 2011, 10 C 2.10, MN 23, DE:BVerwG:2011:310311U10C2.10.0 (for English translation click on 'EN') (re Article 14(3)(a)); Marx, R., *MN 16 Handbuch zum Flüchtlingsschutz, Erläuterungen zur Qualifikationsrichtlinie*, 2nd edn, C. H. Beck, Munich, 2010, p. 616; Kraft, 'Article 14 QD (recast)' op. cit. (fn. 93 above).

Figure 14: Elements of Article 17(1)(a)–(d)

17(1)(a)	**Crime against peace, war crime, crime against humanity**
17(1)(b)	**Serious crime**
17(1)(c)	**Acts contrary to the purposes and principles of the UN**
17(1)(d)	**Danger to the community or the security of the Member State**

Article 17(1) contains some of the same grounds for exclusion as set out in Article 1F Refugee Convention (392), the differences being set out in this section. It should be noted that Article 17 does not explicitly require a final judgment by a criminal court (393). Furthermore, Article 17(2) states that Article 17(1) covers individuals who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

The provisions of Article 17(1)(a)–(d) are dealt with in detail in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Sections 4.1 'Introduction' and 4.2 'Mandatory grounds for exclusion from subsidiary protection status (Article 17(1) and (2))'.

However, given more recent developments in the CJEU case-law on this topic, it is necessary to further assess Article 17(1)(b). The issue of 'serious crime' in relation to Article 17(1)(b) arose in the case of *Ahmed* (394). The CJEU noted that this article:

> permits a person's exclusion from subsidiary protection status only where there are 'serious reasons' for taking the view that he [or she] has committed a serious crime. That provision sets out a ground for exclusion which constitutes an exception to the general rule stipulated by Article 18 [QD (recast)] and therefore calls for strict interpretation (395).

Article 18 QD (recast) obliges Member States to grant subsidiary protection status to third-country nationals or stateless persons who are eligible for subsidiary protection.

The CJEU in *Ahmed* addressed the factors to be considered when deciding what constitutes a 'serious crime' in the context of the revocation of subsidiary protection. It stated that 'the concept of serious crime in Article 17(1)(b) [QD (recast)] is not defined in that directive, nor does that directive contain any express reference to national law for the purpose of determining the meaning and scope of that concept' (396).

The court ruled that 'the scope of the ground for exclusion laid down by Article 17(1)(b) [QD (recast)] is broader than that of the ground for exclusion from refugee status laid down by Article 1(F)(b) [Refugee] Convention and Article 12(2)(b) [QD (recast)]' (397). In contrast to the grounds for exclusion from refugee status, it determined that 'the ground for exclusion from subsidiary protection laid down by Article 17(1)(b) [QD (recast)] refers more generally to a serious crime and is therefore limited neither territorially nor temporally, or as to the nature of the crimes at issue' (398).

In relation to the concept of 'serious crime', the court concluded in *Ahmed* that the penalty provided for a specific crime under the law of the Member State cannot be 'the sole criterion' for assessing whether an individual

(392) See Appendix A. Selected international provisions for the full wording of Article 1F Refugee Convention.

(393) Storey, 'Article 17 QD (recast)', op. cit. (fn. 392 above), p. 1246, para. 5.

(394) CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above).

(395) Ibid., para. 52. Article 18 states: 'Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.'

(396) CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above), para. 33.

(397) Ibid., para. 46.

(398) Ibid., para. 47. See also CJEU, 2020, *Commission* v *Poland, Hungary and Czech Republic*, op. cit. (fn. 13 above), para. 155, effectively quoting this judgment.

committed a serious crime within the meaning of Article 17(1)(b). Rather, it found: ‘It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned’ (399).

The judgment refers to EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2016, which recommends that:

> the seriousness of the crime that could result in a person being excluded from subsidiary protection be assessed in the light of a number of criteria such as, inter alia, the nature of the act at issue, the consequences of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided and the taking into account of whether most jurisdictions also classify the act at issue as a serious crime (400).

Furthermore, the CJEU in *Commission* v *Poland, Hungary and Czech Republic* again highlighted the significance of an individualised assessment in such exclusion cases and stated:

> it follows from the case-law of the Court that the competent authority of the Member State concerned cannot rely on the exclusion clause provided for in Article 12(2)(b) [QD (recast)] and Article 17(1)(b) of that directive, which concern the commission by the applicant for international protection of a ‘serious crime’, until it has undertaken, for each individual case, an assessment of the specific facts within its knowledge (401).

The Austrian Supreme Administrative Court stated that, when dealing with Article 17(1)(b) in the context of ‘serious crime’, each case must be examined in detail with reference to the CJEU criteria set in *Ahmed* (402).

In terms of other national case-law on ending subsidiary protection on exclusion grounds, the National Court of Asylum Law in France confirmed that it was lawful to apply Article 19(3)(a) and Article 17(1)(d) where an Afghan national constituted a serious threat to the community and to the security of the state. The state, in that case, had information from the Italian authorities about the individual’s involvement in terrorist activities, and his records showed that he was a wanted person (403). By contrast, in a Belgian case, a Syrian, who had been granted subsidiary protection status, was convicted of several crimes of shoplifting including of a handbag, a scarf, two bottles of whisky, bananas and various personal care products. The Council for Aliens Law Litigation found that, although these actions could be described as reprehensible, considering the circumstances, including the individual’s problems and his weekly medical consultations, the acts could not be classified as a serious crime (404).

For further information concerning the content of Article 17(1) and (2), see EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Section 4.2 ‘Mandatory grounds for exclusion from subsidiary protection status (Article 17(1) and (2))’.

6.4. Misrepresentation or omission: Article 19(3)(b)

Article 19(3)(b) requires Member States to ‘revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person, if: […] his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status’.

Misrepresentation or omission of facts in relation to ending refugee status on these grounds is dealt with in Section 4.3 above. The general principles and case-law also apply to ending subsidiary protection status.

The question of what happens in circumstances where subsidiary protection was granted based on facts that were subsequently revealed to be incorrect, and where the individual concerned had not misled the Member State, arose in the CJEU case of *Bilali* (405). The Supreme Administrative Court of Austria referred the following question to the CJEU:

> Do the provisions of EU law, in particular Article 19(3) [QD (recast)], preclude a national provision of a Member State concerning the possibility of revocation of subsidiary protection status pursuant to

(399) CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above), para. 58.

(400) Ibid., para. 56, referring also in para. 57 to UNHCR, *Handbook*, op. cit. (fn. 67 above), paras 155–157.

(401) CJEU, 2020, *Commission* v *Poland, Hungary and Czech Republic*, op. cit. (fn. 13 above), para. 154.

(402) Supreme Administrative Court (*Verwaltungsgerichtshof*, Austria), judgment of 6 November 2018, Ra 2018/18/0295, AT:VWGH:2018:RA2018180295.L01.

(403) National Court of Asylum Law (CNDA, France), judgment of 11 April 2019, *M. A.*, No 16037707 C.

(404) Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 20 June 2018, No 205.570.

(405) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above).

> which subsidiary protection status may be revoked without a change in the factual circumstances themselves which are relevant for the purpose of granting that status, but rather only where the state of knowledge of the authority in this regard has undergone a change, and, in that context, without either a misrepresentation or an omission of facts on the part of the third-country national or stateless person having been a determinant factor in the granting of the subsidiary protection status? (406)

In the words of the CJEU itself, the referring court was asking:

> in essence whether Article 19 [QD (recast)] must be interpreted as precluding a Member State from revoking subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion (407).

Regarding the scope of Article 19(3), the CJEU confirmed that 'Article 19(3)(b) of that directive provides for the loss of subsidiary protection status only where there has been a misrepresentation or omission by the person concerned that was decisive for the granting of that status' (408). However, the court noted that Article 19 does not 'expressly preclude subsidiary protection status being lost where the host Member State realises that it has granted that status on the basis of incorrect information that is not attributable to the person concerned' (409).

While Article 19(3)(b) was found to be inapplicable to the facts in *Bilali*, the court went on to consider whether, by also taking into account the purpose and general scheme of the QD (recast), one of the other reasons for the loss of subsidiary protection status, as listed in Article 19, was applicable to such a situation. The court found that:

> Article 19(1) [QD (recast)], read in conjunction with Article 16 thereof, must be interpreted as meaning that a Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion (410).

For further discussion on *Bilali*, see Section 6.2.2 above.

The Belgian Council for Aliens Law Litigation withdrew the subsidiary protection status of a beneficiary after new information revealed that he had used a false identity and ethnic origin, which he had supported with false documents when applying for international protection. The court stated that the question was whether the conditions for withdrawal of subsidiary protection status had been met, and the fact that the person's centre of interests was in Belgium did not in any way prevent the withdrawal of protection (411).

In another Belgian case, the same court withdrew the subsidiary protection status of a woman from Aleppo, when the authorities became aware that she had both Syrian and Polish nationality, but had withheld information relating to her Polish nationality in her application for international protection (412).

(406) CJEU, 2019, *Bilali*, op. cit. (fn. 14 above), para. 30.
(407) Ibid., para. 31.
(408) Ibid., para. 41.
(409) Ibid., para. 42.
(410) Ibid., para. 65.
(411) Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 7 December 2020, No 245.502.
(412) Council for Aliens Law Litigation (RVV/CCE, Belgium), judgment of 20 March 2019, No 218.531.

Part 7. Matters relating to procedures and proof

When determining whether international protection should be revoked or ended, or renewal refused, courts and tribunals are required to consider the relevant provisions of the APD (recast) in order to ensure fair procedures are afforded to the individual concerned.

Part 7 outlines the procedural guarantees available to beneficiaries of refugee status and subsidiary protection status whose protection is being revoked or ended or where there is a refusal to renew such status.

Part 7 is structured as shown in Table 9.

Table 9: Structure of Part 7

7.1. Withdrawal of international protection

The procedure for the withdrawal of international protection is different from that for qualification for international protection, as it is initiated by the relevant national authority and is directed against a beneficiary of international protection.

Article 44 APD (recast)
Withdrawal of international protection

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

Note that the wording of Article 44 states that an examination of this kind '**may** commence'. The use of the word 'may' could be understood to confer discretion on the Member State whether to commence an examination to withdraw international protection. Such an interpretation may, however, not be easy to reconcile with the mandatory nature of some parts of Article 14 and 19 QD (recast).

In practice, Member States do not conduct such examinations every time new information arises. In Ireland and France, for example, such examinations usually occur when a public order or security issue arises in relation to a beneficiary of international protection. In some Member States, however, subsidiary protection status is re-examined more frequently ([413]).

([413]) In France, the authorities do not systematically reconsider the numerous protection statuses they have granted, but rather examine ending protection when a public order problem arises with a beneficiary of international protection. By contrast, in Czechia, subsidiary protection status only lasts for 1 year and there are therefore many cases that deal with the renewal/non-renewal of such protection.

'New elements or findings' may arise, for instance, when the circumstances that led to the granting of international protection have ceased to exist ([414]) or 'have changed to such a degree that protection is no longer required' ([415]). Alternatively, new information may have come to light to suggest that the beneficiary of international protection is a danger to the security of the state or to the community ([416]) or that they should have been or are excluded from being eligible for refugee status or subsidiary protection status ([417]). Furthermore, new elements or findings may arise that establish that the beneficiary of international protection misrepresented or omitted facts in their application for international protection and that this was decisive for the granting of that protection status ([418]).

7.2. Procedural guarantees

While procedural issues are dealt with fully in the EASO judicial analysis on asylum procedures and the principle of *non-refoulement* ([419]), this section outlines the specific procedural rules that apply when refugee status and subsidiary protection status are being withdrawn.

Article 45 APD (recast) sets out several guarantees to which an individual is entitled when the validity of their international protection status is being reconsidered.

Article 45 APD (recast)
Procedural rules

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

(a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and

(b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

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

(a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

(b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

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

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

([414]) Article 11 QD (recast) in conjunction with Article 14.

([415]) Article 16 QD (recast) in conjunction with Article 19.

([416]) Article 14(4) QD (recast) and Article 19(3)(a).

([417]) Article 14(3)(a) and Article 19(2)–(3) in conjunction with Article 17.

([418]) Article 14(3)(b) and Article 19(3)(b).

([419]) EASO, *Asylum Procedures and the Principle of* Non-refoulement *– Judicial analysis*, 2018, op. cit. (fn. 89 above).

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

Article 45 APD (recast) reflects the principle set out in recital 49 APD (recast), which requires that 'persons benefiting from international protection [be] 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'. This ensures that persons adversely affected by such a reconsideration of their protection status are entitled to fair procedures in line with the principle of *audi alteram partem*. This principle holds that everyone has the right to hear and confront the evidence against them in a fair way.

The duty to give reasons for decisions is part of the right to effective judicial protection ([420]). The guarantees set out in Article 45 APD (recast) include being informed in writing of the reconsideration of international protection and being given reasons why such reconsideration is being conducted, along with being afforded an opportunity to submit reasons why international protection should not be withdrawn ([421]). The opportunity to submit reasons accords with the right to be heard, which 'forms an integral part of the rights of the defence, the observance of which constitutes a general principle of EU law' ([422]).

If a personal interview is conducted, the beneficiary of international protection must receive the services of an interpreter whenever necessary in accordance with Article 12(1)(b) APD (recast) ([423]). The requirement to offer interpretation is limited to cases where 'appropriate communication cannot be ensured without such services', meaning circumstances in which the beneficiary of international protection does not have sufficient command of the Member State language or another common language.

In relation to the personal interview, the beneficiary of international protection is also entitled to benefit from the guarantees set out in Articles 14–17 APD (recast). These provisions set out, inter alia, when the personal interview may be omitted, the conditions under which the personal interview must take place, the fact that an adequate opportunity must be given for the presentation of reasons, and the requirement that there be a thorough and factual report or record (transcript or audio or audiovisual) of the personal interview. According to Article 14(1), Member States may determine in national legislation the cases in which a minor must be given the opportunity of a personal interview. Furthermore, in accordance with Article 45(1)(b), if no personal interview is conducted, the beneficiary of international protection must still be able to submit written statements.

Member States also have obligations relating to fair procedures, pursuant to Article 45(2) APD (recast). These include ensuring that the competent authority is able to obtain precise and up-to-date country of origin information from various sources, such as EASO and UNHCR. This provision focuses on the importance of such information in the context of decisions ending international protection. It reflects the language of recital 39 APD (recast), which refers to qualification for international protection and states:

> In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, UNHCR, the Council of Europe and other relevant international organisations.

The asylum procedure should at all stages respect the confidentiality of all aspects of a claim, and no information on the asylum application should be shared with the country of origin ([424]). Therefore, if information on a case is collected, it must not be obtained from the actor(s) of persecution or serious harm which would lead to them being informed that an individual's international protection is being reconsidered. The collection of such

([420]) CJEU (GC), judgment of 3 September 2008, *Yassin Abdullah Kadi and Al Barakaat International Foundation* v *Council of the European Union and Commission of the European Communities*, joined cases C-402/05 P and C-415/05 P, EU:C:2008:461, paras 335–353.

([421]) Article 45(1)(a) and (b) APD (recast).

([422]) CJEU, judgment of 9 February 2017, *M* v *Minister for Justice and Equality, Ireland, Attorney General*, C-560/14, EU:C:2017:101, para 25. See also paras 49–50; CJEU, judgment of 11 December 2014, *Boudjlida* v *Préfet des Pyrénées-Atlantiques*, C-249/13, EU:C:2014:2431, paras 39–40.

([423]) Article 12(1)(b) APD (recast) requires Member States to ensure that applicants 'shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds'.

([424]) Article 48 APD (recast) states: 'Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.' See also UNHCR, 'Asylum processes (fair and efficient asylum procedures)', Global Consultations on International Protection, EC/GC/01/12, 31 May 2001, para. 50(m). The document is a collection of best state practice, including national legislation.

information should also not jeopardise the physical integrity of the person or their dependants, or the liberty and security of their family members in the country of origin ([425]).

The duty to give reasons is also covered by Article 45(3) APD (recast). The 'reasons in fact and in law' must be set out in the written decision to withdraw international protection along with written information on how to challenge the decision. The CJEU refers to the duty to give reasons in *M,* in which it ruled that the determining authority must 'state reasons for that decision adequately, so that, where appropriate, the applicant can exercise his right of appeal' ([426]). National rules may necessarily influence the way in which reasons are presented in the written decisions. Moreover, the precise implications of the EU law requirement of 'reasons in fact and in law' have yet to be determined by the CJEU ([427]). Member States are, nevertheless, required to respect the rights and guarantees that flow from the provisions of the QD (recast), APD (recast) and the rule of law in making decisions relating to ending international protection ([428]).

For further information on Articles 12, 14, 15, 16 and 17 APD (recast), see Section 4.2 of the EASO judicial analysis on asylum procedures and the principle of *non-refoulement*.

7.3. Individual assessment

Article 14(2) and Article 19(4) QD (recast) provide that a Member State must not end international protection before the case has been individually examined ([429]). The duty of the Member State to carry out an individual assessment before ending international protection is comparable to the individual assessment provided for in Article 4(3) QD (recast) when assessing qualification for international protection. That article requires such an assessment to be carried out 'on an individual basis' and in consideration, inter alia, of 'all relevant facts as they relate to the country of origin [...], the relevant statements and documentation presented by the applicant' and 'the individual position and personal circumstances of the applicant, including factors such as background, gender and age'.

When the refugee or beneficiary of subsidiary protection is vulnerable, further procedures and guarantees, relating to legal representation, the personal interview and medical examination, must be afforded by the Member State. When a child's international protection status is being revoked or ended or there is a refusal to renew that status, Member States are required to ensure that the best interests of the child are a primary consideration ([430]).

For further information in relation to specific rights and guarantees afforded to vulnerable persons, see EASO, *Vulnerability in the context of applications for international protection – Judicial analysis*, 2021, notably Section 6.10 'Withdrawal of international protection because of an error when establishing facts on vulnerability' and Part 8 'Special procedural guarantees in proceedings before courts and tribunals'; EASO, *Asylum Procedures and the Principle of* Non-refoulement *– Judicial analysis*, 2018, Sections 4.2.7 'Applicants in need of special procedural guarantees' and 4.2.8 'Guarantees for unaccompanied minors'; and EASO, *Qualification for International Protection (Directive 2011/95/EU) – A judicial analysis*, 2016, Sections 1.4.2.6 'Acts of gender-specific or child-specific nature (Article 9(2)(f))' and 1.8.2.3 'General circumstances in the part of the country of origin and personal circumstances of the applicant'.

The CJEU also alluded to the principle of individual assessment in *B and D*, in which it referred to 'the individual assessment of the specific facts which must be undertaken before any decision is taken to exclude a person from refugee status' ([431]).

([425]) Article 45(2)(b) APD (recast), referring specifically to situations involving the reconsideration of international protection. This provision reflects the UNHCR position set out in UNHCR, 'Advisory opinion on the rules of confidentiality regarding asylum information', 31 March 2005. For further reading, see EASO, *Evidence and credibility assessment in the context of the Common European Asylum System – Judicial analysis*, op. cit. (fn. 277 above), Section 5.6.2.

([426]) CJEU, 2017, *M* v *Minister for Justice and Equality*, op. cit. (fn. 424 above), para. 32.

([427]) EASO, *Asylum Procedures and the Principle of* Non-refoulement *– Judicial analysis*, op. cit. (fn. 89 above), p. 86.

([428]) In Member States that did not opt into the recast directives, it is the QD and APD that apply.

([429]) Article 14(2) states 'Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.' Article 19(4) states 'Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.'

([430]) Article 25(6) APD (recast).

([431]) CJEU, 2010, *B and D*, op. cit. (fn. 11 above), para. 91.

Furthermore, the CJEU emphasised the importance of the individual assessment in *Ahmed*, a case concerning exclusion. It ruled that 'any decision to exclude a person from refugee status must be preceded by a full investigation into all the circumstances of his individual case and cannot be taken automatically' ([432]).

The Court of Appeal (England and Wales, United Kingdom), in *MA (Somalia)*, when dealing with the issue of ceased circumstances and state protection, also emphasised that 'it is an individualised approach' ([433]). The importance of the individualised assessment was also illustrated in the French National Court of Asylum Law, which found that the refugee status granted to an Afghan citizen should be revoked, because he had obtained an Afghan passport and travelled back to his country of origin. The court nevertheless granted him subsidiary protection status, after an individual assessment, considering the intensity and prevalence of generalised violence in the Afghan province from which he came ([434]).

The provisions in the APD (recast) and the related CJEU and national case-law broadly correspond to UNHCR's recommendations on safeguards and guarantees of procedural fairness, which propose a list of minimum procedural requirements pertaining to the cessation, revocation and what UNHCR refers to as 'cancellation' of refugee status ([435]).

7.4. Matters relating to proof

The burden of proof in cases involving the revocation of, ending of or refusal to renew refugee status or subsidiary protection status lies with the Member State concerned, as indicated in Article 14(2) and Article 19(4) QD (recast).

Article 14(2) QD (recast)
Revocation of, ending of or refusal to renew refugee status

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

Article 19(4) QD (recast)
Revocation of, ending of or refusal to renew subsidiary protection status

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

Article 14(2) and Article 19(4) respectively state that the burden of proof to 'demonstrate' that a person has ceased to be a refugee or was never a refugee, or has ceased to be or is not eligible for subsidiary protection, lies with the Member State concerned.

According to the CJEU, in relation to ceased circumstances, the assessment to be carried out is 'analogous to that carried out during the examination of an initial application for the granting of refugee status' and must be carried out with 'vigilance and care' ([436]). In a case dealing with cessation due to change of circumstances, the UK Upper Tribunal (Immigration and Asylum Chamber) stated in *SB (Somalia)*: 'it will be for the Secretary of State to

([432]) CJEU, 2018, *Ahmed*, op. cit. (fn. 12 above), para. 49.

([433]) Court of Appeal (England and Wales, United Kingdom), 2018, *MA (Somalia)*, op. cit. (fn. 25 above), para. 49.

([434]) National Court of Asylum Law (CNDA, France), 2015, *M. Z.*, No 14033523 C+, op. cit. (fn. 45 above).

([435]) On cessation, see UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 25. On revocation and cancellation, see UNHCR, 'Note on the cancellation of refugee status', op. cit. (fn. 8 above), paras 42–43. Note that the term 'cancellation' used by UNHCR does not appear in the QD (recast).

([436]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

persuade the fact-finding tribunal that, on all the current evidence before it, there has been a "significant and non-temporary" change' [437].

In the context of ceased circumstances and the Refugee Convention, UNHCR states that 'The burden rests on the country of asylum to demonstrate that there has been a fundamental, stable and durable change in the country of origin and that invocation of Article 1C(5) or (6) is appropriate' [438].

For further information on the burden of proof in relation to cessation, see EASO, *Evidence and credibility assessment in the context of the Common European Asylum System – Judicial analysis*, 2018, Section 5.6 'Withdrawal of protection and assessment of evidence'.

In cases concerning the revocation of, ending of or refusal to renew refugee status pursuant to Article 14(3) in accordance with Article 12 QD (recast) on exclusion grounds, such grounds must be 'established' by the Member State. Similarly, in cases of revocation of, ending of or refusal to renew refugee status due to misrepresentation or omission of fact, pursuant to Article 14(3)(b), these grounds must also be 'established' by the Member State.

The French National Court of Asylum Law, in a case relating to alleged misrepresentation of identity, found that the information brought by the administration was not sufficient proof to certify the misrepresentation [439]. The information included an address that was purportedly the same as another person's address. However, this address was a university address, which was used by 8 000 other students. Furthermore, even though the refugee's name was the same as another individual's name, this was a common name in the region from which the person came.

The CJEU in *B and D*, while not expressly referring to the applicable burden of proof, emphasised, in the context of an exclusion case, the necessity to 'examine all the relevant circumstances before a decision excluding that person from refugee status pursuant to Article 12(2)(b) or (c) [QD] can be adopted' [440]. For more on the burden of proof in the context of exclusion see EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Section 1.4 'Burden of proof'; see also EASO, *Evidence and credibility assessment in the context of the Common European Asylum System – Judicial analysis*, 2018, Section 5.5 'Exclusion and the assessment of evidence'.

Notwithstanding the fact that the burden of proof is on the Member State, the beneficiary of international protection has a duty of cooperation. Article 14(2), which deals with revocation of, ending of and refusal to renew refugee status, states that the duty is on the Member States 'Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal'. Article 19(4) contains a similar clause in relation to subsidiary protection.

The significance of the shared duty was underlined by the CJEU in *M. M.*, a case that dealt with an assessment of an application for international protection, but is nevertheless useful in this context by way of analogy. The court stated that 'although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application' [441].

The Irish High Court highlighted the duty of cooperation in a case in which refugee status was revoked when false information came to light [442]. The court paid attention to the refugee's failure to disclose details of fraudulent passport visas, coupled with an absence of identity documentation and the different accounts given of involvement with the UK Border Agency. The duty of cooperation also featured in another Irish High Court case, in which a revocation order was made based on false and misleading information given by an applicant in relation

[437] Upper Tribunal (Immigration and Asylum Chamber, United Kingdom), judgment of 1 November 2019, *SB (refugee revocation – IDP camps) Somalia*, [2019] UKUT 358, para. 76. See also Asylum and Immigration Tribunal (United Kingdom), 2007, *RD (Cessation – burden of proof – procedure) Algeria*, op. cit. (fn. 95 above), para. 19.

[438] UNHCR, Guidelines on International Protection: No 3, op. cit. (fn. 37 above), para. 25(ii).

[439] National Court of Asylum Law (CNDA, France), judgment of 1 March 2011, *OFPRA* v *S.*, No 10004319.

[440] CJEU, 2010, *B and D*, op. cit. (fn. 11 above), para. 98.

[441] CJEU, judgment of 22 November 2012, *M. M.* v *Minister for Justice, Equality and Law Reform*, C-277/11, EU:C:2012:744, para. 65.

[442] High Court (Ireland), judgment of 20 January 2017, *S.A.S. and Another* v *Minister for Justice and Equality and Another*, [2017] IEHC 163. With regard to the burden of proof in cases that fall under Article 14(3)(b) or Article 19(3)(b), UNHCR states that the burden of proof in 'cancellation' cases generally rests on the authority, while the standard of proof that needs to be met depends on the issue based on which the grant of status may have been incorrect. See UNHCR, 'Note on the cancellation of refugee status', op. cit. (fn. 8 above), paras 34–36; and UNHCR, 'Background note on the application of the exclusion clauses : Article 1F of the 1951 Convention relating to the Status of Refugees', 4 September 2003, which deals with issues of non-cooperation in the exclusion context at para. 111.

to her husband ([443]). The French National Court of Asylum Law found that the submission of multiple asylum applications under various identities contravened the duty of cooperation ([444]).

The standard of proof varies depending on the type of case. In cases relating to revocation of, ending of or refusal to renew refugee status based on exclusion grounds pursuant to Article 12, or in cases of revoking, ending or refusing to renew subsidiary protection on exclusion grounds pursuant to Article 19(3)(a) QD (recast) in conjunction with Article 17(1) and (2), the standard of proof is 'serious reasons for considering' ([445]). The German Federal Administrative Court has stated 'as a rule, reasons are "good" when there is clear, credible evidence that such crimes have been committed' ([446]).

Article 14(4)(a), which deals with revocation of, ending of or refusal to renew refugee status on the grounds of danger to the security of the Member State, sets a standard of proof of 'reasonable grounds for regarding'.

According to the German Federal Administrative Court, 'reasonable grounds', referred to in Article 14(4), provide for a somewhat lower threshold than 'serious reasons', but in assessing the facts the standard of evidence remains unaffected ([447]). Furthermore, the Supreme Court in the United Kingdom has stated that 'serious reasons' is a stronger standard of proof than 'reasonable grounds' ([448]).

For further discussion on 'serious reasons for considering', see EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Sections 3.2 'Serious reasons for considering' and 4.2.1 'Serious reasons'.

In relation to the standard of proof pertaining to cessation cases, and in particular Article 11(1)(e)–(f) QD, which corresponds to Article 11(1)(e)–(f) QD (recast), the CJEU stated that the same standard of probability of 'a well-founded fear of persecution' applies in relation to refugees ([449]) and, in the case of subsidiary protection, 'substantial grounds for believing' there is a real risk of serious harm applies. Similarly, the CJEU stated:

> when the circumstances which resulted in the granting of refugee status have ceased to exist and … there are no other circumstances which could justify a fear of persecution … either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) [QD], **the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted** ([450]).

The German Federal Administrative Court has found that, in assessing whether the individual still has a need for international protection at the time of cessation on grounds that were not material to the initial decision, the relevant facts must be established afresh and the findings in the original decision granting refugee status have no binding force in this context ([451]).

Further issues in relation to the burden of proof in exclusion are treated in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Sections 1.4 'Burden of proof', 3.2 'Serious reasons for considering', and 4.2.1 'Serious reasons'.

Further guidance in relation to proof can be found in EASO, *Evidence and credibility assessment in the context of the common European asylum system – Judicial analysis*, 2018, Part 4 'Specific principles and standards applicable to evidence and credibility assessment' and Sections 5.6.1 'Burden of proof and the duty of individual assessment', 5.6.2 'Obtaining the elements to demonstrate grounds for withdrawal of international protection', 5.6.3.2 'Revocation, ending or refusal to renew international protection status as a result of exclusion, misrepresentation or omission' and 5.6.3.3 'Danger to security or community of Member State'.

([443]) High Court (Ireland), 2016, *T.F. (Nigeria)* v *Minister for Justice and Equality and Another*, op. cit. (fn. 269 above). The court was satisfied that if the applicant had disclosed the true nature of her relationship with her husband to the International Protection Appeals Tribunal it would have made a material difference to the decision reached.

([444]) CNDA (France), judgment of 7 May 2013, *OFPRA* v *M. A.*, No 12021083.

([445]) Supreme Administrative Court (*Nejvyšší správní soud*, Czechia), Judgment of 31 March 2011, *A. S.* v *Ministry of Interior*, 4 Azs 60/2007-136, p. 18, which considered the standard of 'serious grounds for considering' to be limited by the minimal level of approximately 50 % probability. To meet this standard of proof, clear, persuasive and credible evidence must be available, not just assumptions. Such strong evidence may be based on the confession of the applicant or the testimony of other persons, but is not conditional upon the criminal conviction of the applicant. By contrast, the mere fact of an extradition request or criminal proceedings against the applicant in the country of origin is per se not sufficient to meet this standard.

([446]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), 2011, BVerwG 10 C 2.10, op. cit. (fn. 393 above), para. 26.

([447]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), judgment of 22 May 2012, BVerwG 1 C 8.11, BVerwG:2012:220512U1C8.11.0, para. 27.

([448]) Supreme Court (United Kingdom), judgment of 21 November 2012, *Al-Sirri* v *Secretary of State for the Home Department*, [2012] UKSC 54, para. 75.

([449]) CJEU (GC), 2010, *Abdulla*, op. cit. (fn. 24).

([450]) Ibid., para. 91 (emphasis added). *Abdulla* dealt with the QD and not the QD (recast), hence the reference to Article 2(c) and not Article 2(d) as it is in the QD (recast).

([451]) Federal Administrative Court (*Bundesverwaltungsgericht*, Germany), 2011, 10 C 29.10, op. cit. (fn. 213 above), para. 20.

7.5. Use of classified, confidential, restricted or undisclosed information

An issue that often arises in the context of decisions on revoking, ending or refusing to renew international protection is the question of how to deal with classified, confidential, restricted or undisclosed information that is in the possession of the Member State and related to the beneficiary of international protection. This information may arise, for example, when the person has been convicted of a particularly serious crime or when they constitute a danger to the security of the state (452).

Issues relating to exclusion and confidential and classified information have been addressed in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Section 5.2 'Use of classified information'. Further information on the topic of confidential and classified information can be found in EASO, *Asylum Procedures and the Principle of* Non-refoulement *– Judicial analysis*, 2018, Section 4.2.6.2 'Legal assistance and representation'. However, this issue also needs to be addressed here with specific reference to the ending of international protection.

The right of every person to have access to their file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, is part of the right to good administration, enshrined in Article 41(2) EU Charter, which the CJEU has confirmed reflects a general principle of EU law (453).

Furthermore, Article 23(1) APD (recast), first paragraph, requires Member States to 'ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant ..., shall enjoy access to the information in the applicant's file'. The word 'applicant' in this context must be read in light of Article 45(4) APD (recast), which deals with the procedural rules for withdrawing international protection. In addition, the CJEU case of *M* refers to the right to fair procedures and specifically the right of the applicant to 'comment in detail on the elements that must be taken into account by the competent authority' (454).

There are, however, some instances when a Member State can withhold information contained in a file. Article 23(1) APD (recast), second paragraph, sets out an exception to the general rule if the disclosure of such 'information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates'. This exception can also apply 'where the investigative interests relating to the examination of applications for international protection by the Member States or the international relations of the Member States would be compromised'.

If a Member State invokes the exception in Article 23(1), it is obliged to make access to such information or sources available to the authorities referred to in Article 46 (455). The Member State must, however, also 'establish in national law procedures guaranteeing that the applicant's rights of defence are respected' (Article 23(1)(b)).

There is also a saving clause in Article 23(1), which allows a Member State to 'grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection'. Note, though, that this saving clause is not mandatory.

Where the issue of confidential or classified information arises, the French Council of State found that such information, communicated to the parties, can be taken into consideration (456). This principle is applied in French asylum cases (457). Moreover, in 2015, provisions were introduced in the French Code on the entry and stay of foreigners and the right of asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA)). On the one hand, these allow for the communication to the parties of any element that is not on the file and that the court might use against the applicant. On the other, they allow the determining authority, French Office for the Protection of Refugees and Stateless Persons *(Office français de protection des réfugiés et apatrides* (OFPRA))

(452) An example of this is the decision of Council of State (*Conseil d'état*, France), judgment of 17 April 2019, *OFPRA* c *Mme B*, No 419722 C, FR:CECHR:2019:419722.20190417. It emerged from the confidential documents that the refugee had come into contact, on social networks, with members of Dagestan jihadist networks and then travelled to Turkey in 2014. The files showed she had married a compatriot in Turkey who was killed while fighting in Syria for the Islamic State, and that she herself had become involved in the group.

(453) CJEU, judgment of 8 May 2014, *H. N.* v *Minister for Justice, Equality and Law Reform, Ireland, Attorney-General*, C-604/12, EU:C:2014:302, para. 49.

(454) CJEU, 2017, *M* v *Minister for Justice and Equality*, op. cit. (fn. 422 above), para. 40. See also, in relation to fair procedures, CJEU (GC), judgment of 4 June 2013, *ZZ* v *Secretary of State for the Home Department*, C-300/11, EU:C:2013:363.

(455) Article 46 APD (recast) on the right to an effective remedy refers to courts and tribunals.

(456) Council of State (*Conseil d'état*, France), judgment of 3 March 2003, *Ministre de l'intérieur* c *M. X.*, No 238662 A; and judgment of 11 December 2015, *JD*, No 394989, FR:CESEC:2015:394989.20151211.

(457) Council of State (*Conseil d'état*, France), judgment of 20 February 2019, *M. A.C.B.*, No 421212, FR:CECHR:2019:421212.20190220, para. 3; and 2020, *M. B.*, Nos 425231, *M. A.C.B.*, No 428140 B, op. cit. (fn. 288 above).

to refuse to divulge information to preserve the security of its source. If this is the case, however, the court can consider the confidential information but cannot base its decision exclusively on these elements (458).

In some Member States, the intelligence services will provide information to the court disclosing facts, dates and identification without disclosing the source of the information. Issues may then arise in relation to whether the Member State is allowed to withhold the source of the information. The French courts, for example, have decided that, when such pieces of evidence are put before it, the court will take a balanced approach and consider those elements to be admissible but only to be considered along with the other evidence (459). French legislation provides that, where the determining authority relies on an anonymous source in order to guarantee the security of that source, it must justify the need for confidentiality and provide a summary of the elements of this piece of information (460). It also makes clear that judges cannot base their judgment exclusively on confidential information (461).

It is important to note that, just because there is information on file to suggest that someone is a wanted person, it may not necessarily follow from a court's full investigation of the evidence that the person concerned would constitute a threat to the security of the state or a danger to the community (462).

7.6. Effective remedy

Just as an applicant for international protection has the right to an effective remedy in the course of the procedure assessing their qualification for international protection, such a remedy must also be available in relation to decisions that may deprive beneficiaries of international protection of an existing status.

Recital 50 APD (recast) states:

> It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal (463).

Article 46 APD (recast) sets out the right to an effective remedy. Article 46(1)(c) is a mandatory provision that obliges Member States to 'ensure that applicants have the right to an effective remedy before a court or tribunal, against […] a decision to withdraw international protection pursuant to Article 45'. This provision is to be interpreted in line with the EU Charter, as stressed by the CJEU in *JP,* which confirmed:

> The characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a manner consistent with Article 47 [EU] Charter, which states that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article (464).

During the appeal, procedural guarantees apply. Article 45 sets out procedural rules that must be followed when a Member State is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 QD (recast). Article 45 APD (recast) and the guarantees therein are set out in full in Section 7.2 above. They include the right to be informed in writing of the decision to reconsider international protection and the opportunity to respond (465). In addition, a written decision on the withdrawal of international protection setting out the reasons in fact and law must be given along with information on how to challenge the decision (466).

(458) Council of State (*Conseil d'état*, France), judgment of 19 June 2017, *OFPRA* c *M. A.*, No 389868, FR:CECHR:2017:389868.20170619.

(459) Council of State (*Conseil d'état*, France), 2003, *Ministre de l'intérieur* v *M. X.*, No 238662, op. cit. (fn. 458 above); 2015, *JD*, No 394989, op. cit. (fn. 458 above).

(460) L. 733-4 CESEDA, op. cit. (fn. 288 above).

(461) Ibid.

(462) Council of State (France), 2019, *OFPRA* c *M. G.*, No 416013 A, op. cit. (fn. 304 above).

(463) For more on the definition of 'court or tribunal', see CJEU, judgment of 31 January 2013, *H.I.D., B.A.* v *Refugee Applications Commissioner and Others*, C-175/11, EU:C:2013:45, para. 83, stating that 'in order to determine whether a body making a reference is "a court or tribunal" for the purposes of Article 267 TFEU, which is a question governed by European Union law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent' (citations omitted).

(464) CJEU, judgment of 9 September 2020, *JP* v *Commissaire général aux réfugiés et aux apatrides*, C-651/19, EU:C:2020:681, para. 27.

(465) Article 45(1)(a)–(b) APD (recast).

(466) Article 45(3) APD (recast).

Member States are obliged to ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law ([467]). However, the right of the applicant, recognised by Article 46(3), to obtain a full and *ex nunc* examination before a court or tribunal cannot diminish the obligation on the part of the applicant to cooperate with that body ([468]).

Article 46(4) APD (recast) leaves a certain margin of discretion to the Member States in relation to the task of determining reasonable time limits for applicants to exercise their right to an effective remedy. However, the time limits introduced are subject to the qualification that they must not render such exercise impossible or excessively difficult. The setting of time limits that falls within the scope of the principle of the procedural autonomy of the Member States is nevertheless subject to regard for the principles of equivalence and effectiveness ([469]).

For further discussion on the principle of effective remedy, see EASO, *Evidence and credibility assessment in the context of the Common European Asylum System – Judicial analysis*, 2018, Section 3.1 'Examination of facts and points of law by a court or tribunal'.

See also EASO, *Asylum Procedures and the Principle of* Non-refoulement *– Judicial analysis*, 2018, Part 6 'Right to an effective remedy'.

([467]) Article 46(3) APD (recast). See CJEU, judgment of 19 March 2020, *PG v Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paras 28–31; CJEU, judgment of 19 March 2020, *LH v Bevándorlási és Menekültügyi Hivatal*, C-564/18, EU:C:2020:218, paras 69–71.

([468]) CJEU (GC), judgment of 25 July 2018, *Alheto* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-585/16, EU:C:2018:584, para. 116.

([469]) CJEU, 2020, *JP* v *Commissaire général aux réfugiés et aux apatrides*, op. cit. (fn. 464 above), para. 50. This case dealt with legislation of a Member State that provides that proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible must be submitted within 10 days.

Appendix A. Selected international provisions

1951 Convention relating to the Status of Refugees

Article 1(C)–(F) – Definition of the term 'refugee'

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

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily 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; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;
Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

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

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

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

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

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Appendix B. Decision trees

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

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

Article 14(1) – Revocation of, ending of or refusal to renew refugee status due to ceased circumstances under Article 11(1)(a)–(d)

Article 14(1) in conjunction with Article 11(1)(a)–(d)

Article 14(1) obliges Member States to revoke, end or refuse to renew the refugee status if a person has ceased to be a refugee in accordance with Article 11(1)(a)–(f).

Article 11(1)(a)–(d) deals with situations where the actions of the individual refugee have resulted in a situation in which refugee status is no longer required.

Article 11(1)(a) Article 11(1)(a) deals with situations where the refugee 'has voluntarily re-availed himself or herself of the protection of the country of nationality'.	1. Has the refugee acted in a way that indicates that he or she 'has voluntarily re-availed himself or herself of the protection of the country of nationality'? a) The refugee must **re-avail himself or herself of protection**. b) The refugee must act **voluntarily**. c) The protection must be **provided by the country of nationality**.
Article 11(1)(b) Article 11(1)(b) deals with situations where the refugee 'having lost his or her nationality, has voluntarily re-acquired it'.	1. Had the refugee lost their nationality? 2. Has the refugee voluntarily re-acquired that nationality?
Article 11(1)(c) Article 11(1)(c) deals with situations where the refugee 'has acquired a new nationality, and enjoys the protection of the country of his or her new nationality'.	1. Has the refugee acquired a **new nationality**? 2. If so, does the country of the new nationality provide **effective** protection?

Article 11(1)(d)	
Article 11(1)(d) deals with situations where the refugee 'has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution'.	1. Has the refugee voluntarily '**re-established** himself or herself in the country' of origin? a) Has the refugee acted **voluntarily**? b) Has the refugee '**re-established** himself or herself in the country which **he or she left or outside** which he or she remained'? 2. If so, does the country of the new nationality provide **effective** protection?

Article 14 – Revocation of, ending of or refusal to renew refugee status due to ceased circumstances under Article 11(1)(e)–(f)

Article 14(1) in conjunction with Article 11(1)(e) and (f)

Article 14(1) obliges Member States to revoke, end or refuse to renew refugee status if a person has ceased to be a refugee in accordance with Article 11(1)(e)–(f).

Article 11(1)(e) and (f) deals with situations where 'the circumstances in connection with which [the person] has been recognised as a refugee have ceased to exist' such that there is no longer a need to continue to recognise refugee status.

Article 11(1)(e)	
Article 11(1)(e) deals with situations in which a third-country national or stateless person ceases to be a refugee 'because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist'.	1. Is the person concerned a **third-country national?** 2. Have the **'circumstances** in connection with which he or she has been recognised as a refugee … **ceased to exist'?** a) Comparing the facts on which the initial recognition of refugee status was based with those now existing, has there been a cessation of circumstances? b) Are the ceased circumstances of a sufficiently '**significant and non-temporary** nature'? 3. Can the person concerned 'no longer … refuse to avail himself or herself of the **protection of the country of nationality**'? a) Is there **effective protection** against persecution for the reason(s) on which the original persecution was based in accordance with Article 7(2) QD (recast)? b) Is this protection afforded by one of the **actors** enumerated in Article 7(1)(a) or (b)? 4. Is there a **causal connection** between the change in circumstances and the impossibility for the person concerned to 'refuse to avail himself or herself of the protection of the country of nationality' now existing? 5. Are there **other circumstances different from the reason upon which refugee status was previously granted** that give rise to a well-founded fear of persecution? 6. Are there '**compelling reasons** rising out of previous persecution for [the refugee] refusing to avail himself or herself of the protection of the country of nationality'? a) What were the factual **circumstances of the previous persecution**? b) What would be the **consequences** of a return to the country of origin?

Article 11(1)(f)	
Article 11(1)(f) Article 11(1)(f) deals with situations in which a third-country national or stateless person ceases to be a refugee 'because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist'.	1. Is the person concerned **stateless**? 2. Have the '**circumstances** in connection with which [they were] recognised as a refugee … **ceased to exist**'? a) Comparing the facts on which the initial recognition of refugee status was based with those now existing, has there been a **cessation of circumstances**? b) Is the cessation of a sufficiently '**significant and non-temporary** nature'? 3. Is the person concerned **able to return** to the country of former habitual residence? 4. Is there a **causal connection** between the ceased circumstances and the ability of the person to return to the country of former habitual residence? 5. Are there **other circumstances different from the reason for which refugee status was previously granted** that give rise to a well-founded fear of persecution? 6. Are there '**compelling reasons** arising out of previous persecution for [the refugee] refusing to avail himself or herself of the protection … of the country of former habitual residence'? a) What were the factual **circumstances of the previous persecution**? b) What would be the **consequences** of a return to the country of origin?

Article 14(3)–(4) – Revocation of, ending of or refusal to renew refugee status

Article 14(3)(a)

Article 14(3)(a) deals with persons who have been granted refugee status and should have been or are excluded from being a refugee in accordance with Article 12. The decision trees in EASO, *EASO, Exclusion: Articles 12 and 17 qualification directive – Judicial analysis,* 2nd edn, 2020, Appendix A, apply analogously.

Article 14(3)(b)

Article 14(3)(b) deals with revocation of refugee status, after it has been granted, if the Member State concerned establishes that the refugee's 'misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status'.

Article 14(3)(b)	
Article 14(3)(b) Article 14(3)(b) deals with situations where refugee status is revoked or ended or renewal is refused, if the refugee's 'misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status'.	1. Is one of the two elements that characterise the **misrepresentation or omission** present? a) Was the application for international protection based on **objectively incorrect statements or documents** or did the applicant **omit relevant statements or documents?** This first element is satisfied by demonstrating the existence of erroneous or false information or documents, such as giving a false nationality, making multiple asylum applications or using a false identity. b) Is there a **causal link** between the misrepresentation or omission of facts and the grant of refugee status? The misrepresentation or omission must have been decisive for the granting of refugee status.

Article 14(4)(a)

Article 14(4)(a) allows Member States to end refugee status when the person concerned is considered a danger to the security of the Member State concerned.

Article 14(4)(a)	
Article 14(4)(a) Article 14(4)(a) deals with situations where Member States 'revoke, end or refuse to renew the status granted to a refugee' when 'there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present'.	1. Are there reasonable grounds for regarding the refugee as **'a danger to the security of the Member State in which he or she is present'** within the meaning of Article 14(4)(a)? a) What is the **nature of the actions** undertaken by the person concerned in the country of origin, in a third country and on the territory of the Member State? b) What is the potential **danger to the security** of the Member State? Security of the Member State includes national security and public order. c) Are there reasonable grounds for regarding the person as a **danger to the security** of the Member State? d) Does the need to protect the security of the Member State **outweigh** the interest of the individual in being protected from persecution?

Article 14(4)(b)

Article 14(4)(b) allows Member States to end refugee status when the person concerned constitutes a danger to the community.

Article 14(4)(b)	
Article 14(4)(b) Article 14(4)(b) deals with situations where the status granted to a refugee under the directive is to be ended when 'he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'.	1. Do the facts of the case raise potential issues such that the person concerned, **'having been convicted by a final judgment of a particularly serious crime',** might be considered to be **'a danger to the community' of the Member State in which he or she is present** within the meaning of Article 14(4)(b)? 2. Was the crime committed **'particularly serious'**? This element must be assessed on an individual basis considering criteria including: • the nature of the act; • the consequences of the act; • the form of procedure used to prosecute the crime; • the nature of the penalty; • whether most jurisdictions would also classify the act at issue as a serious crime. The commission of the serious crime does not have to be limited territorially or temporally. 3. Was the person concerned **'convicted by a final judgment'** in the country of origin, in a third country or on the territory of the country of refuge? 4. What is the **potential danger to the community** of the Member State? a) Is there a real risk of reoffending, in other words is there a serious risk that the person concerned will commit comparable crimes in the future? b) A full investigation into all the circumstances of the individual case concerned is required. 5. Does the danger to the community within the state of refuge **outweigh** the interest of the individual in being protected from persecution?

Article 19(1) – Revocation of, ending of or refusal to renew subsidiary protection status due to ceased or changed circumstances under Article 16

Article 19(1) and Article 16 deal with ceased or changed circumstances in relation to subsidiary protection status.

Article 19(1) and Article 16 Article 19(1) and Article 16 deal with situations where a change in the host Member State's state of knowledge of the personal situation of the individual concerned can amount to a change of circumstances.	1. Have 'the circumstances which led to the granting of subsidiary protection status … **ceased to exist or … changed to such a degree that protection is no longer required**'? a) Comparing the facts on which the initial grant of subsidiary protection status was based with those now existing, have circumstances ceased to exist or changed 'to such a degree that protection is no longer required'? b) Is the change of a sufficiently '**significant and non-temporary** nature'? 2. **Is protection no longer required?** Is there effective protection pursuant to Article 7(2) QD (recast) against the serious harm, the risk of which originally led to the grant of subsidiary protection status? 3. Is there a **causal connection** between the change in circumstances and the end of the need for subsidiary protection status? 4. Are there **other circumstances** that give rise to a real risk of serious harm? 5. Are there '**compelling reasons** arising out of previous serious harm for [the person concerned] refusing to avail himself or herself of the protection of the country of nationality or … former habitual residence'? a) What were the factual circumstances of the previous serious harm? b) What would be the consequences of a return to the country of origin? c) Assessing these issues, do they constitute exceptional circumstances related to subsidiary protection that make it impossible reasonably to require the person concerned to return?

Article 19(2) and Article 17(3) deal with situations where applicants for international protection should have been excluded from subsidiary protection status because they left their country of origin in order to avoid criminal sanctions.

The decision tree in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Appendix A, applies analogously.

Article 19(3)(a) and Article 17(1)(a) and 17(2) deal with original or subsequent exclusion from subsidiary protection status because of the commission of international crimes. The decision tree in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Appendix A, applies analogously.

Articles 19(3)(a) and Article 17(1)(b) and 17(2) deal with original or subsequent exclusion because of serious crimes. The decision tree in EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020, Appendix A, applies analogously.

Article 19(3)(b) deals with situations where a misrepresentation or omission of facts was decisive for the granting of subsidiary protection status. The decision tree in respect of Article 14(3)(b) above applies analogously.

Appendix C. Methodology

The first edition of *Ending International Protection: Articles 11, 14, 16 and 19 qualification directive (2011/95/EU) – Judicial analysis* was published in December 2016. In 2018, under a specific contract implementing Framework Contract for Services EASO/2017/589, the International Association of Refugee and Migration Judges (IARMJ-Europe) [470] undertook a review of the first edition of the judicial analysis. Based on feedback and an analysis of the content of the first edition, and taking into account findings regarding key legislative and jurisprudential developments since its publication, the IARMJ produced a review report. This report set out recommendations to EASO with regard to the need to update the materials. On 18 August 2020, the IARMJ and EASO concluded a specific contract under which the IARMJ was to update the judicial analysis, including a separate accompanying compilation of jurisprudence, and to develop a judicial trainers' guidance note (JTGN) on the basis of the recommendations made in the review report.

The IARMJ's editorial team, which comprises exclusively serving and recently retired judges and tribunal members with expertise in asylum law and/or the training of members of courts and tribunals from across the EU+ countries, selected and appointed two researchers. One was commissioned to undertake the update of the judicial analysis and the other to develop the JTGN. Training experts provided editorial support and prepared the compilation of jurisprudence and appendices. Their work was undertaken under the supervision and guidance of the editorial team. The editorial team was established in order to ensure the integrity of the principle of judicial independence and to guarantee that judicial training materials for members of courts and tribunals are prepared and delivered under judicial guidance. The editorial team provided guidance on the update of the training materials and took all decisions pertaining to the structure, format, style and content of the materials.

The role of the commissioned researchers was to undertake research in line with a research methodology provided by the editorial team and to produce an updated new edition of the judicial analysis with appendices, and a JTGN, in accordance with the instructions set out in the terms of reference. Each researcher and training expert was required to adhere to a schedule of work and to produce drafts to publication standard in line with the EASO writing guide *EASO Writing Tips and Tricks, 2020*. They were required to keep in mind at all times that the materials being produced are for use by judges and tribunal members. In particular, they were required to take into account that judicial independence is a cardinal principle in the professional development of judges and tribunal members, and that for them there is an abiding concern to interpret the relevant legal provisions in accordance with EU law and to identify trends in jurisprudence.

The editorial team shared the draft materials with a judge of the CJEU and a judge of the ECtHR in their personal capacities, and with UNHCR. The feedback received was taken into consideration by the editorial team in the finalisation of the materials. The update of the materials was completed in April 2021.

(470) Formerly the International Association of Refugee Law Judges (IARLJ) and IARLJ-Europe.

Appendix D. Primary sources

1. EU law

1.1. EU primary law

Treaty on the Functioning of the European Union (consolidated version as amended by the Lisbon Treaty (entry into force: 1 December 2009)), [2012] OJ C 326/47.

Charter of Fundamental Rights of the European Union (as amended on 12 December 2007 (entry into force: 1 December 2009)), [2007] OJ C 303/01.

Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TFEU in [2012] OJ C 326/295.

Protocol No 22 on the position of Denmark, annexed to the TFEU in [2012] OJ C 326/299.

Consolidated version of the Treaty on the Functioning of the European Union, 2016/C 326/47.

1.2. EU secondary legislation

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, [2004] OJ L 304/12 (QD).

Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, [2010] OJ L 132/11.

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 (QD (recast)).

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), [2013] OJ L 180/60 (APD (recast)).

Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, [2015] OJ L 239/146.

Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, [2015] OJ L 248/80.

2. International treaties of universal and regional scope

2.1. United Nations

Convention relating to the Status of Refugees, 189 UNTS 150, 28 July 1951 (entry into force: 22 April 1954).

Protocol relating to the Status of Refugees, 606 UNTS 267, 31 January 1967 (entry into force: 4 October 1967).

2.2. Council of Europe

European Convention on Rights, 213 UNTS 222, ETS No 005, 4 November 1950 (entry into force: 3 September 1953).

3. Case law

3.1. Court of Justice of the European Union

3.1.1. Judgments

Judgment of 3 September 2008, *Yassin Abdullah Kadi and Al Barakaat International Foundation* v *Council of the European Union and Commission of the European Communities*, joined cases C-402/05 P and C-415/05 P, EU:C:2008:461.

Judgment of 17 February 2009, *Elgafaji* v *Staatssecretaris van Justitie*, C-465/07, EU:C:2009:94.

Judgment of 2 March 2010, Grand Chamber (GC), *Aydin Salahadin Abdulla and Others* v *Bundesrepublik Deutschland*, joined cases C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105.

Judgment of 9 November 2010, *Bundesrepublik Deutschland* v *B and D*, joined cases C-57/09 and C-101/09, EU:C:2010:661.

Judgment of 22 November 2012, *M. M.* v *Minister for Justice, Equality and Law Reform*, C-277/11, EU:C:2012:744.

Judgment of 19 December 2012 (GC), *Mostafa Abed El Karem El Kott and Others* v *Bevándorlási és Állampolgársági Hivatal*, C-364/11, EU:C:2012:826.

Judgment of 31 January 2013, *H.I.D., B.A.* v *Refugee Applications Commissioner and Others*, C-175/11, EU:C:2013:45.

Judgment of 4 June 2013, *ZZ* v *Secretary of State for the Home Department*, C-300/11, EU:C:2013:363.

Judgment of 30 January 2014, *Aboubacar Diakité* v *Commissaire général aux réfugiés et aux apatrides,* C-285/12, EU:C:2014:39.

Judgment of 8 May 2014, *H. N.* v *Minister for Justice, Equality and Law Reform, Ireland, Attorney-General,* C-604/12, EU:C:2014:302.

Judgment of 5 November 2014, *Mukarubega* v *Préfet de police, Préfet de la Seine-Saint-Denis*, C-166/13, EU:C:2014:2336.

Judgment of 11 December 2014, *Boudjlida* v *Préfet des Pyrénées-Atlantiques*, C-249/13, EU:C:2014:2431.

Judgment of 24 June 2015, *H. T.* v *Baden-Württemberg*, C-373/13, EU:C:2015:413.

Judgment of 9 February 2017, *M* v *Minister for Justice and Equality, Ireland, Attorney General*, C-560/14, EU:C:2017:101.

Judgment of 4 April 2017, *Fahimian* v *Bundesrepublik Deutschland,* C-544/15, EU:C:2017:255.

Judgment of 24 April 2018 (GC), *MP* v *Secretary of State for the Home Department*, C-353/16, EU:C:2018:276.

Judgment of 2 May 2018 (GC), *K.* v *Staatssecretaris van Veiligheid en Justitie and H. F.* v *Belgische Staat*, joined cases C-331/16 and C-366/16, EU:C:2018:296.

Judgment of 25 July 2018, *Alheto* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-585/16, EU:C:2018:584.

Judgment of 13 September 2018, *Shajin Ahmed* v *Bevándorlási és Menekültügyi Hivatal*, C-369/17, EU:C:2018:713.

Judgment of 4 October 2018, *Ahmedbekova* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-652/16, EU:C:2018:801.

Judgment of 14 May 2019 (GC), *M* v *Ministerstvo vnitra and X, X* v *Commissaire général aux réfugiés et aux apatrides*, joined cases C-391/16, C-77/17 and C-78/17, EU:C:2019:403.

Judgment of 23 May 2019, *Mohammed Bilali* v *Bundesamt für Fremdenwesen und Asyl*, C-720/17, EU:C:2019:448.

Judgment of 12 December 2019, *Staatssecretaris van Justitie en Veiligheid* v *E.P.*, C-380/18, EU:C:2019:1071.

Judgment of 18 December 2019, *Mohamed M'Bodj* v *État belge*, C-542/13, EU:C:2014:2452.

Judgment of 19 March 2020, *PG v Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216.

Judgment of 19 March 2020, *LH v Bevándorlási és Menekültügyi Hivatal*, C-564/18, EU:C:2020:218.

Judgment of 2 April 2020, *Commission* v *Poland, Hungary and Czech Republic,* joined cases C-715/17, C-718/17 and C-719/17, EU:C:2020:257.

Judgment of 9 September 2020, *JP* v *Commissaire général aux réfugiés et aux apatrides*, C-651/19, EU:C:2020:681.

Judgment of 20 January 2021, *Secretary of State for the Home Department* v *OA*, C-255/19, EU:C:2021:36.

3.1.2. Opinion of Advocate General

Opinion of Advocate General Mazák of 15 September 2009, *Aydin Salahadin Abdulla and Others* v *Bundesrepublik Deutschland*, joined cases C-175/08, C-176/08, C-178/08, and C-179/08, EU:C:2010:105.

3.2. European Court of Human Rights

Judgment of 7 July 1989, *Soering* v *United Kingdom*, No 14038/88.

Judgment of 30 October 1991, *Vilvarajah and Others* v *United Kingdom*, Nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87.

Judgment (GC) of 27 February 2008, *Saadi* v *Italy*, No 37201/06.

Judgment of 11 October 2011, *Auad* v *Bulgaria*, No 46390/10.

Judgment of 15 November 2011, *Al Hanchi* v *Bosnia and Herzegovina*, No 48205/09.

Judgment of 25 April 2017, *Krasniqi* v *Austria*, No 41697/12.

Judgment of 10 October 2019, *O.D.* c *Bulgarie*, No 34016/18.

Judgment of 15 April 2021, *K.I.* c *France*, No 5560/19.

Decision of 14 January 2014, *Y.A.* v *the Netherlands*, No 15439/09.

Decision of 8 June 2017, *M.M. and Others* v *Netherlands*, No 15993/09.

3.3. International Court of Justice

Judgment of 6 April 1955, *Nottebohm Case (Liechtenstein* v *Guatemala)* (second phase), [1955] ICJ Reports 4, p. 23.

3.4. Court and tribunals of Member States

3.4.1. Austria

Supreme Administrative Court (*Verwaltungsgerichtshof*), judgment of 25 October 2018, Ra 2018/20/0360, AT:VWGH:2018:RA2018200360.L01.

Supreme Administrative Court, judgment of 6 November 2018, Ra 2018/18/0295, AT:VWGH:2018:RA2018180295.L01.

Supreme Administrative Court, judgment of 31 January 2019, Ra 2018/14/0121, AT:VWGH:2019:RA2018140121.L01.

Supreme Administrative Court, judgment of 4 April 2019, Ro 2018/01/0014, AT:VWGH:2019:RO2018010014.J00.

Supreme Administrative Court, judgment of 27 May 2019, Ra 2019/14/0153, AT:VWGH:2019:RA2019140153.L00.

Supreme Administrative Court, judgment of 14 August 2019, Ra 2016/20/0038, AT:VWGH:2019:RA2016200038.L02.

Supreme Administrative Court, judgment of 29 August 2019, Ra 2018/19/0522, AT:VWGH:2019:RA2018190522.L01.

Federal Administrative Court (*Bundesverwaltungsgericht*), judgment of 27 March 2014, W127 1401780-2, AT:BVWG:2014:W127.1401780.2.00.

Federal Administrative Court, judgment of 24 July 2014, G307 1406174-1, AT:BVWG:2014:G307.1406174.1.00.

3.4.2. Belgium

Council for Aliens Law Litigation (*Raad voor Vreemdelingenbetwistingen* / *Conseil du contentieux des étrangers* (RVV/CCE)), judgment of 24 June 2010, No 45.396.

Council for Aliens Law Litigation, judgment of 24 June 2014, No 126.144.

Council for Aliens Law Litigation, judgment of 17 August 2017, No 190.672.

Council for Aliens Law Litigation, judgment of 9 May 2018, No 203.723.

Council for Aliens Law Litigation, judgment of 20 June 2018, No 205.570.

Council for Aliens Law Litigation, judgment of 20 March 2019, No 218.531.

Council for Aliens Law Litigation, judgment of 6 February 2020, No 232.289.

Council for Aliens Law Litigation, judgment of 7 December 2020, No 245.482.

Council for Aliens Law Litigation, judgment of 7 December 2020, No 245.502.

3.4.3. Bulgaria

Supreme Administrative Court, judgment of 19 July 2017, No 9661.

3.4.4. Czechia

Supreme Administrative Court (*Nejvyšší správní soud*), judgment of 31 March 2011, No 4 Azs 60/2007-136, *A. S.* v *Ministry of the Interior*.

Supreme Administrative Court, judgment of 18 April 2013, No 1 Azs 3/2013-27, *V. P.* v *Ministry of the Interior*.

Supreme Administrative Court, judgment of 14 February 2018, No 1 Azs 402/2017-48, *A. N.* v *Ministry of the Interior*.

Supreme Administrative Court, judgment of 8 March 2018, No 10 Azs 341/2017-54, *V. N. and A. N.* v *Ministry of the Interior.*

Supreme Administrative Court, judgment of 16 May 2018, No 7 Azs 169/2018-23, *V. S.* v *Ministry of the Interior*.

Supreme Administrative Court, judgment of 23 April 2020, No 5 Azs 189/2015-127*, M.* v *Ministry of the Interior*.

Supreme Administrative Court, judgment of 10 December 2020, No 5 Azs 297/2018-51, *A. M.* v *Ministry of the Interior*.

3.4.5. Estonia

Circuit Court (*Ringkonnakohtud*), judgment of 22 April 2020, *X, Y, Q and W (Afghanistan)* v *Police and Border Guard Board (Politsei- ja Piirivalveameti)* (English summary).

3.4.6. Finland

Supreme Administrative Court (*Korkein hallinto-oikeus*), judgment of 25 November 2020, KHO:2020:129.

Supreme Administrative Court (*Korkein hallinto-oikeus*), judgment of 25 November 2020, KHO:2020:130 (English summary).

3.4.7. France

Council of State, judgment of 13 January 1989, 78055, FR:CESSR:1989:78055.19890113.

Council of State, judgment of 3 March 2003, *Ministre de l'intérieur* c *M. X.*, No 238662 A.

Council of State, judgment of 30 July 2003, *Mlle X.*, No 220082, FR:CESJS:2003:220082.20030730.

Council of State, judgment of 8 February 2006, *Association d'accueil aux médecins et personnels de santé réfugiés en France*, No 277258, FR:CESSR:2006:277258.20060208.

Council of State, judgment of 15 May 2009, *OFPRA* c *M. G.*, No 288747, FR:CESSR:2009:288747.20090515.

Council of State, judgment of 18 June 2014, *M. B.*, No 362703, FR:CESJS:2014:362703.20140618.

Council of State, judgment of 11 December 2015, *JD*, No 394989, FR:CESEC:2015:394989.20151211.

Council of State, judgment of 28 November 2016, *M. C.B.*, No 389733, FR:CECHR:2016:389733.20161128.

Council of State, judgment of 19 June 2017, *OFPRA* c *M. A.,* No 389868, FR:CECHR:2017:389868.20170619.

Council of State, judgment of 30 January 2019, *OFPRA* c *M. G.*, No 416013 A, FR:CECHR:2019:416013.20190130.

Council of State, judgment of 20 February 2019, *M. A.C.B.*, No 421212, FR:CECHS:2019:421212.20190220.

Council of State, judgment of 17 April 2019, *OFPRA* c *Mme B*, No 419722 C, FR:CECHR:2019:419722.20190417.

Council of State, judgments of 19 June 2020, *OFPRA* c *M. A. C.,* Nos 416032 and 416121 A, FR:CECHR:2020:416032.20200619.

Council of State, judgment of 29 November 2019, *M. K.*, No 421523, FR:CECHR:2019:421523.20191129.

Council of State, judgment of 19 June 2020, No 422740 C, FR:CECHR:2020:422740.20200619.

Council of State, judgments of 19 June 2020, *OFPRA* c *M. B. A.,* No 425231 and *OFPRA* c *M. A. C. B*, No 428140 B, FR:CECHR:2020:425231.20200619.

Council of State, judgment of 1 July 2020, *OFPRA* c *M. D.*, No 423272 A, FR:CECHR:2020:423272.20200701.

National Court of Asylum Law (*Cour nationale du droit d'asile*, CNDA), judgment of 24 September 2009, *OFPRA* c *G.*, No 633282/08013386 (in CNDA, *Contentieux des réfugiés: Jurisprudence du Conseil d'État et de la Cour nationale du droit d'asile*, 2009, pp. 20–21).

National Court of Asylum Law, judgment of 8 October 2009, *M. T.*, No 701681/097100.

National Court of Asylum Law, judgment of 1 March 2011, *OFPRA* v *S.*, No 10004319.

National Court of Asylum Law, judgment of 20 October 2011, *M. K.*, No 10010000 R.

National Court of Asylum Law, judgment of 7 May 2013, *OFPRA* v *M. A.*, No 12021083.

National Court of Asylum Law, judgment of 24 July 2013, *Mlle L. M.*, No 12002308 C+ (in CNDA, *Contentieux des réfugiés – Jurisprudence du Conseil d'État et de la Cour nationale du droit d'asile*, pp. 121–122).

National Court of Asylum Law, judgment of 5 October 2015, *M. Z.*, No 14033523 C+.

National Court of Asylum Law, judgment of 8 April 2016, *M. S.*, No 15031759.

National Court of Asylum Law, judgment of 6 July 2017, *M. Q.*, No 16032301 R.

National Court of Asylum Law, judgment of 25 May 2018, *M. A.L.*, No 17047809 C+ (in CNDA, *Contentieux du droit d'asile – Jurisprudence du Conseil d'État et de la Cour nationale du droit d'asile*, pp. 206–210).

National Court of Asylum Law, judgment of 14 September 2018, *M. H.*, No 16029914.

National Court of Asylum Law, judgment of 28 September 2018, *M. K.*, No 17021629 C+.

National Court of Asylum Law, judgment of 17 October 2018, *M. K. S.*, No 18001386 C+.

National Court of Asylum Law, judgment of 28 November 2018 *M. M.*, No 15003496 C+

National Court of Asylum Law, judgment of 21 December 2018, *Messrs A et Mmes A.*, Nos 17010844, 17010847, 17010845, 17010848, 18044574, 18044573, 18044575 and 18044576 C.

National Court of Asylum Law, judgment of 31 December 2018, *M. O.*, No 17013391 R.

National Court of Asylum Law, judgment of 31 January 2019, *M. Z.*, No 18014132 C+.

National Court of Asylum Law, judgment of 12 March 2019, *Mme B.*, No 17028590 C+.

National Court of Asylum Law, judgment of 11 April 2019, *M. A.*, No 16037707 C.

National Court of Asylum Law, judgment of 28 June 2019, *M. T. alias S. et Mme K. épouse T.*, Nos 18024910–18024911 C.

National Court of Asylum Law, judgment of 26 July 2019, *M. T.*, No 17053942 C+.

National Court of Asylum Law, judgment of 30 August 2019, *M. A.,* No 18052314 C+.

National Court of Asylum Law, judgment of 28 December 2020, *M. S.* v *OFPRA*, No 20012065 C +.

Refugee Appeals Commission (*Commission des recours des réfugiés*), decision of 18 October 1999, Molina, No 336763.

Refugee Appeals Commission, decision of 17 February 2006, *M. O.,* No 02008530/406325 R.

3.4.8. Germany

Federal Administrative Court (*Bundesverwaltungsgericht*), judgment of 2 December 1991, 9 C 126/90.

Federal Administrative Court, judgment of 1 November 2005, 1 C 21.04, DE:BVerwG:2005:011105U1C21.04.0 (English translation).

Federal Administrative Court, judgment of 26 February 2009, 10 C 50.07, BVerwG:2009:260209U10C50.07.0 (English translation).

Federal Administrative Court, judgment of 24 February 2011, 10 C 3.10, DE:BVerwG:2011:240211U10C3.10.0 (English translation).

Federal Administrative Court, judgment of 31 March 2011, 10 C 2.10, MN 23, DE:BVerwG:2011:310311U10C2.10.0 (for English translation click on 'EN').

Federal Administrative Court, judgment of 1 June 2011, 10 C 25.10.

Federal Administrative Court, judgment of 7 July 2011, 10 C 26.10, DE:BVerwG:2011:070711U10C26.10.0.

Federal Administrative Court, judgment of 22 November 2011, 10 C 29.10, DE:BverwG:2011:221111U10C29.10.0 (English translation).

Federal Administrative Court, judgment of 22 May 2012, 1 C 8.11, BVerwG:2012:220512U1C8.11.0.

Federal Administrative Court, judgment of 19 November 2013, 10 C 27.12, MN 17, DE:BVerwG:2013:191113U 10C27.12.0 (English translation).

Federal Administrative Court, judgment of 27 July 2017, 1 C 28.16, DE:BVerwG:2017:270717U1C28.16.0 (English translation).

Higher Administrative Court Baden-Wuerttemberg (*Verwaltungsgerichtshof Baden-Württemberg*), judgment of 5 November 2007, A 6 S 1097/05 (English translation).

Higher Administrative Court Lower Saxony (*Niedersächsisches Oberverwaltungsgericht*), judgment of 11 August 2010, 11 LB 405/08.

Higher Administrative Court of Bavaria (*Verwaltungsgerichtshof Bayern*), judgment of 18 October 2010, 11 B 09.30050 (English translation).

Higher Administrative Court Schleswig-Holstein (*Verwaltungsgerichtshof Schleswig-Holstein*), judgment of 21 June 2012, 1 LB 10/10.

3.4.9. Greece

Independent Appeals Committee, 3rd IAC, judgment of 26 November 2020, No 7591/20.

Independent Appeals Committee, 19th IAC, judgment of 23 February 2021, No 212103/2021.

3.4.10. Ireland

Supreme Court, judgment of 19 June 2020, *M. A. M. (Somalia)* v *Minister for Justice and Equality and K. N. (Uzbekistan) and Others* v *Minister for Justice and Equality*, [2020] IESC 32.

High Court, judgment of 1 December 2010, *Gashi* v *Minister for Justice, Equality and Law Reform,* [2010] IEHC 436.

High Court, judgment of 1 March 2012, *Morris Ali* v *Minister for Justice, Equality and Law Reform*, [2012] IEHC 149.

High Court, judgment of 1 November 2012, *Adegbuyi* v *Minister for Justice and Law Reform,* [2012] IEHC 484.

High Court, judgment of 27 January 2014, *Nz.N.* v *Minister for Justice and Equality*, [2014] IEHC 31.

High Court, judgment of 18 March 2014, *Hussein* v *Minister for Justice and Law Reform*, [2014] IEHC 130.

High Court, judgment of 29 July 2016, *T.F. (Nigeria)* v *Minister for Justice and Equality and Another*, [2016] IEHC 551.

High Court, judgment of 20 January 2017, *S.A.S. and Another* v *Minister for Justice and Equality and Another*, [2017] IEHC 163.

High Court, judgment of 27 January 2017, *B.A. and Others* v *International Protection Appeals Tribunal*, [2017] IEHC 36.

High Court, judgment of 15 March 2019, *P.A.F. (Nigeria)* v *International Protection Appeals Tribunal and the Minister for Justice and Equality,* [2019] IEHC 204.

3.4.11. Netherlands

Council of State (*Raad van State*), judgment of 15 June 2016, *201508135/1/V3*, NL:RVS:2016:1773 (English summary).

3.4.12. Poland

Supreme Administrative Court, judgment of 23 February 2016, joined cases II OSK 1492/14, II OSK 1561/14, II OSK 1562/14.

Regional Administrative Court Warsaw, judgment of 21 December 2010, V SA/Wa 383/10.

Regional Administrative Court Warsaw, decision of 16 May 2013, IV SA/Wa 2684/12 (English summary).

3.4.13. Slovenia

Constitutional Court, judgment of 15 October 2015, U-I-U-I-189/14, Up-663/14 (English summary).

Supreme Court, judgment of 5 September 2013, I Up 309/2013 (English summary).

3.4.14. Sweden

Migration Court of Appeal, judgment of 13 June 2011, UM 5495-10, MIG 2011:13 (English summary).

3.5. United Kingdom

Supreme Court, judgment of 21 November 2012, *Al-Sirri* v *Secretary of State for the Home Department*, [2012] UKSC 54.

House of Lords, judgment of 10 March 2005, *R (Hoxha)* v *Special Adjudicator*, [2005] UKHL 19.

Court of Appeal (England and Wales), judgment of 18 December 2008, *DL (DRC)* v *Entry Clearance Officer; ZN (Afghanistan)* v *Entry Clearance Officer*, [2008] EWCA Civ 1420.

Court of Appeal (England and Wales), judgment of 26 June 2009, *EN (Serbia)* v *Secretary of State for the Home Department*, [2009] EWCA Civ 630.

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

Court of Appeal (England and Wales), judgment of 22 June 2017, *Secretary of State for the Home Department* v *MM (Zimbabwe)*, [2017] EWCA Civ 797.

Court of Appeal (England and Wales), judgment of 2 May 2018, *Secretary of State for the Home Department* v *MA (Somalia)*, [2018] EWCA Civ 994.

Court of Appeal (England and Wales), judgment of 29 July 2019, *Secretary of State for the Home Department* v *MS (Somalia)*, [2019] EWCA Civ 1345.

Court of Appeal (England and Wales), judgment of 9 October 2019, *Secretary of State for the Home Department* v *KN (DRC)*, [2019] EWCA Civ 1665.

Court of Appeal (England and Wales), judgment of 10 October 2019, *Secretary of State for the Home Department* v *JS (Uganda)*, [2019] EWCA Civ 1670.

High Court (England and Wales), judgment of 22 November 2000, *R* v *Special Adjudicator ex parte Azizi*, CO/3493/2000 (unreported).

Immigration Appeal Tribunal, judgment of 7 February 2005, *SB (cessation and exclusion) Haiti*, [2005] UKIAT 36.

Asylum and Immigration Tribunal, judgment of 28 June 2007, *RD (Cessation, burden of proof, procedure) Algeria*, [2007] UKAIT 66.

Upper Tribunal (Immigration and Asylum Chamber), judgment of 21 February 2011, *KK and Others (Nationality: North Korea) Korea CG*, [2011] UKUT 92(AC).

Upper Tribunal (Immigration and Asylum Chamber), judgment of 24 November 2017, *ES* v *Secretary of State for the Home Department*, Appeal No RP/00039/2016.

Upper Tribunal (Immigration and Asylum Chamber), judgment of 1 November 2019, *SB (refugee revocation; IDP camps) Somalia*, [2019] UKUT 358.

3.6. Courts and tribunals of non-EU Member States

3.6.1. Canada

Federal Court, *Canada (Minister of Employment and Immigration)* v *Obstoj*, [1992] 2 F.C. 739 (C.A.)

Federal Court Trial Division, judgment of 15 February 1995, *Shahid* v *Canada (Minister of Citizenship and Immigration*, 89 F.T.R. 106 (TD).

Federal Court, judgment of 12 August 2004, *Suleiman* v *Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125, [2005] 2 FCR 26.

Federal Court, judgment of 19 January 2012, *Cadena Cabrera, Sandra Luz* v *Minister of Public Safety and Emergency Preparedness*, 2012 FC 67.

Federal Court, judgment of 13 March 2019, *Nana Abechkhrishvili* v *Minister for Citizenship and Immigration*, 2019 FC 313.

3.6.2. Norway

Supreme Court (*Norges Høyesterett*), judgment of 23 March 2018, *Immigration Appeals Board* v *A, B and C*, HR-2018-572-A, No 2017/1659 (English translation).

Supreme Court, judgment of 3 February 2021, *A, B, C and Norwegian Organisation for Asylum Seekers (NOAS)* v *Immigration Appeals Board (Office of the Attorney General)*, HR-2021-203-A, No 20-121835SIV-HRET (English summary).

Appendix E. Select bibliography

1. Official publications

1.1. European Union

EASO, *Article 15(c) Qualification Directive (2011/95/EU) – A judicial analysis*, 2014.

EASO, *An introduction to the Common European Asylum System for courts and tribunals – A judicial analysis*, 2016.

EASO, *Qualification for International Protection (Directive 2011/95/EU) – Judicial analysis*, 2016.

EASO, *Asylum Procedures and the Principle of* Non-refoulement *– Judicial analysis*, 2018.

EASO, *Evidence and credibility assessment in the context of the Common European Asylum System – Judicial analysis*, 2018.

EASO, *Practical Guide: Qualification for international protection*, 2018.

EASO, *Detention of applicants for international protection in the context of the Common European Asylum System*, 2019.

EASO, *Exclusion: Articles 12 and 17 qualification directive – Judicial analysis*, 2nd edn, 2020.

EASO, *Reception of applicants for international protection (Receptions Conditions Directive 2013/33/EU) – Judicial analysis,* 2020.

EASO, *Vulnerability in the context of applications for international protection – Judicial analysis* 2021.

European Commission, Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, COM(2001) 510 final, 12.9.2001.

1.2. United Nations High Commissioner for Refugees

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*, 1979, reissued February 2019, HCR/1P/4/ENG/REV. 4.

UNHCR, Executive Committee, Conclusion No 18 Voluntary Repatriation, (XXXI), 1980.

UNHCR, 'Note on the cessation clauses', 30 May 1997, EC/47/SC/CRP.30.

UNHCR, 'Note on burden and standard of proof in refugee claims', 16 December 1998.

UNHCR, *The Cessation Clauses: Guidelines on their application*, 26 April 1999.

UNHCR, 'Asylum processes (fair and efficient asylum procedures)', Global Consultations on International Protection, EC/GC/01/12, 31 May 2001.

UNHCR, Guidelines on International Protection: Cessation of refugee status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'ceased circumstances' clauses), 10 February 2003, HCR/GIP/03/03.

UNHCR, 'Background note on the application of the exclusion clauses: Article 1F of the 1951 Convention relating to the Status of Refugees', 4 September 2003.

UNHCR, 'Note on the cancellation of refugee status', 22 November 2004.

UNHCR, 'UNCHR annotated comments on the EC Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304/12 of 30.8.2004)', 28 January 2005.

UNHCR, 'UNCHR comments on the European Commission's proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)511, 21 October 2009)', 29 July 2010.

UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 7th edn, June 2014.

UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014.

2. Other publications

European Migration Network (EMN), *Beneficiaries of international protection travelling to and contacting authorities of their country of origin: challenges, policies and practices in the EU Member States, Norway and Switzerland: EMN Synthesis*, November 2019.

Fitzpatrick, J. and Bonoan, R., 'Cessation of refugee protection', in Feller, E., Türk, V. and Nicholson, F. (eds), *Refugee Protection in International Law: UNHCR's global consultations on international protection*, Cambridge University Press, Cambridge, 2003, pp. 491–544.

Foster, M. and Lambert, H., *International refugee law and the protection of stateless persons,* Oxford University Press, New York, 2019.

Fripp, E., *Nationality and statelessness in the international law of refugee status*, Bloomsbury, 2016.

Goodwin-Gill, G. S. and McAdam, J., *The Refugee in International Law*, 3rd edn, Oxford University Press, New York, 2007.

Grahl Madsen, A., *The Status of Refugees in International Law*, A. W. Sijthoff, 1966.

Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016.

Hathaway, J. C., 'The right of states to repatriate former refugees', *Ohio State Journal on Dispute Resolution*, Vol. 20, No 1, 2005, pp. 175–216.

Hathaway, J. C., *The Rights of Refugees under International Law*, Cambridge University Press, 2005.

Hathaway, J. C. and Foster, M., *The Law of Refugee Status*, 2nd edn, Cambridge University Press, Cambridge, 2014.

Kneebone, S. and O'Sullivan, M., 'Article 1C', in Zimmermann, A. (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Oxford University Press, New York, 2011, p. 481.

Kraft, I., 'Article 11, Qualification Directive 2011/95/EC', in Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016, pp. 1191–1199, Part D III.

Kraft, I., 'Article 14, Qualification Directive 2011/95/EC', in Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016, pp. 1225–1233, Part D III.

Marx, R., *Handbuch zum Flüchtlingsschutz, Erläuterungen zur Qualifikationsrichtlinie*, 2nd edn, C. H. Beck, Munich, 2010.

O'Sullivan, M, 'Legal note on the cessation of international protection and review of protection statuses in Europe', European Council on Refugees and Exiles, 2021.

Peers, S., Moreno-Lax, V., Garlick, M. and Guild, E., *EU Immigration and Asylum Law: Text and commentary – Vol. 3: EU asylum law*, 2nd revised edn, Brill/Nijhoff, 2015.

Piotrowicz, R., '*Lay Kon Tji and Minister for Immigration and Ethnic Affairs*: the function and meaning of effective nationality in the assessment of applications for asylum', *International Journal of Refugee Law*, Vol. 11, No 3, 1999, p. 544.

Storey, H., 'Article 16, Qualification Directive 2011/95/EC', in Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016, pp. 1243–1244, Part D III.

Storey, H., 'Article 17, Qualification Directive 2011/95/EC', in Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016, pp. 1244–1246, Part D III.

Storey, H., 'Article 19, Qualification Directive 2011/95/EC', in Hailbronner, K. and Thym, D. (eds), *EU Immigration and Asylum Law: A commentary*, 2nd edn, C. H. Beck, Bloomsbury Publishing PLC, Munich, 2016, pp. 1247–1248, Part D II.

Storey, H., 'Nationality as an element of the refugee definition and the unsettled issues of "inchoate nationality" and "effective nationality" – part 1: "inchoate nationality"', *Ref|Law*, University of Michigan Law School, 11 June 2017.

Storey, H., 'Nationality as an element of the refugee definition and the unsettled issues of "inchoate nationality" and "effective nationality" – part 2: "inchoate nationality"', *Ref|Law*, University of Michigan Law School, 2 June 2019.

Getting in touch with the EU

In person
All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en

On the phone or by email
Europe Direct is a service that answers your questions about the European Union. You can contact this service:
– by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
– at the following standard number: +32 22999696, or
– by email via: https://europa.eu/european-union/contact_en

Finding information about the EU

Online
Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en

EU publications
You can download or order free and priced EU publications from: https://op.europa.eu/en/publications. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents
For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex at: http://eur-lex.europa.eu

Open data from the EU
The EU Open Data Portal (http://data.europa.eu/euodp/en) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

Publications Office
of the European Union