

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

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I. INTRODUCTION

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

Most European states have not, until recently, utilised cessation in significant numbers due to the administrative workload required to re-assess international protection claims. The increased use of cessation in some states can be explained by a number of political and legal factors (including the development of national political agendas aimed at deterrence). As a legal issue, cessation in Europe is linked to the increased use of temporary residence permits rather than permanent residence. The 2011 Recast Qualification Directive allows EU Member States¹ to issue three-year residence permits to refugees² and one year residence permits to holders of subsidiary protection.³ The Directive also then allows States to review cases upon expiry of those permits and to revoke a person's international protection status and residence if circumstances in the country of origin have changed.⁴ There are also currently proposals before the European Parliament to amend the Recast Qualification Directive to oblige EU Member States to use 'status reviews' to examine whether there have been significant changes in the situation of the relevant country of origin.⁵

More recently, some states have utilised cessation to revoke the refugee status of an individual where they have committed a serious crime.⁶

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

- Germany carried out cessation proceedings with respect to 14,000 Iraqi refugees between 2004 and 2007. In addition to this, Germany have also made significant use of so-called 'revocation examination procedures'⁷ since 2017. Significantly, these procedures doubled in 2019. Although these procedures are instituted for a number of reasons, they specifically include cessation due to changed circumstances.⁸
- Norway commenced cessation proceedings with regard to approximately 1400 Somali refugees in 2017-18;
- Denmark has ended the protection of approximately 800 Somali refugees and has begun cessation proceedings with respect to approximately 900 Syrian subsidiary protection holders.⁹

It is noteworthy that many of those who have had their international protection revoked using cessation are citizens

1 EU Member States bound by the recast Qualification Directive (i.e. all EU Member States except Denmark, Ireland).

2 Directive 2011/95/EU of The European Parliament and of The Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), [2011] OJ L 337/9 (hereinafter '2011 Qualification Directive'). Article 24(1) obliges Member States to issue a three-year residence permit to refugees '[a]s soon as possible after their status has been granted ...' and 'which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3)'.
3 2011 Qualification Directive, Article 24(2).

3 2011 Qualification Directive, Article 24(2).

4 2011 Qualification Directive, Article 11(1)(e) and (f); Article 14.

5 *Proposal for a regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents*, COM(2016) 466 13.7.2016 2016/0223(COD).

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

7 These are preliminary examinations on whether a formal revocation is to be carried out or not. This revocation practice was triggered by a case which has become known as the 'Franco A. scandal' in 2017 (where a person was given international protection with a fake identity).

8 The Asylum Information Database (AIDA), *Asylum in Europe 2020: Country Report Germany*, 2019, p 13, <https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_de_2019update.pdf>: 'In 2019, the BAMF carried out 170,406 of these "revocation examination procedures", which doubles the number of such procedures recorded in 2018 (85,502) and marks an enormous increase compared to 2017 where only 2,527 revocation procedures were carried out. In the vast majority of the 2019 "revocation examination procedures", the BAMF found no reason to revoke or withdraw the protection statuses (96.7%). However, the total number of revocation or withdrawal decisions must not be underestimated as it concerned a total of 5,610 persons in 2019'.

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

of Iraq, Afghanistan, Somalia and Syria - countries which are either currently in an armed conflict or post-conflict situation. This raises legal issues as to the correct test to be used for cessation where the security situation in a country may continue to be uncertain or precarious.

In terms of state practice, the primary provision utilised by states to cease international protection is Article 1C(5) of the Refugee Convention¹⁰ (reflected in Articles 11 and 16 of the Qualification Directive). This relates to changes in the circumstances in the refugee's country of origin. There are also five other recognised reasons for cessation under international and EU law. These primarily relate to voluntary actions undertaken by a refugee, such as re-availment of the protection of their country of nationality. Although there is some state practice of these cessation provisions in Europe, it is very limited in nature and most cessation procedures have utilised Article 1C(5). Therefore, this legal note focuses on Article 1C(5) cessation and not the other, less-utilised, provisions.

This legal note will set out the legal obligations relating to cessation under international and EU law and will then focus on six main legal issues which have been raised by the national state practice of cessation in Europe:

- i. Is the test for cessation of refugee status similar to that for recognition of refugee status? Is it the 'mirror' of recognition?
- ii. What is the standard of proof to be used for cessation?
- iii. Can non-state actors of protection provide 'protection' for the purpose of cessation?
- iv. Does the existence of an international protection alternative (IPA) constitute a relevant change in circumstance which can give rise to cessation?
- v. How should the 'compelling circumstances' exception to cessation be applied?
- vi. Does cessation require assessment of humanitarian considerations and, as part of this, what is the relationship between cessation and the ECHR?

One of the main questions which has been litigated in CJEU and national courts relates to Issue (i), that is, whether Article 1C(5) is the mirror image of Article 1A(2).¹¹ The question here is whether the test for cessation should simply be that the refugee no longer meets the definition of a refugee under the Refugee Convention, or whether it requires more than this. That is, is the criteria for cessation simply absence of persecution or a broader notion of 'effective protection' encompassing criteria such as human rights protections, operation of judicial and administrative structures, and the absence of armed conflict? Similar questions also apply to subsidiary protection where the question is whether the test for cessation is the same as that for recognition. Many of the other issues raised in CJEU and national jurisprudence (relating to non-state actors of protection and the interaction with IPA) are linked to this central question.

10 1951 Convention relating to the Status of Refugees, 189 *UNTS* 150, supplemented by the 1967 Protocol relating to the Status of Refugees, 606 *UNTS* 267, hereinafter 'Refugee Convention'.

11 See eg Judgment of 2 March 2010, *Joined Cases- Salahadin Abdulla, Hasan, Adem and Rashi, Jama v Bundesrepublik Deutschland*, C-175/08, C-176/08, C-178/08 and C-179/08, ECLI:EU:C:2010:105, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=75296&doclang=EN>> (hereinafter '*Abdulla*'); Judgment of 20 January 2021, *Secretary of State for the Home Department v OA*, C-255/19, ECLI:EU:C:2021:36 <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=236682&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=666230>> (hereinafter '*OA*'); UK: *Secretary of State for the Home Department v MA (Somalia)* [2018] EWCA Civ 994 (Arden J) ('*MA Somalia 2018*'); Supreme Court of Norway judgment of 23 March 2018, HR-2018-572-A, (case no. 2017/1659), civil case, appeal against judgment: <www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2018-572-a.pdf>, paragraph 44 ('*HR-2018 Supreme Court of Norway*').

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

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

CESSATION OF REFUGEE STATUS UNDER INTERNATIONAL LAW

Article 1C of the 1951 Refugee Convention permits cessation of refugee status on six recognised bases. The first four provisions focus on voluntary acts of the refugee, such as returning to their home country.¹²

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

(5) he can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under Section 1A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; . . .¹³

The placing of Article 1C(5) in relation to the refugee definition and the terms utilised in that clause are significant. First, Article 1C forms part of Article 1 in Chapter 1 (General Provisions) of the 1951 Convention which sets out the definition of the term 'refugee'. Thus, Article 1C is part of the *definitional* section of the 1951 Convention. Second, Article 1C(5) begins with the words 'This Convention *shall* cease to apply...' Thus, Article 1C is expressed in mandatory terms: it provides that the Convention 'shall cease' rather than 'may'. Third, Article 1C(5) explicitly applies where the 'circumstances in connection with which he has been *recognised* as a refugee have ceased to exist'. It is therefore generally understood that Article 1C applies to only those persons who have been formally *determined* to be a refugee.¹⁴

UNHCR has issued several guiding documents stating its position on key interpretative points relating to cessation.¹⁵ For instance, it has underlined that there needs to be fundamental and durable changes in the country of origin, which may be indicated by democratic elections, significant reforms to the legal and social structure, amnesties, repeal of oppressive laws, dismantling of repressive security forces, and general respect for human rights. UNHCR recognises that observance of specific human rights need not be exemplary, but significant improvements and progress towards the development of national institutions to protect human rights are necessary. Significantly, UNHCR has emphasised on a number of occasions that Article 1C(5) can only be applied to a refugee where the

12 Article 1C(1)-(4) provides that refugee status shall cease where '(1): He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily re-acquired it, or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution.'

13 Similar provisions to Article 1C(5) are set out in Article 1C(6) which apply to refugees without a country of nationality.

14 See UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees', April 2019, HCR/1P/4/ENG/REV. 4, <www.refworld.org/docid/5cb474b27.html> ('UNHCR Handbook'), at paragraph 112: 'Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses'.

15 UNHCR Handbook, above n 14; UNHCR, 'Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees', HCR/GIP/03/03, 10 February 2003 ('UNHCR Cessation Guidelines 2003'); UNHCR, 'UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive' (2008) <www.unhcr.org/refworld/docid/48a2f0782.html> ('UNHCR Cessation Statement 2008')

protection of his or her country of origin is both 'effective and available'.¹⁶ In a recent intervention in an appeal to the Borgarting Court of Appeal (Norway) dealing with cessation, UNHCR clearly stated its position that:

Such protection therefore needs to include the existence of a functioning government and basic administrative structures, as evidenced for instance through a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood.¹⁷

CESSATION OF INTERNATIONAL PROTECTION UNDER EU LAW

Cessation of Refugee Status

Cessation of refugee status is provided for in Article 11(1)(e) of the 2011 Qualification Directive, which sets out similar cessation provisions to that of the 1951 Refugee Convention:

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 avail himself or herself of the protection of the country of nationality;

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.

Broadly speaking, Article 11(1)(e) of the Qualification Directive replicates Article 1C(5) of the Refugee Convention, however, with some significant differences. First, in considering cessation due to a change in circumstances, Article 11(2) of the Directive requires the relevant decision maker to:

... have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.¹⁸

This is an important addition to the cessation criteria in the Directive, as such a requirement is not set out in the Refugee Convention. Rather, these criteria attempt to reflect UNHCR opinion on cessation which have stated that the standard for changes under Article 1C(5) must be 'fundamental, durable and stable'.¹⁹ Further, Article 7(2) of the Qualification Directive provides that protection both against persecution or serious harm 'must be effective and of a non-temporary nature' and sets out further detail as to the criteria for such protection.²⁰

Cessation of Subsidiary Protection

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

1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which *led to the granting of subsidiary protection status have ceased to exist or have changed to*

16 UNHCR Cessation Guidelines 2003, above n 15, pp 15–16; UNHCR Cessation Statement 2008, above n 15, pp 3, 8, 14, 17 ; UN High Commissioner for Refugees (UNHCR), *UNHCR public statement in relation to Salahadin Abdulla and Others v. Bundesrepublik Deutschland pending before the Court of Justice of the European Union, August 2008, C-175/08; C-176/08; C-178/08 & C-179/08*, <<https://www.refworld.org/docid/48a2f0782.html>>; UN High Commissioner for Refugees (UNHCR), *Amicus curiae of the United Nations High Commissioner for Refugees1 in case number 19-028135ASD-BORG/01 (represented by lawyer Arild Humlen) against the State/the Norwegian Appeals Board before the Borgarting Court of Appeal (Borgarting Lagmannsrett) on the interpretation of the 1951 Convention Relating to the Status of Refugees*, 10 April 2020, paragraph 20, <www.refworld.org/docid/5f808ec04.html> (hereinafter 'UNHCR Amicus Bogarting CA').

17 UNHCR Amicus Bogarting CA, above n 16, paragraph 20.

18 2011 Qualification Directive, Article 11(2).

19 UNHCR, Executive Committee Conclusion No. 65, *General Conclusion on International Protection*, U.N. GAOR, 46th Sess., (q) (1991), *aff'd*, ExCom Conclusion No. 69.

20 Article 7(2) provides that 'Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.'

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.²¹

The practical implications of this difference in wording (between ‘circumstances in connection with which’ and ‘circumstances which have led’) has not yet been directly considered in jurisprudence. However, the jurisprudence on the meaning of the term ‘connection with which’ under Article 11 of the Directive has noted that this connotes a wider set of considerations than whether the ‘grounds’ of refugee status have changed.²² It may therefore be that the term ‘led to’ for subsidiary protection cessation is slightly narrower than the term used for refugee status. Significantly, the Aliens Act of Denmark explicitly distinguishes between cessation standards for refugee status and subsidiary protection.²³

III. THE CJEU DECISIONS ON CESSATION IN ABDULLA, 2010 AND OA, 2021

There are two important CJEU decisions on cessation. The first is *Salahadin Abdulla, Hasan, Adem and Rashi, Jama v Bundesrepublik Deutschland* (*Abdulla*) decided in 2010.²⁴ This will be the focus of discussion in this Legal Note as it is a foundational case which interpreted key principles of cessation and has been cited extensively by national courts. Reference will also be made to developments subsequent to *Abdulla*, including a recent CJEU decision in OA which considered the interaction of cessation and non-state actors of protection.²⁵

THE CJEU DECISION IN ABDULLA, 2010

The CJEU decision in *Abdulla*, was a reference from the German Federal Administrative Court involving five cases which shared common facts: they all involved applicants from Iraq whose refugee status had been revoked by German authorities on the basis that they no longer feared persecution due to the overthrow of Saddam Hussein’s regime.²⁶

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

The German Federal Administrative Court then posed related questions that were to be answered in the event that the CJEU held that something more than mere absence of persecution was required for cessation (Referral Questions 2(a)-(c) and 3). These were as follows:

21 2011 Qualification Directive, Article 16 [emphasis added].

22 See eg UK Court of Appeal in *Secretary of State for the Home Department v KN* (DRC) [2019] EWCA Civ 1665 at paragraph 33: ‘Those provisions in the Refugee Convention and Immigration Rules do not authorise the revocation of a refugee’s status merely if the grounds on which the respondent was granted that status have changed but, rather, where “the circumstances in connection with which he has been recognised as a refugee have ceased to exist”’.

23 Discussed in Nik Tan, above n 9, at p 76.

24 *Abdulla*, above n 11. This was the first time the CJEU had given a ruling on the issue of cessation. Note also the Opinion of Advocate General Mazák in *Abdulla*: Opinion of 15 September 2009, *Salahadin Abdulla and others*, C-175/08, C-176/08, C-178/08 and C-179/08, ECLI:EU:C:2009:551.

25 OA, above n 11.

26 *Bundesverwaltungsgericht* (Federal Administrative Court, Germany), 10 C 33.07, 7 February 2008, available at (2009) 21 (3) *International Journal of Refugee Law*, 549, paragraph 23 (*BVerwG 33.07*).

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

Recognition and Cessation

In addressing the primary question as to the relationship between cessation and recognition of status, the CJEU interpreted cessation in Article 11(1)(e) of the Qualification Directive as the mirror of the recognition of refugee status. The reasoning of the CJEU was that Article 11(1)(e) of the Qualification Directive (like Article 1C(5) of the Refugee Convention), provides that a person ceases to be classified as a refugee when 'he no longer qualifies for refugee status'.²⁷ Cessation therefore implies that 'the change in circumstances has remedied the reasons which led to the recognition of refugee status'.²⁸ It held that the term 'protection' used in Article 11(1)(e) of the Directive refers to protection against acts of persecution:

In so far as it provides that the national "can no longer ... continue to refuse" to avail himself of the protection of his country of origin, Article 11(1)(e) of the Directive implies that the "protection" in question is the same as that which has up to that point been lacking, namely protection against the acts of persecution envisaged by the Directive.²⁹

In interpreting cessation in this manner, the CJEU noted that, pursuant to Article 7(2) of the 2004 Qualification Directive, the competent authorities must verify that the actor or actors of protection in the country of origin operate *inter alia*, 'an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection'.³⁰ The court then referred to what the competent authorities must assess including the conditions of operation of these actors of protection, in turn making a link to the assessment of facts and circumstances under Article 4(3) of the Directive (including the extent to which basic human rights are guaranteed in that country).³¹ As for the terms 'significant and non-temporary nature' under Article 11(2), the Court held that the change of circumstances will be considered to be that when the factors which formed the basis of the refugee's fear of persecution may be regarded as having been permanently eradicated.³²

Cessation and Actors of Protection

The CJEU in *Abdulla* stated that the actors of protection referred to in Article 7(1) 'may comprise international organizations controlling the State or a substantial part of the territory of the State, *including by means of the presence*

27 *Abdulla*, above n 11, paragraph 65. See also the Court's findings at paragraph 66: 'By stating that, because those circumstances 'have ceased to exist', the national 'can no longer ... continue to refuse to avail himself or herself of the protection of the country of nationality', that article establishes, by its very wording, a causal connection between the change in circumstances and the impossibility for the person concerned to continue to refuse and thus to retain his refugee status, in that his original fear of persecution no longer appears to be well founded'.

28 *Abdulla*, above n 11, paragraph 69.

29 *Abdulla*, above n 11, paragraph 67. The Court noted further that: 'In that way, the circumstances which demonstrate the country of origin's inability or, conversely, its ability to ensure protection against acts of persecution constitute a crucial element in the assessment which leads to the granting of, or, as the case may be, by means of the opposite conclusion, to the cessation of refugee status': paragraph 68.

30 *Abdulla*, above n 11, paragraph 70.

31 *Abdulla*, above n 11, paragraph 71.

32 *Abdulla*, above n 11, paragraph 73. Key aspects of the CJEU's decision in *Abdulla* have been endorsed by the court in the more recent case of *OA*, particularly its findings on cessation as the 'mirror' of recognition and the necessary requirements for 'protection' under cessation, see *OA*, above n 11, paragraph 38, 42, 44, 52, 57-58.

of a multinational force in that territory'.³³ It did not give any further guidance as to the nature of such a force (for instance, whether it should be present in the country for a defined period) or what its role should be (for example, whether forces undertaking peacekeeping or humanitarian functions would suffice or whether it had to be carrying out state-like functions relating to rule of law institutions within the country in question). It also did not specify whether it should be supported by a UN or other international mandate.

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

In my view, where the assistance of multinational troops is employed by a State such employment could be viewed as a reasonable step to prevent persecution in the country of nationality of a refugee. I consider however that in order to comply with the terms of Article 7 of Directive 2004/83, a State may only rely on the assistance of multinational troops provided such troops operate under the mandate of the international community, for example under the auspices of the United Nations.³⁴

Further, although the CJEU reiterated that cessation requires a 'significant and non-temporary' change in circumstances, pursuant to Article 11(2) of the Qualification Directive, it did not link this requirement with Article 7. That is, it did not specifically address the transitional nature of the occupation of Iraq by multinational forces and link that to the need to establish durability of change under the test for cessation. Some of these open questions have been addressed in national jurisprudence (discussed below). Further legal issues relating to non-state actors of protection and cessation have also been the subject of a recent decision of the CJEU in OA following a referral to the court from the UK Upper Tribunal (discussed below).³⁵

The relationship between cessation and subsidiary protection

In response to the question of the interaction between cessation and subsidiary protection, the CJEU noted that the term 'international protection' used in the Qualification Directive governs 'two distinct systems of protection': refugee status and subsidiary protection status.³⁶ It also noted that this separation is reflected in Article 2(e) of the Directive which states that a person eligible for subsidiary protection is one 'who does not qualify as a refugee'.³⁷ It therefore held that the two regimes were separate and must be interpreted independently:

Therefore ... the cessation of refugee status cannot be made conditional on a finding that a person does not qualify for subsidiary protection status.³⁸

This finding is significant as this contradicts the stated position of UNHCR, which has held that the presence of a 'real risk of serious harm' which would form the basis for subsidiary protection under Article 18 of the Qualification Directive, would exclude the operation of the cessation provision under Article 11(1)(e).³⁹

The relationship between the two regimes and the criteria for cessation of subsidiary protection is also discussed in the CJEU judgment in *Bilali*.⁴⁰ This case concerned the revocation of subsidiary protection where the applicant was found to have been given protection based on incorrect information. Here the Court noted that under Article 16(1) of the Qualification Directive, cessation of subsidiary protection will occur when the circumstances which led to the granting of subsidiary protection have ceased to exist or have changed to such a degree that protection is no longer required. Further, that the change in circumstances must, according to Article 16(2), be of such a significant and definitive nature that the person concerned no longer faces a real risk of serious harm, within the meaning of Article

33 *Abdulla*, above n 11, paragraph 101 (emphasis added). The Court also discussed this issue at paragraph 75.

34 Opinion of Advocate General Mazák in *Abdulla and others*, above n 24, paragraph 54.

35 See list of referral questions in OA, above n 11, paragraph 29.

36 Indeed, Article 2(a) of the Directive defines 'international protection' as 'the refugee and subsidiary protection status as defined in (d) and (f)'.

37 *Abdulla*, above n 11, paragraph 78. Article 2(e) of the 2004 Qualification Directive is now Article 2(f) of the Recast 2011 Directive. The wording of both provisions is the same.

38 *Abdulla*, above n 11, at paragraph 79. It further explains: 'Within the system of the Directive, the possible cessation of refugee status occurs without prejudice to the right of the person concerned to request the granting of subsidiary protection status in the case where all the factors, referred to in Article 4 of the Directive, which are necessary to establish that he qualifies for such protection under Article 15 of the Directive are present' (paragraph 80).

39 UNHCR Cessation Statement 2008, above n 16, p 17.

40 Judgment of 23 May 2019, *Mohammed Bilali v Bundesamt für Fremdenwesen und Asyl*, C-720/17, ECLI:EU:C:2019:448, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=214394&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=22401170>> (hereinafter 'Bilali').

15 of that Directive.⁴¹ Significantly, the Court indicated that the test for cessation of subsidiary protection would be similar to that set out for refugee status in *Abdulla*, that is, the question will be whether the applicant's original fear of serious harm no longer appears to be well founded.⁴²

The need for stable security situation and living conditions

The CJEU was asked to rule on whether cessation of refugee status under Article 11(1)(e) requires that the security situation in the refugee's country of nationality be stable and the general living conditions ensure a minimum standard of living (Question 2(c)). Unfortunately, the CJEU failed to answer this question, on the basis that having regard to the answer given on the 'mirror' issue, there was no need to answer that second question.⁴³ This has therefore remained an open question which has been raised in national jurisprudence (discussed below in Part IV(vi)).⁴⁴

Standard of Proof

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

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

The change of circumstances will be of a "significant and non-temporary" nature, within the terms of Article 11(2) of the Directive, when the factors which formed the basis of the refugee's fear of persecution may be regarded as *permanently eradicated*.⁴⁵

Importantly, UNHCR has recommended that all developments which would appear to show significant and profound changes be given time to consolidate before any decision on cessation is made. In the Discussion Note on the Application of the 'ceased circumstances' Cessation Clause in the 1951 Convention, UNHCR advocated that a period of twelve to eighteen months should elapse after the occurrence of profound changes before such a decision is made and that this period be regarded as a minimum for assessment purposes.⁴⁶ Recent applications of the cessation clause by UNHCR show that the average period is around four to five years from the time fundamental changes commenced.

In relation to the standard of proof for *new claims*, the CJEU held that consideration of whether there are any other circumstances which could justify a fear of persecution⁴⁷ attracts the same standard of probability as that applied when refugee status was granted.⁴⁸ Thus, if the ceased refugee makes new claims for persecution, then this is not assessed under cessation (Article 11(2)) but using the well-founded fear test for recognition of refugee status.⁴⁹

In making this finding, the CJEU did recognise that the more relaxed standard of proof under Article 4(4) of the

41 Bilali, above n 40, paragraph 47.

42 *Bilali*, above n 40, paragraph 48: 'It follows... from the actual wording of Article 19(1) of Directive 2011/95 that there is a causal connection between the change in circumstances referred to in Article 16 of that directive, and the impossibility for the person concerned of retaining his status as beneficiary of subsidiary protection, in that his original fear of serious harm, within the meaning of Article 15 of that directive, no longer appears to be well founded (see, by analogy, judgment of 2 March 2010, Salahadin Abdulla and Others, C 175/08, C 176/08, C 178/08 and C 179/08, EU:C:2010:105, paragraph 66).'

43 *Abdulla*, above n 11, paragraph 77.

44 This has also been referred to in UNHCR's amicus intervention in a recent Norwegian case where UNHCR reiterated that states using cessation must consider issues such as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood: UNHCR Amicus Bogarting CA, above n 16, paragraph 20.

45 *Abdulla*, above n 11, paragraph 73 (emphasis added).

46 UNHCR, 'Discussion Note on the Application of the 'ceased circumstances' Cessation Clause in the 1951 Convention; (EC/SCP/1992/CRP.1), paragraphs 12, 20, <www.unhcr.org/en-au/excom/scip/3ae68ccf10/discussion-note-application-ceased-circumstances-cessation-clauses-1951.html>.

47 Either for the same reason as that initially at issue or for one of the other reasons establishing refugee status set out in Article 2(c) of the Directive.

48 *Abdulla*, above n 11, paragraph 91.

49 *Abdulla*, above n 11, paragraphs 83 and 88.

Qualification Directive may apply where new claims of persecution, unrelated to the original basis of recognition of refugee status, are made:

... in so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of the Directive may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of the Directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee.⁵⁰

However, the Court placed a proviso on this statement, indicating that this may usually only be the case 'when there are earlier acts or threats of persecution which are *connected* with the *reason* for persecution being examined at that stage'.⁵¹

EU Legislative Developments since the Abdulla ruling

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

1. Protection against persecution or serious harm can only be provided by:
(a) the State; or (b) parties or organizations, including international organizations, controlling the State or a substantial part of the territory of the State *provided they are willing and able to offer protection in accordance with paragraph 2.*
2. *Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.*⁵²

THE CJEU DECISION IN OA, JANUARY 2021

This case concerned a Somali national who had been granted refugee status in 2003 on the basis of his membership of a minority clan persecuted by majority clans. His refugee status was revoked in 2016 due to a change in circumstances in Somalia. The UK government argued before the CJEU that there had a non-temporary change of circumstances in the refugee's country of origin as minority clans are no longer subject to persecution by the majority clan in the Mogadishu region, and the State now offers effective protection in that region. Importantly, the referring court, in assessing the applicant's situation if returned to Mogadishu, found that he could seek financial support from family living in that city, from his sister who was residing in Dubai and from members of his clan (Reer Hamar) in the UK.⁵³ The refugee applicant disputed this, noting that the country information used in the cessation assessment was the result of a misunderstanding of State protection, since it was based in part on the availability of protection from family or other clan members, who are private, and not State, actors.⁵⁴ This was relevant because the referring court had recognised that if no financial or other form of support is provided by their family or clan, Somali nationals who return to Mogadishu 'have no real prospect of securing access to a livelihood on return [and] will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms'.⁵⁵

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

'The protection envisaged by the 1951 Convention is fundamentally, in substance, the traditional protection offered by a State, namely, a functioning legal and policing system based on the rule of

50 *Abdulla*, above n 11, paragraph 100.

51 *Abdulla*, above n 11, paragraph 100.

52 2011 Qualification Directive, Article 7 (emphasis added).

53 *OA*, above n 11, paragraph 28.

54 *OA*, above n 11, paragraphs 25-26.

55 UK Upper Tribunal (Referring Court) referral questions, cited in *OA*, above n 11, paragraph 29.

law. Non-State protection envisaged by Article 7(1)(b) of the Qualification Directive is not simply the protection which might be offered by purely private parties — such as, for example, that of a private security firm guarding a gated compound, but is rather that offered by non-State actors who control all or a substantial part of the territory of a state and who have also sought to replicate traditional State functions by providing or supporting a functioning legal and policing system based on the rule of law.⁵⁶

'I therefore consider that in accordance with Article 7(1) and Article 11(1)(e) of the Qualification Directive 'protection' can be provided by the State or, in the alternative, by non-State actors who control all or a substantial part of a State and who have also sought to replicate traditional State functions by providing or supporting a functioning legal and policing system based on the rule of law. Mere financial and/or material support supplied by non-State actors falls below the threshold of protection envisaged by Article 7 of the Qualification Directive.⁵⁷

This was also the approach taken by the CJEU to this issue in its decision of 20 January 2021. Importantly, the Court confirmed its earlier approach to cessation in *Abdulla*, finding that the notion of 'protection' in the cessation assessment must be the same as that for recognition of status (i.e. the 'mirror image').⁵⁸ It also held that the social or financial support provided by private actors, such as families or clans fall short of such 'protection' and is therefore irrelevant for both the assessment of recognition and of cessation, ruling that:

'Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, must be interpreted as meaning that any social and financial support provided by private actors, such as the family or the clan of a third country national concerned, falls short of what is required under those provisions to constitute protection and is, therefore, of no relevance either to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Article 7(1)(a) of that directive, or to the determination, under Article 11(1)(e) of that directive, read together with Article 2(c) thereof, of whether there continues to be a well-founded fear of persecution.⁵⁹

IV: NATIONAL PRACTICES AND CASE LAW ON CESSATION

National practices and case law have covered a number of different aspects of cessation. This legal note breaks analysis of cessation into those various legal issues as they relate to distinct aspects of the relationship between cessation and key aspects of international protection, such as non-state actors of protection and the IPA. We note that that this list is not exhaustive and that case law examples are a mere illustration of the types of issues which have been litigated in national courts across Europe.⁶⁰

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

Although the CJEU in *Abdulla* held that the test for cessation is the 'mirror' of recognition, there has been some divergence in approach amongst national courts on this issue. On one hand, the superior courts in the **UK** and **Germany** have held that protection for the purposes of cessation means protection against persecution, that is, cessation is the 'mirror image' of recognition.⁶¹ In the **UK**, the UK Court of Appeal in *Secretary of State for the Home*

56 Opinion of Advocate General Hogan of 30 April 2020, *Secretary of State for the Home Department v OA (Request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom))*, C-255/19, ECLI:EU:C:2020:342, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=226001&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6295619>>, paragraphs 78-79. (hereinafter 'AG Opinion in OA').

57 AG Opinion in OA, above n 56, paragraph 84.

58 OA, above n 11, paragraph 64: 'Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in respect of the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof'.

59 OA, above n 11, paragraph 64.

60 Please refer to the AIDA country reports for more information on cessation-related practices across Europe: <<https://asylumineurope.org>>.

61 UK: *Secretary of State for the Home Department v MA (Somalia)* [2018] EWCA Civ 994 (Arden J) ('MA Somalia 2018'); Germany: *A v R* 2011, paragraph 16.

Department v MA (Somalia) explained its reasoning as follows:

.. the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist. Thus, the relevant question is whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee. The recognising state does not in addition have to be satisfied that the country of origin has a system of government or an effective legal system for protecting basic human rights, though the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred.⁶²

On the other hand, the Supreme Court of **Norway** held in a 2018 case that the cessation test is not simply the 'mirror image' of the assessment for recognition and so the test for cessation is not simply whether a person has a well-founded fear of persecution.⁶³ The rationale for this finding was that '[a] person who has been recognised as a refugee has obtained a slightly higher level of safety than a person who has not'.⁶⁴ Significantly, UNHCR has endorsed the approach in this case, noting in a recent amicus submission that '[t]he cessation analysis is not simply the "mirror image" of assessing whether a person has a well-founded fear of persecution and is unwilling or unable to avail her- or himself of the protection of her or his country of origin'.⁶⁵ However, the ruling in *Abdulla* on the relationship between recognition and cessation does not appear to have been contested in other national cases .

Another aspect of this question is certain state practice which adds further cessation 'triggers' to national legislation. An example of this is the state practice of **Bulgaria** which adds cessation criteria which is not provided for in either the Refugee Convention or Qualification Directive. As AIDA has reported, cessation procedures are initiated when authorities provide information indicating that status holders have either returned to their country of origin, obtained residence or citizenship in a third country, or have not renewed their Bulgarian identification documents for a period exceeding 3 years. As AIDA notes, '[t]his broadened interpretation of the recast Qualification Directive introduces de facto an additional cessation ground in violation of national and EU legislation'.⁶⁶

The practical implications of the difference between recognition and cessation can also be clearly seen in the approach taken by some national courts to the treatment of family members and, in particular, aged-out children in cessation procedures which is discussed later in this Legal Note (at p.15).

ii. The Standard of Proof for Cessation

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

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

The condition that the circumstances that led to recognition as a refugee "are no longer present" – or "have ceased to exist" pursuant to the Convention – means that a change must have taken place that is so significant that protection can be enjoyed in the home country. In my opinion, this condition also implies that the change that has taken place must be *sufficiently consolidated*, so that the foreign national, who is prepared to stay in Norway, is not consigned to a life that may easily result in new flight and right to refugee status.⁶⁷

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

62 *MA Somalia* 2018, above n 11, paragraph 2.

63 HR-2018 Supreme Court of Norway, above n 11, paragraph 44. The Court held that 'the conditions for revoking a refugee status and residence permit pursuant to section 37 subsection 1 e, are not a direct mirroring of the conditions for granting the same pursuant to section 28'.

64 HR-2018 Supreme Court of Norway, above n 11, paragraph 44.

65 UNHCR Amicus Bogarting, Norway, above n 16, paragraph 26 (citing HR-2018 Supreme Court of Norway).

66 AIDA, Asylum in Europe – Country Report Bulgaria, 2019, p 79 <https://asylumineurope.org/wp-content/uploads/2020/02/report-download_aida_bg_2019update.pdf>. See also, AIDA, Asylum in Europe – Country Report Bulgaria, 2020, p 83 <https://asylumineurope.org/wp-content/uploads/2021/02/AIDA-BG_2020update.pdf>.

67 HR-2018 Supreme Court of Norway, above n 11, paragraph 39 (emphasis added).

will not obviate a finding of cessation:

.... the Refugee Convention and the QD are not measures for ensuring political and judicial reform in the countries of origin of refugees. The risks which entitle individuals to protection are risks which affect them personally and individually. It is an *individualised* approach. Just as it is no answer to an asylum claim that there is a legal system which might in theory be able to protect them, so conversely the absence of such a system is not an answer to a cessation decision if it is shown that the refugee has sufficient, lasting protection in other ways or that the fear which gave rise to the need for protection has in any event been superseded and disappeared.⁶⁸

Jurisprudence in **France** has also considered protection and cessation in relation to the best interests of the child principle. For instance, in a case concerning two girl applicants from Mali who claimed risk of FGM, the CNDA refused to apply cessation despite statements from the girls' mother that FGM had reduced in prevalence in Mali. In concluding that there was no change of circumstances, the Court relied on the best interests of the child principle set out in the Convention on the Rights of the Child, and the protection against FGM set out in Article L.752-3 Ceseda.⁶⁹

One specific question in national case law has been whether a change can be regarded as 'significant and non-temporary' if there is **armed conflict** in the country of origin. In a cessation decision by the Immigration Appeals Board of **Norway** in 2017, a majority of the Grand Board found that 'significant' changes had taken place in Mogadishu and therefore cessation was applicable.⁷⁰ The majority of the board noted that the main security threats in Mogadishu are terrorist attacks carried out by al-Shabaab and that these terror threats are aimed at the authorities but are not directed at the civilian population. The minority, in contrast, found that a significant and 'permanent' change had not occurred. This was because it was not clear from the country information as to whether al-Shabaab constitutes a risk to the civilian population in Mogadishu and that a significant change must also have taken place in the democratic and human rights situation in the country of origin.⁷¹

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

Case law in **Norway**⁷² and the **UK**⁷³ has held that a change of personal circumstances can trigger cessation. The 2017 **UK** Court of Appeal decision in *MM (Zimbabwe)* held that:

The circumstances in connection with which a person has been recognised as a refugee are likely to be a combination of the general political conditions in that person's home country and some aspect of that person's personal characteristics. Accordingly, a relevant change in circumstances for the purposes of Article 1C(5) might in a particular case also arise from a combination of changes in the general political conditions in the home country and in the individual's personal characteristics, or even from a change just in the individual's personal characteristics, if that change means that he now falls outside a group likely to be persecuted by the authorities of the home state.⁷⁴

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

Another issue in national practice concerns the application of cessation where an individual has been recognised as a refugee on the basis of their **family relationship** with a person who has already been granted refugee status,

68 MA Somalia 2018, above n 11, paragraph 49.

69 CNDA, Mme S and Mme F., Decision Nos 17038232 and 17039171, 26 November 2018, discussed in AIDA, Country Report, France, 2019, p 130 <https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_fr_2019update.pdf>.

70 Immigration Appeals Board of Norway ('Grand Board'), Decisions on Cessation, June 2017, <www.une.no/kildesamling/stornemndavgjorelser/stornemnd---opphor-av-flyktningstatus/>. It found that '[w]ith the help of AMISOM [the African Union Mission in Somalia], the Somali authorities regained control of the city in 2012, which has led to a gradual improvement in the security situation in Mogadishu, and that al-Shabaab is no longer deemed to constitute a real risk to the appellants'.

71 Ibid.

72 HR-2018 Supreme Court of Norway, above n 11.

73 *Secretary of State for the Home Department v MM (Zimbabwe)* [2017] EWCA Civ 797 <www.bailii.org/ew/cases/EWCA/Civ/2017/797.html>; *Secretary of State for the Home Department v KN (DRC)* [2019] EWCA Civ 1665 <www.bailii.org/ew/cases/EWCA/Civ/2019/1665.html>.

74 *MM (Zimbabwe)*, above n 73, paragraph 24.

rather than any individualised fear of persecution in their home country. This can raise procedural complexities for cessation if such an applicant was given international protection based on a family relationship without having been an individual determination of whether they themselves had a well-founded fear of persecution.

In **France**, the Council of State [Conseil d'État], ruled that refugee status can end following divorce, when the status was obtained based on family unity.⁷⁵ In relation to children, however and an example of **best practice** is the finding of the CNDA in 2018 that, in line with the principle of family unity, a child benefitting from the same refugee status as his mother could not be subject to cessation by the mere fact of reaching the age of 18, as long as the mother maintained refugee status.⁷⁶

In two recent 2019 cases in the **UK** - *Secretary of State for the Home Department v KN (DRC)*⁷⁷ and *Secretary of State for the Home Department v JS (Uganda)*,⁷⁸ the court considered whether cessation can be applied to refugee status arising from a **family relationship**. In each of these cases, the applicants were **children** when they were recognised as a refugee and obtained refugee status via their parents. The argument was how this affected cessation when the children had turned 18 and therefore 'aged out' of a dependent category or lost any special protections that may be afforded to them as minors.

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

In this case, the respondent was granted refugee status 25 years ago in 1994 at a time when, under the policy then in place, a member of a family of a person granted refugee status was himself automatically recognised as a refugee... His father's persecution by the regime in DRC, and well-founded fear of further prosecution were he to be returned to that country, were manifestly part of the circumstances in connection with which the respondent himself was recognised as a refugee.⁷⁹

The Court therefore held that:

given that the respondent has been granted refugee status, the onus of proving that the circumstances in connection with which he was recognised as refugee have ceased to exist lies on the Secretary of State. He must show that, if there were any circumstances which in 1994 would have justified the respondent fearing persecution in DRC, those circumstances have now ceased to exist and that there are no other circumstances which would now give rise to a fear of persecution for reasons covered by the Refugee Convention.⁸⁰

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

... on its true construction, article 1C(5) requires consideration of *relationship* and *risk*. It follows .. that, in the language of article 1C(5) of the Refugee Convention, 'the circumstances in connexion with which [the applicant] has been recognised as a refugee... have ceased to exist', since his mother can

75 Council of State [Conseil d'État], *M.A. (Russia) vs French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 29/11/2019, <<https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1057>>.

76 CNDA, M. O., Decision No 17013391, 31 December 2018, cited in AIDA, Asylum in Europe – Country Report France, 2019, p 129 <https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_fr_2019update.pdf>.

77 *Secretary of State for the Home Department v KN (DRC)*, above n 73.

78 *Secretary of State for the Home Department v JS (Uganda)* [2019] EWCA Civ 1670 <www.bailii.org/ew/cases/EWCA/Civ/2019/1670.html>.

79 *Secretary of State for the Home Department v KN (DRC)*, above n 73, paragraph 34.

80 *Secretary of State for the Home Department v KN (DRC)*, above n 73, paragraph 36.

no longer have a well-founded fear of persecution in Uganda.⁸¹

In addition to these cases involving **derivative status**, there is a more general question as to whether the fact that a child turns 18 and therefore 'ages out' should be a trigger for cessation. The issue here is whether the reason for recognition – being a minor or a dependent – no longer exists. For instance, it was the practice of decision-makers in **Slovenia** to grant subsidiary protection to unaccompanied minors from Afghanistan until they were 18 on the basis that a return of an UAM to Afghanistan would represent a risk of serious harm. However, upon those applicants 'ageing out' the authorities would refuse to extend their subsidiary protection because the initial reasons for the grant of protection (being a minor) no longer existed.⁸²

In such a scenario, a state may be under an obligation to consider the best interests of the child, their right to family life and obligations under European law in relation to family reunification (even where a child 'ages out').⁸³ Indeed, UNHCR's view is that the fact that a child turns 18 years of age should not routinely prompt the initiation of cessation procedures or discontinuation of residence permit. It states that the protection risks which gave rise to the granting of protection status do not necessarily end because childhood ends.⁸⁴

Another question which has arisen in national case law has been how **new claims of persecution** should be dealt with in cessation assessment procedures. This was the subject of consideration by the **German** Federal Administrative Court in 2011 in *A and R v Federal Republic of Germany*.⁸⁵ This case concerned husband and wife applicants from Iraq. The applicants were recognised as refugees by the German Federal Office in February 2002 on the basis that the Iraqi authorities viewed a mere application for asylum in another country as political opposition.⁸⁶ In 2005, the German Office revoked the applicants' refugee status following a finding that their fear of persecution had permanently ceased to exist due to the changed political conditions in Iraq. The applicants made new claims that the husband had been involved in the Democratic People's Party in Iraq prior to leaving the country. The German Federal Administrative Court held that there was a link between the new claims and the previous basis for recognition and thus the case could be assessed as a cessation decision (that is, whether there has been a non-temporary change in country conditions under Article 11(2)). The political party the applicant had been involved with was at that time in opposition to Saddam Hussein's regime and thus the Court viewed this as sufficiently linked to the previous claim for refugee status upon which the applicant had been granted refugee status:

Although the recognition of his refugee status was not *founded* on this argument, it was nevertheless connected with opposition to the regime at the time – which was presumed by the Iraqi authorities because he had filed an application for asylum – and was therefore *connected* with political opinion as a reason for persecution.⁸⁷

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

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

If the Complainant is threatened with persecution in relation to his involvement with the 'Democratic People's Party', this would indeed need to be taken into account in the examination under Article 11(2) of Directive 2004/83/EC, with regard to the question of whether the established change in circumstances – specifically, the cessation of persecution by the Saddam Hussein regime and the establishment of a new government . . . is sufficiently significant that the Complainant's fear of persecution

81 *Secretary of State for the Home Department v JS (Uganda)*, above n 78, paragraph 172 (emphasis in original).

82 Discussed in EDAL summary of Constitutional Court of Slovenia, Constitutional Court of the Republic of Slovenia, Judgment U-I-U-I-189/14, Up-663/14, 15 October 2015, <www.asylumlawdatabase.eu/en/case-law/slovenia-constitutional-court-republic-slovenia-15-october-2015-judgment-u-i-u-i-18914>.

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

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

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

86 German Federal Administrative Court, *BVerwG 10 C 3.10*, paragraph 2.

87 German Federal Administrative Court, *BVerwG 10 C 3.10*, paragraph 24.

should no longer be considered well founded.⁸⁸

This has also been considered as part of cessation of subsidiary protection by the Constitutional Court of **Slovenia**.⁸⁹ In this case, the Asylum authority had refused to examine new evidence which the applicant submitted in support for his request for an extension of his subsidiary protection status. The Authority argued, amongst other things, that if there were new circumstances the applicant should start a new procedure for international protection and that the findings in *Abdulla* were not applicable by analogy (because that case was about cessation of refugee status, not subsidiary protection). However, the Constitutional Court of Slovenia endorsed the application of *Abdulla* to subsidiary protection, finding that in assessing cessation of subsidiary protection status it is not enough to conclude that the circumstances based on which protection was granted ceased to exist but also that there are no circumstances that would justify the need for protection. Therefore, an applicant can make new claims for protection as part of the cessation procedure.

iii. Cessation and non-state actors of protection

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

- a. Whether international organisations, multinational forces or militias can constitute 'actors of protection' for the purpose of cessation.
- b. Whether family members can constitute 'actors of protection for the purpose of cessation.

Multinational forces

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

Decisions of authorities in **France** have differentiated between levels of protection provided by various UN forces. For instance, a number of decisions of the French Commission de Recours have held that there is a difference in protection provided by UN forces established under Chapter VI and Chapter VII of the UN Security Council. It has held that UN forces established under Chapter VI are not actors of protection, but that those established under Chapter VII are.⁹⁰ The rationale is that under Chapter VII of the UN Charter, UN missions have administrative and coercive powers.⁹¹

Family as actors of protection

The other legal issue arising from non-state actors is whether the presence of **family members can be** viewed as protectors for the purpose of cessation. This was considered by the **UK** Upper Tribunal in 2019 in a case involving an applicant from Mogadishu, Somalia. The Upper Tribunal found that the applicant had some close family in Mogadishu and that he could look to them for some financial support. He could also look for such support from his sister based in the United Arab Emirates and fellow clan members in the United Kingdom. However, it did not make a definitive ruling on this issue and referred a number of questions to the CJEU in *Secretary of State for the Home Department v OA (Request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom))*.⁹² As discussed above (under Part I of this Legal Note), the CJEU's ruling in *OA* on this issue was that the social or financial support provided by private actors, such as families or clans falls short of 'protection' and is thus irrelevant in a cessation assessment.

iv. Cessation and Internal Protection Alternative (IPA)

88 German Federal Administrative Court, *BVerwG 10 C 3.10*, paragraph 24 (emphasis added).

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

90 See ECRE, 'The Impact of the EU Qualification Directive on International Protection', October 2008, 95.

91 See *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Chapter VII.

92 *OA*, above n 11.

The use of IPA in cessation decisions is contested. UNHCR has, on a number of occasions, cautioned against the use of Article 1C(5) in relation to part of a territory.⁹³ In its 2003 Guidelines on Cessation it states that cessation should not apply to regional safety:

... changes in the refugee's country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status. Refugee status can only come to an end if the basis for persecution is removed without the precondition that the refugee has to return to specific safe parts of the country in order to be free from persecution. Also, not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental.⁹⁴

It has also reiterated that position in *amicus curiae* submissions to national courts in cessation cases.⁹⁵ This is relevant to national case law on this issue as some decisions of national courts have referred to the UNHCR position on cessation and IPA. In an intervention in an appeal in a Norwegian court, UNHCR has adopted a clear position against the use of an IPA in cessation assessments:

UNHCR submits that the IFA⁹⁶ concept can be applied only in the context of assessments of eligibility for international protection within Article 1A (2) of the 1951 Convention, and not in the context of cessation of refugee status in accordance with Article 1C (5) and (6) of the 1951 Convention. The possibility of an IFA is part of the holistic test under Article 1A (2) of the 1951 Convention to establish whether a person has a well-founded fear of persecution and is unwilling or unable to avail her- or himself of the protection of her or his country of origin. In contrast, cessation on the basis of "ceased circumstances" requires an assessment of whether the situation in the country of origin in connection with the reasons for recognizing the person as a refugee has changed fundamentally and durably. Further, IFA is part of a forward-looking test, whereas cessation on the basis of "ceased circumstances" concerns an assessment of the extent or degree to which past circumstances have materially changed.⁹⁷

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

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

- In 2017, a decision of the Grand Board of the Immigration Appeals Board in Norway found that cessation was satisfied in relation to two applicants from Somalia, on the basis of changes in *part* of that country. The majority of the Grand Board found that 'significant' changes had taken place in the capital (Mogadishu) since the time the applicant were granted refugee status and temporary residence permits. Specifically, 'the Somali authorities regained control of the city in 2012, which has led to a gradual improvement in the security situation in Mogadishu, and that al-Shabaab is no longer deemed to constitute a real risk to the appellants'.⁹⁸
- In a 2020 decision of the Borgarting Appeals Court, the court held that IPA may be applied to cessation and there is no need to apply a reasonableness test. The court held that the 'significant and stable change' can hinge on relational factors and that the security situation in the IPA (Kabul) did not give rise to new grounds of refugee status.⁹⁹

In contrast, there has been a divergence of opinion on this issue amongst authorities in the **UK**. In a 2018 decision of the **UK** Upper Tribunal in *MS (Somalia)*, the tribunal held that the UK authorities were *not* entitled to cease the applicant's refugee status on the basis only of a change in part of the country.¹⁰⁰ In doing so, the Tribunal confirmed the correctness of the UNHCR Cessation Guidelines on that point (although emphasising that that it was not afford-

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

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

95 See UNHCR Amicus Bogarting CA, above n 16, paragraph 9: 'UNHCR submits that the IFA concept can be applied only in the context of assessments of eligibility for international protection within Article 1A (2), and not with regard to cessation of status within Article 1C (5) and (6) ... and not in the context of a cessation assessment'.

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

97 UNHCR Amicus Bogarting CA, above n 16, p 10, paragraph 25.

98 See eg decisions of the Grand Board of the Immigration Appeals Board of Norway, above n70. I note that a majority of the Board disagreed with the majority, finding that a significant and permanent change had *not* taken place in the security situation in Mogadishu. However, the minority also seemed to be accepting and applying a 'partial' cessation test.

99 Case 19-028135ASD-BORG, summarised in UNHCR Amicus Bogarting CA, above n 16.

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

ing the UNHCR Cessation Guidelines ‘a status of being determinative of the issue in question’).¹⁰¹

However, this finding was reversed on appeal, with the UK Court of Appeal holding that in a case in which refugee status has been granted because the person *cannot* reasonably be expected to relocate, a cessation decision may be made if circumstances change such that the person *can* now reasonably be expected to relocate. The Court emphasised that this will suffice for application of cessation provided that the change in circumstances is ‘significant and non-temporary’ in accordance with the 2011 Qualification Directive.¹⁰² As part of the cessation assessment, the Court held that the size of the area of relocation will be relevant to the reasonableness of being expected to relocate there and also to whether the change in circumstances is ‘significant and non-temporary’. However, the Court did not accept that there is any requirement that it be a *substantial* part of the country.¹⁰³

v. The ‘Compelling Reasons’ Exception to Cessation

Article 1C(5) of the Refugee Convention sets out an exception or ‘proviso’ to the operation of cessation where there are ‘compelling reasons’ arising out of previous persecution. Specifically, Article 1C(5) provides that it ‘shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality’.¹⁰⁴ However, the proviso is phrased so as to be limited to *Article 1A(1)* of the Convention, that is, pre-1951 refugees. Despite this, UNHCR has consistently argued that the exception reflects a ‘more general humanitarian principle’ which should be applied to all Convention refugees.¹⁰⁵

In an example of **best practice**, Article 11(3) of the recast 2011 EU Qualification Directive reflects this principle, setting out a compelling reasons exception for *all refugees*. It provides that cessation ‘shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing 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’.¹⁰⁶

As an illustration of European national practice (and not an exhaustive list), laws in **Belgium, France, Germany** and **Norway** have also interpreted the exception as applying broadly to all refugees.¹⁰⁷ For instance, Section 73 of the German Asylum Procedure Act provides that cessation shall not apply ‘if the foreigner has compelling reasons, based on earlier persecution, for refusing to return to the country of which he is a citizen, or, if he is a stateless person, in which he had his usual residence’.¹⁰⁸

Another example of best practice, is a decision of the Council for Alien Law Litigation of **Belgium** in relation to a victim of domestic violence.¹⁰⁹ Here the Council held that where previous persecution is of such gravity that the applicant’s fear was exacerbated to the point where a return to their country of origin would be unfeasible, the applicant may retain their refugee status despite a change in circumstances. The Council explained that this exacerbated fear should be assessed in light of the applicant’s personal experience, their psychological structure and the extent of the physical and psychological consequences relevant to the case.

One question which seems to have led to some divergence in national practice is how trauma may be assessed as constituting a ‘compelling reason’. This is important as the European Asylum Support Office (EASO) has indicated that return to the country of origin may have ‘unacceptably severe consequences if the mental suffering of a person who received a psychotrauma during the original persecution would greatly increase upon return’.¹¹⁰

In **Germany**, the threshold for evidence of trauma appears to be quite high. For instance, the German Higher Ad-

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

102 *MS (Somalia)* above n 6, paragraph 49.

103 *MS (Somalia)*, above n 6, paragraph 50.

104 Refugee Convention, Article 1C(5).

105 UNHCR Handbook, above n 15, paragraph 136. See also UNHCR Cessation Guidelines 2003, above n 16, paragraph 31; UNHCR, *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004*, 28 January 2005, p 25.

106 2011 EU Qualification Directive, Article 11(3).

107 Norway: Immigration Act s 37; Germany: *Asylum Procedure Act* s 73(1); France: Refugee Appeals Commission (France), decision of 18 October 1999, *Molina*, No 336763.

108 *Asylum Procedure Act*, Germany, Section 73(1).

109 Council for Alien Law Litigation, Belgium, Case no.190 672, 17 August 2017 <www.asylumlawdatabase.eu/en/case-law/belgium-council-alien-law-litigation-17-august-2017-n%C2%B0190-672>.

110 EASO *Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU) A Judicial Analysis*, pp 39-40 (citations omitted).

ministrative Court of Baden-Württemberg held that a diagnosis of Post-Traumatic Stress Disorder (PTSD) is, in and of itself, neither necessary nor sufficient to engage Article 11(3) of the Qualification Directive.¹¹¹

In the **UK**, current policy guidance allows for the application of compelling circumstances when refugee status is revoked. However, the guidance puts the threshold for the exception at a very high level, stating that it 'applies to cases where refugees, or their family members, have suffered *truly atrocious forms of persecution* and it is *unreasonable* to expect them to return to their country of origin or former habitual residence'.¹¹² It sets out some examples of instances where the exception might apply: ex-camp or prison detainees; survivors or witnesses of particularly traumatic violence against family members, including sexual violence; and those who are severely traumatised.¹¹³

vi. Cessation – Living Standards, Humanitarian Considerations and the ECHR

National case law has considered whether humanitarian considerations such as living standards should be relevant to the cessation assessment. As part of this, there is a question as to how cessation interacts with the non-refoulement principles in the European Convention on Human Rights.¹¹⁴

The applicability of humanitarian standards to cessation and the role of Article 3 of the ECHR was considered in the **United Kingdom** in the 2017 decision of *MM v Zimbabwe*¹¹⁵ and the 2018 decision of the UK Court of Appeal in *Secretary of State for Home Affairs v MA (Somalia)*.¹¹⁶ The question at issue was whether a decision-maker carrying out a cessation decision was also required to consider whether the refugee's rights under Article 3 of the European Convention on Human Rights would be violated if they were returned to their country of origin.¹¹⁷ Article 3 of the ECHR provides that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'. Thus, the cases involved an analysis of whether humanitarian considerations formed part of the cessation criteria. In both of these cases, the Court held that the test for cessation of refugee status is different to that for assessment of ECHR non-refoulement arguments and does not encompass humanitarian considerations.¹¹⁸

In the more recent case, *MA Somalia*, the applicant claimed he would face significant humanitarian challenges if returned to his country of origin. A significant development in the case was that on 3 October 2014, the UK Upper Tribunal Court handed down a new country guidance decision for Somalia: *MOJ and others (Return to Mogadishu) (CG)*.¹¹⁹ This held that ordinary civilians returning to Mogadishu were no longer at any risk from security forces, international forces or terrorist organisations and that such persons would normally look to their family or clans for support on return. The issue was whether such protection would be available and, if not, what implications this had for the living conditions of the applicant if returned.

At first instance, the tribunal judge accepted that the applicant was from a minority clan, that the applicant did not know where his parents were, that he had little education, and his family in the UK would not be able to support him because they were on Social Security benefits.¹²⁰ Therefore, if the applicant was to be returned to Somalia, 'it was likely that he would have to live in conditions that fell below acceptable humanitarian standards'.¹²¹ Therefore the tribunal held that the cessation standards set out in the UK immigration rules were not satisfied.

The UK Secretary of State argued before the Court of Appeal that the first-instance decision maker had wrongly

111 Higher Administrative Court of Baden-Württemberg (Germany), *A 6 S 1097/05*, paragraph 26, cited in EASO, above n 107, p 40.

112 UK Home Office, *Asylum Policy Guidance, Revocation of Refugee Status*, 19 January 2016, p 26.

113 *Asylum Policy Guidance*, above n 108. The guidance notes that 'The presumption is that such persons have suffered grave acts of persecution, including at the hands of elements of the local population, and therefore cannot reasonably be expected to return. Application of the 'compelling reasons' exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees and reflects a general humanitarian principle. As this provision is expected to apply only in the most exceptional of cases, any decision not to proceed with revocation on this basis must be taken by a senior caseworker'.

114 This has also been considered by the CJEU in *OA*, above n 11, discussed earlier in this note at pp. 12.

115 *Secretary of State for The Home Department v MM (Zimbabwe)* [2017] EWCA Civ 797.

116 *Secretary of State for The Home Department v MA (Somalia)*, [2018] EWCA Civ 994, UK Court of Appeal 2 May 2018 (hereinafter 'MA Somalia 2018').

117 Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS No. 005 ('ECHR').

118 *MM (Zimbabwe)*, above n 73, paragraph 34-35.

119 *MOJ and others (Return to Mogadishu) (CG)* [2014] UKUT 442.

120 First Tier Tribunal decision (Judge Hinson), summarised in *MA (Somalia)* 2018, paragraph 14.

121 First Tier Tribunal decision (Judge Hinson), summarised in *MA (Somalia)* 2018, paragraph 14.

focused on humanitarian conditions in the country of origin in applying the cessation principles.¹²² The Secretary of State argued that ‘the lawfulness of a cessation decision does not depend on any comprehensive verification of the country of origin’s systems for protecting human rights, nor on any question relating to Article 3 [of the ECHR]’.¹²³ That is, Article 3 of the ECHR is a separate matter to a cessation decision. As part of its arguments, the Secretary of State also submitted that there was a distinction between cases where a person is subjected to a risk of violence on return and cases of *deprivation*.¹²⁴

Ultimately, the UK Court of Appeal held, *inter alia*, that:

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

Article 3 is not normally violated by sending a refugee back to his country of origin where there is a risk that his living conditions will fall below humanitarian standards.¹²⁵

Therefore, the court held that ‘[t]he verification necessary for a cessation decision under the QD would not, therefore, of itself include verification that the returning refugee would have the right to earn a living’.¹²⁶ Significantly, the UK Court of Appeal relied heavily on the findings of the CJEU in *Abdulla* in coming to this conclusion.¹²⁷ The court ultimately held that ‘humanitarian standards are not the test for a cessation decision’¹²⁸ and that in its findings the First-tier Tribunal went much further than the Qualification Directive or the Refugee Convention.¹²⁹

V. CONCLUSION

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

EU case law has established that the test for cessation of international protection should be interpreted as the ‘mirror’ of recognition of protection. In contrast, the interpretation given to cessation by UNHCR is broader, as it has stated on many occasions that cessation is not merely the ‘mirror’ of recognition .

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

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

122 *MA (Somalia)* 2018 paragraph 22.

123 *MA (Somalia)* 2018 paragraph 27.

124 *MA (Somalia)* 2018 paragraph 33.

125 *MA (Somalia)* 2018, paragraph 2.

126 *MA (Somalia)* 2018, paragraph 58.

127 *MA (Somalia)* 2018, paragraphs 50 –54, referring to *Abdulla*.

128 *MA (Somalia)* 2018, paragraph 56.

129 *MA (Somalia)* 2018, paragraph 56.