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"NOT A DAY LONGER THAN NECESSARY"

CESSATION OF INTERNATIONAL PROTECTION WITHIN THE EUROPEAN UNION.

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Abstract

Refugee status and subsidiary protection are not supposed to be eternal. Indeed, international protection can be withdrawn when it is no longer considered necessary or justified, in accordance with the cessation clauses of the 1951 Refugee Convention and the European Union (EU) Qualification Directive. While the EU States have made little use of this process in the past, new State practices and contemporary literature seem to indicate a revival of interest in the cessation clauses in recent years. How can this sudden surge of interest in cessation be explained? What impact could it have on the nature and duration of international protection?

The dissertation will focus on the international legal framework on cessation and the specificities of the European one, the past and present cessation practices of the EU States, the contemporary challenges in monitoring cessation practices, and a specific case study on French practices. Through the review of international and European refugee law instruments, institutional guidelines, relevant jurisprudence, publications by researchers and civil society organisations, available quantitative data on cessation cases in the EU and an interview with legal officers of the French administrative status determination authority, this work identifies various difficulties in the interpretation and implementation of the cessation concept.

What emerges from the research is a persistent divergence of practices between Member States, the limits of the procedural guarantees granted to beneficiaries of international protection and the risk of seeing an increase in cessation decisions against nationals of fragile and sometimes still in-conflict States. This Master's thesis therefore calls for better regulation of cessation practices within the EU.

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List of abbreviations

CEAS: Common European Asylum System

CJEU: Court of Justice of the European Union

CE: *Conseil d'Etat* (in English, Council of State)

CESEDA: *Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile* (in English, Code of Entry and Residence of Foreigners and of the Right to Asylum)

CNDA: *Cour Nationale du Droit d'Asile* (in English, French National Court of Asylum)

COI: Country-of-origin information

CRR: *Commission des Recours des Réfugiés* (in English, Refugee Appeals Commission)

EASO: European Asylum Support Office

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

ECRE: European Council on Refugees and Exiles

EMN: European Migration Network

EU: European Union

EUAA: European Union Agency for Asylum

ExCom: Executive Committee of the High Commissioner's Programme (the UNHCR's governing body)

IPA: Internal Protection Alternative

IRO: International Refugee Organization

NGO: Non-Governmental Organisation

OFPRA: *Office Français de Protection des Réfugiés et Apatrides* (in English, French Office for the Protection of Refugees and Stateless Persons)

UDHR: Universal Declaration of Human Rights

UK: United Kingdom

UN: United Nations

UNGA: United Nations General Assembly

(UN)HCR: (United Nations) High Commissioner for Refugees

US: United States

WWII: World War II

Glossary

Cancellation: Invalidation of a status recognition that should not have been granted in the first place *(UNHCR Note on the Cancellation of Refugee Status)*.

Cessation: The ending of international protection status pursuant to Article 1C of the 1951 Convention or Article 16 of the Qualification Directive because international protection is no longer necessary or justified *(UNHCR Note on the Cancellation of Refugee Status)*.

Complementary protection: Protection mechanisms outside the 1951 Refugee Convention, being granted to asylum-seekers who failed in their claim for refugee status *(Ruma Mandal, External Consultant for the UNHCR)*.

Internal Protection Alternative: A situation where an asylum-seeker or a beneficiary of international protection can be protected from serious harm or persecution in another part of its country of origin and can reasonably be expected to settle there.

International protection: Refugee status and subsidiary protection *status (Qualification Directive)*.

Non-refoulement: a core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation *(European Commission website)*.

Partial cessation: Cessation declarations for distinct sub-groups of a general refugee population from a specific country, for instance, for refugees fleeing a particular regime but not for those fleeing after that regime was deposed (*UNHCR guidelines on International Protection No. 3)*.

Refugee: Someone who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it *(Refugee Convention)*.

Resettlement: the selection and transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them - as refugees - with permanent residence status *(UNHCR website)*.

Revocation: Withdrawal of status when a person engages in conduct which comes within the scope of Article 1F(a) or (c) of the Refugee Convention after having been recognised as a refugee *(UNHCR Note on the Cancellation of Refugee Status)*.

Serious harm (Qualification Directive): Serious harm consists of: a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment; and c) individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict *(EU Qualification Directive)*.

Subsidiary protection: The protection given to someone who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country *(EU Qualification Directive)*.

Temporary protection: Temporary protection is an exceptional measure to provide immediate and temporary protection in the event of a mass influx or imminent mass influx of displaced persons from non-EU countries who are unable to return to their country of origin *(European Commission website)*.

Introduction

"*Refugees status, being abnormal, should not be granted for a day longer than was absolutely necessary…*"[1]

This statement was made by G. J. van Heuven Goedhart, the first United Nations High Commissioner for Refugees, at the 23rd meeting of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, on 16 July 1951. He explained his comment by stating that "a person [has] the status of *de facto* citizenship (…) if he really [has] the rights and obligations of a citizen of a given country"[2]. In such case, international protection should be ended as the refugee can be protected by this country. Therefore, cessation applies when a refugee has secured or can secure national protection, either in the country of origin[3] or in another country, and thus does not need international protection anymore[4]. This rationale constitutes the foundation of the idea of cessation, which has been integrated into the 1951 Refugee Convention.

In the contemporary asylum systems, the Convention Relating to the Status of Refugees (also known as the Geneva Convention of 28 July 1951 or the Refugee Convention) is the main document defining the status and rights of refugees as well as the obligations of States towards them. The Convention was adopted on 28 July 1951, at the end of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. Within the Convention, Article 1C establishes the cessation clauses by setting out an exhaustive and specific list of 6 circumstances in which a person who has been granted refugee status can, and shall, have international protection withdrawn. Those clauses are the following:

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

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

[1] United Nations (UN), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Summary Record of the Twenty-third Meeting*, 26 November 1951, url
[2] *Ibid*.
[3] For the sake of brevity, in this thesis, the term "country of origin" will be used to refer to both the "country of nationality" and "the country of former habitual residency" in the case of stateless persons.
[4] United Nations High Commissioner for Refugees (UNHCR), *Note on the Cessation Clauses*, 30 May 1997, url

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

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

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

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence"[5].

Due to the existence of complementary forms of protection[6], refugees are not the only beneficiaries of protection who can have their status withdrawn. For example, the European Union (EU), in adopting the Qualification Directive in 2004, created subsidiary protection for all persons who do not qualify for refugee status but who nevertheless require international protection, as they would face a risk of serious harm[7] if they were returned to their country of origin. The Directive also provides for its own "cessation clause" according to which:

"*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*

[5] United Nations, *Convention Relating to the Status of Refugees*, Geneva, 28 July 1951, article 1C url

[6] Complementary protection can be defined as protection mechanisms outside the 1951 Refugee Convention, being granted to asylum-seekers which failed in their claim for refugee status.

[7] Serious harm is defined in article 15 of the directive and includes: a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment; (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required"[8].

This provision is clearly inspired by clauses 1C5 and 1C6 of the Refugee Convention, thus proving the relevance of those dispositions in recent years. It is interesting to note that cessation grounds for subsidiary protection are significantly fewer than those provided for refugees, as will be discussed later in the thesis.

Furthermore, cessation is not the only process that can lead to withdrawal of refugee status. Indeed, according to the United Nations High Commissioner for Refugees (UNHCR), with reference to end of protection, 3 categories need to be distinguished: cancellation, revocation and cessation[9].

- **Cancellation** refers to the invalidation of a "refugee status recognition which should not have been granted in the first place". This can happen when the status has been granted due to a misrepresentation of facts, when the applicant receives protection from another agency of the UN (Article 1D of the Convention), possesses the same rights and obligations as the nationals of their country of residence (Article 1E), or should have been excluded from international protection because of the acts they have committed (Article 1F[10]).
- **Revocation**: withdrawal of status when a person "engages in conduct which comes within the scope of Article 1F(a) or (c) of the 1951 Convention after having been recognised as a refugee". This can happen when a refugee (or a beneficiary of subsidiary protection) has committed acts qualifying for exclusion after having obtained asylum, thereby demonstrating that they are no longer worthy of international protection[11].

[8] European Union (EU), *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*), 20 December 2011, article 16, url
[9] UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, p.2, url
[10] Article 1F states that a person shall be excluded from the refugee status if they have committed: (a) a crime against peace, a war crime, or a crime against humanity, (b) a serious non-political crime outside the country of refuge prior to their admission to that country as a refugee, (c) acts contrary to the purposes and principles of the United Nations.
[11] In EU law, provisions were introduced to extend the concept of revocation to beneficiaries of international protection that represent a threat to the host country, notably when they have committed a serious non-political crime after the recognition of their status. This represents an extension of the original concept of revocation, which focus only on crimes against peace, war crimes, crimes against humanity or acts contrary to the purposes and principles of the United Nations…

- **Cessation** refers to "the ending of refugee status pursuant to Article 1C of the 1951 Convention because international protection is no longer necessary or justified". It is worth noting that it is the only end of protection process explicitly incorporated in the Convention. Moreover, cessation is included within Article 1, which is probably the main article of the Convention, as it deals with the refugee definition. This particularity tends to present cessation as the primary process for ending protection[12].

In this thesis, the focus will primarily be on cessation and not on the other grounds for ending protection. Indeed, the main object of interest will be to analyse how it may be decided that international protection is no longer needed. What indicators are precise enough to ensure that the risk of persecution or serious harm is definitively, or at least durably, eradicated? What procedural guarantees can be offered to beneficiaries of international protection (refugee status or subsidiary protection) to ensure that their status is not unjustly withdrawn and to allow them to rebuild their lives without fear of being suddenly and arbitrarily deprived of their protection?

Withdrawing status from a beneficiary of international protection is not a trivial act. Indeed, such a withdrawal of protection can only be followed by 3 situations for the former status holder: first, this person can stay regularly in the host country, because they have or can acquire citizenship, a permanent residence permit or a temporary residence permit on other grounds than asylum. Second, they are unable to obtain a residence permit, refuse to repatriate and become undocumented. They may remain irregularly in the host country or have to migrate to a third country. Third, they return to their country of origin, where they used to have a well-founded fear of persecution or to risk serious harm. In the last two cases, if the withdrawal is illegitimate, it can have dramatic consequences for the former status holder, who is forced to live in illegality and precariousness or to return to a country where they still have a well-founded fear of persecution or harm. The practice of cessation is therefore a high-stake exercise.

Cessation is however a key component of the current asylum systems, without which States, uncertain of when their responsibilities towards status holders will end, are likely to be much stricter in granting international protection. Yet, despite the importance of these provisions, it appears that most countries, including European countries, have made very little

[12] While this distinction is clear in the UNHCR's guidelines, the line is often blurred in State practices, which sometimes use the terms "cessation", "termination" or "revocation" for all the processes of ending protection.

use of the cessation clauses in the past, as noted by researchers such as Schultz (2020)[13], O'Sullivan (2021)[14], Cole (2021)[15], Goodwin-Gill, McAdam and Dunlop (2021)[16]. As a result, cessation law is generally considered underdeveloped[17], leaving much discretion to the States to develop their own practices.

However, most researchers also argue that the situation has recently changed[18], as European states are "reviving the Refugee Convention's cessation provisions"[19]. According to Joan Fitzpatrick and Rafael Bonoan, who were already observing this development in 2003 at the global level, there are several reasons for this new interest in cessation: "democratization in some formerly repressive States; a concern to prevent asylum from becoming a backdoor to immigration; experiments with temporary protection during mass influx; a stress upon voluntary repatriation as the optimal durable solution to displacement; the development of standards for voluntary repatriation; frustration with protracted refugee emergencies; and dilemmas posed by return to situations of conflict, danger, and instability"[20]. In practice, this dynamic translates into an increase in the number of cessation decisions (including with respect to beneficiaries of international protection coming from war-torn countries), the introduction of more frequent status reviews[21] and the increased use of complementary forms of protection that are more easily ceased. For example, Nikolas Feith Tan (2020) observes in Denmark the establishment of a robust cessation case management infrastructure, the subjection of even resettled refugees to cessation proceedings and the reduction of the duration of residence permits, which are only renewed after a status review. The researcher interprets those evolutions as a paradigm shift "away from permanent

[13] Jessica Schultz, "The end of protection? Cessation and the 'return turn' in refugee law", *Odysseus Academic Network*, 31 January 2020, url
[14] European Council on Refugees and Exiles (ECRE), Maria O'Sullivan, *Legal Note on the cessation of international protection and review of protection statuses in Europe*, 2021, url
[15] Georgia Cole, "Cessation" *in* Costello Cathryn, Foster Michelle, and McAdam Jane, *The Oxford Handbook of International Refugee Law*, June 2021, p. 1030-1045, url
[16] Guy S. Goodwin-Gill, Jane McAdam and Emma Dunlop, *The refugee in international law (Fourth edition)*, Oxford University Press, 2021, Part 1, Chapter 4, url
[17] Nikolas Feith Tan, "The End of Protection: The Danish 'Paradigm Shift' and the Law of Cessation", *Nordic Journal of International Law (Forthcoming)*, 2020, p.2, url
[18] It is interesting to note that for some authors, such as Georgia Cole, this change dates back to the 1990s, while for Nikolas Feith Tan it is much more recent and originates from the 2015 migration crisis. This thesis will thus seek to provide its own answer to the question: when have European countries started to modify their approach to cessation?
[19] Jessica Schultz, *op.cit*.
[20] Joan Fitzpatrick and Rafael Bonoan, "Cessation of Refugee Protection" *in* Erika Feller, Volker Türk, Frances Nicholson (ed.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection,* Cambridge University Press, 2003, p. 492, url
[21] Status reviews are used to assess whether the protection needs of beneficiaries are still ongoing or whether an end of protection provision (cessation, revocation, cancellation or other national dispositions) may apply.

protection and integration towards temporary protection and return"[22]. Despite Denmark appearing as a front-runner on this new approach of cessation and international protection, Nikolas Feith Tan made similar observations in other European countries: in Norway in particular, but also, concerning the shortening of the duration of residence permits, in Austria, Belgium, Hungary and Sweden.

On the contrary, during my five-month internship at the French National Court of Asylum, or, in French, *Cour Nationale du Droit d'Asile* (CNDA)[23], I have had the opportunity to observe that the French institutions do not seem to adopt the same approach. The Court indeed has very few cessation cases to examine and the first instance status determination authority (the OFPRA[24]) does not carry out frequent status reviews. I therefore started to wonder about the following: How could one explain the diverse approaches adopted by European countries, and in particular such a difference between the Danish and the French practices? Are all EU countries moving towards a more frequent application of the cessation clauses, fostered by the harmonisation of asylum systems through the work of the European Commission? And if so, is France bound to catch up with other European countries? While some of these interrogations cannot be answered with current data, reflections have however allowed me to come up with a research question for this work.

Hence, this thesis will aim to answer the following research question: to what extent have the different European countries and institutions shown a tendency to increase and simplify cessation proceedings in recent years, suggesting a shift in their perception of asylum away from permanent protection and integration towards temporary protection and return?

In terms of methodology, this thesis will be based on the study of international law and treaties, the UNHCR and EU guidelines, national and international jurisprudence, research articles, civil society reports as well as a case study of the French cessation practices[25]. This last part will be informed by the CNDA case law and an in-depth interview with two officials of the legal section of the OFPRA. These different data will be used to compare cessation law and practices in different countries, and to determine whether there

[22] Nikolas Feith Tan, *op.cit*., p.1, url
[23] Court of appeal for the decisions taken by the first-instance administrative authority or determining authority.
[24] Office Français de Protection des Apatrides, which translates in English as French Office for the Protection of Refugees and Stateless Persons
[25] By cessation practices, we are referring here to a set of factors such as the number of cessation decisions, the triggers for status reviews, the most-used cessation clauses, etc.

have been major changes over time. Therefore, my research will be mainly based on a qualitative analysis, although the few statistical data available will serve to investigate the evolution of the number of cessation cases in the different European countries.

The first chapter will be dedicated to a presentation of international and European law on cessation. It will highlight the specificities of European law and the role of different actors in its interpretation. In the second chapter, I will try to provide an analysis of the historical trends in the application of cessation provisions in European countries and assess the harmonisation of cessation practices in the EU. The third chapter will present current stakes related to the application of cessation clauses in Europe, such as the development of periodic status reviews or the application of cessation in conflict situations. Special attention will be paid to the position taken by the EU institutions on those new developments. Finally, the last chapter will be devoted to a case study of French cessation practices, in order to determine if the country follows the same trends as its European neighbours. These different analyses should allow us to find an answer to the question: are most European countries changing their cessation practices in favour of a new approach to asylum based on temporary protection and return?

Chapter I – The international and European legal frameworks on cessation of international protection

The first chapter of this thesis will discuss the genesis and evolution of the international and European legal frameworks on cessation. The analysis will focus on the way in which the legal instruments preceding the Refugee Convention, the Refugee Convention itself and the Common European Asylum System deal with the issues of cessation in particular (defined as the withdrawal of refugee status when international protection is no longer needed) and end of protection in general (therefore including other reasons to withdraw refugee status).

1. The idea of end of protection in legal instruments prior to the Refugee Convention

1.1. The idea of cessation before World War II

The issue of cessation is intrinsically linked to the question of the existence of protection statuses (international protection such as the refugee status or complementary forms of protection). Indeed, the idea of cessation is to officially cease to recognise a status and specific rights to beneficiaries of protection. Yet, before 1920, there did not seem to be any object such as refugee status, at least in Europe and in the United States (US). Indeed, according to James C. Hathaway (1984)[26], for more than four centuries before 1920, relatively small groups of people were able to move freely across European countries, to the United States or to "newly discovered lands"[27]. Those people were broadly described as refugees insofar as they appeared as victims "of circumstances which force [them] to seek sanctuary in a foreign country"[28]. However, after the First World War, the formation of massive groups of refugees and the rise of nationalism in Europe put a stop to this freedom of movement. The principal idea that emerged was to reserve assistance for those in the greatest need. This is how the idea of creating a refugee status for certain persons, or groups of persons, was born.

[26] James C. Hathaway, "The Evolution of Refugee Status in International Law: 1920-1950", *The International and Comparative Law Quarterly*, Vol. 33, No. 2, April 1984, p. 348-349, url
[27] There are, however, some exceptions to this freedom of movement, notably with respect to non-Europeans, as evidenced by the Chinese Exclusion Act of 1882 in the United States, which, by prohibiting Chinese immigration, marked the beginning of a nationalist withdrawal.
[28] James C. Hathaway, *op.cit.* p.348, url

Indeed, at first, the predominant idea was to grant asylum to groups of people based primarily on their nationality (or country of habitual residence), their presence outside their country of origin and their inability to enjoy the protection of their government[29]. The definition of groups qualifying for refugee status was conducted under the auspices of the League of Nations. Hence, if in 1921, the mandate of the High Commissioner for Refugees of the League was limited to Russians, the status of refugees was later extended to Armenians (in 1924), Assyrians, Assyro-Chaldeans, Syrians, Kurds and a small group of Turks (in 1928)[30]. These extensions were decided through a series of arrangements and conventions signed by several European states in the framework of the League of Nations[31]. Under these agreements, refugees were able to receive identity certificates, otherwise known as the Nansen Passports, in reference to the name of their creator, Fridtjof Nansen, the first High Commissioner for Refugees.

From reading these documents, it appears that, even though they do not contain explicit end of protection clauses, the idea of cessation was already implicitly present. Indeed, firstly, the definitions of refugees included in these arrangements specify that refugees do not enjoy the protection of their government of origin and do not have a second nationality[32]. It can be assumed that international protection is lost if the protection of the government of origin is re-established or if the refugee obtains a second nationality. Such a cessation however does not seem to be automatic[33]. Secondly, the identity documents issued generally have a limited validity date (which should not exceed 1 year in the 1926 Arrangement)[34]. This suggests that refugee status, or at least identity documents, may not be renewed if one does not meet the definition of refugee anymore[35]. Finally, more explicitly, the example of an identity certificate at the end of the 1922 agreement states that the certificate ceased to be

[29] Guy S. Goodwin-Gill, Jane McAdam and Emma Dunlop, *op.cit.,* 1, chapter 2, url
[30] Gilbert Jaeger, "On the history of the international protection of refugees", *International Review of the Red Cross*, Vol. 83, n°843, 727-738, p.729, url
[31] *Arrangement with respect to the issue of certificates of identity to Russian Refugees*, League of Nations (July 1922) Arrangement relating to the issue of identity certificates to Russian and Armenian refugees (May 1926) ; Arrangement relating to the legal status of Russian and Armenian refugees (June 1928) ; Arrangement concerning the extension to other categories of refugees of certain measures taken in favour of Russian and Armenian refugees (June 1928) ; and Convention relating to the International Status of Refugees (October 1933).
[32] League of Nations, *Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees*, 12 May 1926, para. 2, url
[33] In the 1926 arrangement, it is recommended that, when a government issues a national passport to someone (which means that this person has acquired the nationality of this country), it also withdraws from this person their identity certificate. But it is not presented as mandatory.
[34] League of Nations, *Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees*, 12 May 1926, para. 9, url
[35] While the possibility of renewal of the certificates are mentioned in several agreements, the conditions for renewals are not specified.

valid if the bearer enters Russian territory[36]. This last example clearly inspired one of the cessation clauses of the Refugee Convention, as we will be able to see later on. These provisions demonstrate that, even if cessation was not the main focus of the agreements, its idea was already underlying. Efforts seemed however more directed at controlling the number and nationality of people recognized as refugees[37], than at withdrawing status from those who no longer qualify as refugees.

Almost ten years later, similar provisions were included in the League of Nations agreements[38] granting refugee status to some people fleeing Germany, proving that the perspective on cessation has not changed. Regarding end of protection in general, the 1933 Convention on the International Status of Refugees grants protection against refoulement[39] to their countries of origin "in any case" to Russian, Armenian and assimilated refugees[40]. On the contrary, the 1938 Convention on German refugees states that the latter may be reconducted to German territory, for reasons of national security or public order[41], and if they refuse to proceed to another territory[42]. Yet, such an expulsion would be equivalent to ending protection, for reasons other than the absence of a persistent need for protection. Hence, while cessation was only implicitly mentioned on identity certificates (in the provision invalidating it in case of return to the country of origin), an entire article was devoted to end of protection for security reasons. In summary, at that time, cessation was not singled out as the main

[36] League of Nations, *Arrangement with respect to the issue of certificates of identity to Russian Refugees*, League of Nations, 5 July 1922, p.239, url

[37] For example, it was decided not to grant protection to Montenegrins living in France, to Jews living in Bukowina, Bessarabia and Transylva (in Romania) or to Ruthenians living in Austria and Czechoslovakia, despite the recommendations of the High Commissioner for Refugees (Hathaway, 1984, p.355). In the same way, for more political reasons, most Member States of the League of Nation decided not to include Italian and Spanish refugees in the League's mandate, in order to avoid provoking Mussolini (Goodwin-Gill, McAdam, Dunlop, 2021).

[38] 1936 Provisional Arrangement concerning the Status of Refugees coming from Germany; 1938 Convention concerning the Status of Refugees coming from Germany

[39] Non-refoulement a core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation (cf. European Commission website, url). Here, the 1933 Convention states that a refugee can be removed from the territory for reason of national security or public order, but they cannot in any case be refused entry by the signatory State at the frontiers of their country of origin (article 3)

[40] League of Nations, *Convention Relating to the International Status of Refugees*, League of Nations, 28 October 1933, Article 3, url

[41] Public order is a term that is mentioned in many agreements, without any definition being provided. In this thesis, public order will be defined as the state of normality and security which should be pursued by the State in order to ensure the harmonious development of society. The lack of definition of the concept in official texts has however an impact on what states can claim to be necessary to defend public order.

[42] League of Nations, *Convention concerning the Status of Refugees Coming From Germany*, 10 February 1938, Article 5, url

reason for ending protection (as it is in the Refugee Convention) and return to the country of origin was the only trigger for cessation.

1.2. The major contribution of the Constitution of the International Refugee Organization (1946)

After World War II (WWII), which created massive groups of refugees from various countries, the constitution of the International Refugee Organization (IRO, 1946)[43] marks a significant change in the asylum system by adopting a more comprehensive perspective on both refugee status[44] and end of protection. Indeed, the ideas of a return to normal conditions and of an end to protection are presented as key norms, as they are already raised in the preamble, which states that refugees should be assisted "either to return to their countries of nationality or former habitual residence, or to find new homes elsewhere". In the case of Spanish republicans, it is specified that they should be returned to Spain only after a democratic regime has succeeded the falangist regime. This thought of ceasing protection only after a change of circumstances has inspired two of the future cessation clauses of the Refugee Convention. Besides, a major contribution of this constitution is the possibility for refugees to refuse to return to their country of origin, if they expressed valid objections, such as:

(i) *"persecution, or fear, based on reasonable grounds of persecution because of race, religion, nationality or political opinions, provided these opinions are not in conflict with the principles of the United Nations, as laid down in the Preamble of the Charter of the United Nations;*

(ii) *objections of a political nature judged by the Organization to be "valid" (...)*

[43] United Nations, *Constitution of the International Refugee Organization*, New York, 15 December 1946, url

[44] Starting from the constitution of the Intergovernmental Committee on Refugees 1938, the definition of refugees has expanded and even multiplied. For the ICR, refugees were defined not only on the basis of their nationality and the absence of State protection, but also on the reasons for their emigration (race, religion, nationality or political opinion). In the IRO constitution, no less than 4 different definitions have been included. However, in practice, Arthur Rucker, the deputy director-general IRO, recognises that a large part of refugees are not included in the work of the organisation, which is only concerned with "the non-Germanic refugees who were left at the end of I945 in Germany, in Austria, and in Italy, with certain groups of pre-war refugees, the Spanish refugees, the so-called Nansen refugees, Russians, Armenians, etc., and with groups of both Europeans and Chinese refugees in China. We are also expected to do what we can for the group known as neo-refugees-those people who are, even to this day, still flowing into Western Europe from Eastern Europe" (cf. Arthur Rucker, The Work of the International Refugee Organization, *International Affairs*, Volume 25, Issue 1, January 1949, Pages 66–73, url)

(iii) in the case of persons falling within the category mentioned in section A, paragraphs 1 (a) and 1 (c)[45] compelling family reasons arising out of previous persecution, or, compelling reasons of infirmity or illness"[46].

Several points of this extract are of key importance for the comprehension of the duration of protection in contemporary asylum systems. Indeed, in the IRO convention, return (and therefore *de facto* cessation of international protection, as the definition of refugee implies to be outside of one's country of origin) seems to be the norm, whereas staying in the host country is the exception, only allowed when someone fears persecution based on race, religion, nationality or political opinion (factors which resemble our current definition of refugees[47]). This underlines the idea that some refugees need, rather than temporary protection, a long-term one. Moreover, the compelling reasons mentioned in point iii) – a concept that will be later included in the Refugee Convention - illustrate an important and still relevant idea that cessation is not to be applied to someone who is deemed legitimate in their refusal to return because of previous family-related persecution, physical injuries, or illnesses. Practically, that means that such people can retain refugee status forever if they refuse to re-avail themselves of the protection of their country of origin and are unable to obtain another nationality, and therefore that cessation is not a mandatory outcome of refugee status.

Another significant development in the IRO constitution is the inclusion of a list of circumstances in which refugees cease to obtain assistance from the organization (and therefore international protection) in Annex I, part I, section D:

"(a) when they have returned to the countries of their nationality in United Nations territory, unless their former habitual residence to which they wish to return is outside their country of nationality; or
(b) when they have acquired a new nationality; or

[45] i.e. "victims of the nazi or fascist regime or regimes which took part on their side in the second world war…" and "persons who were considered refugees before the outbreak of the second world war, for reasons of race, religion, nationality or political opinion."
[46] United Nations, *Constitution of the International Refugee Organization*, New York, 15 December 1946, Annex I, part I, section C, p.13 url
[47] According to the 1951 Refugee Convention, a refugee is someone who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" or "who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it" (article 1A2).

(c) when they have, in the determination of the Organization become otherwise firmly established; or

(d) when they have unreasonably refused to accept the proposals of the Organization for their re-settlement or repatriation; or

(e) when they are making no substantial effort towards earning their living when it is possible for them to do so, or when they are exploiting the assistance of the Organization"[48].

Through the inclusion of this section, it is the first time that the international community has tried to create a list of exhaustive reasons to end international protection, which goes beyond simply returning to the country of origin. Now, all these reasons do not fall within the scope of the concept of cessation, as we define it nowadays (i.e. the absence of a persistent need for international protection after having been granted refugee status). Indeed, while the first 3 points refer to situations where a refugee has re-availed themselves of the protection of their country of origin or has acquired the protection of another country (cessation-related ideas), the last 2 ones refer to circumstances when one is now considered undeserving of international protection (revocation-related ideas). Indeed, in case d), the refugee does not seem to accept the rules governing the refugee status under this specific Convention, and in case e), they appear not to make substantial efforts to earn a living without the assistance of the IRO. Therefore, in the IRO convention, cessation was equated with other grounds for ending international protection.

1.3. The question of the duration of international protection in the Universal Declaration of Human Rights (1948)

In 1948, the Universal Declaration of Human Rights (UDHR) incorporated an article on asylum that states the following: "Everyone has the right to seek and to enjoy in other countries asylum from persecution"[49]. To start with, the major change of this statement is that anyone, without any consideration of nationality, can be considered for international protection. The Declaration, however, does not specify the criteria to be applied in refugee status determination or cessation proceedings, as several Member States (Australia, Lebanon

[48] United Nations, *Constitution of the International Refugee Organization*, New York, 15 December 1946, Annex I, part I, section C, p.13 url

[49] United Nations, *Universal Declaration of Human Rights*, Paris, 10 December 1946, article 14, url

notably) in the Drafting Committee thought implementation measures should be laid down in a Convention.

Nevertheless, the study of the UDHR *travaux préparatoires* already gives us indications on the approach adopted by the United Nations (UN) Member States on the duration of international protection at that time. For instance, during the 37th meeting of the drafting committee of the UDHR, the chairman (Mrs. Roosevelt, which was also the representative of the United States) asked for the article to refer to "temporary asylum" as she thought that the host countries should not be bound to guarantee permanent residence. The Lebanese delegate commented on this proposed amendment by suggesting to replace the qualification "temporary" with "during persecution", which would mean that international protection would end when the conditions in the country of origin leading to persecution have ceased to exist (one of the future cessation clauses of the Refugee Convention). However, such a perspective implied that one's protection may never cease if persecutions were to continue, an idea that was opposed by the United States. A third approach was defended by the French representative, who thought that there was no need to include neither the mention of "temporary asylum" nor the one of "during persecution. As no agreement was reached on the other proposals, it was this approach that was endorsed by the vote. However, the lack of consensus on the question of the duration of protection was notable as the votes were particularly divided on the American proposal to add the word "temporary" before the word "asylum", with 2 states voting for, 2 against and 3 abstaining[50]. Therefore, this debate on the duration of protection underlines that the idea of end of protection and cessation had gained importance after WWII, and even though it was decided not to include any reference to the duration of protection in the UDHR, it only left this question open for consideration in a possible future convention.

In summary, the study of earlier legal instruments demonstrates that, before WWII, the reflection on end of protection, and especially cessation, has been secondary in international negotiations on refugee issues. Yet there was also little provision for long-term local integration of refugees. The question of the duration of international protection was thus often ignored in international agreements. The idea of cessation nevertheless gained importance after WWII, as illustrated by the IRO convention, the *travaux préparatoires* of

[50] United Nations, Commission on Human Rights, Drafting Committee, *Summary of the thirty-seventh meeting*, 18 may 1948, p.8-14, url

the UDHR but also and most importantly the drafting of the 1951 Refugee Convention. The next part will therefore be dedicated to the study of the key inputs of the Refugee Convention, cornerstone of our contemporary asylum system, to the definition of the cessation concept.

2. The idea of cessation in the Refugee Convention and the UNHCR interpretation

2.1. The place of cessation in the *travaux préparatoires* of the Convention

Pretty soon after WWII, it became clear that the 'refugee problem' would not be solved within a few years and only with the available instruments. To begin with, the previous agreements only covered certain categories of refugees and had been ratified by only a few numbers of States, as recognised by the UN Secretary General himself[51]. Moreover, a significant number of new refugees were coming to Western Europe from Central and Eastern countries. Yet the mandate of the IRO, the main organisation guaranteeing refugee protection, was supposed to end on the 30th of June 1950[52].

Therefore, the UN Secretary general was mandated to undertake a study "on the existing situation in regard to the protection of stateless persons" and to submit recommendations on "the desirability of concluding a further convention on this subject" in March 1948[53]. In this study, whose first part was mostly devoted to refugee issues[54], the Secretary General evokes the idea of cessation as early as in the introduction, as he states that repatriated and re-established (or, as we say nowadays, resettled) refugees will not need international protection in the future[55]. He also claimed that it was necessary to resort to the method of a convention in order to solve the statelessness issue[56]. This was the beginning of the process of creating the 1951 Refugee Convention.

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[51] United Nations, Ad Hoc Committee on Refugees and Stateless Persons, *A Study of Statelessness*, 1 August 1949, p.8, url
[52] Gilbert Jaeger, *op.cit*, p.733, url
[53] United Nations , Economic and Social Council, *Resolution 116 (VI) D of 1 and 2 March 1948*, p.18, url
[54] Indeed, the UN Secretary-General included refugees in his study as he considered that "a considerable majority of stateless persons are at present refugees". Indeed, he argued that refugees are *de jure* stateless persons if they have been deprived of their nationality by their country of origin. They are *de facto* stateless persons if without having been deprived of their nationality they no longer enjoy the protection and assistance of their national authorities".
[55] Ad Hoc Committee on Refugees and Stateless Persons, *op.cit*., p.5, url
[56] *Ibid*., p. 52 and 59, url

There were a very large number of documents that were created in relation to the drafting of the Refugee Convention (the so-called "*travaux préparatoires*"), which cannot all be examined in the context of this thesis. Indeed, among the *travaux préparatoires*, there are official records, resolutions and comments from the Economic and Social Council, the UN General Assembly (UNGA), the Ad Hoc Committee on Statelessness and Related Problems and other specialised institutions, as well as records and amendments from the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (held from 2 to 25 July 1951). However, what is important for our topic is to analyse the evolution of the cessation clauses in the different documents.

While the main issue of the *travaux préparatoires* was again to decide who should be eligible for refugee status, the idea of a limited duration of protection was nevertheless present since the first drafts. Indeed, in 1950, the Secretary General submitted a preliminary draft of the Refugee Convention and his comments on various issues, which he presented as a basis for discussion[57]. While the Secretary General did not include a specific article on cessation, it was discussed whether to include or not, under article 28 dealing with naturalisation, a provision according to which if, after a fairly long lapse of time (e.g. fifteen years) and a proposition to apply for naturalisation from the government, a refugee refused to do so with no valid reasons, then the Contracting Party could be released from the obligations of the Convention (and would thus cease to recognise them the rights attached to the status of refugee). The Secretary General proposed arguments for and against this provision, without deciding the issue. In favour of such a disposition was the claim that the position of refugee is abnormal and should not be permanent (i.e. the main rationale of the cessation clauses), and that the refugee should therefore seize the opportunity to acquire the nationality of the country in which they have long been established. In opposition to this provision was the idea that no one should be forced into a new nationality, especially as they may still cherish the hope of returning, just as the Italian refugees who had returned to their country twenty years after the establishment of the fascist regime in 1922. However, both arguments are based on the same idea according to which it would be abnormal for a refugee to want to remain a refugee, and that the latter can only aspire to two possibilities: either to settle permanently in their host country, with the same rights and duties as a citizen, or to return to their country of origin.

[57] United Nations, *Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons - Memorandum by the Secretary-General*, 3 January 1950, url

In the end, this provision was not included in the draft Convention relating to the status of refugees proposed by the Ad hoc committee on statelessness and related problems to the Economic and Social Council on 17 February 1950[58]. However, a brief mention of cessation was made within Article 1D, which states that the convention shall cease to apply to any refugee under 2 circumstances: *if the refugee acquires a new nationality* (1) or *if he returns to his country of nationality or former habitual residency* (2). This list of circumstances, in comparison with the IRO constitution, is rather short and only includes cessation-related grounds for ending protection (i.e the absence of a persistent need for international protection). Nevertheless, its inclusion within Article 1, which was entitled "definition of the term refugee", demonstrates the growing importance of cessation issues in the mind of the Convention drafters. This importance was further demonstrated by the decision of the Economic and Social Council, on 11 August 1950, to expand the number of cessation clauses. In the proposed draft of article 1, the Economic and Social Council thus states the following:

> *"B. This Convention shall not apply to any refugee enjoying the protection of a Government because*
> *(1) He has voluntarily re-availed himself of the protection of the government of the country of his nationality;*
> *(2) Having lost his nationality, he has voluntarily re-acquired it*
> *(3) He has acquired a new nationality and enjoys the protection of the government of the country of his nationality;*
> *(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;*
> *(5) As a former member of a German minority, he has established himself in Germany or is living there"*[59].

The wording of the first sentence of this extract highlights that the principal element of the cessation clauses is that the former refugee now enjoys the protection of a government, whether it is the one of their country of origin or of another host country. Moreover, the situation of German refugees is singled out, as if the cessation clauses were thought with the particular purpose of limiting the duration of protection for German refugees. At the eleventh

[58] United Nations, *Report of the ad hoc committee on statelessness and related problems*, 17 February 1950, p.13-28, url
[59] United Nations, Economic and Social Council, *Resolution of 11 and 16 August 1950*, E/RES/319 (XI), II, url

meeting of the Economic and Social Council, the French representative (Mr. Rochefort) explained why his country advocated for the inclusion of the cessation and exclusion clauses, which he called the "safeguarding clauses"[60]. The French delegation believed that, given the wide definition adopted for the term refugee, there may come a day when the countries will be unable to honour the obligations from the Convention because they will be faced with a too large influx of refugees. He took the example of the 500,000 Spanish Republicans that had been hosted by France, claiming that they could be a "danger" for France after the end of the IRO[61]. Mr. Rochefort therefore thought that only "persons who were still refugees" should keep the status, and not those who enjoy the protection of a government. In addition, in a following meeting, the French representative stated that all refugees could not expect naturalisation, as some of them would represent a "burden" for the hosting country, and that there was a difference between hospitality and naturalization[62]. However, the delegate also recognised that no victim of racial persecution should be compelled to return to the country where they "had suffered so bitterly"[63]. These different remarks show that the cessation clauses were drafted with both a "practical perspective", according to which refugees who would not bring assets to the country should be provided with another solution than naturalisation, and a "humanitarian perspective", which prevents host countries to return people who had suffered strong persecutions.

The draft Convention was then discussed by the UN General Assembly, which slightly amended the wording, but most importantly deleted the provision on the German minorities and included 2 new clauses, which are the followings:

> *"1.B. The present Convention shall cease to apply to any person falling under the term of section A if: (...)*
> *(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or*

[60] United Nations, Economic and Social Council, *Official Records, Eleventh Session, 406 meeting*, 11 August 1950, p.275-276, url
[61] It shows that there was already a link between the ideas of cessation and of the safety of the State.
[62] United Nations, Ad Hoc Committee on Refugees and Stateless Persons, *Second Session: Summary Record of the Thirty-Third Meeting,* 14 August 1950, url
[63] United Nations, Economic and Social Council, *Official Records, Eleventh Session, 406 meeting*, 11 August 1950, p.275-27, url

(6) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country"[64].

The new cessation clauses (5) and (6) add an important ground for cessation, in which cessation is triggered by a change of circumstances which often does not depend on the refugee (for instance, a change of government in their country of origin). Those new clauses seem to be an answer to the concerns expressed by the French delegation during the previous meetings of having too many refugees who no longer need international protection and could not expect naturalization. These additions also validate the position of the Lebanese delegation during the drafting of the UDHR, according to which asylum was supposed to be accorded during persecution only, without being able to predefine a specific duration.

The UN General Assembly adopted this draft convention in December 1950 and then convene a Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, in Geneva from 2 to 25 July 1951, to finalise the text. A few amendments to the cessation clauses were proposed, which were mostly discussing their wording. Yet, the Netherlands also proposed the introduction of a new clause defining a time limit of 10 years during which if the refugee does not avail themselves of the possibility to acquire the nationality of their host country, then they should cease to be considered a refugee[65] (an issue that had already been raised in the Secretary General's first draft, but which had not been resolved). However, this amendment was withdrawn, as several delegations expressed their conviction that many refugees retain the hope of returning to their homeland, even after a long period of time, and that this hope should not be taken away from them[66]. The idea of defining a limit to the duration of refugee status in the form of such a clause was therefore abandoned.

On another note, when the delegated discussed the compelling reasons in clauses (5) and (6), the French representative insisted that this provision was to be applied only to victims of exceptional circumstances, such as Israeli refugees (i.e. Jewish refugees) of German or Austrian origin which might be deprived of their refugee status as a result of the restoration

[64] United Nations General Assembly (UNGA), *Resolution 429 (V),* 14 December 1950, Article 1.B, url
[65] United Nations, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Draft Convention Relating to the Status of Refugees. Netherlands: Amendment to Article 1*, 13 July 1951, url
[66] United Nations , Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, Summary Record of the Twenty-third Meeting*, 1951, url

of a democratic regime in their country of origin[67]. The provision prevented them to return to a country where their people have suffered atrocious persecution. This interpretation was globally validated by other countries, which shows that it was intended to set a high threshold in the application of the compelling reasons dispositions. The Conference of the Plenipotentiaries thus drafted the final version of the cessation clauses of the Refugee Convention in July 1951.

The study of the *travaux préparatoires* of the Refugee Convention thus demonstrated that, while the question of cessation was not the priority of the negotiations, efforts were made in order, not to define a strict limit to the duration of protection, but to specify the circumstances in which a refugee could not retain their status and the associated rights. The rationale behind this was the practical idea of reserving status and assistance for those refugees most in need, particularly in States hosting large numbers of refugees, while retaining a humanistic exception for victims of extreme persecution, such as the Jewish exiles from Germany and Austria. These various considerations led to the wording of the cessation clauses of the Refugee Convention, as it is still in force today.

2.2. The idea of cessation in the 1951 Refugee Convention

The Refugee Convention is the cornerstone of our contemporary asylum systems. Adopted on 28 July 1951, it entered into force on 22 April 1954 and was complemented by the 1967 Protocol relating to the Status of Refugees[68], which removed the geographical and temporal limitations of the Convention[69]. It is thereby the only international treaty entirely devoted to the question of refugees with a universal geographical and temporal scope. Its importance is also illustrated by the number of ratifications: 149 States are parties to one or both international instruments[70]. Therefore, the inclusion of the cessation clauses in this convention also gives them a universal scope. Article 1C states the following:

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

[67] United Nations , Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Summary Record of the Twenty-eight Meeting*, 1951, url
[68] United Nations, *Protocol relating to the Status of Refugees*, New York, 31 January 1966, url
[69] Indeed, in the original Convention, refugee status was temporarily restricted to persons who fled "as a result of events occurring before 1 January 1951" and individual states could also opt to restrict the geographical scope to events having occurred in Europe.
[70] UNHCR, "The 1951 Refugee Convention", *UNHCR website*, url (Accessed: 5 September 2022)

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

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

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

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence"[71].

The first noteworthy point is that the article states that the Convention 'shall cease to apply' and not 'may'. It seems to mean that State Parties have the obligation to cease international protection when the conditions are filled. Those conditions are enumerated in 6 cessation clauses: 3 of them are based on the restoration of links with the country of origin, 1 on the acquisition of a new nationality (and thus the protection of a new country) and 2 on a change in the circumstances that gave rise to refugee status. Concerning the interpretation of these clauses, 3 aspects are explicitly highlighted in the article's wording:

1. **Being able to rely on the protection of national authorities**: in the case of clauses 1C1, 1C3 and 1C5, these only apply if the refugee can enjoy the protection of their country of origin or new country of nationality. This seems to mean that refugees can maintain their status if this protection does not exist (if the protection is partial or

[71] United Nations, *Convention Relating to the Status of Refugees*, Geneva, 28 July 1951, article 1C url

ineffective, however, no precision is given). On the contrary, for clause 4, the mere fact of re-establishing oneself in the country of origin is a ground for cessation, regardless of the protection of the authorities. This is probably because re-establishing oneself means more than just returning, but recreating strong social and economic links such as residing there, paying taxes, creating a business, voting, etc. For clause 1C6, the focus is on the possibility of the stateless person to return to their country of origin (which is not always the case). However, it does not specify if the refugee must be able to receive the protection of authorities there.

2. **The voluntary character**: in 3 of these clauses (clauses 1C1, 1C2, 1C4), there is mention of a voluntary action by the refugee (e.g. voluntarily reacquiring their original nationality). Besides, clauses 1C1 to 1C4 are often referred to as the clauses triggered by the refugee's actions, in opposition to clauses 1C5 and 1C6, whose application in most cases does not depend on the refugee[72].
3. **The compelling reasons**: for clauses 1C5 and 1C6 (the "ceased circumstances" clauses), there is an exception for refugees "who can invoke compelling reasons arising out of previous persecution". As discussed previously, this provision was intended for exceptional cases such as victims of Nazism. Nevertheless, it reflects a willingness to consider the application of the cessation clauses on a case-by-case basis rather than collectively, as is the procedure for granting refugee status.

Hence, the Refugee Convention includes a list of circumstances under which refugee status can be withdrawn when international protection is no longer considered necessary. However, the Convention does not detail, as for the status determination procedure, the practical modalities for the application of these clauses, such as precise criteria for assessing the voluntary nature of an action, the existence of protection by national authorities or procedural guarantees. The determination of those modalities is therefore left to the States and, in some cases, to the UNHCR.

On another note, it should be noticed that article 1C is not the only article raising issues related to cessation and end of protection in general. For instance, article 27 encourages the States to "*as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings"*[73]. This relates to the

[72] UNHCR, *Notes on the cessation clauses*, 1997, url
[73] United Nations, *Convention Relating to the Status of Refugees*, Geneva, 28 July 1951, article 27 url

idea that refugee status is considered abnormal and that refugees should aspire either to return to their country of origin or to become regular citizens in their host country. Moreover, return is not always a viable option, for example when the refugee has built a family in their host country, especially since the right to respect for private and family life is guaranteed by Article 12 of the UDHR[74]. States Parties are therefore encouraged to facilitate the naturalisation of refugees. However, even beyond naturalisation, former refugees can also stay in their host country if they are eligible for another type of residence permit (work permit, student visa, humanitarian permit, etc.). However, they must apply for this permit, which is often not automatically granted following cessation. Besides, Article 27 is an invitation, not an obligation, for States to facilitate naturalisation, which indicates that the final choice to grant nationality, permanent or temporary residence remains in the States' hands.

Finally, the Convention includes a provision for the end of protection for security reasons in clause 33.2. Within article 33, which prohibits refoulement, clause 33.2 allows an exception for refugees who represent a danger to the security of the host State[75]. While this provision does not provide for the loss of refugee status, it is a withdrawal of international protection *de facto* since such protection can no longer be effective in a country where the refugee is at risk of persecution and cannot avail themselves of the protection of national authorities. However, the fact that cessation is included in Article 1, which deals with the definition of refugees, and is detailed at length, whereas the end of protection on security grounds is a simple paragraph within an article that precisely prohibits refoulement, proves that cessation has acquired a privileged status in comparison with other potential reasons for ending protection. Indeed, in this framework, cessation is presented as a norm, applying to refugees who no longer need protection, whereas end of protection on security grounds, which concerns refugees who are still at risk of persecution but are considered dangerous for the host country, can only be applied in exceptional circumstances.

Hence, while cessation was not a central issue in the *travaux préparatoires*, it does have major importance in the Refugee Convention. It can thus be assumed that it was not because of its secondary character that cessation was little discussed, but because most States agreed on the principle. Yet, although the circumstances that may lead to cessation are precisely detailed, the Convention does not specify the modalities of their application. The United Nations High Commissioner for Human Rights (UNHCR), an institution created in

[74] United Nations, *Universal Declaration of Human Rights*, Paris, 10 December 1946, article 12, url
[75] United Nations, *Convention Relating to the Status of Refugees*, Geneva, 28 July 1951, article 33 url

parallel to the Convention, therefore has a key role to play in interpreting the cessation clauses and establishing guarantees for the respect of refugees' rights.

2.3. The interpretation and inputs of the UNHCR

The UNHCR was established by a UNGA resolution of December 1949, with an original mandate of 3 years, starting from January 1951. The new agency was entrusted with the protection of refugees and displaced persons as defined in the IRO Constitution and "such persons as the General Assembly may from time to time determine, including (…) under the terms of international conventions". One of its main functions was also to promote the conclusion of international conventions providing for the protection of refugees and supervise the application of the provisions of such conventions[76]. The agency was therefore largely involved in the preparation of the 1951 Refugee Convention. Moreover, the Statute of the UNHCR was adopted by the UN General Assembly on 14 December 1950[77] and includes the same refugee definition and cessation clauses as those contained in the Draft Convention adopted on the same day. Hence, despite minor differences between the UNHCR's Statute and the Refugee Convention (which were brought by later amendments during the Conference of Plenipotentiaries), UNHCR and the States Parties are concerned with the same issues. As a result, the Refugee Convention assigns a special role to the agency. Indeed, Article 35 commits States to cooperate with the UNHCR in its functions of supervising the application of the provisions of the Convention. Regarding the cessation clauses in particular, the Executive Committee of the High Commissioner's Programme (ExCom) recognises that their application "rests exclusively with the Contracting States, but that the High Commissioner should be appropriately involved (…) as provided for in article 35"[78].

In view of exercising its supervisory functions, the UNHCR has issued a series of legal positions on refugee law in the form of the "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status" and additional "Guidelines on International Protection". Although these guidelines are only informative and non-binding, they have been recognised by many courts (notably in Canada, the United States and the United Kingdom)

[76] UNGA, *resolution 319 A (IV) of 3 December 1949*, Annex, url
[77] UNGA, *Resolution 428 (V) of 14 December 1950*, url
[78] Executive Committee of the High Commissioner's Programme (ExCom), *General Conclusion No. 69,* 1992, url

as representing normative guides with important relevance[79]. Moreover, the UNHCR can use other lobbying tools to share its opinions, such as interventions with governments, public advocacy, amicus curiae briefs[80] and court submissions. Concerning the topic of cessation specifically, the UNHCR addresses it in its Handbook (1973)[81], in the ExCom's General Conclusions No. 65 (1991)[82] and No. 69 (1992)[83] and in two specific guidelines: Notes on the cessation clauses (1997)[84] and Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (2003)[85]. A review of these documents highlights 6 important positions held by the UNHCR:

1. The exhaustive nature of the cessation clauses: in the Handbook, the UNHCR states that "the cessation clauses are (…) exhaustively enumerated. They should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status"[86]. In the following paragraph, the HCR specifies that cancellation is a different matter, as the person should not have been recognized refugee in the first place (because of a misrepresentation of fact, the possession of another nationality or because an exclusion clause should have been applied). In this case, the decision to grant international protection is annulled, and the person is considered as never having been a refugee. Moreover, in its Note on the Cancellation of Refugee Status (2004)[87], the UNHCR adds that neither expulsion under article 32 of the Convention nor loss of protection under article 33.2[88] provide for the loss of refugee status (even if, as seen earlier, refoulement is equivalent to a *de facto* end of protection). However, this note marks an evolution in the position of the UNHCR, as revocation - which is the withdrawal of refugee status when a

[79] UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees in case number 20-121835SIV-HRET regarding F.K. and others against the State/the Norwegian Appeals Board before the Supreme Court of Norway (Norges Høyesterett*), 16 December 2020, url
[80] An amicus brief is a written submission to a court, providing legal arguments and recommendations in a given case, which is presented by someone who is not a party to the proceedings.
[81] UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, 2019 (first published in 1972), p. 29-33, url (hereinafter: The Handbook)
[82] ExCom, *General Conclusion No. 65,* 1991, url
[83] ExCom, *General Conclusion No. 69,* 1992, url
[84] UNHCR, *Notes on the cessation clauses*, 1997, url
[85] UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 2003, url (hereinafter: Guidelines on Article 1C5 and 1C6)
[86] UNHCR, *The Handbook*, 2019, p. 29, url
[87] UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, p.2, url
[88] These two articles allow for expulsion or refoulement on specific conditions linked to national security and public order. Concerning refoulement, which implies expulsion to the country where the refugee's life is at risk, the conditions are stricter, as the refugee must have been convicted of a particularly serious crime which proves that they are a danger for the security of the country.

person commits acts qualifying for exclusion after having obtained asylum - is now considered as another legitimate reason for withdrawing status. To this day, the UNHCR does not recognise any other ground for ending international protection.

2. Opposition to frequent status reviews: in its Handbook, the UNHCR states that "a refugee's status should not in principle be subject to frequent review to the detriment of his sense of security, which international protection is intended to provide"[89]. In particular, the agency opposes the idea of trying to apply the ceased circumstances clauses following temporary, minor changes in the country of origin[90]. Indeed, according to the UNHCR, the purpose of the Refugee Convention is to seek durable solutions for refugees. Therefore, cessation should not result in persons residing in a host State with uncertain status or being compelled to return to a volatile situation, as this could cause further instability in the country of origin and lead to new flights and protection needs[91].

3. Criteria of interpretation for clause 1C1: according to the UNHCR's Handbook[92], the clause of re-availment of national protection implies 3 requirements:

a) Voluntariness: the refugee must have acted voluntarily. In a case where they are forced, by their host country for instance, to apply for a passport to their consulate, the clause does not apply.

b) Intention: the refugee must intend by their action to re-avail themselves of the protection of their country of origin. If a refugee voluntarily applies for a national passport, it can be presumed, in the absence of proof to the contrary, that they intend to re-avail themselves of the protection of their national authorities. In contrast, if they apply for documents that they could not obtain otherwise, or for which non-nationals would likewise have to apply, such as birth or marriage certificates, then their status should be maintained. In the case of a visit to the home country, the UNHCR argues that situations must be judged based on their individual merits, as visiting an old or sick parent has a different bearing on the refugee's relation to their country of origin than regular visits for holidays or business reasons.

(c) Re-availment: the refugee must actually obtain the protection of their national authorities. For instance, applying for repatriation does not automatically trigger cessation. End of protection can only happen once the country of origin has granted

[89] UNHCR, *The Handbook*, 2019, p. 32, url
[90] ExCom, *General Conclusion No. 69,* 1992, url
[91] UNHCR, *Guidelines on Article 1C5 and 1C6,* 2003, p.3 url
[92] UNHCR, *The Handbook,* 2019, p. 30-31, url

the refugee's request for return or re-availment of protection, for instance by delivering an entry permit or a passport.

4. Criteria of application for clauses 1C3 and 1C4: in its Notes on the cessation clauses, the UNHCR states that, whether the refugee re-acquires their nationality or acquires a new one, cessation does not apply if the nationality does not carry with it effective protection of the country concerned. It means that the former refugee must be able to exercise all the rights attached to the possession of this nationality[93].

5. Criteria of interpretation for clauses 1C5 and 1C6: to avoid subjecting refugees to unnecessary status reviews due to temporary changes, the ExCom in its General Conclusion No. 69 stresses that the ceased circumstances clauses should only be applied after a careful assessment of the changes in the country of origin, which must be "fundamental, stable and durable". This assessment should ensure in an "objective and verifiable way" that the situation which justified the granting of refugee status has ceased to exist[94]. In Its Notes on the cessation clauses, the UNHCR adds that "fundamental changes are considered as effective only if they remove the basis of the fear of persecution"[95].

(a) Fundamental character of the change: States Parties are invited to consider political factors such as democratic elections, declarations of amnesties, repeal of oppressive laws, dismantling of former security services, etc.[96] Another important indicator is the general human rights situation (right to life and liberty, non-discrimination, independence of the judiciary, fair and open trials, freedom of expression, association, religion, etc.). Nevertheless, there is no requirement for the human rights situation to be exemplary, but only that significant improvements have been made regarding some of these indicators. Finally, national protection must be effective, which "means more than mere physical security or safety, and would need to include, apart from the prevalence of calm and security in the area concerned, the presence of a functioning governing authority, the existence of basic structures of administration including a functioning system of law and justice and the existence of adequate infrastructures to enable residents to exercise their right to a basic

[93] UNHCR, *Notes on the cessation clauses*, 1997, url
[94] ExCom, *General Conclusion No. 69,* 1992, url
[95] UNHCR, *Notes on the cessation clauses*, 1997, url
[96] This focus on changes in the political situation seems to indicate that, in 1997 at least, the principal actor of persecution considered was the State. Therefore, a change of government could have a strong impact on the fear of persecution. Nowadays, a lot of refugees are protected because they fear private actors, such as in the case of excision or forced marriage. In these situations, a political change will have fewer impact, except if a new government pledges to fight against such practices.

livelihood"[97]. Therefore, for the HCR, the application of the ceased circumstances clauses implies more than safety from persecution and respect for political and civil rights, but also economic and social stability allowing for a decent life.

b) Durability of the change: the UNHCR advises to wait for a minimum period of 12 to 18 months after the occurrence of profound changes to take a cessation decision. However, the agency recognises that there are no firm rules on the needed period to evaluate a durable change. Hence, the period of assessment could be shorter when the change takes place peacefully under a constitutional, democratic process with respect for human rights, by contrast with a change occurring following a regime taking power through violence[98].

6. Procedural guarantees: According to the UNHCR's guidelines on clauses 1C5 and 1C6, the burden of proof for applying the ceased circumstances clauses rests on the country of asylum. Moreover, the declaration process of a collective cessation must be transparent and appropriately involve the UNHCR[99]. Finally, in accordance with ExCom's General Conclusion No. 69, all refugees should have the opportunity, in case of collective cessation, to request for their case to be reconsidered on grounds relevant to their individual merits. In particular, the ceased circumstances clauses should not be applied to refugees who have a continued need for protection, a well-founded fear of persecution on another ground than the one that led to the granting of the status, or compelling reasons for refusing to avail themselves of the protection of their country of origin[100].

Hence, the study of the *travaux préparatoires*, of the wording of the Refugee Convention and of the UNHCR guidelines highlights the various challenges linked to the application of the concept of cessation. On the one hand, there is a clear willingness from States to grant protection only for as long as is deemed necessary, except for refugees who have suffered extreme persecution. On the other hand, many questions remain on the way to determine this necessary duration, to assess a durable change of circumstances or to define an action to re-avail oneself of the protection of the authorities. The choice made by the drafters of the Convention and by the UNHCR has been to let States decide on a case-by-case basis whether or not to apply the cessation clauses, with help of the available guidelines.

[97] UNHCR, *Notes on the cessation clauses*, 1997, url
[98] *Ibid*.
[99] UNHCR, *Guidelines on Article 1C5 and 1C6,* 2003, p.7-8, url
[100] ExCom, *General Conclusion No. 69,* 1992, url

However, in the European context, this rather flexible framework of the Refugee Convention is supplemented by the Common European Asylum System (CEAS), which imposes more binding obligations on States. The following section will therefore be devoted to discussing the specificities of the European Union (EU) legal framework and their impact on the application of the cessation clauses.

3. The specificities of the EU legal framework

Asylum was not originally a competence of the Union, which first developed as an economic cooperation area. The EU common asylum policy only began with the 1993 Treaty of Maastricht and took the form of the CEAS following the adoption of the Tampere Programme in October 1999. The CEAS is a legal and policy framework, aiming to guarantee harmonised and uniform standards for asylum-seekers and for the content of international protection (refugee status and subsidiary protection) in the EU. It is based "on the full and inclusive application of the Geneva Refugee Convention and Protocol"[101] and governed by five legislative instruments (the Asylum Procedures Directive, Reception Condition directive, Qualification directive, Dublin Regulation and EURODAC Regulation) and one agency (the European Union Agency for Asylum). It should be noted that EU directives and regulations are binding for Member States and their violation can lead to sanctions, unless the Member State decided, when adopting the different EU treaties, to reserve the right not to take part in measures relating to the creation of the European area of freedom, security and justice. Such a restriction was made by Denmark[102], the United Kingdom and Ireland[103]. Therefore, except for these 3 countries, all EU Member States have to follow the CEAS rules on cessation and withdrawal of status procedures. The third part of this chapter will be dedicated to the analysis of those rules and procedures.

[101] European Commission, "Common European Asylum System (CEAS)", *European Commission website*, url (Accessed: 09 September 2022)
[102] Under *Protocol (No 22) on the position of Denmark to the Treaty on the Functioning of the European Union,* Denmark does not participate in the adoption and the implementation of measures relative to the area of freedom, security and justice, except if, in a six-month period after the adoption of the measures, it decides to transpose it in its national law on a case-by-case basis.
[103] Under *Protocol (No 21) on the position of the United Kingdom (UK) and Ireland in respect of the area of freedom, security and justice*, the UK and Ireland do not have to take part in the adoption and implementation of measures relatives to the area of freedom, security and justice, except if they express the wish to do so before or after the adoption of the measures.

3.1. The cessation clauses of the Qualification Directive

The EU law on cessation is mainly defined by the Qualification Directive[104], which aims to harmonise the criteria by which Member States decide who is eligible for refugee status or subsidiary protection and to define the content of the protection granted. The directive was adopted in 2004 and recast in 2011. It is largely inspired by the Refugee Convention, to which all EU Member States are parties, as evidenced by the preamble according to which "the Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees"[105]. Moreover, Article 78 of the Treaty on the Functioning of the European Union clearly states that the EU common policy on asylum must be in line with the 1951 Refugee Convention and the 1967 Protocol[106]. Yet, if the Refugee Convention is binding, it does not include any sanction mechanism, unlike the Qualification Directive, where non-compliance can notably lead to a conviction by the Court of Justice of the European Union (CJEU). Therefore, the Directive strengthens the application of the Convention. Concerning the cessations clauses, they were included in Article 11 of the Qualification directive, which start identically in the original and the recast versions:

"1. A third-country national or a stateless person shall cease to be a refugee if he or she:

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or

(b) having lost his or her nationality, has voluntarily re-acquired it; or

(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or

[104] EU, *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*), 20 December 2011, url (hereinafter: the Qualification Directive)
[105] EU, *Qualification Directive*, 2011 and 2004, Preamble, url and url
[106] EU, *Treaty on the Functioning of the European Union*, Article 78, url

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

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded"[107].

Overall, this is a rewording of Article 1C of the Refugee Convention, with the incorporation of the UNHCR's comments on the need to ensure the fundamental, stable and durable nature of a change of circumstances before applying the ceased circumstances clauses. One could nevertheless wonder why they choose to use the word "significant and non-temporary" instead of "fundamental, stable and durable", which could be interpreted as a different threshold for the application of cessation. Yet, the fact that this provision was incorporated in the Directive strengthens the protection of status holders, as it gives a binding value to the UNHCR comments on the nature of the change of circumstances.

Between the 2 versions of the Directive, one of the most remarkable differences is that in the 2004 version, the compelling reasons provisions were not included, contrary to the 2011 version which states that "*3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence"*[108]. Despite this principle being part of the Refugee Convention, it means that States could not be sanctioned by EU institutions if they refused to apply it before the adoption of the recast. Therefore, the fact of adding it to the 2011 directive could be an indication that this principle has gained importance and is now increasingly applied, beyond the original intention which was to reserve it for the victims of Nazism.

On another note, the main contribution of the Qualification Directive was the creation of subsidiary protection, which aims to protect people who do not meet the conditions for refugee status but who face a "*real risk of suffering serious harm*"[109] in their country of

[107] EU, *Qualification Directive*, 2011 and 2004, Article 11, url and url
[108] European Union, *Qualification Directive*, 2011, Article 11, url
[109] Serious harm is defined in article 15 of the directive and includes: a) death penalty or execution; (b)torture or inhuman or degrading treatment or punishment; (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

origin. The Qualification Directive also provides for a cessation clause for subsidiary protection in Article 16. Once again, the only difference between the two versions is the inclusion of the compelling reasons provisions in the 2011 recast, which states the following:

> *"1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.*
> *2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.*
> *3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence."*[110]

Here, the most noticeable thing is that there is only one cessation clause, which is the equivalent of clauses 1C5 and 1C6 of the Refugee Convention. The drafters of the Directive apparently decided not to include the clauses 1C1 to 1C4, which refer to actions from the refugee placing him under the protection of their country of origin or a new country. This means that it is theoretically impossible to cease subsidiary protection for the sole reason that a beneficiary has acquired a new nationality or has returned to their country of origin. Yet, interestingly, subsidiary protection, by its very nature, is subsidiary. It can only be granted if the asylum-seeker does not qualify for refugee status and it usually comes with fewer rights than the latter (the duration of the residence permit is often shorter and the access to social assistance as well as family reunification may be limited). Therefore, it may seem paradoxical that there are fewer grounds for ceasing international protection for beneficiaries of subsidiary protection than for refugees, as the status of the latter seems more protective. Such a perspective is strengthened by the fact that the threshold for the application of the ceased circumstances clauses is lower for subsidiary protection than for refugee status. Indeed, for refugees, international protection can only be ceased if the circumstances that led to the granting of the status "have ceased to exist", whereas for subsidiary protection it is enough that the circumstances "have changed to such a degree that protection is no longer required". In practice, States may choose to consider that a re-establishment in the country of origin or

[110]European Union, *Qualification Directive*, 2011, Article 16, url

the acquisition of a new nationality are a change in the circumstances that led to the granting of subsidiary protection, which can thus lead to cessation, or, on the contrary, that such considerations are irrelevant to the ending of subsidiary protection.

Lastly, the Qualification Directive, contrary to the Refugee Convention, includes provisions for ending international protection on other grounds than cessation, in Article 14 (about refugee status) and Article 19 (about subsidiary protection). Indeed, both articles include provisions on cancellation, revocation and withdrawal of status on public order grounds. Thus, while cessation is still introduced in a separate article, it is no longer presented as the only standard for ending protection. This development may have an impact on State practices, as we shall see in the coming sections.

In summary, the Qualification Directive is the main EU legal instrument dealing with cessation law. Yet, if the Directive establishes the conditions for ending protection, it does not give much information on the procedures and guarantees that are necessary to protect the fundamental rights of status holders. This matter was consequently addressed in a subsequent legal act, namely the Asylum Procedures Directive.

3.2. Procedural guarantees in the Asylum Procedures Directives

The Asylum Procedures Directive[111], first adopted in 2005, recast in 2013, aims to define minimum standards on common procedures for granting and withdrawing international protection. Within the Directive, articles 44, 45 and 46 are the main ones addressing end of protection. Under the overarching term of "withdrawal of international protection", the Directive includes cessation, revocation, cancellation and end of protection on public order grounds. Therefore, being the subject of cessation proceedings does not entail any additional guarantees compared to other grounds for withdrawing one's status.

The Asylum Procedures Directive provides for two types of guarantees for cases of withdrawal of protection: guarantees similar to those for status determination procedures and specific guarantees. First, concerning the common guarantees, the ones stated in the directives are the right to an effective remedy before a court or tribunal, the right to remain on the territory while an appeal is pending, the right to free legal assistance in appeal (but not

[111] EU, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 2013, url (hereinafter: the Asylum Procedures Directive)

necessarily in first instance), the right to a written decision explaining the reasons for such decision in fact and law, and, in case of an interview or hearing, the right to an interpreter. Yet, it is not stated how to implement those guarantees to make sure that they are effective and available. For instance: what is the minimum time limit to lodge an appeal?

Regarding the specific guarantees for withdrawal of international protection, the Directive states that the persons concerned have the right to be informed in writing of the reconsideration of their status and the reasons for this reconsideration, and the right to submit, in a personal interview or a written statement, the reasons as to why their international protection should not be withdrawn. This last right means that beneficiaries of international protection can be heard in an interview, but it is not mandatory. Yet, the absence of such interviews can sometimes be an issue, if the concerned person is unable to submit in writing their point of view (in particular, if they don't speak the local language, if they don't understand the legal procedures or simply if they have poor writing skills) and because more information can often be obtained from an interview. It must be noted that there are no rules to determine when an interview might be necessary or what minimum timeframe should be given to status holders to share their written observations.

In addition, the Member States also need to respect some procedural rules which are essential for the protection of status holders' fundamental rights: they should seek precise and up-to-date information from a variety of sources, including the EUAA and UNHCR, on the situation in the country of origin, while ensuring not to provide compromising information to actors of persecution that could put the beneficiary of international protection at risk.

Hence, while the Qualification Directive defines two different sets of cessation clauses for refugees and beneficiaries of subsidiary protection and the Asylum Procedures Directive establishes procedural requirements for withdrawing protection, both directives do not provide much additional information on the interpretation and practical application of the clauses in comparison to the Convention and the UNHCR guidelines. Does it mean that Member States have a large discretion in the interpretation and application of the cessation clauses?

3.3. State discretion in the interpretation and application of the cessation clauses

In EU law, a directive is a legal act that requires Member States to achieve a certain result but leaves them discretion as to how to achieve it. Transposition into national law must take place by the deadline set when the directive is adopted (2 years for both the Qualification and the Asylum Procedures Directives). Moreover, the directives define a minimum set of standards that the Member States must fulfil, but they are also allowed to maintain or introduce more favourable standards, (article 3 of the Qualification Directive and 5 of the Asylum Procedures Directive). Thus, the harmonisation of national laws is not total. Besides, especially in the Qualification Directive, some terms leave room for interpretation. For instance, Member States are responsible for interpreting "a significant and non-temporary" change of circumstances for the application of the ceased circumstances clauses. For all those reasons, States have a certain discretion in the implementation of the Directives. However, this freedom of interpretation is not limitless. Indeed, after the law is enacted by the EU legislative institutions (the European Parliament and the Council of the EU), their interpretation is supervised by other institutions, starting with the Court of Justice of the European Union (CJEU).

The CJEU is the judicial authority of the Union. Its role is to ensure the uniform application and interpretation of EU law. This is mainly achieved through preliminary rulings, which are binding for all Member States[112]. As regards the cessation clauses, the Court has issued one key preliminary ruling: *Abdulla and others v Bundesrepublik Deutschland* (2010)[113]. The case concerned five Iraqi nationals whose refugee status had been revoked by German authorities under article 11(1)(3) of the directive (or article 1C5 of the Convention) due to the overthrow of Saddam Hussein's regime. In this case, the CJEU evoked a lot of different points of the directives, however the most important findings are:

a. Concerning the change of circumstances, refugee status ceases when the Member States has verified that the circumstances which justified the person's fear of persecution no longer exist and that the person has no other reason to fear being persecuted (two-step procedure).

[112] A preliminary ruling is a decision of the CJEU on the interpretation of European Union law, given in response to a request from a national court.

[113] Court of Justice of the European Union (CJEU), *Salahadin Abdulla and Others v. Bundesrepublik Deutschland,* C-175/08; C-176/08; C-178/08 & C-179/08, 2 March 2010, url

b. To assess the change of circumstances, the Member State must verify that the actor(s) of protection operate(s) an effective legal system for the detection, prosecution and punishment of acts constituting persecutions and that the person concerned must have access to such protection[114]. It means that the ceased circumstances clauses require more than the mere absence of persecution, but the CJEU has not pronounced itself on the need for minimum standards of living (unlike the UNHCR, which considers these standards necessary).

c. As indicated in Article 7 of the Qualification Directive, the actor of protection can be an international organisation controlling the State or a substantial part of the territory of the State. The CJEU adds that this includes the presence of a multinational force in that territory. However, in several comments on the Qualification Directive, the HCR has considered it inappropriate to include non-state entities as actors of protection, as they do not have the attributes of a state and the same obligations under international law, which in practice means that they have a limited ability to enforce the rule of law and that the local government is unable to protect its nationals. For the UNHCR, this would mean that the requirement of enduring and fundamental change is not met[115]. This example proves that, while the HCR is considered a relevant source of interpretation, its guidelines are not always followed by States.

Furthermore, besides the CJEU and UNHCR, other actors can influence the Member States interpretation. One of them is the European Union Agency for Asylum (EUAA). The agency, known as the European Asylum Support Office (EASO) until January 2022, is responsible for providing operational and technical assistance to European countries in order to increase the convergence of asylum and reception practices. The institution has therefore written its own non-binding guidelines on cessation, based on the CJEU rulings, the UNHCR comments and Member States case law. Hence, the Practical guide on the application of cessation clauses gives examples of interpretations for specific points (such as re-availment of the protection of nationality authority, compelling reasons or continued needs for protection) and procedural guarantees[116]. The Judicial analysis of Articles 11, 14, 16 and 19 of the Qualification Directive gives input on the definition of a "non-temporary" change of

[114] This is a reference to article 7 of the Qualification Directive. However, what is new is that the Court directly links the application of the cessation to the presence of an actor of protection, which was not explicitly the case in the Directive.
[115] UNHCR, *UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive*, 2008, p.16, url
[116] European Asylum Support Office (EASO), *Practical guide on the application of cessation clauses*, 2021, url

circumstances, stating that it means that the situation can be expected to remain sufficiently stable for the foreseeable future but not that the new circumstances are guaranteed to continue indefinitely. Moreover, the office argues that "the greater the risk of persecution, the more permanent the stability of the changed circumstances needs to be"[117]. In addition, regarding the assessment of effective protection in the country of origin, the EASO claims that, although the extent to which human rights are guaranteed is a relevant factor in the assessment, "low standard of human rights protection does not of itself rule out the application of Article 11(1)(e)"[118]. Such a statement, which appears to be at odds with the more cautious approach of the UNHCR, may have a strong impact on States case law. Finally, other actors' reports and jurisprudence can be taken into account in State practices and interpretation, such as the European Court of Human Rights rulings, the third countries' case law and the NGOs and national human rights institutions' reports.

Hence, the CEAS Directives, the CJEU rulings and the EASO guidelines complement the Refugee Convention, detailing the modalities of its application. On one hand, they can be seen as reinforcing the Convention, by offering guarantees to refugees and controlling States' actions in this field. On the other hand, those rules are sometimes less protective than the UNHCR recommendations and can give States the legitimacy to ignore the latter. Thus, the impact of the CEAS on the Refugee Convention can be considered double-edged. Moreover, in comparison to other asylum issues, there are rather few CJEU rulings on the application of the cessation clauses. As a result, States have in practice a fairly wide discretion in this application, as they can for instance decide on a case-by-case basis which situation is characterised by a significant and non-temporary change of circumstances or which action amounts to a restoration of the protection of national authorities.

In summary of this first chapter, we analysed the two main legal frameworks that apply to European countries concerning international protection and cessation: the Refugee Convention and the Common European Asylum System. Both legal frameworks include cessation provisions, which demonstrates that protection was not meant to be permanent. But the idea of integration is also included, in Article 28 of the Convention or in Article 34 of the Qualification Directive which encourages access to integration programmes. Moreover, the grounds for cessation are strictly regulated, as the list of cessation clauses is exhaustive and

[117] EASO, *Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive*, 2016, p.33 url
[118] *Ibid*., p.35

included in the main article of the Convention. Therefore, the legal frameworks put forward 2 main durable solutions for refugees: cessation or local integration. Besides, while the cessation provisions in the Convention and the Qualification Directive can seem similar, the latter actually strengthens the former's dispositions as the violation of its provisions can lead to sanctions under EU law. Yet, beyond the definition of cessation clauses, the question that arises is that of their implementation, which is guided by the non-binding UNHCR's Guidelines for the Convention and by the Asylum Procedures Directive for the CEAS. One could suppose that the growing importance of the CEAS, through its binding directives, since the 90s would have had an impact on Member States' cessation practices, notably by harmonising them. The following chapter will thus be dedicated to the evolution of cessation practices in Europe, from the adoption of the Refugee Convention to recent years. Is the importance given to cessation in the texts reflected in practice? Have European States always had the same conception of cessation or has it evolved over time? Do they define their practices more at the national level or do they try to harmonise them at the European level?

Chapter II – The States' cessation practices from the Refugee Convention to the present day

In this second chapter, the evolution of cessation practices is approached through the prism of State practices, using indicators such as the number of cases handled per year, asylum procedures, legal guarantees and the existence of international discussions on the topic. The aim is to see if there is a convergence of State practices and to try to explain the increase in the number of cessation cases observed recently in some European countries.

1. Cessation in the EU, a historically marginal and hardly traceable phenomenon

1.1. The lack of available quantitative data

When studying cessation practices in the EU, two problems arise at first glance: first, cessation clauses do not appear to have been widely used by most European countries until recent decades; second, there is generally little data, either quantitative or qualitative, on the use of cessation in Europe. Indeed, during my research, I have consulted the websites and reports of many international organisations, such as the UNHCR refugee data finder[119], the Eurostat Asylum database[120], the EUAA asylum statistics[121] and the country reports of the asylum information database of the European Council on Refugee and Exiles (ECRE)[122]. Yet, in those databases, most of the statistics concern asylum claims and there is very little data on cessation cases, especially on past decisions (before the year 2008).

Concerning quantitative data, on the UNHCR's database, there is no other information than naturalisation (which usually automatically leads to cessation) and this information is only available for 5 EU countries (Bulgaria, Czechia, France, Ireland, Netherlands) and for 2021. On the EUAA website, no information is shared on cessation cases. On the ECRE database, country reports are available on only 19 EU countries (out of 27) plus the United Kingdom, Turkey, Switzerland and Serbia. All these reports discuss cessation law and practices, but statistics on the number of cessation cases are only available

[119] UNHCR, "Refugee Data Finder", *UNHCR website*, url (Accessed: 15 September 2022)
[120] Eurostat, "Asylum – Database", *Eurostat website*, url (Accessed: 15 September 2022)
[121] European Union Agency for Asylum (EUAA), "Data Analysis and research", *EUAA website,* url (Accessed: 15 September 2022)
[122] European Council on Refugee and Exiles (ECRE), "Country reports", *Asylum Information Database*, url (Accessed: 15 September 2022)

in some countries, rarely disaggregated by cessation clauses and limited to recent years (in most cases data is only available for one year between 2018 and 2021). Indeed, as a pan-European network of NGOs, the ECRE has only access to data shared in institutional reports or those that governments agree to provide upon request. Therefore, data on the number of cessation cases are only available for 12 of the EU countries (Austria, Belgium, Bulgaria, France, Germany, Italy, Malta, Poland, Portugal, Romania, Slovenia and Spain) whereas Croatia and Ireland reported having had 0 cessation case in recent years. Moreover, in Austria, Bulgaria and Germany, cessation and end of protection on other grounds are not distinguished in the statistics. Finally, the Eurostat database is the most comprehensive tool, but still has important limitations. Indeed, statistics on the number of decisions withdrawing status, in first instance or as final decisions, are available for all EU countries, by year and by quarter. However, these data only cover the 2008-2021 period, while by comparison the number of asylum-seekers by nationality has been documented since 1985. In addition, the statistics do not distinguish between the different reasons for ending protection, let alone cessation clauses[123].

Therefore, there is very little data on past cessation decisions, and even recent data often does not allow to distinguish between this process and other means to end protection. This seems to indicate a significant lack of interest of States in the practice of cessation, which is likely related to a rather low number of cessation cases per year. In any case, the study of qualitative reports on State practices may also inform us on the number of cessation cases.

1.2. A recent surge in qualitative reports

Regarding qualitative data on cessation practices, in addition to the 19 ECRE country reports, there are few international research on the subject. Moreover, the few available reports have been released only very recently and only address end of protection in general (and not specifically cessation). Indeed, in the EUAA Asylum Reports, there is usually a part dedicated to “Review, cessation and revocation of international protection status” but only

[123] Indeed, the database allows for filtering the 'reasons' for withdrawal of status using the categorisation 'Withdrawn due to revocation', 'Withdrawn due to cessation', 'Withdrawn due to refusal to renew' and 'Unknown'. However, it is not possible to exploit this filtering for the purposes of this thesis: firstly, there does not appear to be a specific category for cessation. Secondly, when a particular category is selected, the data is only available for 2021 and not for all countries. According to the Eurostat teams I contacted in October 2022, the breakdown of data according to the reason for withdrawal of status only became mandatory from 2021 onwards, and several States were unable to provide their data for "technical reasons".

from 2019 onwards. In addition, in 2021, the EASO published a compilation of jurisprudence on end of protection (cessation, revocation, cancellation and end of protection on public order grounds) which explores the jurisprudence of the CJEU, the ECtHR, national courts of Member States and third countries. Furthermore, the European Migration Network (EMN)[124] has recently issued 3 cessation-related publications: a study on beneficiaries of international protection travelling to and contacting the authority of their country of origin (2019)[125], a paper on temporary asylum and cessation of refugee status in Scandinavia (2020)[126] and an ad-hoc query on the application of the principle of compelling reasons (2021)[127]. In addition, the ECRE has discussed the issue in its 19 country reports and has published in 2021 a legal note on cessation and review of protection statuses analysing recent developments in the EU[128]. Finally, during my interview with Johan Ankri and Enguerrand Gatinois, legal officers of the French first instance determining authorities, I asked about the existence of multilateral discussions on such issues. Aside from the recent EASO practical guide on the application of cessation cases[129], which is a guide discussing good practice rather than substantive guidance, cessation is clearly not the subject that crystallises most debates at the European level[130].

Regarding publications at the national level, it is difficult to report on these as their access is sometimes restricted to internal use (as in the CNDA in France) and in the language of the country concerned. Besides, they also seem to be rare and recent. For instance, while Belgium, Germany and the Netherlands have stated to have recently adopted guidelines on beneficiaries returning to their country of origin, most countries simply refer to the UNHCR guidelines[131]. Moreover, on the principle of compelling reasons, while 24 States responded to the ad-hoc query, only 3 of them answered positively to the question of having national guidelines on this subject (France, the Netherlands and Sweden)[132].

[124] The EMN is an EU-funded network for the exchange of information on migration and asylum between Member States.
[125] European Migration Network (EMN), *Beneficiaries of international protection travelling to and contacting authorities of their country of origin*, 2019, url
[126] EMN Norway, Jan-Paul Brekke, Jens Vedsted-Hansen and Rebecca Thorburn Stern, *Temporary asylum and cessation of refugee status in Scandinavia. Policies, practices and dilemmas*, 2020, url
[127] EMN, *Applying the principle of compelling reasons in asylum cases*, 2021, url
[128] ECRE, Maria O'Sullivan, *op.cit*., url
[129] EASO, *Practical guide on the application of cessation clauses*, 2021, url
[130] Interview with Mr. Johan Ankri and Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[131] EMN, *Beneficiaries of international protection travelling to and contacting authorities of their country of origin*, 2019, p.7 and 37, url
[132] EMN, *Applying the principle of compelling reasons in asylum cases*, 2021, url

This lack of information seems to confirm our hypothesis of a historical disinterest in cessation. Cessation seems to have been, historically, a marginal phenomenon which did not require resources to be invested in the production of statistics and guidelines. On the contrary, recent publications on the subject by European institutions and research networks indicate a renewed interest in the issue, but which remains secondary by comparison with other issues such as recourse to detention for asylum-seekers, the instrumentalization of migration by third-countries or managing unaccompanied children asylum-applications. Moreover, analysis of the available data suggests that the renewed interest in cessation is occurring only in some, and not all, European countries.

1.3. Different trends across EU countries

As noted in the introduction, various researchers[133] highlighted the limited use of cessation clauses in the EU in the past and the renewed interest in this concept in recent times. This dynamic seems to be confirmed by the EUAA reports, especially the 2021 one, stating that "trends from previous years continued pointing towards an increased use of status reviews and more rigorous use of cessation and revocation grounds"[134]. Yet, it is worth wondering whether all single EU states are affected by this same dynamic. The lack of available statistics does not permit us to give a categorical answer to this question. However, the Eurostat database enables to make some assumptions, although it does not distinguish between cessation and other reasons for ending protection, which may be a first bias for our analysis. Furthermore, regarding the number of first instance and final decisions on withdrawal of status per year, for a significant number of countries, the figure for ends of protection is not reported or is 0. Either these countries do not practice cessation, or they do not report their data, which may represent a second potential bias for our analysis. Despite those biases, some observations can be made. The analysis will be based on the first instance decisions, as cessation decisions do not always result in an appeal. Indeed, a status holder may not appeal if the cessation is the result of naturalisation, if they have already implicitly renounced their protection, if they have left the country or changed their address (in such cases, it is often not possible for the determining authority to reach the beneficiary of international protection and inform him/her about the procedure. As a result, the beneficiary may not be able to appeal within the time limit). Tables of the number of first instance

[133] Such as Fitzpatrick and Bonoan (2003), Schultz (2020), O'Sullivan (2021), Cole (2021), Goodwin-Gill, McAdam and Dunlop (2021) (cf. introduction)
[134] EASO, *EASO Asylum Report 2021*, 2021 p.209, url

decisions withdrawing refugee status or subsidiary protection can be found in Annexes 1 and 2 of this thesis.

The first observation we can make is on the variation in the total number of withdrawals of protection. From 2008 to 2010, the number of cessations of refugee status per year in the entire EU was rather high but decreasing (from 6,320 in 2008 to 2,825 in 2010). From 2011 to 2016, it was significantly lower: almost always under 1 000 per year. Finally, from 2017 to 2021, the number rose again. The pic was 8 755 cessation per year in 2020 (10 times more than in 2016). If we regard cessation of subsidiary protection, the numbers are generally lower, but the trends are similar. In 2009-2010, the numbers were slightly higher than in the following years (6,320 in 2009, 2,825 in 2010 and 1,060 in 2014). In addition, there is also a large increase from 2017 with a peak of 6,165 cessations in 2019. The difference between end of refugee status or subsidiary protection can be explained by the fact that more people are granted refugee status than subsidiary protection in the EU. For example, in 2020, refugee status and subsidiary protection accounted for 45% and 26% respectively of protection statuses granted (refugee status, subsidiary protection and humanitarian protection, which is a complementary form of protection based on national law)[135]. The distribution was similar in previous years.

Concerning the high number of withdrawals of refugee status from 2008 to 2010, it can almost exclusively be explained by Germany's practice: for instance, from the total of 6,320 ends of protection in 2008, 6,045 happened in Germany. France had the second highest number of withdrawals, which was yet only of 140. Regarding subsidiary protection, the largest number of withdrawals happened in Belgium from 2009 to 2010, but Austria and Germany also ended a certain number of protections. For instance, out of a total of 1 435 ends of protection in 2010, 760 happened in Belgium, 385 in Austria and 195 in Germany. On the contrary, the rise in the number of ends of protection after 2017 is explained by the practice of much more countries. Indeed, the number of ends of protection rose strongly in Austria, Belgium, Bulgaria, Denmark, Germany and France, but also more slowly in Italy, Hungary, Netherlands and Sweden (10 out of 27 EU countries). The figures are still much higher for Germany (6,475 ends of refugee status out of a total of 8,755 in 2020), which can be explained by the fact that it is the EU country with the most refugees[136], but which is also consistent with Maria O'Sullivan comment that "of all EU countries, only Germany has

[135] Eurostat, "EU granted protection to over 280 000 asylum applicants in 2020", 2021, url
[136] UNHCR, *Refugee Data Finder*, url (Accessed: 16 October 2022)

applied Article 1C(5) to holders of temporary residence permits in significant numbers"[137]. She adds that "other EU countries have cessation provisions in place in domestic law but have only commenced utilisation of those provisions relatively recently and in comparatively small numbers". For most countries, the number of ends of protection was indeed a record in these years. Therefore, in the past, withdrawal of status almost exclusively happened in Germany (especially for refugees), while it is more general nowadays. However, there are still some countries with very low numbers of withdrawal of status, such as Greece, Slovenia and Slovakia (with a number of ends of protection often under 20 per year). There are also some outliers, like Malta in particular, with a high number of withdrawals of subsidiary protection in 2014 -2016 (between 555 and 445) and a low number in 2020-2021 (0 and 15). Hence, globally, if cessation is responsible for at least part of the withdrawals of status in the States with the higher number of end of protection, as recent literature allows us to assume, then there is a great variation in the number of cessation cases and trends in Member States.

However, it must be noted that from the available number, it is hard to predict future cessation practices. Indeed, between the two peaks observed (2008-2010 and 2017-2021), the evolution of the number of withdrawals of status is not linear, as it increases or decreases from one year to the next. Therefore, it is complicated to draw conclusions and particularly to assume there is a trend toward more cessation applications. There actually can be two hypotheses: either there is effectively a trend towards more withdrawal of status that will persist in the long term, or either the sudden surge of interest in ending protection in 2019 and 2020 is only temporary and a reaction to the 2015 migration crisis[138], which led to a significant increase in the number of recognition of status (185,000 asylum-seekers in 2014[139], 333,350 asylum-seekers in 2015[140], 700,000 in 2016[141], 533,000 in 2017 and 333,400 in 2018[142]). More likely, it is a combination of the two hypotheses.

[137] Maria O'Sullivan, *Refugee Law and Durability of Protection. Temporary Residence and Cessation of Status*, 2019, p.3, url

[138] The term 'crisis' is sometimes criticised by activists for its negative connotation and its tendency to conceal the potential positive aspects of migration (e.g. the opportunity to learn new languages or skills like non-violent conflict resolution). However, the events of 2015 can be seen as a humanitarian crisis, insofar as European asylum and reception systems failed to adapt to the influx of migrants, outsourced their borders to Morocco or Turkey, entrusted humanitarian aid to volunteers in refugee camps and failed to develop mechanisms of European solidarity. For all these reasons, we choose in this thesis to use the term 'migration crisis'.

[139] Eurostat, "EU Member States granted protection to more than 185 000 asylum seekers in 2014", 2015, url

[140] Eurostat, "EU Member States granted protection to more than 330 000 asylum seekers in 2015", 2016, url

[141] Eurostat, "EU Member States granted protection to more than 700 000 asylum seekers in 2016", 2017, url

[142] Eurostat, "EU Member States granted protection to more than 300 000 asylum seekers in 2018", 2019, url

In summary, the analysis of cessation data is constrained by the limited availability and translation of data on cessation cases and cessation practices in EU countries. However, two conclusions are possible. The first conclusion is based on the lack of available quantitative data before 2008 and the fact that even though recent data and reports were published on this subject, they rarely distinguish cessation from the other grounds for ending protection for an appropriate analysis. Therefore, there seems to have been a historical disinterest in cessation, which could be explained by 2 potential reasons: either cessation is a marginal phenomenon and so does not require resources to be invested in the production of statistics and guidelines; or cessation is considered as more a national competence than a European competence, despite its inclusion in the CEAS. Secondly, the number of reported cessation decisions has risen sharply since 2017 at the Union level. Besides, at the national level, most countries, apart from Germany, had not an intensive and regular practice of cessation. Hence, despite Fitzpatrick Bonoan[143] already observing the revival of interest in cessation in 2003 (at the global level), one can assume that this renewed interest only really took place from 2017 (in the aftermath of the migration crisis) at the European level. However, this recent rise of cessation decisions does not concern all European countries (only 10 out of 27 EU countries), which raises the question of the harmonisation of cessation law and practices in the EU.

2. A limited harmonisation of cessation law and practices

First of all, it must be noted that the harmonisation of cessation law and practices in the EU is mostly ensured through the Qualification and Asylum Procedures Directives. However, Denmark has decided not to opt in to both directives, while Ireland and the United Kingdom (when it was part of the EU) only opted out of the recasts[144]. Therefore, those countries have no legal obligations to respect the recast directives rules, except if those are already part of the Refugee Convention (and even in this case, they are not subject to sanction mechanisms). This is one of the factors explaining the limited harmonisation of cessation law and practices in the EU. Other factors are that the directives only set minimum standards, that they leave it to the States to implement them in a discretionary manner and that European institutions may not perceive the monitoring of cessation practices - which can be realised by European Commission through infringement procedures and the Court through rulings - as a

[143] Joan Fitzpatrick and Rafael Bonoan, *op.cit*., p. 492, url
[144] Therefore, Ireland is bound by the original directives, while the United Kingdom, which left the EU, is not bound by any.

priority, given the wide variety of subjects covered by European law. For all those reasons, the harmonisation of State law and practices is not complete, which may have an impact on beneficiaries of international protection, as we shall see.

2.1. A varying content of national cessation clauses

In order to compare cessation laws of EU Member States, we will mostly use the ECRE's asylum information database and its country reports[145], which were all updated on 31 December 2021 at the latest. These reports provide information in English from rather reliable sources, with are either directly the concerned governments or the 106 national NGOs that constitute the ECRE network. Thanks to this database, we will study whether national cessation clauses are consistent with international and European law. Indeed, according to the UNHCR, "the cessation clauses *are* negative in character and are exhaustively enumerated"[146]. Therefore, while it is possible to slightly modify the wording when translating them into national languages, it is theoretically impossible to add new cessation clauses or to alter them too deeply. Yet, if we look at the incorporation of cessation clauses into national law, European States have made different choices. One of the first things to be noted is that for a significant number of countries (Netherlands, Austria, Hungary, etc.), cessation clauses are grouped with other grounds to end protection: it means that no difference is made between the reasons *for* ending protection in the status withdrawal procedures[147]. It is also another hint of the historical lack of specific interest of States in cessation.

In the case of the States bound by the Qualification Directive, they all have reproduced the cessation clauses established by international law in a more or less faithful manner. Several states have included a direct reference to the Refugee Convention clauses in their law, while also incorporating the European criterion of the "significant and durable" nature of the change of circumstances (such as France, Belgium and Austria), or have

[145] 19 EU countries which are: Austria, Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Italy, Ireland, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden.
[146] UNHCR, *The Handbook*, 2019, p. 29, url
[147] This assimilation of the different concepts may however be problematic since, according to Article 14(6) of the Qualification Directive, when protection is ended for reasons other than cessation, revocation or cancellation, the person concerned retains certain rights and in particular the protection against refoulement. This is for instance the case when protection is withdrawn for reasons of public order (threat to the security of the State or, after a conviction for a particularly serious crime, to society). Then, if cessation and end of protection on public order grounds are not properly distinguished in the procedures, it is possible that rights that should have been retained are withdrawn.

reproduced almost identically the Qualification Directive clauses (Italy*).* Some States have slightly modified the formulation of the clauses, but without a substantive influence on their interpretation. For example, under Croatian law, cessation occurs when the refugee "returns to and resides" in the country they left, not when they "re-established" themselves there (clause 1C4)[148]. However, sometimes, those changes can have a significant impact. For example, in Bulgarian law, the mere fact of obtaining another nationality is likely to lead to cessation, without mentioning the enjoyment of the protection of the country of new nationality. This significantly lowers the threshold for cessation and is explicitly contrary to UNHCR's guidelines. Moreover, several countries have also changed the number of cessation clauses. In particular, many of them have merged clauses 1C5 and 1C6 (Cyprus, Croatia, Sweden, Spain etc.). For instance, in Cyprus, international protection ceases when the refugee "can no longer continue to refuse the protection of the country of nationality or habitual residence because the circumstances that led to recognition as a refugee have ceased to exist"[149]. Although this formulation may seem similar to that of the Refugee Convention, it actually modifies clause 1C6, since the latter requires the stateless refugee to be able to return to their country of habitual residence, contrary to the new wording. Some states also have added cessation clauses that are not explicitly in the Convention. For instance, the Bulgarian, Portugal and Romanian laws state that international protection ceases when the beneficiary renounces his status. Although this clause is not included in the Convention, it is validated by the UNHCR in its Handbook, which states that ceasing to grant international protection when a refugee no longer wishes to be considered as such is self-evident[150]. Finally, in 2020, Bulgaria added a cessation trigger which provides for the launching of a cessation procedure when beneficiaries of international protection fail to renew their expired Bulgarian identity documents, or to replace them if they have been lost, stolen or destroyed, in a period of 30 days. According to Bulgarian authorities, this does not lead to automatic cessation but just to a launching of the cessation procedures[151]. However, for the ECRE, this equates in practice to the introduction of an unlawful cessation ground, which has already affected 4,264 status holders[152]. To date, the CJEU (through rulings) or the European

[148] ECRE, "Cessation and review of protection statuses. Croatia", *Asylum Information Database*, url (Accessed: 21 September 2022)
[149] ECRE, "Cessation and review of protection statuses. Cyprus", *Asylum Information Database*, url (Accessed: 21 September 2022)
[150] UNHCR, *The Handbook,* 2019, p. 29-30, url
[151] EASO, *EASO Asylum Report 2021*, 2021, p.210, url
[152] ECRE, "Cessation and review of protection statuses. Bulgaria", *Asylum Information Database*, url (Accessed: 22 September 2022)

Commission (through infringement procedures) have not decided whether this policy is a violation of European law. This demonstrates that there is a lack of common legal frameworks on triggers for cessation procedures, and that even among Member States bound by the same directives, transposition of European law can give rise to substantial variations.

Furthermore, it is worth noting that European states that are not bound by the Qualification Directive can also follow its guidance. In the case of Ireland, which is bounded by the 2004 Qualification Directive but not by the 2011 recast, the national law includes almost the same clauses as the Directive and incorporates the compelling reasons provisions which are not part of the 2004 Directive (but which are in the Refugee Convention)[153]. Concerning the United Kingdom - which since 1 January 2021, date of the end of the Brexit transition period, is no longer subject to European law, and which before that was only bound by the 2004 Qualification Directive - the cessation provisions are also very similar to EU law. Indeed, the British cessation clauses for refuges are identical to that of the 2004 Directive: they are the same as the Refugee Convention, plus the European criterion of the significant and non-temporary nature of the change in circumstances, but without the compelling reasons provisions. For humanitarian protection, which is the British equivalent to subsidiary protection, the cessation clause is also the same as the 2004 Directive one[154]. Finally, in Denmark, which is not bound by any of the Qualification Directives, the Asylum Act does not include a dedicated article on cessation, but cessation provisions are spread in several articles. Hence, when the beneficiary of international protection[155] has stayed outside Denmark for 6 months or 12 months (depending on their residence permit) and has voluntarily resettled in their country of origin or acquired the protection of a third country, then their residence permit expires (Article 17). The temporary residence permit also expires when any foreigner acquires the Danish nationality (Article 18a). Besides, the residence permit of a beneficiary of international protection can be withdrawn if the circumstances justifying asylum have changed in such a way that the alien no longer risks persecution. If the beneficiary of international protection returns to their country of origin for a holiday or short stay, their residence permit may be withdrawn if they no longer risk persecution there,

[153] ECRE, "Cessation and review of protection statuses. Ireland", *Asylum Information Database*, url (Accessed: 22 September 2022)
[154] United Kingdom, Home Office, *Immigration Rules*, February 2016 (updated: August 2022), paragraphs 339A and 339GA, url
[155] Danish law provides for three types of international protection: convention status, protection status (which is almost equivalent to subsidiary protection) and temporary protection status.

given that such a return creates a presumption of changed circumstances (Article 19)[156]. Thus, while Danish law can seem more protective, in that for instance a return to the country of origin does not trigger cessation if the circumstances in the country of origin have not changed and the concerned person has not stayed outside Denmark for 6 months, in practice beneficiaries of international protection do not enjoy specific guarantees such as the provisions of compelling reasons or the criterion of significant and non-temporary change of circumstances. Danish law is thus quite distinct from EU cessation law, contrary to Irish or UK law.

Thus, the study of ECRE reports has shown that cessation clauses in national law may differ from one EU country to another. In general, most States, apart from Denmark, have cessation clauses similar to the Refugee Convention, but some of them have made small adjustments that change the interpretation of the clauses, for example by merging clauses 1C5 and 1C6 or by deleting the reference to the protection of the country in clause 1C3. Bulgaria has even added a trigger for cessation that is considered by the ECRE as an unlawful new cessation clause. Thus, the harmonisation achieved by the Qualification Directive can be considered limited. Similarly, one could wonder whether the harmonisation under the Asylum Procedures Directive is more extensive.

2.2. The procedures and guarantees provided by national laws

Within the CEAS, the Asylum Procedures Directive sets out minimum procedural standards for the withdrawal of status (such as in particular the right to an effective remedy before a court or tribunal, the right to free legal assistance on appeal and the right to submit the reasons why one's international protection should not be withdrawn). However, States remain free to decide on a certain number of issues, such as the triggers for the reconsideration of status or the conditions for granting some particular rights. Yet, this discretion may have an impact on the chances of beneficiaries of international protection to retain their status.

To begin with, States' discretion in deciding on the triggers for the reconsideration of status is one of the main factors explaining the different number of cessation cases. Indeed, several situations can be envisaged: systematic status reviews upon renewal of the residence

[156] Denmark, *Udlændingeloven*, 22 august 2022, Sections 17, 18a and 19, url (in Danish, unofficial translation) (hereinafter: The Aliens Act)

permit or after a predetermined duration, ad-hoc review following a notification from other national authorities (border guards, embassies or consulates abroad) or collective reviews following reports from international institutions (notably UNHCR and EUAA) or from NGOs indicating a change of circumstances in the country of origin. The States that practice the most cessation are generally those that provide for at least one systematic review, such as Germany, but also Denmark, Austria or Hungary. More precisely, according to a 2019 EASO survey: "9 out of 23 responding EU+[157] countries subject the international protection status to a systematic renewal process after 1, 3 or 5 years (all 9 countries apply this renewal process to the subsidiary protection status and 6 of them also apply it to the refugee status)"[158]. Besides, some EU countries, like Belgium, Bulgaria or Italy, have recently put in place close cooperation with immigration offices to get informed of refugees' eventual travel to their country of origin, which can also lead to a raise in cessation cases. On the contrary, in countries like Croatia, Cyprus, France, etc., there is no systematic review of protection status, even upon the renewal of the residence permit[159]. Therefore, it is less likely in those countries to have one's status reconsidered. Finally, regarding collective reconsideration of status following a change of circumstances, this issue will be discussed in the following section, as it is subject to different interpretations from EU States.

Once cessation proceedings have been initiated, beneficiaries of protection are not equally likely to retain their status in all countries. To begin with, some States only initiate cessation proceedings when they have solid information to support the application of one of the clauses and are therefore less likely to conclude to the maintenance of status than other States that more frequently initiate cessation. Furthermore, according to the Asylum Procedures Directive, when Member States inform the beneficiary of international protection of the reconsideration of their status, they must give them the opportunity to present reasons why their international protection should not be withdrawn. But States can choose to do it either by written statement or by interview. The EASO itself, in its Practical guide on the application of the cessation causes, recommended arranging for personal interviews, as this makes it easier to explain in detail the reasons for the reconsideration of the status and to judge the credibility of the counterarguments brought by the beneficiary[160]. However, while many EU countries provide for mandatory interviews (e.g. Bulgaria, Slovenia, Spain, etc.),

[157] EU Member States (including the United Kingdom) + Iceland, Liechtenstein, Norway and Switzerland
[158] EASO, *Practical guide on the application of cessation clauses*, 2021, p.43, url
[159] ECRE, "Country reports", *Asylum Information Database,* url (Accessed: 23 September 2022)
[160] EASO, *Practical guide on the application of cessation clauses*, 2021, p.31, url

others use written statements or interviews depending on the circumstances (e.g. France and Belgium) and still others generally use only written statements (e.g. Ireland). Therefore, it would be interesting to study, if statistics were available, whether people who are interviewed are more likely to retain their status since they are given the opportunity to defend themselves in person.

Finally, another factor that has a more certain influence on the rate of retention of status is the accessibility and effectiveness of procedural guarantees, such as the right to appeal and to free legal assistance. Indeed, the directive leaves discretion to the States in the modalities of implementation of these procedural guarantees. Yet, the ECRE argues that the time limit for lodging an appeal may concretely jeopardise the effectiveness of the right to appeal, since it may be too short to find a lawyer, request free legal assistance or prepare the hearing adequately, especially when the applicant is not familiar with the local language and legal system[161]. While the law some countries (such as Italy or the Netherlands) grant a 30 days or 4 weeks delay, which seems fairly reasonable, other countries only grant 15 days (Slovenia, Malta, Germany) or even 8 or 9 days (Hungary and Croatia). Regarding free legal assistance, there are similar inequalities. The Asylum Procedures Directive allows to restrict free legal assistance for persons who have sufficient resources, who have left the territory or whose appeal has no tangible chance of success[162]. Therefore, the States have a rather large discretion in implementing this procedural guarantee, since they can decide on the threshold of sufficient resources or the definition of "tangible chances of success". Moreover, like for appeal, States can also define different time limits to request free legal assistance. This discretion can lead to a difference in accessibility. For instance, the ECRE judges that in Cyprus, it is extremely difficult to be awarded free legal assistance due to the “means and merits” test[163]. In Croatia, free legal assistance is even reserved for beneficiaries of international protection affected by a change of circumstances in their country of origin[164]. Yet, without free legal assistance, it is probably less likely to maintain one’s protection status.

Therefore, beneficiaries of international protection do not undergo exactly the same cessation procedures in every EU State, which can have an impact on their chances to retain their status. Depending on their host country, they are more likely to face reconsideration of

[161] ECRE, “Regular Procedures. Italy”, *Asylum Information Database*, url (Accessed: 23 September 2022)
[162] EU, *Asylum Procedures Directive*, Article 20 and 21, url
[163] ECRE, “Cessation and review of protection statuses. Cyprus”, *Asylum Information Database*, url (Accessed: 23 September 2022)
[164] ECRE, “Cessation and review of protection statuses. Croatia”, *Asylum Information Database*, url (Accessed: 23 September 2022)

status or not, but they also have access to more or less effective procedural guarantees. As a result, we can see that, whether it be the content of the cessation clauses or the procedures followed, the harmonisation of Member national laws by the directives is not total. Furthermore, beyond the legal texts themselves, the interpretation made by national authorities of cessation clauses is another source of divergence in cessation practices. In particular, the ceased circumstances clauses appear to be applied to very different situations across countries.

2.3. Different conception of the change of circumstances

As discussed in the previous chapter, the CJEU rulings and EUAA guidelines provide criteria to be considered in applying the cessation clauses but leave it to the States to make an assessment using these criteria. Consequently, the application and interpretation of cessation clauses sometimes differ from one country to another. For instance, for clauses 1C1 and 1C4, Hungary considers that simply returning to the country of origin, even temporarily, is sufficient to presume that an individual has re-availed themselves of the protection of their national authorities or has re-established themselves in the country of origin, while other Member States usually take into account the frequency of visits, the length of stay, the reason for returning and other specific aspects[165]. It leads them to accept return in certain situations, for example for visiting an ill family member or for funerals[166]. Concerning the ceased circumstances clauses, the national differences in interpretation and application are even more striking, due to the vagueness of the term "circumstances". Moreover, these clauses are the only ones that allow for a collective reconsideration[167] of status. The collective character of those cessation clauses is also underlined by their other designation: the “general cessation” clauses[168]. However, according to the UNHCR’s guidelines, the Member States still have, upon request, to consider individual reasons to oppose cessation. Finally, the ceased circumstances clauses (especially 1C5) are the primary provisions used in cessation

[165] EMN, *Beneficiaries of international protection travelling to and contacting authorities of their country of origin*, 2019, p.22-23, url
[166] For some countries, such as France, Spain, Cyprus, prior authorisation must be sought from the host country authorities before travelling to the country of origin.
[167] By collective reconsideration, we mean that groups of people coming from the same territory can have their status reconsidered at the same time.
[168] UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, 2003, p.2, url

proceedings in the EU[169]. The interpretation and application of the general cessation clauses are therefore major issues.

The first question that arises in relation to these clauses is which situation qualifies as a change of circumstances. Most EU countries did not try to apply systematic cessation to any group of people due to durable changes in their country of origin. Some did in the past but do not have such policies nowadays. For instance, France initiated a procedure for the collective reconsideration of the status of Spanish refugees in 1979, after the death of Franco (1975), the enactment of the Democratic Constitution, the amnesty of political offences, the recognition of parties (including the Communist Party), and the first free elections[170]. This collective cessation may also have been prompted by Spain's new application to join the EU, submitted in 1977. Indeed, a country's accession to the European Union can lead to such considerations, due to the strong requirements expected in terms of human rights protection and justice, but this is not systematically the case. For example, France still has some Romanian refugees whose status has not been reconsidered to this day[171]. Another example of historic collective applications of cessation is Germany which, from 2003 to 2007, ended the protection of 14,000 Iraqi refugees following the fall of the Saddam Hussein regime[172]. Despite the widespread insecurity, precarious living conditions and the transitional character of the occupation of Iraq by multinational forces, Germany considered that these dangers concerned the entire population and could therefore not be considered as persecution, which is supposed to be individual in nature. However, this policy ended following the recognition by the German authorities that non-Muslim minorities in Iraq could be exposed to persecution, but also a request for a preliminary ruling of the Court of Justice of the European Communities (the predecessor of the CJEU, before the entry into force of the Lisbon Treaty in 2009) which led to the famous Abdulla jurisprudence. While the Abdulla ruling was only to be issued in 2010, the German authorities already decided to stop revoking Iraqis' refugee status and to annul cessation decisions in cases which were not yet final following the preliminary request. This shows the major importance of the CJEU's case law, which can challenge an entire national practice. Finally, more recently, in January 2020, the Netherlands decided to reassess all subsidiary protection status (about one hundred) of beneficiaries from

[169] ECRE, Maria O'Sullivan, *op.cit*., p.3, url
[170] Office Français de Protection des Réfugiés et Apatrides (OFPRA), Aline Angoustures, *40 ans d'exil. La Retirada et la protection des réfugiés espagnols par l'OFPRA (1939-1979),* 2020, p. 63-64, url
[171] Interview with Mr. Johan Ankri and Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[172] UNHCR, *UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive*, 2008, p.10-11, url

Sudan, considering that there had been a significant and non-temporary change of circumstances in the conflict that affected certain parts of the country. However, in the end, the reassessment project resulted in 0 cessation on the ground of ceased circumstances, as most beneficiaries were considered to have continued needs of protection[173]. This result calls into question the relevance of such status review projects, due to the administrative costs involved and the stress imposed on the beneficiaries of protection, since it did not have any impact on the status in the end. Nowadays, the main EU countries to practice such collective status reviews based on a change of circumstances in the country of origin are Denmark (concerning Somalis and Syrians)[174] and Hungary (regarding Afghans, before the Taliban's seizure of power, and Syrians)[175]. It is worth noting that in most cases, when an EU country decided to consider collective cessation for a particular nationality (with the exception perhaps of EU candidates), it was rarely followed by other Member States. Their decision is therefore more national than European.

Yet, while the ceased circumstances clauses were first thought to apply to changes in the country of origin, as the UNHCR Handbook points out[176], some European countries also apply them to individual situations. This is notably the case in France, which considers that when refugee status has been obtained through family unity, divorce can be a ground for cessation under clauses 1C5 and 1C6[177]. Indeed, the circumstances that gave rise to the granting of the status (the family situation) are considered to have permanently and significantly changed, which would justify cessation. Similarly, the Swedish authorities decided that subsidiary protection status could be ceased when it was granted in relation to child-specific risks and the beneficiary has now become an adult[178]. Those two examples prove that the ceased circumstances clauses are indeed applied to very different situations in European countries, and that, for the sake of harmonisation or comparison, it might be interesting to have a research paper, similar to the EMN study on clauses 1C1 and 1C4, on the application of clauses 1C5 and 1C6.

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[173] ECRE, "Cessation and review of protection statuses. Netherlands", *Asylum Information Database*, url (Accessed: 26 September 2022)
[174] Nikolas Feith Tan, *op.cit.,* p.2, url
[175] ECRE, "Cessation and review of protection statuses. Hungary", *Asylum Information Database*, url (Accessed: 26 September 2022)
[176] Indeed, according to the UNHCR's Handbook (p.32), "circumstances refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution".
[177] ECRE, "Cessation and review of protection statuses. France", *Asylum Information Database*, url (Accessed: 26 September 2022)
[178] ECRE, "Cessation and review of protection statuses. Sweden", *Asylum Information Database*, url (Accessed: 26 September 2022)

The second question is which indicators to consider to assess a significant and non-temporary change of circumstances. On this topic, we can also see considerably different practices from EU countries, which impact the beneficiaries' chances to maintain their status. Most notably, when the country was still part of the EU, the UK Immigration Appeal Tribunal (SB Haiti 2005)[179] objected to the UNHCR's guidelines that the application of clauses 1C5 and 1C6 require effective and available protection. According to the tribunal, the absence of any persecutory treatment of the refugee is sufficient. Therefore, they believe there is no legal requirement for the country of origin to have a functioning government, administrative and legal system, and adequate infrastructure to enable residents to exercise their rights (including the right to basic subsistence), in order to apply the cessation clauses. On the contrary, in France, the *Cour Nationale du Droit d'Asile* (National Court of Asylum) ruled in a 2018 decision that the assessment of a significant and lasting change includes "an examination of the operating conditions of institutions, administrations and security forces and of any groups or entities in the country that may be responsible for acts of persecution, including an assessment of the application of the laws and regulations of the country of origin, the effectiveness of respect for fundamental human rights and the existence of an effective judicial system to detect, prosecute and punish acts constituting persecution, system to which the individual concerned could have access"[180]. It is not sufficient that the source or actor of persecution has disappeared, but it is also necessary that the country of origin offers effective and accessible protection to former beneficiaries of international protection, and that substantial efforts have been undertaken to protect fundamental human rights. This shows that, depending on the asylum country, there can be very different thresholds for the application of the ceased circumstances clauses, which can impact the chances of beneficiaries to retain their status. In addition, according to ECRE, some countries such as Poland, Hungary or Portugal do not carry out an adequate assessment of the individual and general situation in cases of ceased circumstances, thus contravening the minimum standards defined by the CEAS[181].

Finally, the last question is how to take into account compelling reasons and continued needs for protection. While no transnational study has addressed the issue of continued needs for protection, there has been an EMN ad-hoc query on the compelling

[179] United Kingdom, Immigration Appeal Tribunal, *SB Haiti*, UKAIT 00036, 7 February 2005, para. 27 and 37, url
[180] France, Cour nationale du droit d'asile (CNDA), *Decision N°18001386 C+,* 17 Octobre 2018, url (in French)
[181] ECRE, "Country reports", *Asylum Information Database,* url (Accessed: 26 September 2022)

reasons. It appears from the replies of the Member States that a certain number of them do not have established practices and national guidelines on this principle (Croatia, Estonia, Finland, Italy, etc.) and that most of the other countries that declare to apply it also do not have national guidelines or practical examples (Germany, Hungary, Malta). Finally, some countries provide specific examples of situations that may lead to the use of the principle of compelling reasons, such as France, which applies it, among other cases, to victims of torture or to persons whose family have suffered serious abuse. On the other hand, Belgium places particular emphasis on the cases of victims of violence against women in areas such as female genital mutilation, forced marriage, human trafficking and persecution against LBGT+ people[182]. Overall, there is thus also a diversity of practices among States in relation to this principle, reflecting the diversity of interpretation and application of cessation clauses altogether.

Hence, the study of EU States law and practices on cessation highlights important divergences, which may impact on the chances of beneficiaries to maintain their status. However, this divergence is not in itself a legal problem as long as States respect the minimum standards set by CEAS, which is not always the case according to NGOs (as illustrated by ECRE's criticism of the Bulgarian additional ground for cessation or the poor assessment of changed circumstances in Poland, Hungary and Portugal). Moreover, in some cases, State practices complicate the access of beneficiaries of international protection to their fundamental guarantees, for example the right to an effective remedy before a court or tribunal or to free legal assistance. Thus, some items could still be subject to further harmonisation. Moreover, while divergence in practices was a minor problem in the past given the low recourse to cessation by States, the recent revival of interest in this process may call into question the low level of harmonisation. In order to assess the impact of this new focus on cessation, the first question to be answered relates to the reason for this renewed interest in the concept.

3. Is the current European context more favourable to the application of cessation?

As we have seen before, States have made little use of cessation clauses in the past. According to an expert roundtable, organised by the UNHCR in 2001, this historical

[182] EMN, *Applying the principle of compelling reasons in asylum cases*, 2021, url

reluctance can be explained by: "the administrative costs" (as it involves paying for case officers, legal aid, interpreters, potential returns to the country of origin, and it can lead to new applications for other residence permits that would trigger further costs) and "the recognized likelihood that even where cessation results, it may not lead to return because those whose refugee status has ceased will have the possibility to remain under another status; and/or a State preference for naturalization"[183]. This last remark hints at the idea that cessation is quite strongly assimilated to return, and that it may be perceived as useless when return is impossible, thus explaining the low number of cessation cases. Yet, the recent increase in cessation cases and discussions suggest that the situation has changed.

Defining a single reason for the renewed interest in cessation in all European countries is a difficult, if not impossible, task. Indeed, multiple factors may be behind this revival of the cessation clauses. Fitzpatrick and Bonoan (2003) provide a brief summary in their introduction: "These factors include: democratization in some formerly repressive States; a concern to prevent asylum from becoming a backdoor to immigration; experiments with temporary protection during mass influx; a stress upon voluntary repatriation as the optimal durable solution to displacement; the development of standards for voluntary repatriation; frustration with protracted refugee emergencies; and dilemmas posed by return to situations of conflict, danger, and instability"[184]. It is likely a combination of these different factors that, in some States, are causing a surge of interest in cessation. However, it is possible to group these factors into several categories for analytical purposes.

3.1. More frequent changes of circumstances in the countries of origin?

The first categories are the factors related to changes of circumstances in the country of origin. These factors could mainly explain the interest in clauses 1C5 and 1C6. It is unlikely that there are nowadays more changes of circumstances than in the past, especially considering the major political evolutions following the Cold War. However, given the relatively long period of time advised by the UNHCR to activate these clauses, it is not surprising that they were little used in the early years of the Refugee Convention. Moreover, nowadays, it is easier to be informed of such changes of circumstances with the advent of the Internet. Indeed, the circulation of geopolitical information about countries which may be far

[183] UNHCR, Global consultations on international protection, *Summary Conclusions: Cessation of Refugee Status,* 2003, p.2, url
[184] Joan Fitzpatrick and Rafael Bonoan, *op.cit*, p. 492, url

away, or with which the host State has little contact, is much simpler and the cost of information is reduced. This could have an impact on the number of cessation cases.

In the past, cessation due to ceased circumstances has been employed on rare occasions. Sometimes, declarations of general cessation were issued, without actual reconsiderations of status, to transfer administrative and fiscal responsibilities from one government entity to another or to limit applications from asylum-seekers coming from this country[185]. The principal aim seemed to deter new asylum applications, without ending the protection of current refugees. Besides, general cessation could also serve to acknowledge the democratic efforts and legitimacy of a new government. François Sureau, in *Le Chemin des Morts* (in English: *The Way of the Dead*), recounts the difficult exercise for the judges of the French National Court of Asylum, after 1979, to confirm or annul cessation decisions concerning Spanish refugees. To annul the first instance decisions would equate to denying Spain's return to a democratic regime and the rule of law, but to apply it would mean negating the existence of repeated murders committed against Franco's former opponents in Spain[186]. The potentially political character of cessation can thus be problematic if statuses are withdrawn too early. In several instances, States have also applied cessation following UNHCHR's recommendations due to a change of circumstances in a given country. However, Georgia Cole (2021) emphasises the limits of this approach, pointing out that the UNHCR has, on multiple occasions, supported cessation in order to show public confidence in a new State despite significant concerns on the fundamental and durable nature of change (e.g. in East Timor in 1992). However, there is a risk that States are pressured into following UNHCR's recommendations, as refusing to do so would cast doubt on the reform efforts of a neighbouring country and could have long and widespread diplomatic consequences[187]. Thus, for Georgia Cole, the application of article 1C5 "ultimately rests more on politics than law". She argues that it is impossible to be perfectly objective in assessing a change of circumstances, decision-making and implementation of cessation not only because of the vagueness of the criteria and the difficulty of applying them to reality, but more importantly due to the importance of political considerations such as the "costs and benefits of hosting

[185] Global consultations on international protection, *Summary Conclusions: Cessation of Refugee Status,* 2003, p.546, url
[186] François Sureau, *Le chemin des morts*, Gallimard, 2013, Summary, url. It should be noted that, although this book is presented as being based on real events, the case described by the narrator was potentially invented by the author.
[187] Georgia Cole, *op.cit.*, p.1035-1036, url

refugees[188], the desire to expedite their repatriation to put a seal of approval on new governing regimes, and the oscillating political pros and cons of cessation"[189].

Hence, in the past, it seems that cessation was rarely motivated exclusively, or even primarily, by a change in circumstances, even though the latter is an essential factor in its initiation. At present, the situation hardly appears different in this respect. The democratisation of neighbouring countries is still an objective of the EU Enlargement Policy and EU Neighbourhood Policy, which can theoretically lead to cessation of status for some beneficiaries of international protection. However, while the advent of the Internet and globalisation has reduced information costs, the administrative costs of the status review process and of the return assistance often offered to former beneficiaries are still present. Similarly, those developments do not influence the other residence permits that refugees can obtain or the possible State preference for naturalisation. Therefore, these factors continue to play a major role in States' cessation decisions. As proof, in some countries such as France, despite the passage of many years and changes in circumstances, cessation has not been applied to, among others, a certain number of Romanian refugees[190]. Therefore, changes of circumstances and the democratisation of neighbouring countries cannot alone explain the renewed interest in cessation in recent years.

3.2. Migration crisis and nationalist reactions

A second set of factors that may be behind the renewed interest in cessation is the nationalist political developments in Europe and the backlash against immigration, especially after the 2015 migration crisis. Among the factors raised by Fitzpatrick and Bonoan (2003), this includes "a concern to prevent asylum from becoming a backdoor to immigration", "a stress upon voluntary repatriation as the optimal durable solution to displacement" and "frustration with protracted refugee emergencies"[191]. Furthermore, in 2021, Maria O'Sullivan pointed out the development of national policy agendas for deterrence as one of the main drivers of the increased use of cessation in some European States[192]. Indeed, in

[188] Hosting refugees is often seen as a financial cost or a source of undesirable diplomatic tensions, but it can also be a useful diplomatic tool for a country wishing to cast doubt on the legitimacy of a neighbouring country. As an example, the flight of refugees from East Germany during the Cold War was used to criticise the undemocratic character of the Eastern Bloc.
[189] Georgia Cole, *op.cit*., p.1043-1044, url
[190] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[191] Joan Fitzpatrick and Rafael Bonoan, *op.cit,* p. 492, url
[192] ECRE, Maria O'Sullivan, *op.cit,* p.2, url

recent years, many countries (such as Italy, Sweden, Hungary, Poland, France, Spain, etc.) have seen a rise in nationalist and far-right parties and in discourses associating immigration with delinquency, crime and economic crisis. On many occasions, these developments have led to reforms of immigration and asylum laws. For example, between 1986 and 2018, France adopted 21 laws on immigration, asylum or nationality, i.e. 1 every 1.5 years on average[193]. For journalist Marianna Skorpis, these legislative developments, caused by the rise of the far-right party "*Front National*" (now "*Rassemblement National*") but also by European legislations, have complexified and tightened French immigration law (inter alia, regarding obtention of a permanent residence permit, which is a major issue for beneficiaries of international protection who wish to settle in their host country). The influence of the national debates on immigration and integration can also in some cases be visible in the questions during status review interviews. For example, according to the ECRE, the German authorities sometimes ask questions which are not relevant to cessation or revocation, but which relate to the person's integration in Germany or their religious practices[194].

In 2021, Goodwill-Gill, MacAdam and Dunlop added that the surge of interest in end of protection provisions is also linked to the augmentation of the number of people in search of protection and the fight against terrorism[195]. As an illustration, Germany has exponentially increased its number of status reviews following the "Franco A. scandal" in 2017. Franco A. was a German soldier, who was arrested for the alleged preparation of a terrorist attack, and who had managed before that to be granted subsidiary protection by pretending to be a Syrian citizen. His aim was apparently to shift responsibility for the planned attacks on refugees. In response to this scandal, the BAMF[196] (German first instance determining authority) carried out 80,000 to 100,000 "revocation examination procedures" (preliminary examinations on whether a formal revocation[197] is to be carried out or not), targeting specifically male beneficiaries between 18 and 40 years old. This led to an increase in cessation, especially since the German procedures do not distinguish between cessation and other grounds for end of protection[198]. In 2018, another scandal, called the "BAMF Scandal", took place following accusations of corruption of six staff members of the Bremen branch office of the BAMF.

[193] Marianne Skorpis, "Trente ans de lois françaises sur l'immigration. Un débat sans fin", *ARTE*, 2019, url (in French)
[194] ECRE, "Cessation and review of protection statuses. Germany", *Asylum Information Database*, url (Accessed: 3 October 2022)
[195] Guy S. Goodwin-Gill, Jane McAdam, Emma Dunlop, *op.cit*, Part 1, Chapter 4, url
[196] The "*Bundesamt für Migration und Flüchtlinge*", or in English "Federal Office for Migration and Refugees".
[197] In the German context, revocation can refer both to cessation and to other grounds to end protection.
[198] ECRE, "Cessation and review of protection statuses. Germany", *Asylum Information Database*, url (Accessed: 3 October 2022)

Although the scandal eventually proved to be largely overestimated, it nevertheless triggered an increase in revocation examination procedures. As a result, while before 2017, only a few thousand revocation examination procedures were initiated each year, since 2017, the BAMF has initiated hundreds of thousands of those procedures[199]. Thus, even though national security and public order are not grounds for cessation, they may indirectly increase the number of cessation cases by causing more frequent status reviews.

Concerning the particular impact of the 2015 migration crisis, not only did it amplify national debates on immigration and asylum, but it was also one of the main factors that prompted the European institutions to reflect on a forthcoming reform of the CEAS (currently under negotiation, this reform will be further explored in a later section of the thesis). Indeed, in a 2016 communication, the European Commission clearly identifies the "ongoing migration and refugee crisis" as a reason for the reform. The text also points out that the granting of international protection in the EU has in practice "almost invariably led to permanent settlement" and recalls that international protection is only supposed to last for as long as the risk of persecution or serious harm persists. The European Commission therefore advocates for more regular status reviews[200].

Hence, these different examples demonstrate that, beyond changes in circumstances in the countries of origin, it is mainly political considerations linked to national debates on immigration, the increase in the number of asylum applications and the fight against terrorism that seem to prompt the current renewal of interest in cessation. This motivation is reminiscent of ideas that were raised during the *travaux préparatoires* of the Refugee Convention, reflecting the willingness to grant international protection only for as long as it is needed in order to reserve it for those who need it most. However, the influence of national security or public order reasons on the initiation of cessation cases, as well as the increasing complexity of naturalisation procedures, demonstrate that the renewed interest in cessation is also motivated by different reasons than the conviction of the end of the need for protection. In other words, it seems that it is mostly an interest in ending protection and in what is perceived as public order that is driving the increase in cessation cases. However, for cessation to actually be a "solution" to contemporary migration challenges, in the absence of a willingness to integrate or naturalise, it would imply that this procedure could effectively

[199] *Ibid*.
[200] European Commission, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe,* 2016, p.2 and 5, url

lead to the return of former beneficiaries of international protection to their countries of origin. Yet, it appears that it is not always the case.

3.3. Cessation as a prelude to return?

Cessation is often perceived as having for sole outcome the (forced) return of refugees to their countries of origin. Yet, as discussed in the introduction, when international protection ends, a former beneficiary can find himself in one of three situations: either he may apply for or has been granted citizenship, a permanent residence permit or a temporary residence permit on grounds other than asylum; or he stays illegally in the former host country; or he returns to his country of origin, either voluntarily or by expulsion. Therefore, return is only one of the 3 possibilities resulting from cessation. Moreover, in a 2008 statement, the UNHCR added that the application of the ceased circumstances clauses "should be informed by the overall objective of refugee protection, which aims at finding durable solutions for refugees. Durable solutions are integration in the host State, resettlement to a third State and voluntary return to the home State if this is possible in safety and dignity"[201]. Therefore, if international protection is intended to be only temporary and to lead to more durable solutions, return is only one of these possible solutions. In fact, cessation can be a consequence of other durable solutions, since naturalisation in the host country or in a third country constitutes ground for cessation. Cessation can also lead to local integration if it prompts the former beneficiary to apply for another residence permit. However, in practice, cessation is still often associated with return. The UNHCR itself, during an intervention before the UK House of Lords for a cessation case in 2005, recognised that when no other legal status is available for the refugee, "cessation should only be invoked where the refugee can and will, in fact, be returned to his country of origin"[202]. In practice, the UNHCR is indeed often reticent to apply cessation when no durable solution is available. Actually, the very inclusion of the exception of the compelling reasons in the Convention proves that return is the expected consequence of the application of the ceased circumstances clauses. Indeed, in the absence of return, there would be no need for the refugee to continue to receive international protection and therefore for this exception. Hence, while former status holders

[201] UNHCR, *UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive*, 2008, p.6, url
[202] UNHCR, U*NHCR intervention before the House of Lords in the cases of Xhevdet Hoxha v. Special Adjudicator and B v. Immigration Appeal Tribunal,* 5 January 2005, p.12, url

have the possibility of applying for naturalisation or other residence permits, a collective application of clauses 1C5 and 1C6 is expected to result in a certain number of returns.

Yet, return-oriented cessation can have significant negative consequences in case of error. Firstly, regarding the application of the ceased circumstances clauses, if continued needs for protection are not taken into account or if the change of circumstances is not sufficiently fundamental, stable and durable, the former beneficiary of international protection may face persecution or serious harm upon return to their country (cf. the case of the Spanish Republicans as recounted by François Sureau[203]). Secondly, according to the UNHCR's guidelines, cessation should not result in "persons being compelled to return to a volatile situation, as this would undermine the likelihood of a durable solution and could also cause additional or renewed instability in an otherwise improving situation, thus risking future refugee flow"[204]. Hence, if misapplied, cessation and return may have consequences for the stability of the country of origin. Thirdly, the UNHCR adds that cessation should not result either "in persons residing in a host State with an uncertain status"[205]. In this case, the former beneficiary, unable to work legally, would lose the opportunity to rebuild their life, while the host country may have to spend resources to guarantee this individual's fundamental rights (for emergency housing, food, healthcare, etc.). This situation can be the result of the person's refusal to return, for instance when a beneficiary of international protection has stayed in the country of asylum for a long time and has built up family, friendship and economic ties. In this case, return-oriented cessation may represent an interference with the right to private and family life as guaranteed by Article 8 of the European Convention on Human Rights (ECHR)[206]. Moreover, a former beneficiary residing with an uncertain status can also be the outcome of a cessation where return would breach the principle of non-refoulement and article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment), as the former status holder may still risk persecution or serious harm upon return. In this case, where international protection still appears necessary, the legitimacy of cessation can be seriously challenged: the risk of such treatment suggests that the protection of national authorities has not been effectively restored or that the change of circumstances is not fundamental. Last but not least, return-oriented cessation, especially

[203] François Sureau, *op.cit.*, url
[204] UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 2003, p.3, url
[205] *Ibid.*
[206] Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 1950, Article 8, url

collective cessation, can have important consequences for the whole society, as businesses may lose employees and associations volunteers.

Therefore, cessation is a high-stake exercise, which should be realised with caution. Firstly, the determining authority must be sure of the characterisation of the facts (re-availment of the protection of the country of origin; fundamental, durable and stable change of circumstances) and to consider the individual merits of each case (continued needs for protection, compelling reasons). Secondly, the ExCom in General Conclusion No. 69 advises States to consider "appropriate arrangements" (such as other residence permits) "for those persons who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links"[207].

Regarding EU State practices, the relation between cessation and return seems to vary a lot from one country to another[208]. In Denmark (for the ceased circumstances clauses) or in the Netherlands, the link seems quite significant, as cessation cannot be applied to beneficiaries of international protection who have been granted a permanent residence permit. Given that permanent residence is granted on the basis of the length of previous stay, and not of the severity of persecution, this exception to cessation probably does not mean that the status holder has greater needs for protection, but simply that States are not interested in ceasing their status as it would not trigger return. In Poland, the decision of the Refugee Board (the administrative body in charge of the appeal proceedings)[209] entails an obligation to leave the territory within 30 days. On the contrary, some countries have undermined the link between cessation and return. For instance, Austria requires the status of any refugee who has held it for 5 years to be only withdrawn after the beneficiary has received a residence permit under a different immigration status. In Spain, in case of a change of circumstances in the country of origin, the beneficiary of international protection can apply for a long-term residence permit which is usually granted. Finally, some States are halfway between the two approaches. In Germany, local authorities decide to grant (or refuse) another residence permit on the basis of the length of stay, degree of integration, employment situation and family ties. In Italy, if the status has been ceased but the principle of non-refoulement prohibits the return,

[207] ExCom, *General Conclusion No. 69,* 1992, url
[208] ECRE, "Country reports", *Asylum Information Database,* url (Accessed: 5 October 2022)
[209] This is a specificity of Poland: the first appeal is not examined by a court or tribunal, but by an administrative body, and the onward appeal to the Voivodeship Administrative Court has no automatic suspensive effect: the foreigner must request the Court to suspend the decision on the end of protection. This particularity is a bit at odd with the Asylum Procedures Directive, which guarantees the right to an effective remedy before a Court or a tribunal and the right to remain in the territory pending the outcome of the remedy.

the person can be granted a special protection residence permit. Finally, in some cases, cessation does not lead neither to return nor to the granting of another permit. This is the situation, criticised by the UNHCR, in which a former beneficiary of protection remains in the former country of asylum with uncertain status. In Denmark, where the number of cessation cases has risen sharply in recent years, this is the great majority of cases for some nationality (according to Nikolas Feith Tan in 2020, only a few dozen of the 800 Somalis who have had their protection ended actually returned in Somalia through assisted voluntary repatriation programmes[210]).

In conclusion, this chapter has provided evidence that most European states, apart from Germany, have not made regular use of cessation historically. In rare exceptions, collective cessation proceedings have been initiated to recognise the democratisation efforts made in neighbouring countries, especially for EU candidates. Hence, even though international protection is presented as temporary in the texts, States, in past practices, have favoured the idea of local integration and of durable, if not permanent, protection. However, the current context - characterised by a better circulation of information, extensive debates on immigration and an increase in the number of people seeking protection - seems to be more favourable to the application of cessation clauses and the return of former status holders. Consequently, in some Member States, especially since 2017, the number of cessation cases has strongly increased. This raises a range of issues as cessation law is generally considered underdeveloped[211]. Indeed, given the low number of cessation cases, many national courts have not had the opportunity to rule on the compatibility of national provisions with EU law, or to submit requests for preliminary rulings to the CJEU. This results in the limited harmonisation of cessation law and practices in the EU and leaves States, for the time being, with a wide discretion in the application of cessation. As a result, the practices of some States could be in breach of EU law, such as Bulgaria's additional cessation ground or the weak assessment of individual circumstances in cessation cases by Poland, Hungary and Portugal. Therefore, the recent interest in cessation highlights all the shortcomings of current cessation law, which will have to be discussed and settled by European and national courts. What is the real difference between cessation for refugee status or subsidiary protection? Should it be guaranteed that beneficiaries of international protection

[210] Nikolas Feith Tan, *op.cit.,* p.25, url
[211] *Ibid*., p.2

have the same chances of retaining their status in different EU countries? What is the place of cessation in the development of new forms of asylum, such as temporary protection? These different issues, which are at the heart of the contemporary debate on cessation, will be discussed in the following chapter.

Chapter III – Contemporary debates and possible evolutions of cessation law and practices

This third chapter focus on the analysis of contemporary debates and unresolved issues regarding cessation. Special attention will be dedicated to the EU efforts to harmonise cessation law and practices, to the legal debate on very specific interpretation and application issues and to the new forms of cessation that seems to emerge in some States' practices, notably in Denmark. The main issue will be to try to determine if the entire European Union is slowly shifting away from a presumption to permanent protection and local integration to temporary protection and return.

1. Reforming EU cessation law

1.1. Cessation: a secondary issue of the CEAS reform

Addressing cessation has never been the primary objective of the CEAS reform. Indeed, this reform is above all a reaction to the 2015 migration crisis and to the resulting struggle in managing migration flows and asylum applications at the EU borders (especially in Greece and Italy). Hence, according to the European Commission in 2016, the main goal of this reform is "to move from a system which places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to a fairer system which provides orderly and safe pathways to the EU for third-country nationals in need of protection or who can contribute to the EU's economic development"[212]. Yet, in the same text, the European Commission also advocates for a more rigorous use of the cessation clauses and status reviews as it claims that protection is supposed to be granted "only for so long as the risk of persecution or serious harm persists"[213]. For this reason, the reform is likely to have an impact on cessation.

Moreover, the CEAS reform package is based on a review of all the CEAS legislative instruments and in particular on the replacement of the Qualification and the Asylum Procedures Directives by regulations. In EU law, regulations lead to a higher degree of harmonisation than directives. Indeed, directives set out objectives and requirements that States must transpose into national law within a certain timeline, whereas regulations

[212] European Commission, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe,* 2016, p.2, url
[213] Ibid., p.5

immediately become part of national law without any transposition process. The text of the regulation as adopted by the European institutions is directly applied by the national authorities, leaving them less discretion. Regarding cessation law, despite the cessation clauses in the proposed regulation being exactly the same as in the Qualification Directive, this distinction may have a significant bearing on the variations of national law that we have identified in the previous chapter. Indeed, States will be forced to apply the cessation clauses exactly as worded in the regulation. This means that it will be impossible for them, for example, to merge clauses 1C5 and 1C6, and not take into account the specificities of stateless persons, as it is currently the case in Spain or Sweden. In terms of procedures, the grounds for status reviews and the time limits for appeals will also be harmonised. This could prevent countries such as Hungary or Croatia from granting only 8 or 9 days to appeal. Finally, unlawful grounds for ending protection will be easier to identify and sanction without a transposition law to study. For instance, it will be easier to decide whether Bulgaria's provision to initiate a withdrawal of protection in case of failure to renew identity documents constitutes an additional unlawful ground for cessation or not.

Thus, the CEAS reform could be an opportunity to strengthen the procedural guarantees offered to status holders in the event of withdrawal of protection and to harmonise their chances of retaining their status depending on their host country. However, the regulations can also have unfavourable aspects for status holders. After announcing the reform of the CEAS, the European Commission consulted different stakeholders on their opinions on the proposed options. The NGOs were in general "not in favour of further harmonisation, fearing a lowering of standards". They advocated in particular for keeping the more favourable treatment possibilities[214]. Indeed, unless explicitly mentioned, the regulations remove the possibility of introducing provisions that are more favourable than the standards provided for by EU law, as it was the case in the directives (article 3 of the Qualification Directive and 5 of the Asylum Procedures Directive). For cessation matters, the most significant impact is probably the one linked to the duration of the residence permits: indeed, in the Qualification Directive, the first granted permit had to be of at least 3 years for refugees and at least 1 year for beneficiaries of subsidiary protection, but could be longer[215];

[214] EU, *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*, 2016, Explanatory memorandum, url (i.e the proposal for a Qualification Regulation)

[215] EU, *Qualification Directive*, 2011, Article 24, url

whereas in the proposed Qualification regulation, the first granted permit has to be of 3 years for refugees and 1 year for beneficiaries of subsidiary protection, no more no less[216]. Considering that the proposed regulation also aims to link status reviews with the renewal of residence permits, this new approach will inevitably have an impact on cessation.

Finally, a further effect of the CEAS reform on cessation is linked to the transformation of the EASO into the EUAA and the extension of its mandate by strengthening its operational role and granting it additional funding and legal means. The new regulation, enacting this transformation, was adopted in December 2021 and entered into force in January 2022[217]. It was actually the first of the initiatives of the CEAS reform package to be approved, which shows that the reform is moving forward. Regarding cessation, the EUAA should enable a better harmonisation of Member States' practices, as the agency is responsible for establishing a monitoring mechanism to assess States' compliance with the CEAS (Article 14), for providing further training to relevant national administrations (article 8) and for the coordination of Member States' efforts in order to develop a common analysis of country-of-origin information (article 11). This last point is particularly noteworthy as it should help Member States to comply with assessment guidelines and may influence decision-making in ceased circumstances cessation cases.

Therefore, while revising cessation law is not the primary aim of the CEAS reform, the latter will probably have a substantial impact on cessation practices anyway. Cessation law and procedures should be extensively harmonised, especially with regard to the wording of the cessation clauses, the triggers for status review and the access to procedural guarantees. In the next parts, special attention will be given to the effects of the introduction of mandatory status review and of the common analysis of country-of-origin information. Hence, we will start by studying the possible impacts of the reform of withdrawal of status procedures on the number of cessation cases initiated in EU countries and on the access to procedural guarantees.

[216] EU, *Proposal for a Qualification Regulation,* 2016, Article 26, url
[217] EU, *Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*, 2021, url (i.e. the EUAA Regulation)

1.2. Increasing and harmonising withdrawal of status procedures

In both the revision of the Qualification and the Asylum Procedures directives, procedures for withdrawing international protection are not the primary issues but are still likely to be significantly affected by the reform. The main impact will probably derive from the introduction of mandatory status reviews. Indeed, constating that few Member States were carrying out systematic status reviews "despite the obligation to withdraw the status when the risk of persecution or serious harm cease"[218], the European Commission proposed in its Qualification Regulation to introduce two triggers for mandatory status review in Article 15 (for refugee status) and Article 21 (for subsidiary protection). Those triggers are: when there is a significant change of circumstances in the country of origin which is reflected in an EU-level document (such as an EUAA guidance) and when the Member State renews the residence permit for the first time for refugees and for the first and second times for beneficiaries of subsidiary protection. The difference in the number of mandatory status reviews between protection statuses can be explained by the fact that the European Commission stated that was "inherently more temporary"[219] than refugee status in its 2016 Communication on the reform[220]. However, in both cases, the mandatory status reviews upon renewal of the permits are limited to three years: indeed, under the new rules of the regulation, the residence permit for refugees is valid for three years and renewable for three years, and the one for beneficiaries of subsidiary protection is valid for one year and renewable for two years. Therefore, it seems that the European Commission considers that, after three years of stay, beneficiaries of international protection are entitled to a greater degree of stability with regard to the maintenance of their protection. It could also be linked to the fact that after 3 years, one is less likely to return to their country of origin even if their status is ceased, because they have created stronger links with the host countries.

This introduction of regular and mandatory status reviews could have a great impact on State practices, especially for States who are not used to this procedure. In the framework

[218] EU, *Proposal for a Qualification Regulation*, 2016, Explanatory Memorandum, url
[219] However, it is not clearly stated what would be the reasons to consider subsidiary protection as more temporary. One could think that if someone is granted subsidiary protection as a result of a family dispute, the conflict may end more quickly than widespread racial or religious discrimination. Likewise, in a situation of indiscriminate violence, the former status holder may not be targeted after the end of the conflict. Yet, in practice, vendetta can last over time, especially when deaths were involved. Moreover, is one has been sentenced to death penalty, this sentence is unlikely to be temporary. Therefore, the "temporary character" of subsidiary protection can be questioned.
[220] European Commission, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe,* 2016, p. 11, url

of the European Commission's stakeholder consultation on the reform, some Members States warned of the administrative burden that could result from the obligation to do a cessation check each time a residence permit is renewed. Nonetheless, the Commission believes that the current proposal should not generate an additional administrative burden as mandatory reviews are restricted to situations where a decision on the renewal of the residence permit would have to be taken in any case or in the event of a reported significant change of situation in one country[221]. Such an affirmation could however be challenged. To begin with, status reviews involve additional costs for obtaining information about the general situation in the country of origin, but also about the personal situation of the status holders, compared to permit renewals. It also involves costs for interpreters and possible free legal assistance. These costs are even higher if a collective review is decided following a change of circumstances in one country of origin, as has rarely happened in most EU States before. Finally, most EU States did not provide for so frequent renewals of permits before the reform. Actually, according to the ECRE, in 2016, 21 out of 28 EU countries were granting residence permits that were more favourable to refugees or beneficiaries of subsidiary protection than the Qualification Directive or Regulation minimum standards[222] (for instance, in France, after recognition of status, a refugee is granted a 10-year resident card). It means that the reform will lead to a greater administrative workload for both permit renewals and status reviews. Thus, if the reform is adopted, it remains to be seen how the implementation of these highly resource-intensive procedures will be achieved.

Moreover, according to the European Commission, many NGOs opposed the idea of mandatory status reviews, "warning of negative effects to integration prospects"[223]. For instance, for the ECRE "the assumption that the purpose of protecting refugees so long as risks prevail in their country of origin is in contradiction with traditions of permanent resettlement in countries of asylum seems to ignore the reality of displacement phenomena leading to forced migration"[224]. Indeed, as recognized by the European Commission itself in 2016: "protracted displacement lasts on average 25 years for refugees"[225]. Status reviews during the first 3 years of displacement therefore seem highly unlikely to lead to cessation.

[221] EU, *Proposal for a Qualification Regulation*, 2016, Explanatory Memorandum, url
[222] ECRE, *Asylum on the Clock? Duration and review of international protection status in Europe*, 2016, p.4, url
[223] EU, *Proposal for a Qualification Regulation*, 2016, Explanatory Memorandum, url
[224] ECRE, *Asylum on the Clock? Duration and review of international protection status in Europe*, 2016, p.2, url
[225] European Commission, *Lives in Dignity: From Aid-dependence to Self-reliance: Forced Displacement and Development*, 2016, p.3, url

Given the likely long duration of displacement, ECRE advises, on the contrary, to offer stable and long residence permits as an essential precondition for effective integration. It takes the example of other major countries of asylum which enable refugees to apply for permanent residence quickly after recognition (immediately in Canada, after 1 year after in the US). On the contrary, the NGO network qualifies the European Commission's preference for low-duration residence permits and systematic reviews as a "ticking clock" approach to international protection[226]. The Jesuit Refugee Service (JRS) is even more critical of the reform, which it calls the "death of asylum". Given that status reviews and application of the ceased circumstances clauses are rare in Europe, and that most countries currently have more favourable residence rights than those in the Qualification Directive or Regulation, the JRS sees this reform as an illogical harmonisation downwards, which would create a detrimental environment for beneficiaries of international protection. Indeed, the NGO claims that mandatory status reviews can generate anxiety (especially for children) and exacerbate past traumas, that temporary status would discourage Member States and status holders from engaging in social inclusion processes, and that the brevity and uncertainty of status deter employers from hiring beneficiaries of international protection (an important factor in local integration). Finally, the JRS criticises the differentiation made between refugee status and subsidiary protection on the duration of residence permits and the number of mandatory status reviews. Indeed, the European Commission itself had recognised in 2009[227] that the assumption that subsidiary protection was more temporary had been disproved by practical experience, and that limiting the rights of beneficiaries of such protection could no longer be considered necessary and justified. Therefore, JRS states that differentiating between the two forms of protection in terms of status review is illogical and counterproductive[228].

Moreover, the UNHCR also advised deleting Articles 15 and 21 of the proposed regulation, which it considers problematic for 6 reasons: 1. the risk of increasing legal uncertainty; 2. the risk of undermining integration; 3. the lack of sufficient legal safeguards; 4. the fact that those reviews are unlikely to result in cessation due to the usually long-duration of protection needs of people who seek asylum in the EU; 5. the additional burden for determining authorities and 6. the fact of making a currently infrequent practice

[226] ECRE, *Asylum on the Clock? Duration and review of international protection status in Europe*, 2016, p.9, url
[227] European Commission, *Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted*, 2009, p. 8, url
[228] Jesuit Refugee Service, *The CEAS reform package: the death of asylum by a thousand cuts*?, 2017, p.17-19, url

mandatory[229]. For all these reasons, NGOs and the UNHCR are worried about the potential impacts of the new mandatory status reviews.

Yet, while status reviews would be the main change introduced by the reform of withdrawal of status procedures, the proposed Asylum Procedures Regulation could also serve to strengthen some legal guarantees. Indeed, according to the European Commission, this regulation aims to address the differences in the types of procedures used, the time limits of the procedures, and the rights and procedural guarantees of asylum-seekers and beneficiaries of international protection in the EU[230]. While most of the provisions of the Asylum Procedures Directive are retained, some procedural guarantees are strengthened. For instance, free legal assistance should now be available in administrative and appeal proceedings (Article 15), while it was only mandatory for appeals in the Directive. Besides, the proposed regulation provides that beneficiaries of international protection must now be given the opportunity to submit reasons why their status should not be withdrawn through a written statement and an interview, and no longer only one of the two (Article 52). Moreover, the 2020 amended proposal brought additional changes. In particular, the time limit for appealing against a decision withdrawing international protection should be between two weeks and two months, and not within one month as in the original version (Article 53(7))[231]. Finally, according to Regulation articles 14(5) and 20(3) of the proposed Qualification, withdrawal of status should only take effect three months after the decision is rendered in order to allow the former status holder to apply for another residence permit[232]. Therefore, return would not be automatic.

Hence, the reform of asylum procedures will probably lead to the harmonisation and rise of the number of cessation cases initiated in the EU. While NGOs are concerned about the effects of the increased number of status reviews on the integration of beneficiaries of international protection, the European Commission emphasizes the strengthening of procedural guarantees and the need to grant protection only for as long as necessary. Therefore, procedural changes should be the first major impact of the reform on cessation.

[229] UNHCR, "UNHCR comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466", 2018, url
[230] EU, *Proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, 2016, Explanatory Memorandum, url
[231] EU, *Amended proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, 2020, article 53, url
[232] EU, *Proposal for a Qualification Regulation*, 2016, Articles 14 and 20, url

The second significant impact is likely to arise from the common analysis of country-of-origin information and its effect on decision-making in cessation cases.

1.3. Toward the harmonisation of cessation decision-making?

As established in the second chapter, in the past, EU Member States have often considered different factors in their application of the cessation clauses, on issues such as the assessment of a voluntary re-availment of the protection of national authorities or the evaluation of a significant and non-temporary change of circumstances. This situation represents an inequality for beneficiaries of international protection who have fled the same country for similar reasons (for instance fear of the same actor of persecution) but who have different probabilities of having their protection ceased depending on their host country (e.g. Hungary was one of the only countries to withdraw subsidiary protection from Afghans, based on a change of circumstances, before the Taliban took power[233]).

Yet, as previously stated, the CEAS reform package includes a new EUAA regulation, which has already been adopted, transforming the EASO into the EUAA and expanding its mandate. The new regulation notably includes a monitoring mechanism, training and the coordination of efforts to develop a common analysis of country-of-origin information (COI). As specified in Article 8 (on training), the EUAA still has to respect the independence of national courts and tribunals (it is not specified if this independency extends to administrative authorities). This means that the EUAA cannot force the judicial authorities to make a specific decision, such as whether or not to apply cessation in specific cases. In addition, cessation issues are not presented as priorities for either the training or the new monitoring mechanism (Articles 8(4) and 14(3)). However, even if they are not priorities, it will be possible for the EUAA to address these issues during visits and/or general or specific training, as the agency's mandate includes the operational and technical application of the CEAS in general. The training priorities moreover also include topics important for cessation, such as "interview techniques", "relevant case law" and "issues related to the production and use of information on third countries"[234]. Therefore, through monitoring and training, the EUAA will be able to contribute to the harmonisation of cessation practices, even though it will not be a priority and its guidance won't be binding.

[233] Occurrences of punctual cessation of subsidiary protection of Afghans have also been found in the Austrian case law.
[234] EU, *EUAA Regulation,* 2021, Article 8, url

Furthermore, the most important aspect of the EUAA harmonisation capacities will be linked to the creation of "European networks on third-country information" and "common analysis on the situation in countries of origin" (articles 10 and 11 of the EUAA regulation). The EUAA's main task will thus be to develop a common analysis of COI (country-of-origin information) by coordinating the exchange of information between Member States and the creation of EU-level guidance notes. The EUAA will also be tasked with ensuring the consideration of the UNCHR relevant guidelines and the regular review and update of guidance notes. Therefore, the EUAA will not prepare the guidance notes alone, but will have an important role as a coordinator given the number of Member States involved (all but Denmark and Ireland).

Those new attributions of the EUAA should lead to an increase in status reviews and a harmonisation of cessation decisions. Indeed, according to the proposed Qualification Regulation (Articles 15 and 21)[235], Member States shall initiate status reviews when the common analysis of COI indicates a significant change in a given country of origin which is relevant for the protection needs of status holders. Therefore, the EUAA, after consultation with Member States, will have the ability to trigger status reviews in all States if it considers that there has been a significant and non-temporary change of circumstances in a foreign country. Moreover, the common analysis of COI should also harmonise the decision-making in cessation cases. Indeed, having the same COI would ensure that most Member States don't miss on any asylum-related information and allow them to consider similar factors for the assessment of significant and non-temporary changes of circumstances. Besides, even though the EUAA guidance notes are non-binding tools, Articles 11 and 17 of the Qualification Regulation specify that the determining authorities have to take into account information from all relevant sources, including Union-level COI, to assess a change of circumstances. This raises a few questions. For instance, will individual Member States be free to deny the existence of a sufficiently significant and durable change of circumstances, and therefore refuse to apply cessation, following the recognition of such change in an EU-level guidance note? And if so, will they have to carry out status reviews for all beneficiaries of international protection anyway, considering other grounds for ending protection as well? As the regulations are silent on these issues, should they be adopted, it will probably be up to the CJEU to decide the matter in the future. It is however quite likely that it would take important sources and conflicting arguments for a Member State to decide to move away from one

[235] EU, *Proposal for a Qualification Regulation*, 2016, url

EUAA country guidance in a systematic way (for instance to decide not to apply cessation for a whole country). It is more probable that Member States will effectively apply cessation, except in special individual cases, thus contributing to the harmonisation and increase of the number of cessations.

Therefore, if fully adopted, the CEAS reform package may bring substantial changes to cessation practices, in direct and indirect ways. These expected changes would be primarily due to the transformation of directives into regulations (from which it is harder to deviate), new mandatory triggers for status reviews and the common analysis of COI. Cessation law and practices should be harmonised not only with respect to the transposition of cessation clauses in national law or the establishment of procedures, but also regarding the number of cessation cases initiated and the decisions made on similar cases. While the European Commission insists on the need to protect status holders only for as long as necessary and on the strengthening of procedural guarantees, NGOs and the UNHCR claim that this reform may lead to a lowering of standards and have a negative impact on integration prospects. For the purposes of this thesis, this is the first indication that the EU is moving towards more temporary protection. Indeed, the EASO itself, in its 2020 asylum report, acknowledge that "debates around the increased use of status reviews and more rigorous use of cessation (…) further transformed the status of international protection towards a more temporary, less stable status"[236]. Moreover, if the reform focuses on harmonising the recourse to cessation, it leaves aside many interpretation issues that will inevitably arise during the production of COI common analysis or status reviews. For instance: how to assess a change of circumstances that is significant and non-temporary in complex situations, such as countries at war? If a change of circumstances only happens in part of a country, can it lead to cessation? And finally, given the lower threshold for the application of the ceased circumstance clause to beneficiaries of subsidiary protection and the absence of CJEU case law on this topic, what minimum standards should be considered when deciding on cessation in these cases? These crucial issues are a core part of contemporary debates on cessation.

[236] EASO, *Asylum Report 2020,* 2020, p. 177, url

2. Defining cessation standards for complex situations

2.1. Cessation of refugee status in armed conflict situations

Considering the likely increase in status reviews and cessation cases which should result from the CEAS reform, the NGOs are not only worried about the effect of such policies on the integration of status holders, but also about the possibility that States start applying cessation in inappropriate cases. Indeed, in previous chapters, we have already highlighted how the cessation clauses can be applied to very different situations depending on the host State, in the absence of a CJEU ruling on a specific issue. Moreover, in 2021, the ECRE constated that many of those who had their international protection withdrawn with the ceased circumstances clauses in Europe were coming from countries which are either currently in an armed conflict or post-conflict situation (mainly Iraq, Afghanistan, Somalia and Syria)[237]. In the course of the research for this thesis, occurrences of such cessations were notably constated in Denmark, Hungary, Austria, Netherlands, Norway, etc. For the ECRE: "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"[238].

Regarding cessation of refugee status, it must first be noted that the existence of an armed conflict is not a direct ground to obtain refugee status. Indeed, the applicant must prove that they are at individual risk of persecution because of their race, religion, nationality, membership of a particular social group or political opinion. Yet, "the fact that many or all members of particular communities are at risk [during an arm conflict] does not undermine the validity of any particular individual's claim", as recalled by the UNHCR (2016)[239]. Hence, an armed conflict may be a factor that exacerbates the risk of persecution if individuals are targeted on the basis of their race, nationality, religion, membership of a particular social group or political opinion, but it is not in itself the reason for recognition of refugee status. Therefore, it could be conceivable that the circumstances which gave rise to the recognition of refugee status could change even if the conflict persists, for example if the feared actor of persecution is defeated (e.g. a rebel group which specifically targeted civilians on the basis of their religion). However, is it possible to apply the ceased circumstances clauses then? Is the change sufficiently significant and non-temporary if the conflict goes on?

[237] ECRE, Maria O'Sullivan, *op.cit*, 2021, p.2-3, url
[238] *Ibid.*
[239] UNHCR, *UNHCR Guidelines on International Protection No. 12 on claims for refugee status related to situations of armed conflict and violence*, 2016, p.4, url

Can the actor(s) of protection effectively operate(s) an effective legal system for the detection, prosecution and punishment of acts constituting persecutions, to which the persons concerned would have access? And finally, isn't a minimum degree of stability in the security situation necessary for the implementation of cessation?

Although the subject of the present discussion is the refugee situation, owing to the even less defined criteria for the cessation of subsidiary protection (as will be seen in the next section), there is a theoretical link between the two subjects. Indeed, while armed conflict cannot be a ground for recognition of refugee status, it can be for subsidiary protection (Article 15(c) of the Qualification Directive)[240]. Therefore, since armed conflict can be a ground for granting international protection, is it legitimate to cease refugee status in these circumstances? For the UNHCR (2008): "a situation of indiscriminate violence in the context of an armed conflict as referred to in Article 15(c) of the Qualification Directive would indicate that the security situation is not stable" and "in the absence of a stable security situation (…) the criteria for cessation would not be met"[241]. However, in its Abdulla ruling (2010), the CJEU went against this opinion, as it judged that "cessation of refugee status cannot be made conditional on a finding that a person does not qualify for subsidiary protection status"[242] in order to keep distinct the two systems of protection. It means that cessation of refugee status can occur if there is a risk of serious harm, but also that the former refugee has the right "to request the granting of subsidiary protection status"[243] in the event of cessation. But this statement implies that cessation of refugee status can occur during armed conflict and that the granting of subsidiary protection is not automatic (the former refugee must apply for it). Moreover, it cannot be excluded that the procedure causes excessive anxiety to the former refugee or even that they do not subsequently benefit from subsidiary protection or another residence permit. In this latter case, can the former refugee be returned to their country of origin? In international law, the principle of non-refoulement also applies to persons who are not beneficiaries of international protection, in particular in relation to Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment) of the ECHR. Regarding expulsions to war zones, although the Court

[240] Article 15(c) of the Qualification Directive provides that a third-country national qualifies for subsidiary protection in case of "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".
[241] UNHCR, *UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive*, 2008, p.16, url
[242] CJEU, *Salahadin Abdulla and Others v. Bundesrepublik Deutschland,* C-175/08; C-176/08; C-178/08 & C-179/08, 2 March 2010, para. 79, url
[243] Ibid., para. 80

has ruled against them in some cases (notably for expulsions to Syria[244]), this prohibition is not absolute. In particular, in the case L.M. vs Russia, the ECtHR stated the following: "The Court notes that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of expulsion (…) however, it has never ruled out the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return"[245]. Therefore, the level of violence necessary to prohibit expulsion to the country of origin is similar to that of Article 15(c) of the Qualification Directive. However, Article 3 of the ECHR offers additional safeguards. Indeed, even if international protection is withdrawn, any expulsion must comply with international obligations and can be appealed to the ECtHR. This new assessment is an additional safeguard, especially as the ECtHR also assess the existence of minimum humanitarian standards (access to healthcare, food, etc.) without which an individual could be exposed to degrading treatment. In summary: 1. cessation is possible for a refugee coming from a country at war, providing that the circumstances leading to their well-founded fear of persecution have ceased (and that this change is significant and non-temporary); 2. deportation may be a consequence of cessation if the level of violence in the country of origin does not exceed a certain level and the former status holder is not eligible to other residence permits.

However, even though the CJEU has established that cessation of refugee status is theoretically possible when one comes from a country in armed conflict, the issue of a durable and significant change in circumstances is not yet resolved. In both conflict and recent post-conflict situations, it is often difficult to predict the future and it is never excluded that the conflict will re-emerge or increase in intensity (the recent example of Afghanistan proves this). When a country experiences an end or easing of conflicts, two distinct situations are generally considered: on the one hand, a State takes or regains control of its territory and functions, on the other hand, an international institution or force ensures the control and protection of the territory. Indeed, in the recent OA ruling (2021), the CJEU has judged that

[244] For instance: European Court of Human Rights (ECtHR), *Affaire O.D c. Bulgarie (Requête no 34016/18),* 10 October 2019, url (in French) ; ECtHR, *Case of M.D and others v. Russia (Applications nos. 71321/17 and 9 others),* 14 September 2021, url

[245] ECtHR, *L.M. and Others v. Russia, (Applications nos. 40081/14, 40088/14 and 40127/14)*, 15 October 2015, para. 119, url

any social, financial or even security support provided by private actors, such as the family or clan, could not equate State protection as defined by the Qualification Directive[246] and was therefore irrelevant for both the recognition and cessation of status[247]. Moreover, for the researcher Georgia Cole (2021), invoking cessation based on protection provided by non-State entities such as international organisations, as permitted by the Directive Qualification, is deeply flawed. Indeed, she notably argues that: 1. the directive does not specify whether an international organisation should control the administrative functions of a State or only its territory; 2. the adoption of a State-centred approach may not be relevant in non-Western political contexts (e.g. where tribes and customary power play a more important role); 3. international organisations acting as protection actors can only provide temporary protection (indeed they do not aim to control the States in the long term) and are not bound by the same human rights law than States and 4. non-State actors are not in a position to guarantee the rights and obligations of citizenship that are essential to the restoration of effective protection[248]. Therefore, the only solution for a significant and non-temporary change of circumstances would be for the State (or former main actor of protection) to regain control of its territory and functions. Ensuring that the resumption of control will be non-temporary, in a conflict or post-conflict country, is however a complicated task. For all these reasons, despite the theoretical possibility of applying cessation to refugees from war-torn or post-conflict countries, the practice of some European States to apply cessation to Iraqi, Afghan, Somali and Syrian nationals can be seriously challenged, especially when considering the potentially very severe consequences of such decisions. It now remains to be seen whether this trend to apply cessation in conflict situations will extend to other European states or whether such cessation decisions will be validated by the CJEU in a preliminary ruling. Yet, overall, this new practice can be seen as an indicator of the new perception by some European states of cessation as being more temporary and more easily ceased.

2.2. The lack of cessation standards for subsidiary protection

While many questions remain open about cessation standards for refugees, the case of beneficiaries of subsidiary protection is even more complex. Indeed, as noted by Maria

[246] Article 7(2) states that "Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection"
[247] CJEU, *Secretary of State for the Home Department v OA*, C-255/19, 20 January 2021, para. 52-63, url
[248] Georgia Cole, *op.cit.*, p. 1042, url

O'Sullivan, there is little judicial consideration of cessation of subsidiary protection by comparison to cessation of refugee status[249]. Indeed, the CJEU only briefly referred to the cessation of subsidiary protection in the 2019 Bilali case law (which was not a cessation case but a case of cancellation as the status had been granted on the basis of incorrect information). The court drew an analogy with Abdulla jurisprudence by holding that Article 16 of the Qualification Directive (the cessation clause) should be interpreted as meaning that there must be a causal link between the change in circumstances and the fact that the original fear of serious harm was no longer well-founded[250]. It however gave no major guidance on how to assess this change of circumstances or on possible differences with the cessation of refugee status. Moreover, the European Commission itself considers subsidiary protection as "inherently more temporary"[251] and has therefore included more mandatory status reviews for this form of protection in its proposed Qualification Regulation. Which impact can have this lack of case law and this consideration of the status as more temporary on the cessation standards for subsidiary protection?

As a reminder, there is only one cessation clause for subsidiary protection, included in article 16 of the Qualification Directive and Article 17 of the proposed Qualification Regulation. This clause states that:

> *"1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.*
> *2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.*
> *3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of*

[249] ECRE, Maria O'Sullivan, *op.cit.,* p.4, url
[250] CJEU, *Mohammed Bilali v Bundesamt für Fremdenwesen und Asyl,* C-720/17, 23 May 2019, para. 48, url
[251] European Commission, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe,* 2016, p. 11, url

nationality or, being a stateless person, of the country of former habitual residence"[252].

To start with, the absence of clauses 1C1 to 1C4 raises the question of whether the acquisition of a new nationality or the re-availment of protection from the authorities of the country of origin could not be considered as changes in the circumstances that led to the subsidiary protection. Indeed, if the status holder is able to receive national protection, international protection, which is itself subsidiary, is no longer deemed necessary. Moreover, the question of the effectiveness of the protection received in this case could be the same for a beneficiary of subsidiary protection fearing degrading treatment due to a vendetta as for a refugee fearing persecution by a non-state actor. The reasons for the difference in the number of cessation clauses therefore seem unclear.

Concerning the remaining clause, while it is mainly a rewording of clauses 1C5 and 1C6, there are a few differences. To start with, Maria O'Sullivan notes that the clause refers to 'the circumstances which led' and not 'the circumstances in connection with which' the status was granted, like in the refugee ceased circumstances clauses[253]. While the practical implications of this wording have not yet been considered in jurisprudence, she supposes that the term 'led to' for subsidiary protection may be slightly narrower than 'in connexion with which', since the latter has been considered by the UK Court of Appeal (2019) as including a wider set of considerations than merely whether the grounds for refugee status have changed[254]. However, the CJEU or other national courts could interpret this variation differently. Secondly, the cessation clause for subsidiary protection does not differentiate between stateless persons and third-country nationals, which means that cessation can be applied without regard to whether a stateless person can actually return to their country of origin. This absence of distinction also led to the deletion of the direct reference to the re-availment of the protection of national authorities that was included in clause 1C5 but not 1C6 of the Convention[255]. Last but not least, the threshold for the application of cessation is visibly lower, since it is sufficient that circumstances have changed to such an extent that protection is no longer necessary, and not necessarily that they have ceased to exist.

[252] EU, *Qualification Directive,* 2011, Article 16, url
[253] ECRE, Maria O'Sullivan, *op.cit.,* p.6, url
[254] UK Court of Appeal, *Secretary of State for the Home Department v KN (DRC),* 2019, para. 33, url
[255] In article 16, the mention is made in the compelling reasons provisions, but not directly in the cessation clause.

What might be the practical implications of these variations? Primarily, where subsidiary protection has been granted in relation to an armed conflict, this means that the conflict does not necessarily have to disappear for cessation to be decided. It is sufficient that the asylum State considers that there have been sufficient changes in the country of origin so that protection is no longer necessary, such as when the level of violence has decreased to the point where there is no longer indiscriminate violence that seriously and individually threatens civilian lives. For instance, in 2020, the Netherlands decided to reassess all the subsidiary protection statuses granted in relation to indiscriminate violence in parts of Sudan (Darfur, South Kordofan and Blue Nile), as it considers that the conflict no longer reached the Article 15(c) standards[256]. In the end, all the beneficiaries retained their status, mainly because they were considered at risk on other grounds than indiscriminate violence. This experience demonstrates that a change in a conflict level of violence, no matter how durable, is not always an efficient indicator of the end of the risk of serious harm or persecution, as the risk of serious harm or persecution is often based on several reasons.

Moreover, even if the lowering of the level of violence was an effective indicator of the end of the risk of serious harm or persecution, there is still an issue to determine the significant and non-temporary nature of the change of circumstances. The problem is even more complex than for the refugee status, given that in the Abdulla ruling, the CJEU only covered Article 11(e) of the Qualification Directive, that is to say only ceased circumstances cessation for refugees. Therefore, it is not clear whether States need to assess the presence and actions of an actor of protection in the country of origin to withdraw subsidiary protection. On one hand, the compelling reasons provisions and the definition of "a person eligible for subsidiary protection" in Article 2 of the Qualification Directive both refer to the inability or unwillingness to avail oneself of the protection of the country of origin. On the other hand, contrary to Article 11(e), the cessation clause for subsidiary protection does not refer directly to the re-availment of the protection of the national authorities. Two interpretations can be made. In one case, beneficiaries of subsidiary protection must be able to receive protection from an actor of protection, and then the problems highlighted in the previous section (cessation of refugee status in armed conflict situations) are renewed. In the second case, beneficiaries of subsidiary protection can have their status withdrawn even in the absence of a protection actor if the risk of serious harm is considered removed, which

[256] ECRE, "Cessation and review of protection statuses. Netherlands", *Asylum Information Database*, url (Accessed: 26 September 2022)

significantly lowers the threshold for cessation and the likelihood of having a truly significant and non-temporary change. Therefore, in the end, not only cessation standards for subsidiary protection are less defined, but their interpretation can also significantly lower the threshold for applying cessation.

This issue may seem particularly problematic considering that the distinction between the granting of refugee status and subsidiary protection is not always very clear. As evidence of this, the ECRE (2016) pointed out that in 2015, while most Syrian asylum-seekers were granted refugee status in Germany, Austria, Greece and Bulgaria, they were instead overwhelmingly granted subsidiary protection in Sweden, Spain, Cyprus and Malta[257]. Since it is unlikely that the risk faced by Syrian asylum-seekers would be different depending on the country in which they request asylum, the idea of having different cessation standards from one country to another appears rather unfair. It is also possible that States voluntarily prefer to grant subsidiary protection, as they consider it more temporary and more easily ceased. For all these reasons, it seems important that European institutions and national courts work on clarifying the differences between refugee status and subsidiary protection (or on harmonising the granted protection) and on defining cessation standards for subsidiary protection.

2.3. The viability of partial cessation and Internal Protection Alternatives

Current cessation debates are also focusing on the issue of partial cessation, from which arises the one of the Internal Protection Alternatives (IPA)[258]. The idea of 'partial cessation' is defined in the UNHCR's Guidelines on Article 1C5 and 1C6 as "cessation declarations for distinct sub-groups of a general refugee population from a specific country, for instance, for refugees fleeing a particular regime". However, the UNHCR also opposed the idea that changes in only part of the country of origin may lead to cessation, as it argues that cessation implies that "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" and that "not being able to move or to establish oneself freely in the country of

[257] European Council on Refugees and Exiles (ECRE), *Asylum on the Clock? Duration and review of international protection status in Europe*, 2016, p.4, url

[258] International Protection Alternative, sometimes referred to as International Flight Alternative (IFA) or International Relocation, is evoked when an asylum-seeker or sometimes a beneficiary of international protection can be protected from serious harm or persecution in another part of its country of origin and can reasonably be expected to settle there.

origin would indicate that the changes have not been fundamental"[259]. Yet, despite the UNHCR's position, partial cessation is sometimes applied in relation to the concept of IPA, notably in Norway[260]. It remains to be seen whether EU law can be interpreted as authorising this practice, and which issues may arise from it.

Regarding partial cessation, it can be deduced from the Abdulla ruling that it is a possibility under EU law. Indeed, the Court judged that an international organisation controlling a substantial part of the territory of the State could be recognised as an actor of protection for cessation under clause 1C5. In this case, given that cessation is only possible when protection is available, it means that cessation can only occur if the beneficiary is expected to return to the area where the actor of protection is present, and not a territory without any actor of protection. Hence, the cessation is 'partial'. The question that arises from such practice is: is it possible to send back a former status holder to another territory than the one he came from, based on the availability of an IPA? In EU law, the concept of IPA, which is not present in the Refugee Convention, is based on Article 8 of the Qualification Directive, according to which:

> *"1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:*
> *(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or*
> *(b) has access to protection against persecution or serious harm as defined in Article 7;*
> *and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there."*[261]

As stated by the first sentence, the concept of the IPA is supposed to apply "as part of the assessment of the application for international protection". Therefore, it was not primarily intended to serve as a cessation criterion. In its Practical guide on the application of the IPA, the EASO also states that the IPA is assessed at the stage of the qualification for international protection, in order to avoid "confusion" with the ceased circumstances cessation, that applies after the status was granted[262]. However, some countries refer to IPA in cessation

[259] UNHCR, *Guidelines on Article 1C5 and 1C6*, 2003, p.5, url
[260] ECRE, Maria O'Sullivan, *op.cit*., p.17, url
[261] EU, *Qualification Directive*, 2011, Article 8, url
[262] EASO, *Practical guide on the internal protection alternative*, 2021, p.36, url

proceedings. For instance, Kabul (from 2020 to August 2021) and Damascus have been regularly used as IPA to cease subsidiary protection of Afghans and Syrians status holders by the Hungarian administrative authorities, and such decisions have been confirmed by the Court of appeal on several occasions[263]. In 2019, the Austrian Supreme Administrative Court also ruled, in the case of an Afghan who had reached the age of majority since the granting of his status, that a cessation decision could be based on an IPA[264]. Finally, in 2018, the UK Upper Tribunal held that cessation of refugee status was not possible solely on the basis of a change in part of the country of origin (in this case, in Mogadishu in Somalia)[265]. However, this finding was overturned on appeal, with the UK Court of Appeal holding that in cases where refugee status was granted because the person could not reasonably be expected to relocate, a cessation decision can be taken if the circumstances changed such that the person can now reasonably be expected to relocate. The court added that "the size of the area of relocation will be relevant to the reasonableness of being expected to relocate there and to whether the change in circumstances is significant and non-temporary", without requiring for this area to be a substantial part of the country[266].

This difference of conclusions between national courts of the same country demonstrates the difficulty of interpreting cessation provisions in relation to IPA. Moreover, across European countries, there have been wide differences in considering which territories qualify as IPA in status determination procedures. For instance, according to Bríd Ní Ghráinne (2021)[267], Cyprus, Germany, Sweden, Norway, and the United Kingdom consider that Mogadishu can be an IPA for Somali asylum-seekers, whereas Italy, Malta, and Spain do not. Similar divergences are constated for some parts of Russia (for Chechens) and Kabul (before the Taliban took power). For the author, this variation in the application of IPA leads to unpredictability and undermines the rule of law.

Therefore, a lot of issues can be raised regarding the application of cessation based on IPA. In particular, which criteria should be used to assess the "reasonableness

[263] ECRE, "Cessation and review of protection statuses. Hungary", *Asylum Information Database*, url (Accessed: 25 October 2022)
[264] Austria, Supreme Administrative Court, *Ra 2019/14/0153*, 27 May 2019, Case summary on Refworld, url
[265] UK, Upper Tribunal, Judge Kopieczek, *The Secretary of State for the Home Department v MS (Somalia)*, UKUT 00196, 22 March 2018, para. 57, url
[266] UK, Court of Appeal (Civil division), *The Secretary of State for the Home Department v MS (Somalia),* EWCA Civ 1345, 29 July 2019, para. 49-50, url
[267] Bríd Ní Ghráinne, "Part V The Scope of Refugee Protection, Ch.38 The Internal Protection Alternative", in Cathryn Costello, Michelle Foster, Jane McAdam, *The Oxford Handbook of International Refugee Law*, 2021 url

of return"? Should it include humanitarian standards and if so, which ones? Should it encompass the right to a basic livelihood and/or the existence of financial support, which several jurisdictions refuse to consider with regard to cessation, but which seem essential to expect from someone to relocate in another part of their country? Should language, religion, culture, etc. be taken into account? Overall, the problem of the inclusion of IPA in cessation proceedings is that the IPA concept, due to its absence in the Refugee Convention, lacks clear definition and standards for its application[268]. Therefore, the same questions that arise for its application in refugee status determination are replicated in cessation decisions, which adds a new layer of complexity to an already complicated procedure.

In this part, several issues linked to the implementation and interpretation of cessation provisions were discussed: the cessation of refugee status in armed conflict situations, the lack of cessation standards for subsidiary protection and the possibility of applying IPA for partial cessation. However, at the time of the writing of this thesis, those issues are mainly discussed by national courts, leading to a lack of harmonisation among EU countries. In an effort to provide equivalent levels of protection to status holders in all States, it would be interesting to have the CJEU rule on minimum standards and criteria for assessing the legitimacy of cessation in these situations. However, it is up to the national courts o take this decision to submit preliminary requests to the CJEU in the coming years. Now, even though all the issues discussed above are complex and of major importance for beneficiaries of international protection, the binding nature of the Directive and the restrictive interpretation of the cessation clauses still provide for major legal safeguards for status holders. However, this is not the case for other forms of protection, such as the humanitarian status, that are based on national laws and that can sometimes be granted to those who are rejected from the asylum procedures. One could therefore wonder if, in response to nationalist demands for greater cessation, Member States may increasingly rely on complementary forms of protection, that are more easily amended and more temporary. The next part will explore the different possibilities for European states to circumvent cessation rules in order to limit the duration of protection for asylum-seekers, with a particular focus on Denmark's new policies since 2015.

[268] *Ibid*.

3. The rise of new forms of cessation

3.1. The potential lowering of cessation standards through complementary protection

In the previous part, the discussion was centred on the traditional concept of cessation, that is to say cessation of international protection in accordance with the Refugee Convention cessation clauses. Even for subsidiary protection, the cessation clause is extremely similar to the ones of the Convention. An important characteristic of these clauses is that they must be interpreted restrictively, and the violation of their rules can lead, in the framework of the CEAS, to sanctions. In addition, State discretion in implementing the cessation standards is likely to be strongly reduced by the future reform of the CEAS. Yet, in recent years, new 'forms of cessation' seem to be emerging, in the sense that the protection granted to an asylum-seeker is withdrawn because it is no longer deemed justified, without necessarily having recourse to the cessation clauses of the Refugee Convention. This can happen through the development and increased use of complementary forms of protection that allow states to emancipate themselves from international law and give them a much wider discretion to end protection.

Complementary protection can be defined as protection mechanisms outside the 1951 Refugee Convention, or forms of protection from removal/deportation being granted to asylum-seekers who have failed in their claim for refugee status[269] or could not access asylum procedures (for temporary protection). In this thesis, the term will mainly refer to complementary forms of protection other than subsidiary protection (as is often the case in the EU), i.e. complementary forms of protection which find their legal basis in other texts than the Refugee Convention and the CEAS directives, and which are often granted through other procedures than international protection. One of those forms of complementary protection is the "national protection statuses", which are only supposed to be granted when one does not meet the criteria for refugee status or subsidiary protection in the EU.

From a literature perspective, there is a crucial lack of research on the compared use of complementary protection in the EU. One of the only recent reports on the subject is an EMN comparative overview of national protection statuses in the EU and Norway (2020)[270].

[269] UNHCR, Ruma Mandal, *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")*, 2005, p.8, url
[270] EMN, *Comparative overview of national protection statuses in the EU and Norway*, 2020, p.11 url

In this study, the EMN identified the following categories of national protection statuses: constitutional asylum, collective protection (other than EU temporary protection) and statuses based on humanitarian or compassionate grounds (for instance status based on non-refoulement, medical reasons or climate change). National protection statutes thus address a wide variety of needs and situations (including some that are very close to asylum and persecution issues) and all the 20 EU countries interrogated had at least one national protection status. Moreover, the Eurostat figures suggest a five-fold increase in the number of national protection statuses granted between 2010 and 2018 (an increase similar to the ones of refugee status and subsidiary protection granted)[271]. One expected consequence of this increase in the number of complementary protection granted could be an increase in the withdrawal of status, which raises the question of the conditions under which a national protection status can be ended.

The issue of cessation of complementary protection was briefly discussed by Nikolas Feith Tan in 2020. He first noted that "if the law of cessation under the 1951 Convention remains underdeveloped, the law on cessation for complementary protection holders is anaemic". This situation is a major issue as "the lack of a comprehensive complementary protection framework in some jurisdictions leaves the law open to governments seeking to instrumentalize and minimize their protection obligations"[272]. For him, there are 3 approaches in ending complementary protection:

a) A 'Convention-centric' approach, inspired by the Refugee Convention cessation clauses (as in the case of the subsidiary protection cessation clause).

b) A minimalist approach, based on the principle of non-refoulement as a backstop for the ending of complementary protection.

c) A middle ground that incorporates both non-refoulement and further human rights law obligations, such as in particular the right to private life and the right to minimum humanitarian conditions in the country of origin[273].

In its General Conclusion No 109, the ExCom recommended to adopt a Convention-centric approach as it stated that the doctrine developed on Article 1C5 of the Refugee Convention could provide helpful guidance in ending complementary protection[274]. According to Nikolas Feith Tan, Denmark is one of few jurisdictions to both actively pursue

[271] *Ibid*., p.4
[272] Nikolas Feith Tan, *op.cit*., p.3, url
[273] *Ibid*., p.8-10
[274] ExCom, *General Conclusion No.109*, 2009, url

cessation and apply markedly different standards for Convention and complementary protection holders (using the minimalist approach). Yet, the Danish case points out "to the potentially significant divide in cessation standards between the high bar set by the Refugee Convention, on the one hand, and the comparatively low threshold required by human rights law, on the other"[275]. Hence, although the idea of a more complicated cessation for persons with an individual risk of persecution or serious harm seems logical, "the potentially vast differences in cessation standards is disproportionate to the experiences and profiles of affected protection holders who are likely to come from the same few refugee-producing states"[276]. Now, even though Nikolas Feith Tan was mostly writing about national protection statuses in Denmark that are similar to EU subsidiary protection (which has much higher cessation standards), such observation may also be relevant for national protection statuses in the CEAS countries. Indeed, the lack of studies and major case law on the cessation of national protection statuses in other EU States does not allow to conclude that there is significantly more protection for the complementary protection status holders in those countries.

In the EU, national protection statuses are supposed to complement international protection (refugee status and subsidiary protection) and thus to protect third-country nationals that do not meet the conditions for international protection[277]. However, because there is no such thing as a perfect refugee status determination system, and because these systems can be influenced by national debates, it cannot be excluded that some people are granted complementary protection when they should have benefited from international protection and thus be subject to the traditional cessation clauses. For instance, in EU Member States, the recognition rates of international protection for the same country of origin vary greatly (for instance, in 2018, recognition rates for Iraqis ranged from 94.2% in Italy to 12% in Bulgaria; and, for Afghans, from 98.4% in Italy to 24% in Bulgaria)[278]. Therefore, those who are not granted international protection in one country are likely to receive complementary protection statuses, with potentially lowered cessation standards. Intentionally or not, the use of complementary protection may thus serve to circumvent international cessation law and create new cessation rules.

[275] Nikolas Feith Tan, *op.cit*., p.23, url
[276] *Ibid*.,
[277] EMN, *Comparative overview of national protection statuses in the EU and Norway*, 2020, p.5, url
[278] ECRE, "Asylum Statistics 2018: Changing Arrivals, Same Concerns", *Asylum Information Database*, 2019, url

In summary, while there is no strong evidence of widespread and intentional use of complementary forms of protection in place of international protection nowadays, it is an issue to watch. Not only do complementary forms of protection not carry the same rights as international protection, but the cessation rules are usually less defined and more easily amended, which could lead to a weakening of cessation guarantees. Defining non-binding guidelines on cessation of complementary protection and harmonising recognition rates for international protection could be a solution for this situation.

3.2. The increased use of temporary forms of protection

Temporary protection is another form of complementary protection, which is also distinct from traditional international protection (refugee status or subsidiary protection). Indeed, it is an umbrella concept to describe time-limited protection granted to large groups of displaced people in mass influx situations. The granting procedures are usually group-based and do not identify individualised risks of harm[279]. Several forms of temporary protection exist: some are nationals (like in Denmark) but there is also an EU Temporary Protection Directive[280], which establishes a harmonised form of temporary protection. The Directive was adopted in 2001, following the conflict in former Yugoslavia, but has never been activated before the 2022 Ukrainian crisis. Regarding the participation of Member States, Denmark did not opt in to the Directive, while the United Kingdom and Ireland did. In addition, it is important to note that: 1. this directive is not part of the CEAS; 2. the procedures for granting temporary protection are different from those for international protection, 3. beneficiaries of temporary protection are still allowed to apply for asylum. Temporary protection status holders are therefore not automatically asylum-seekers, let alone refugees or beneficiaries of subsidiary protection.

The Temporary Protection Directive aims to define minimum standards for giving temporary protection in the event of a mass influx of displaced persons who cannot return to their country of origin. The protection granted is presented as a measure of exceptional character when asylum systems are unable to process the influx of displaced persons. It is therefore not intended to replace international protection or even national protection statuses.

[279] Nikolas Feith Tan, *op.cit*, p.12, url
[280] EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, 2001, url (hereinafter: the Temporary Protection Directive)

However, there is a strong link with international protection as temporary protection aims to protect displaced persons who may fall within the scope of the Refugee Convention or Qualification Directive, in particular when there are fleeing armed conflicts, endemic violence or general violations of their human rights[281].

Regarding end of protection provisions, Article 4 of the Temporary Protection Directive provides for the granting of a one-year residence permit, which may be extended automatically by six-month periods for a maximum of one year (therefore, a maximum duration of two years). Besides, according to Article 6, temporary protection is terminated a) when the maximum duration has been reached or b) following a decision of the Council of the EU judging that "*the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement*"[282].

While the second condition is based on the cessation idea that protection is no longer required, the first one enables the end of protection even if the risk of harm is still present. However, it could be argued that a two-year period (the maximum duration of the permit) is sufficient to prepare a classic asylum application, as permitted by the Directive. Furthermore, even though the clause on the end of protection based on a change of situation includes more than non-refoulement but also human rights obligations, it lowers cessation standards in comparison with international protection, given that protection must be ended once the maximum duration has been reached. This raises the question of the future situation of the beneficiaries of temporary protection at the end of this maximum duration. Moreover, the fact that there is no mention of the 'significant and non-temporary nature of the change of circumstances' in these terms, but rather of a 'safe and durable return' reinforces the return-oriented nature of this protection and adds heterogeneity to the criteria for cessation, which complicates the establishment of clear common rules for ending protection. This could be explained by the fact that the Qualification Directive was adopted after the Temporary Protection Directive, but the Temporary Protection Directive could have been updated to be consistent with the cessation rules of international protection.

As regards the current shift in the perception of cessation, the unprecedented use of temporary protection[283] for the Ukrainian crisis raises several issues: first, what ground will

[281] *Ibid*., article 2, url
[282] *Ibid*., article 6, url
[283] Temporary protection was not even activated during the influx of nearly 1 million asylum-seekers in 2015.

be used for ending temporary protection (maximum duration of the protection or change of situation)? If applicable, which criteria will be used to assess the change of situation? This recalls the problems posed by the cessation of complementary forms of protection in general. Secondly, is the access to asylum procedures adequately guaranteed? Indeed, even if the right to apply for asylum is included in the Temporary Protection Directive, one may fear the possibility of national authorities raising the threshold for granting international protection (in particular with regard to the individualisation of the risk), knowing that those asylum-seekers are already protected. Moreover, States have the option to suspend the processing of asylum applications until the end of the temporary protection period[284]. In this case, it can happen that the risk of persecution or serious harm has diminished at the end of the period, leading to the refusal of international protection, while it would have been granted in the countries that processed the applications immediately. Therefore, just as in the previous section, it would be insightful to study the international protection recognition rates in different Member States after the end of temporary protection. Thirdly, this new form of protection could have effects on the European perception of the duration of international protection. Indeed, temporary protection is return-oriented. In the directive, an entire chapter (Articles 20 to 23) is dedicated to return measures. Besides, for Nikolas Feith Tan, temporary protection "abolishes the perception that temporarily protected groups will stay permanently in the host state and not return"[285]. Therefore, the use of temporary protection may be an indication of the shift in the perception of asylum away from permanent protection and integration towards temporary protection and return. However, it remains to be seen if temporary protection will be applied again in the near future, or if the current situation is an exception.

From the perspective of status holders, temporary protection also has some advantages: it allowed Ukrainians to have their situation regularised much faster than other asylum-seekers and to avoid long and stressful asylum procedures. In addition, protection was granted without having to demonstrate personal fears of persecution or serious harm. However, on the downside, the maximum duration of protection, the lack of clarity on the standards of cessation and the absence of the compelling reasons provisions for Ukrainians who wish to remain in their host country in case of trauma could be seen as major drawbacks.

[284] European Commission, Hanne Beirens, Sheila Maas, Salvatore Petronella and Maurice van der Velden, *Study on the Temporary Protection Directive*, 2016, p.7, url
[285] Nikolas Feith Tan, *op.cit*, p.13, url

Furthermore, if the Temporary Protection Directive provides for legal safeguards regarding the ending of protection, it is not the case for national forms of temporary protection. In the EU, only Denmark has this kind of protection, as all other States are bounded by the Temporary Protection Directive. However, some other close countries also have similar schemes (Iceland, Norway, and Switzerland). Hence, Nikolas Feith Tan regrets that "the concept of temporary protection lacks clear international legal moorings"[286]. Because of this, just like other forms of complementary protection, temporary protection could be intentionally used as a way to lower the duration of protection and promote a return-oriented form of protection. Denmark, as we shall see, is a clear example of this new conception of international protection. However, the question that must be raised is whether the Danish approach can influence the perception of EU institutions and other Member States.

3.3. Danish cessation practices: a laboratory for future EU asylum policies?

Within the literature dedicated to the revival of the cessation clauses in Europe, many authors mention the Danish case. In particular, researchers such as Maria O'Sullivan (2019)[287], Malene Jacobsen (2021)[288] and Nikolas Feith Tan (2020)[289] have recently discussed what Denmark self-described as a "paradigm shift", enforced by numerous legislative amendments which foster regular reviews of protection needs and cessation procedures for all refugees and complementary protection holders[290]. In the framework of this thesis and its research question on the changing perception of the temporality of asylum, the Danish case is also very important. Indeed, the idea of "a shift of the perception of asylum away from permanent protection and integration towards temporary protection and return"[291] is based on Nikolas Feith Tan's study of Danish new cessation practices. In these practices, one can find all the measures previously discussed aiming at limiting the duration of protection: the rise of the number of status reviews, cessation cases and the use of complementary forms of protection; frequent reforms of asylum law involving the lowering of cessation standards and the reduction of the duration of residence permits; a strong focus on return; application of cessation in conflict situations and use of partial cessation and IPA.

[286] *Ibid*.
[287] Maria O'Sullivan, "Can States cease the protection status of resettled refugees?", *Asylum Insight*, 2019, url
[288] Malene H. Jacobsen, "Precarious (Dis)Placement: Temporality and the Legal Rewriting of Refugee Protection in Denmark", *Annals of the American Association of Geographers*, 2022, url
[289] Nikolas Feith Tan, *op.cit.*, url
[290] *Ibid.*, p.1
[291] *Ibid*.

There are also very uncommon practices that are specific to Denmark, such as the cessation of protection for resettled refugees[292]. Hence, if it is clear that Denmark has adopted a radically new approach to the duration of asylum, it remains to be seen if these practices will influence or have already influenced EU institutions and other Member States. Without even being in the CEAS (and therefore not being subject to the same rules as European States), is Denmark a front-runner or an outlier of European asylum policies?

In order to answer these questions, 2 Danish policies which are driving the increase in cessation decisions will be examined: the rise of complementary forms of protection and the strengthening of status review provisions. According to Nikolas Feith Tan and Jens Vedsted-Hansen (2021), the Danish Paradigm shift started in 2015 with the adoption of 'temporary protection', which they described as "a particularly 'thin' form of return-oriented protection for asylum-seekers fleeing generalised violence primarily from Syria"[293]. Temporary protection is a form of complementary protection added to the 2 pre-existing forms of protection: the 'Convention Status' and the 'Protection Status'[294]. Indeed, while protection status is granted to foreigners facing the death penalty, torture or inhuman or degrading treatment in their country of origin, temporary protection applies to those for whom the death penalty, torture or inhuman/degrading treatment arises from a situation involving indiscriminate violence and attacks against civilians[295]. For the purpose of this thesis, there are 2 important aspects to note: first, beneficiaries of temporary protection are granted a special short-term residence permit (1 year, renewable for 2 years). Secondly, the explanatory memorandum to the bill emphasized that the proposed provision did not aim to expand the scope of asylum in Denmark, but to ensure "that those falling within the new category of temporarily protected persons could be more readily returned to their country of origin once the worst hostilities had ended"[296]. The focus is thus on return, and not only on cessation. Besides, it means that in the absence of this temporary protection status, the

[292] UNHCR defines resettlement as the selection and transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them - as refugees - with permanent residence status (c.f. "Information on UNHCR resettlement", *UNHCR website*, url). But in Denmark, resettled persons are sometimes admitted with a protection status with lowered cessation standards and temporary residence permits. Therefore, they are also concerned by status review provisions.
[293] Nikolas Feith Tan and Jens Vedsted-Hansen, "From Denmark to Damascus. Human rights and refugee law dimensions of Denmark's cessation push", *VerfBlog*, 2021, url
[294] Some authors, such as Nikolas Feith Tan, refer to the protection and temporary protection statuses as 'subsidiary protection status' and 'subsidiary temporary protection status' respectively, due to their similarity to EU subsidiary protection. However, these Danish statuses are not governed by the same rules as the EU subsidiary protection, so we will prefer the term "protection status".
[295] Denmark, *Aliens Act*, 22 august 2022, Section 7 url (in Danish, translation by Google Translate and Deepl)
[296] EMN Norway, *op.cit.*, p. 14, url

concerned asylum-seekers would be eligible for the protection status. The memorandum also specified that temporary protection could be ended "irrespective that the situation – despite improvements – continues to be serious, fragile and unpredictable" and that the cessation criteria of fundamental, stable and durable change of circumstances should no longer be applied to the classic protection status[297]. Therefore, the introduction of complementary forms of protection appears to be clearly aimed at lowering cessation standards.

The second important aspect of the Danish paradigm shift is the increased importance of status reviews. Since 2012, the conditions for obtaining permanent residence permits have been tightened on several occasions. In particular, from 5 years of legal stay, refugees need now to wait 8 years to apply for such permit[298]. In addition, in February 2016, the initial duration of the residence permit for Convention and Protection statuses was reduced from 5 years to 2 and 1 years respectively (5 months before similar provisions were introduced in the proposed Qualification regulation)[299]. This policy sharply increases the number of status reviews that status holders must undergo. Finally, in 2019, the Danish Parliament adopted a law according to which immigration authorities should end the protection of refugees and complementary protection holders unless such cessation or non-extension "would be in breach of Denmark's international obligations"[300]. It means that the only thing to consider is whether there is a risk of persecution or harm still present, just like in status determination procedures, without granting an additional degree of safety for those who have already been granted a form of protection. In several bills, cessation, revocation of permits and return (as there is little mention of the possibility to apply for other permits) are thus presented as the preferred outcomes of status reviews for all protection holders.

Therefore, is Denmark a frontrunner or an outlier of the European Asylum policies? On the one hand, regarding Danish temporary protection, it could not have inspired the EU Temporary Directive, as this one is anterior to the Danish law (2001 in the EU, 2015 in Denmark). Moreover, EU temporary protection is not intended to be a replacement for international protection, as beneficiaries are still allowed to apply for asylum. However, it could be argued that when the time comes to end temporary protection for Ukrainians, the EU institutions may be tempted to draw inspiration from the Danish practices, as there are

[297] Nikolas Feith Tan and Jens Vedsted-Hansen, *op.cit,* url
[298] Refugee Welcome, Michala Clante Bendixen, "Refugees need permanent residency. Roll back the paradigm shift", *Refugees.DK*, 2021, url
[299] EMN Norway, *op.cit*., p.14, url
[300] Nikolas Feith Tan*, op.cit.*, p.17, url

no recent examples of temporary protection cessation among CEAS countries. Therefore, inspiration is possible but not yet existing. Nikolas Feith Tan also notes that Denmark could remain an outlier, due to the resource-intensive nature of cessation proceedings, and the fact that Denmark has a well-founded determining authority and comparatively fewer asylum-seekers than other Member States[301]. Similar policies in States like Germany, Italy or France could be too costly. Finally, EU law prevents the CEAS States to apply markedly different standards for Convention refugees and subsidiary protection holders, as is the case in Denmark, even though precise cessation standards for subsidiary protection still have to be discussed.

On the other hand, Denmark not being part of the CEAS, it allows the country to be a laboratory for policies which, if they are deemed satisfactory, can serve as an inspiration for the EU institutions and other Member States. In the proposed Qualification Regulation (2016), the insistence on a greater use of cessation provisions, the new mandatory status reviews and the limitation of the duration of residence permits resemble the 2015 Danish paradigm shift. Moreover, on the national level, a certain number of countries (Austria, Belgium, Hungary and Sweden) have voluntarily decreased the duration of the residence permit of protection holders following the 2015 migration crisis[302], in the footsteps of Denmark (yet, whether it is a direct inspiration from Denmark or just the fact that all States had the same reaction to the crisis is not clear). Regarding future developments, as previously noted, the subject of the possible application of cessation in conflict or post-conflict situations is still to be discussed, as well as the idea of partial cessation and IPA. Danish practices in this matter could also serve as an inspiration. Finally, in their report on the CEAS reform, the Jesuit Refugee Service regrets that resettle refugees are to be subjected to the full EU asylum acquis, with no express exemption from status reviews[303]. Therefore, it is not excluded for Member States to inspire from one of the most original Danish policies: the cessation of protection of resettled refugees. For all these reasons, if it is not one yet, it is possible for Denmark to become a pioneer in EU asylum policies.

[301] *Ibid*., p.23
[302] *Ibid*., p.22
[303] Jesuit Refugee Service, *The CEAS reform package: the death of asylum by a thousand cuts*?, 2017, p.17 url

In conclusion of this chapter, since 2015, cessation has acquired unprecedented importance in the political and legal debates. The main developments considered are the introduction of mandatory status reviews, the reduced duration of residence permits, the possibility to apply cessation in conflict situations and the definition of cessation standards for subsidiary protection and complementary forms of protection. On all these issues, there are different positions, linked to the purpose of asylum (preference for integration or return), but also to practical issues (administrative costs of cessation). On one side, the European Commission does not push the paradigm shift as far as Denmark, placing less emphasis on the return of former status holders, it can be deduced from the proposed CEAS reform package (in particular the mandatory status reviews and the common COI analysis) that there is a shift in the European Commission perception of asylum away from permanent protection and integration towards temporary protection and, depending on the State's preferences, return. The other European institutions, which are currently discussing the reform, will also have to take a position on this issue, either by validating or amending the provisions in question. On the other side, the UNHCR and many NGOs oppose those practices, highlighting the risks of impeding integration, causing undue anxiety, and the unlikelihood that protection needs will be temporary. Therefore, the new perception of asylum as more temporary and return-oriented is not universally shared. This circles back to my comment in the introduction about not noticing any particular interest in cessation at the French National Court of Asylum. Is this the illustration that some EU States resist this shift in the perception of asylum as more temporary and return-oriented? If so, how would their practices be impacted by the CEAS reform? In order to answer these questions, the next chapter will be dedicated to a case study of French cessation practices.

Chapter IV - A case study on French cessation practices

This last chapter is dedicated to a study of French cessation practices in order to determine whether EU States are uniformly experiencing a shift in their perception of asylum. The chapter is strongly based on my experience as an intern at the *Cour Nationale du Droit d'Asile* (CNDA), the discussions, training materials and decisions to which I had access, as well as an interview I had the opportunity to conduct with some legal officers of the *Office Français de Protection des Réfugiés et Apatrides* (OFPRA): Mr. Johan Ankri, head of the legal, European and international affairs division (DAJEI) and Mr. Enguerrand Gatinois, head of the public order and end of protection section of the DAJEI.

1. The French legal framework on cessation

1.1. French law and authorities on cessation matters

In France, asylum law is regulated by the Code of Entry and Residence of Foreigners and of the Right to Asylum (*Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile*, CESEDA)[304]. The OFPRA is the administrative authority taking first instance decisions, while the CNDA, an administrative court specialised in asylum, is responsible for ruling on appeals. In some cases, it is possible for the applicant or for the OFPRA to lodge an onward appeal before the *Conseil d'Etat* (Council of State). Those appeals, called 'appeals in cassation', are fairly rare. Besides, the *Conseil d'Etat* does not re-examine all the elements of the case, but only the respect of the procedural rules, the absence of error of fact and the correct application of the law by the asylum judge. If the *Conseil d'Etat* annuls a decision, it usually refers the case back to the CNDA, but, on limited occasions, it may also settle the case definitively without referral. When the *Conseil d'Etat* takes a decision, for instance on the interpretation of a specific provision, those decisions are binding for the Court: they must be followed in all subsequent cases.

Regarding cessation matters, the cessation clauses for refugee status are incorporated in Article L. 511-8 of the CESEDA. This article makes a direct reference to Article 1C of the Refugee Convention and inserts the criterion of the significant and non-temporary nature of the change of circumstances for clauses 1C5 and 1C6. In the same article, the Code mentions

[304] France, *Code de l'entrée et du séjour des étrangers et du droit d'asile*, 2004 (updated in 2021), url (hereinafter : *the CESEDA*)

other grounds for ending protection: withdrawal of status due to fraud or exclusion. There are 2 reasons for exclusion: when the applicant should have been excluded from international protection based on article 1D, 1E or 1F of the Convention at the time of the status recognition; and when the current status holder should now be excluded from protection based on those same articles but for circumstances that happened after the status recognition. Moreover, article L.511-7 includes provisions for withdrawing status on public order grounds (when the refugee represents a serious threat to the security of the State; or when the refugee has been convicted of a crime or serious offence and represents a threat to society). The difference between the two articles is that Article L.511-8 (withdrawal due cessation, fraud or exclusion) is deemed to withdraw refugee 'status' and 'quality'[305], whereas Article L.511-7 (withdrawal on public order grounds) only withdraws the 'status' but not the 'quality'[306]. In practice, in accordance with Article 14(6) of the Qualification Directive, withdrawal of status on public order grounds leaves certain rights to the person who still qualifies as a refugee, including protection against refoulement[307].

Concerning subsidiary protection, cessation is presented in Article L.512-3 of the CESEDA, which states that*:*

> *"The French Office for the Protection of Refugees and Stateless Persons terminates, on its own initiative or at the request of the administrative authority, the benefit of subsidiary protection when the circumstances which justified the granting of this protection have ceased to exist or have undergone a sufficiently significant and lasting change for it to no longer be required*
> *(...) Subsidiary protection shall be maintained where the beneficiary can provide compelling reasons based on previous serious harm for refusing to avail himself of the protection of his country*"[308].

[305] As a matter of definition, the quality is possessed by any person who fulfils the material conditions to be considered a "refugee", whereas the status is the formal recognition of this quality by a Member State. While the difference may seem small, perhaps even confusing, it does in fact entail a significant difference in rights and has a meaningful impact on the practice of ending protection, as we shall see later on.
[306] This difference has been established by the jurisprudence of the Conseil d'Etat in 2020: cf. France, Conseil d'Etat, *Decision n° 416032*, 19 juin 2020, url
[307] Amara Koné, « Les droits du « réfugié sans le statut » : étude de la portée de la révocation ou du refus d'octroi du statut de réfugié à la lumière de la jurisprudence récente du Conseil d'État », *La Revue des droits de l'homme*, 2021, url
[308] France, *CESEDA*, 2021 version, Article L.512-3, url (unofficial translation)

Overall, it is a rather faithful rewording of Article 16 of the Qualification Directive. Article L.512-3 also includes or makes reference to other grounds for ending subsidiary protection (fraud, exclusion and public order grounds, which are detailed in Article L512-2).

In summary, the CESEDA is the main legal framework for ending international protection in France. It contains the cessation clauses and includes the compelling reasons provisions and the criteria of the significant and non-temporary nature of the change of circumstances. Cessation is presented alongside other end of protection grounds, but not in the same article as withdrawal of status due to public order reasons, mainly because the two processes do not lead to the loss of the same rights. Apart from this exception, cessation does not seem to have particular importance in comparison to other grounds for ending protection.

1.2. Triggers for status reviews

The first indication of the French lack of particular interest in cessation is the absence of mandatory status reviews. Indeed, firstly, there are no systematic status reviews upon the renewal of residence permits. Secondly, regarding the possible collective reconsideration of status following a change of circumstances in the country of origin, this policy has been used on rare occasions in the past. Indeed, according to Johan Ankri, head of the legal section of the OFPRA, such collective status reviews have probably happened a couple of times, most likely for European nationalities, but it was a long time ago (1979 for the Spanish republicans). In recent years, and even decades, such policy of reconsidering all protection statuses granted to one nationality has not been practiced, even for new EU Member States[309]. Indeed, the French population of protected persons still includes people from European countries, such as 160 Romanian and 119 Polish refugees[310]. Besides, no collective reconsideration of status has been initiated following recent UNHCR's recommendations to cease refugees' status for certain nationalities. For instance, the 2021 recommendation of the UNHCR to cease protection for Ivoirian refugees who fled the civil war[311] has not been followed by systematic reviews in France, even if those recommendations can be considered if a status review is triggered on other grounds.

Therefore, under which circumstances can refugees and beneficiaries of subsidiary protection be subject to status reviews in France? According to Johan Ankri, cessation

[309] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[310] OFPRA, *Rapport d'activité 2021*, 2022. p.133, url
[311] UNHCR, "UNHCR recommends the cessation of refugee status for Ivorians", *UNHCR website*, 2021, url

proceedings are mostly initiated by using clauses 1C1 and 1C5[312]. For clause 1C1, status reviews are usually triggered when the OFPRA receives information from the police borders that the refugee has travelled back to their country of origin without having received a safe-conduct[313] beforehand. According to EMN France, beneficiaries of international protection travelling to their country of origin is an issue of concern, but not a national policy priority. Moreover, the OFPRA is said to be "generally informed" (so probably not always) by the border authorities if beneficiaries are identified when returning to their country of origin[314]. It is therefore likely that a certain number of undeclared returns - but not all of them - lead to a status review.

Regarding clauses 1C5 and 1C6, status reviews can be triggered when the beneficiary of international protection shares information about their personal situation that is linked to the obtention of protection. In most cases, it involves a spouse who has obtained status on the basis of family unity, and who subsequently divorces. Indeed, in France, there is a general principle of law (i.e. a principle not written in the texts but recognised by the jurisprudence) according to which when someone is granted refugee status, their partner (married or cohabiting), children who were minors at the time of entry into France, and other dependants also obtain the status[315]. In this context, divorce is considered as a change of circumstances within the meaning of clauses 1C5 and 1C6. Therefore, if the OFPRA is informed of the divorce of a refugee who has been granted status by family unity, this may trigger a status review. It should be noted that for subsidiary protection, family unity does not apply to the partner but does to the children[316].

Finally, status reviews and subsequent cessations can be triggered on grounds that are not-cessation related. Indeed, the OFPRA can initiate a status review when it receives information relating to public order, for example when the beneficiary of international protection has been convicted of a crime or is under surveillance by the domestic intelligence services. However, since the *Conseil d'Etat* jurisprudence established in 2020 the difference between refugee 'status' and 'quality' discussed in the previous section, the OFPRA carries out status reviews according to a hierarchy of norms: it first examines the applicability of

[312] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[313] In France, the administrative authorities can grant a protected person a safe-conduct (a permission to travel) to return to their country of origin, if this return is motivated by humanitarian reasons only.
[314] EMN France, Beneficiaries of International Protection Travelling to and Contacting Authorities of their Country of Origin, 2019, p.7, url
[315] Caroline Lantero, "[Jurisprudence] Le principe de l'unité familiale : un principe général du droit examiné d'office", *Lexbase*, 2016, url (in French)
[316] Conseil d'Etat (CE), *Décision N° 439248*, 21 January 2021, url

fraud provisions, then cessation, then exclusion (the three grounds that can lead to the withdrawal of refugee status and quality) and then public order (which only leads to the withdrawal of status). Consequently, when the OFPRA receives information justifying a status review on public order grounds, the decision to end protection may be taken on the basis of cessation, which comes before in the hierarchy of norms. For example, if an Ivorian refugee who has fled the civil war has committed a crime, and the OFPRA reviews their status, the end of protection will probably be based on the 1C5 cessation clause rather than on public order grounds (provided that no personal circumstances are preventing the application of the ceased circumstances clauses). For this reason, when the 1C5 cessation clause is examined and invoked by OFPRA, it is very often following the receipt of information related to public order (or following a divorce of a refugee who has obtained status on family unity grounds) rather than because of the publication of a new report by the EUAA or the UNHCR[317].

Finally, regarding the 1C3 cessation clause (obtaining a new nationality), it should be noted that the acquisition of French nationality automatically leads to the end of protection. Naturalisations do not trigger status reviews and are registered in a different category than cessation decisions. This may raise questions about the comparability of European data if other countries count naturalisation within cessation decisions.

In summary, there are not many triggers for cessation in France, and in particular no systematic status reviews. In most cases, status reviews are thus triggered by the return to the country of origin, the divorce of a refugee having obtained the status by family unity and the receipt of information related to public order. The idea of the hierarchy of norms is interesting, in that it makes a clear distinction between cessation, exclusion and fraud on the one hand, and end of protection on public order grounds on the other. However, it also creates the possibility that the rise in security concerns will lead to an increase in cessation cases. This situation was not exactly foreseen by the Refugee Convention, which focuses primarily on the absence of reasons for the individual to refuse protection from the authorities of their country of origin or new country of nationality/residence, and not on security concerns. However, this type of practice is not a French exception. Several other countries, such as Germany, Bulgaria and Austria[318], do not distinguish between procedures to remove status for cessation or other grounds, allowing cessation to be mixed with security considerations.

[317] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[318] ECRE, "Country reports", *Asylum Information Database,* url

It might be interesting to study whether, at the national level, other European countries have set up similar hierarchies of norms in order to make a clear distinction between cessation and withdrawal of status on public order grounds, which do not have the same legal consequences in terms of retained rights. Beyond these considerations, the low number of specific triggers for cessation in France suggests that this issue is not a national priority.

1.3. Cessation procedures

The procedures for withdrawal of status for cessation are quite similar to those foreseen by the Asylum Procedures Directive[319]. For instance, for initiating the procedure for ceased circumstances cessation, the OFPRA must rely on multiple sources, including notably the EUAA and UNHCR. Hence, if, as previously stated, the UNHCR recommendations do not trigger cessation, they are still a "fairly strong" element of the OFPRA's analysis. This analysis needs to be complemented by other sources. In particular, the OFPRA has its own research department: the DIDR[320]. When the application of ceased circumstances cessation is considered, the DIDR is responsible for preparing a comprehensive note on the different aspects of the country and in particular on the situation of the community under consideration, which helps to clarify the analysis.

According to internal procedures, if the OFPRA finds that a cessation clause can potentially be invoked, it must send an information letter to the beneficiary of international protection to notify them of the reconsideration of their status and of the legal basis that could warrant the termination of protection. The letter is accompanied by an invitation to submit written observations and, sometimes, by a call for an interview. The interview can be used to establish, for example, the reasons for one's return to their country of origin and whether there was an intent to re-avail themselves of the protection of the country's authorities. Interviews are recorded, transcribed and interpreted (if needed). It is possible that the information letter, with the invitation to submit written observations or to attend an interview, does not reach the recipient, often because the person forgot to inform the OFPRA of their change of address. In this case, the procedure continues without the status holder's observation (and sometimes without the possibility of appeal, since the person does not know that their status has been withdrawn). It is indeed the responsibility of beneficiaries of

[319] Most of the information on the cessation procedures comes from the interview with Mr. Ankri and Mr. Gatinois and my own observations at the CNDA

[320] "Division de l'information, de la documentation et des recherches", or in English "Information, Documentation and Research Division"

international protection to report any changes of address. However, this can be an issue, for instance if the beneficiary does not receive the registered mail because they were on a long holiday. Safeguards could be developed to avoid such situations.

Following the interview or the written communication of the status holder's observations, a decision is taken by a 'protection officer' and validated by the management. This officer examines the various information received by the OFPRA from other national authorities, institutional reports and observations from status holders, and then decides whether a cessation clause can be applied. They must also systematically consider whether there are other grounds for protecting the person (e.g. a situation of indiscriminate violence in the country of origin which could lead to the granting of subsidiary protection) or compelling reasons not to cease protection. The OFPRA's cessation decisions can be appealed before the CNDA, under the same conditions as for asylum applications. The time limit for appeal is 1 month (2 months if the person lives in French overseas territories). Legal aid must be applied for within 15 days (which can be fairly short when one does not understand the procedures for applying). It is available to all, regardless of income, and can only be denied if the appeal is manifestly unfounded (which is rare for cessation cases). In practice, it is therefore widely granted: the acceptance rate for all appeals at the CNDA (asylum application, withdrawal of status and other claims) has been higher than 90% since 2015[321]. In addition, status holders, who generally enjoy more stable living conditions than asylum-seekers, can comply more easily with the time limits and procedures indicated. Appeals are suspensive, which means that the beneficiaries keep their protection until the CNDA decision is rendered.

When the appeal is deemed admissible (transmitted within the time limit and not manifestly unfounded), it is treated under the regular procedure as for asylum applications. It is supposed to give rise to a hearing within 5 months. In 2021, the average processing time was however of 7 months and 8 days[322]. Indeed, a hearing may be postponed, for example, if the applicant is unable to attend, if the lawyer is on strike or if the judicial panel does not have time to deal with all the cases scheduled for the day. In the regular procedure, the panel is composed of 3 judges: a president of the panel, a judge appointed by the *Conseil d'Etat* and a judge appointed by the UNHCR (this role of the UNHCR within a national determining authority is a French specificity). Hearings generally take place in the presence of an

[321] ECRE, "Regular Procedures. France", Asylum Information Database, url (Accessed : 31 October 2022)
[322] *Ibid*.,

interpreter (if necessary) and a lawyer (very often funded by legal aid). They are public unless the president of the panel orders a closed hearing (mainly at the request of the applicant, to guarantee their right to privacy). The hearings consist of a reading of a report summarising the case, a discussion between the judges and the claimant, and then a plea by the lawyer. Like interviews, hearings have a major role in providing a more detailed understanding of the personal situation of the individual concerned, for instance to assess the 'voluntary' or 'intentional' nature of the re-availment of protection by the country of origin's authorities.

The Court is said to be a judge of full jurisdiction *("plein contentieux")*. This means that it must evaluate the entire legal and factual situation at the time it rules on the case, and not at the time OFPRA issued its decision. It therefore takes into account all the events that have occurred in the meantime. Furthermore, according to the *Conseil d'Etat's* jurisprudence, if the CNDA considers the reason for which the OFPRA decided to cease protection unfounded, it must examine whether the person concerned falls under another of the cessation clauses of the Refugee Convention or of the provisions of Article L.511-7 (fraud or exclusion)[323]. On the contrary, if the Court deems justified the reason for ending the protection, it must, before pronouncing cessation, verify whether there are other reasons for maintaining protection than those for which the claimant had been granted the original status (other risks of persecution or serious harm)[324]. Thus, even if the Court finds a ground for cessation used by the OFPRA to be well-founded, it may decide to maintain protection.

At the end of the hearing, the judges deliberate in private, and the decision is given 3 weeks later. When the cessation decision is upheld, the Court does not issue an obligation to leave the territory. The decisions are transmitted to the Ministry of the Interior, which then decides on the foreigner's right to residence, based on considerations other than asylum. Hence, the CNDA's decision does not automatically trigger return, even though the potential consequences of return must be assessed by the Court in the context of the application of clauses 1C5 and 1C6. Moreover, the former status holders can lodge an appeal in cassation within 2 months before the Council of State. The appeal in cassation is however not suspensive, and the applicant may be returned to his country of origin while waiting for the hearing (the average processing time is 2 years)[325]. In most cases, the CNDA decision is the final one, as the onward appeals before the Council of State are fairly rare (1,5% of the CNDA

[323] CE, *n°404756 B*, 28 December 2017
[324] CNDA, *n°15003496 C+,* 28 November 2018
[325] ECRE, "Regular Procedures. France", Asylum Information Database, url (Accessed : 31 October 2022)

decisions lead to an onward appeal, while the appeal rate against OFPRA decisions is between 80 and 85%[326]). This rareness can be explained by the fact that onward appeals must be presented by a lawyer registered with the *Conseil d'Etat* and are only admissible if they are based on a failure to follow procedures, an error of fact or an error of law by the asylum judges.

In summary, this section has provided an overview of the legal framework for cessation in France. The legal provisions of the CESEDA and the end of protection procedures are similar to the ones of the CEAS Directive, with maybe the exception of the hierarchy of norms which allows cessation to be triggered by security considerations. Yet, the absence of numerous triggers for status reviews seems to indicate a preference in France for a durable perception of asylum and a focus on local integration rather than on cessation. However, in order to confirm this hypothesis, the second part of this chapter will be devoted to studying the evolution, in practice, of cessation decisions taken by the OFPRA and the CNDA.

2. A limited and protective practice of cessation?

2.1. Historical trends in the application of cessation

This section will explore the evolution of the number of cessation cases in France to see whether there has been a historical interest and/or a recent surge of interest in cessation. Quantitative data on first instance decisions have been available in the OFPRA's activity reports since 2005 (although the latest report available is from 2001)[327]. The reports are interesting for several reasons: first, they state the number of "maintenance of status" decisions, i.e. when protection is not ended after a status review. Secondly, they distinguish naturalisation from other reasons for ending protection, as naturalisation does not give rise to a specific cessation decision by the OFPRA: cessation is automatic and cannot be appealed. Renunciations to their status by beneficiaries are also counted separately. Finally, unlike the Eurostat database, the OFPRA differentiates cessation and withdrawal of status on public order grounds. However, the figures must still be analysed with caution. Indeed, since 2017,

[326] Those rates concern appeals against all decisions, including asylum applications and cessation decisions (CNDA, *Rapport d'Activité 2021*, 2022, p.5 and 10, url (in French)).
[327] OFPRA, "Rapports d'Activité", *OFPRA website*, url

the OFPRA has not made a clear distinction between cessation and exclusion or fraud (the three concepts included in Article 511-8), as shown in the following extract from the 2021 report:

MAINTIENS / CESSATIONS DE LA PROTECTION	
Maintiens du statut	**188**
Naturalisations enregistrées	**3 720**
Renonciations au statut	**1 291**
Cessations, exclusions et retraits de statut	**864**
cessations au titre de l'article L. 511-8 du Ceseda	*475*
fin de statut au titre de l'article L. 511-7 du Ceseda	*231*
fin de protection subsidiaire	*158*

Source: OFPRA, 2021 Activity report (in French)

Within the section "cessations, exclusions and withdrawals of status", the different categories are "cessations under Article L.511-8", "end of status under Article L.511-7" and "end of subsidiary protection". However, exclusion and fraud are counted among "cessations under article L.511-8" as I deduced from some information provided to me by Johan Ankri, head of OFPRA's legal section[328]. This means that all decisions under this category are not cessation-related. In addition, the categories used to distinguish the different end-of-protection decisions have varied over the years, and the breakdown of cessation data according to the cessation clauses used was only available between 2010 and 2015. Finally, for subsidiary protection, there is no distinction between cessation or other reasons for ending protection. However, the available data, presented in Annex 3, nevertheless allow some conclusions to be drawn.

To begin with, the absence of cessation data before 2005 suggests that there was no particular interest in cessation issues before that date. However, this assumption needs to be tempered for two reasons. First, during the *travaux préparatoires* of the Refugee Convention, the French delegation was the one that insisted on the insertion of the cessation clauses (cf. Chapter I, part 2.1 of this thesis). Secondly, the literature provides information on the application of cessation to Spanish refugees in 1979 to Chileans from 1994 and to Romanians from 1995[329]. Thus, there is evidence of past practices of cessation in France, but, apart from

[328] According to the information he shared with me, in 2021, there were 241 cessations based on clause 1C1, 13 on clause 1C3, 1 on clause 1C4, 178 on clause 1C5, 20 exclusions and 16 withdrawals for fraud. The addition of those categories makes 475, which is the number of "cessations under article L.511-8" in the activity report.
[329] OFPRA, Aline Angoustures, *op.cit.*, p. 63-64, url; Aline Angoustures, "L'OFPRA et le traitement des demandes d'asile des Chiliens en France", *Hommes & migrations*, 2014, url (in French); Joan Fitzpatrick and Rafael Bonoan, *op.cit.*, p. 505, url

specific historical episodes, this practice was not prominent and certainly not comparable to that of Germany[330].

From 2005 to 2015, one can see that there was a fairly stable number of cessation decisions: generally between 50 and 150 per year. This number excludes renunciations and naturalisations, which have always amounted to a rather high number (several thousand per year). Hence, in a very large number of cases, beneficiaries of protection end their protection by their own choice or by naturalisation, meaning that the OFPRA does not need to carry out any status review. When the end of protection decisions are distinguished according to their grounds, it can be seen that, from 2005 to 2015, the majority of them were cessations of refugee status. Indeed, subsidiary protection, resulting from the 2004 Qualification Directive, was still recent, and only led to a few cessations per year (less than 10); withdrawal of status based on a threat to State security or society only appeared in 2015[331]; and the figures for exclusion or fraud were very low (generally less than 10 per year). Cessation of refugee status was therefore the main process for ending protection. Yet, from 2009 to 2014, the number of decisions to maintain protection following a status review was systematically higher than the number of cessations (sometimes two to three times higher). This can be explained by the fact that, according to the OFPRA (2010), "the cases reported as being likely to lead to a cessation of status require a long investigation, but in the majority of cases this results in the status being maintained, particularly due to insufficient evidence, the burden of proof being on the administration"[332]. Cessation was therefore not a major phenomenon.

Since 2015, the situation has changed. There has been a rise in the number of ends of protection: 85 in 2014, 312 in 2020, and 864 in 2021. The number of cessations of refugee status has also increased: 77 in 2014, 191 in 2020, and 475 in 2021. Finally, the number of terminations of subsidiary protection has been growing too: 6 in 2014, 44 in 2020, and 158 in 2021. Therefore, there has been a rise in the number of cessations, starting in 2015 and accelerating in 2021. Moreover, from 2015 to 2021, the number of cessations of refugee status alone was almost systematically higher than the number of protection upheld at the end of the status review, which shows a real change in practices. Possible explanations for this increase in cessation decisions will be proposed in a subsequent section of the thesis.

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[330] Cf. Maria O'Sullivan's comment that Germany is the only EU country to have applied clause 1C5 in significant numbers in the past (Maria O'Sullivan, *Refugee Law and Durability of Protection. Temporary Residence and Cessation of Status*, 2019, p.3, url)

[331] France, *LOI n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile*, url (in French)

[332] OFPRA, *Rapport d'activité 2010*, 2011, p.46, url

Concerning the current application of the cessation clauses, according to some information communicated by the OFPRA's legal section, the most-used cessation clauses in 2021 are 1C1 (247 applications) and 1C5 (178 applications)[333]. Although this information is not disclosed in the activity reports, the OFPRA knows the distribution of the cessation clauses used (so it is probably considered as subsidiary information). The nationalities most affected by cessation and withdrawal of status in 2021 are Russia, Turkey and the Democratic Republic of Congo. However, based on all activity reports, the nationalities affected vary greatly from year to year. The OFPRA does not have any statistics on the application of each clause to each nationality. But, according to lawyers Johan Ankri and Enguerrand Gatinois, there are a significant number of cessations of refugee status under clause 1C1 for Russians, and under clause 1C5 for Albanians and Ivorians. The OFPRA also does not have statistics on the use of compelling reasons provisions. This could be because cessation and the diverse issues that arise from it are not national priorities.

Regarding cessation cases at the CNDA, the appeal rate for cessation decisions is not known by the OFPRA but seems to be lower than for asylum applications. This can result from the fact that status holders who have changed address do not always receive information about the cessation of their protection in time to appeal, but also from the high number of renunciations: it can be assumed that some status holders do not notify their wish to renounce their status, but do not oppose the cessation decision when it is taken. This hypothesis is confirmed by the number of hearings at the CNDA. Indeed, the Court does not have any statistics, even internally, on the number of annual end of protection decisions (let alone on specific end of protection grounds such as cessation), which hints at the absence of particular interest in cessation. However, according to my own research in Ariane Archives (the database for the Court's decisions), between January and July 2022, only 43 cessation decisions were issued by the Court (40 for refugee status, 3 for subsidiary protection)[334]. This figure is significantly lower than the average number of OFPRA cessation decisions in recent years (299 cessation per year between 2016 and 2021[335]). These CNDA decisions resulted in 27 ends of protection and 16 protections upheld (the maintenance of protection rate is thus 37%). The most used clauses are 1C1 (27 cases) and 1C5 (12 cases, 10 of which are for family unity issues). There are therefore fewer cessation cases at the CNDA, but they follow the same trends as the OFPRA in terms of cessation grounds. Finally, among the Ariana

[333] Information communicated by Mr. Johan Ankri by email on 27 October 2022.
[334] Research carried out on the "Ariane Archives" database on 21 August 2022
[335] Cf. Annex 3

database, which only contains only decisions that are classified as particularly important, there are not many cessation cases. Indeed, the search for "cessation clause(s)" gives 42 results (42 decisions of particular importance mentioning them), while by comparison the search for "exclusion clause(s)" gives 166 results[336]. This tends to show that there is not (yet) a particularly strong interest in cessation at the CNDA.

These different observations lead to the conclusion that while the number of cessation cases in France is growing, they are still very marginal in relation to the total number of decisions issued, both by the OFPRA (140,000 decisions in 2021)[337] and by the CNDA (68,403 decisions)[338]. This seems too little to speak of a real revival of interest in the cessation clauses for now. This finding is supported by the approach adopted by the French determining bodies in relation to cessation, which could be described as protective.

2.2. A rather protective conception of cessation

From my interview with Johan Ankri and Enguerrand Gatinois, as well as the CNDA training material that I had the opportunity to review, it appeared to me that France has a rather 'protective' conception of cessation. By protective, I mean that a fairly high degree of proof is required to establish that international protection is no longer needed. For example, according to the 2010 OFPRA activity report, cessation cases involve a long investigation process and statuses tend to be maintained when the evidence is insufficient[339]. Moreover, at both the OFPRA and the CNDA levels, other reasons to grant protection and compelling reasons not to re-avail oneself of the protection of the country of origin are systematically considered. This contrasts with most other European countries which, with the exception of Belgium, have no practical examples or established practice of applying the compelling reasons provisions[340].

Concerning the interpretation of clause 1C1, the case law of the *Conseil d'Etat* and the CNDA has enabled to establish a list of actions that constitute "acts of allegiance", i.e. acts generating a presumption of re-availment of the protection of the country of origin's authorities. This presumption is not irrefutable in that the status holder can oppose cessation

[336] Research carried out on the "Ariane" database on 16 August 2022 with the keywords "cessation clause", "cessation clauses", "exclusion clause" and "exclusion clauses".
[337] OFPRA, "Premières données de l'asile 2021 à l'Ofpra", *OFPRA website*, 2022, url (in French)
[338] CNDA, "Rapport d'Activité 2021", *CNDA website*, 2022, url (in French)
[339] OFPRA, *Rapport d'activité 2010*, 2011, p.46, url
[340] EMN, *Applying the principle of compelling reasons in asylum cases*, 2021, url

by providing information about the nature of the concerned act, the non-effectivity of the protection obtained or imperative constraints justifying the act of allegiance. For instance, acts of allegiance include the issuance and extension of a passport, return to the country of origin or marriage in the country of origin[341]. On the contrary, using an inauthentic passport of which the authorities of the concerned country are unaware, or simply making a flight stopover in the country of origin do not constitute allegiance[342]. Regarding examples of imperative constraints that may justify an act of allegiance, the OFPRA and the CNDA accept returns (even without a safe-conduct) to visit a sick or dying relative or to pick up a child in a country in crisis such as Afghanistan[343]. The completion of administrative procedures at the consulate of the country of origin at the request of the French authorities or to obtain a passport to allow children to join their mother in their country of origin are also acceptable explanations for an act of allegiance. On the contrary, a return to the country of origin following the death of a family member, to respect traditional customs and with a passport obtained after the granting of refugee status, was not considered a legitimate reason by the Court[344] (which shows that the Court's jurisprudence is not 'systematically protective). These examples demonstrate that there is a case-by-case assessment of the justifications for the act of allegiance, taking into account the person's intentions, whether or not they are aware of the possible loss of status, the potential imperative constraints and the effectiveness of the protection received.

Regarding the application of clauses 1C5 and 1C6, there are few countries whose nationals are systematically subject to cessation during status reviews. However, the existence of a change of circumstances (in relation to specific factors of persecution) in some countries has been validated by the *Conseil d'Etat* and CNDA case law, notably for EU Member States, countries of the ex-Yugoslavia and countries of the ex-USSR[345]. Hence, if there are still Polish or Romanian refugees in France nowadays, it is essentially because they have not been subject to status reviews. At present, according to Enguerrand Gatinois, the main countries concerned by these cessations are Albania, where the change of circumstance has been validated by the CNDA's jurisprudence, and Côte d'Ivoire, since the UNHCR's

[341] Conseil d'Etat (CE), *Décision N°42960 A,* 15 February 1984; CE, *Décision N°177013 B*, 31 March 1999; CNDA, *Décision N°09017836*, 23 December 2010
[342] CNDA, *Décision N°15013973 C+*, 21 December 2016; Commission des recours des réfugiés (CRR, predecessor of the CNDA), *Décision N°300164*, 21 November 1997
[343] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[344] CNDA, *Décision N°12002308 C+,* 24 July 2013; CE, *Décision N°288747*, 15 May 2009, url; CNDA, *Décision N°608347*, 8 April 2008
[345] CE, *Décision N°220082, 30* July 2003; CRR, *Décision N°335287,* 12 October 2001; CNDA, *Décision N°10008275 R,* 25 November 2011

declaration of cessation. Yet, there are several countries where, despite a long period of time and changing circumstances, the CNDA refuses to apply cessation: this is the case of the Democratic Republic of Congo and the former opponents of the Mobutu regime (pre-1997), refugees from the Sri Lankan civil war (1983-2009), Roma from Kosovo, or Cambodian refugees (from 1975)[346]. These refusals of cessation are generally explained by the democratic and human rights protection standards expected by the Court. For example, in the case of the Democratic Republic of Congo, the CNDA considered in a 2018 decision that the current regime retains an authoritarian character, does not protect against persecution, and also practices political repression on a large scale. Therefore, the change of government cannot constitute a significant and durable change of circumstances[347]. In this decision, the Court also referred to the concept of actor of protection, derived from the Qualification Directive and the Abdulla case law, thus proving its compliance with European guidelines.

The CNDA is also quite protective for cessation of subsidiary protection, in that it does not apply markedly different standards for the evaluation of the change of circumstances. Hence, while generally approving cessation for Albania[348], the Court ruled in 2018 that the situation in Albania regarding crime and corruption did not allow for the conclusion that there had been a sufficiently significant and durable change for ceasing the subsidiary protection of an Albanian national who was victim of a mafia bank manager[349]. Moreover, in this decision, the Court insisted on the fact that clause 1C1 does not apply to beneficiaries of subsidiary protection and that the issuance of a driver's license through the claimant's mother in Albania was not sufficient to prove that the national authorities could ensure his protection. Yet, it must be noted that it is not because a previous decision has endorsed or refuted a change of circumstances in one specific country that other judicial panels must follow those conclusions in subsequent cases. Indeed, judicial panels are said to be sovereign, which means they can take different decisions even on similar facts. Hence, in other cessation cases, the change of circumstances in Albania was upheld (for instance for a refugee fearing persecution based on their imputed political opinions[350]). This sovereignty of judicial panels allows them to truly take into account the individual circumstances in each case. It also demonstrates that the national standards of human rights do not have to be

[346] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[347] CNDA, *Décision n°18001386 C+,* 17 octobre 2018
[348] According to my interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois.
[349] CNDA, *Décision N°18009542 C*, 14 November 2018
[350] CNDA*, Décision N°21055231,* 14 June 2022

perfect, but only that significant improvements must have been made with respect to the specific situation of each claimant.

Regarding the application of cessation in conflict situations, in a 2018 decision, the Court found that the decrease in the intensity of violence in Iraq (considered as a context of indiscriminate violence) did not constitute a sufficiently fundamental and durable change to justify the cessation of subsidiary protection. It also granted refugee status to the claimants, holding that they were exposed to politico-religious persecution[351]. Hence, for Johan Ankri, in view of this rather protective jurisprudence, it is unlikely to see the French institutions carry out cessations in a systematic way (individual exceptions are possible) in areas where subsidiary protection is granted because of indiscriminate violence (such as Syria, Somalia, Nigeria, Yemen, Iraq, etc.)[352].

Sometimes, the OFPRA and the CNDA are also led to oppose cessation, such as when it is requested by the guardians of the beneficiary of international protection. This is mainly the case of parents of girls who have been recognised refugees based on their membership to the social group of girls at risk of Female Genital Mutilation (FGM) in their country of origin. Because the refugee status prevents them to travel to their country of origin with their daughter, the parents request cessation. In 2018, the CNDA refused to apply cessation to two Malian girls due to the high prevalence rates of FGM in Mali and despite the mothers' claims that they could protect them[353]. In taking this position, French institutions apply the principle of the best interest of the child and a precautionary approach. Those fairly exceptional decisions raise the question of the procedures used to handle such cases: should it be considered as a status renunciation or as cessation, as the CNDA framed it in those 2 decisions? Should additional procedural guarantees be introduced for those situations?

Lastly, concerning ceased circumstances cessation linked to individual circumstances, this is a fairly specific French practice. It mainly concerns cases related to divorce or renunciation of status by persons who were recognised as refugees, and from which the status of other beneficiaries derives. Cessation then occurs for the secondary beneficiaries because the granting of international protection served to protect the right to family life and is therefore no longer considered necessary. It rarely endangers the person, as

[351] CNDA, *Décisions N°17010844 – 18044574 – 17010847 – 18044573 – 17010845 – 18044575 – 170010848 - 18044576 C*, 21 December 2018
[352] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[353] CNDA, *Décision N° 17038232*, 26 November 2018; CNDA, *Décision N° 17039171*, 26 November 2018

the OFPRA and the CNDA systematically check whether the person risks persecution or serious harm upon return.

In summary, it appears that French case law is rather protective in the area of termination, especially concerning the application of the 1C5 clause. Controversial practices - such as cessation in conflict situations, the significant lowering of cessation standards for subsidiary protection, or the reliance on IPA for cessation - are usually not being used. Again, this seems to indicate that there is no current major revival of interest in the cessation clauses in France. However, the result of each case can depend on the protection officer (at the OFPRA) or on the judicial panel (at the CNDA), which can be more or less protective. Moreover, given that cessation clauses are still more used now than in the past, it could be interesting for French institutions to think about strengthening procedural guarantees.

2.3. A possible strengthening of procedural guarantees

Overall, France has rather strong procedural guarantees, compliant with EU norms, and more protective than other European countries: for instance, the delay for appeal (1 month) is fairly reasonable and free legal assistance is widely granted. Moreover, there are specific guarantees, such as the collegiality of the judicial panels of the CNDA which favours the independence and impartiality of the judges and allows for the confrontation of points of view. The presence of UNHCR-appointed judges can also be considered as a guarantee, in that they usually provide a certain expertise on humanitarian matters. However, some other safeguards could be further improved.

For starters, the use of interviews for first instance decisions. According to OFPRA's legal officers Johan Ankri and Enguerrand Gatinois, there are more cessation cases without an interview than with one, and there are certainly fewer interviews for cessation than for exclusion for instance. Indeed, as an example, Enguerrand Gatinois mentions the case of Albanians for whom the change of circumstances since the 1990s is recognized by the OFPRA and (often) upheld by the CNDA, which could explain the lesser need to interview status holders[354]. While wanting to avoid unnecessary interviews may be understandable for the OFPRA, given possible budgetary and staffing constraints and the increase in asylum applications in recent years, this approach has its drawbacks. Mainly, written submissions do not allow for an assessment of potential ongoing protection needs or compelling reasons that

[354] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022

might preclude cessation as effectively as an interview. The EASO itself recommended arranging for personal interviews for a better assessment of the personal situation of the status holders in its Practical guide on the cessation clauses[355]. Therefore, granting additional funding for the OFPRA to be able to carry out more interviews for cessation proceedings could be a way to improve legal safeguards.

Secondly, while the OFPRA is obliged by law (Article L562-2 of the CESEDA) to give beneficiaries of international protection the opportunity to comment, in writing or in an interview, as to why they should be allowed to retain their protection, The law does not specify how much time the status holder should be given to present his observations and what the consequences should be in case of delay. Indeed, the status holder may need time to read the mail, gather information or even contact a lawyer or some associations to request guidance (especially if they are away when they receive the mail). In a 2021 decision, the CNDA annulled an OFPRA cessation decision, finding that the Office had neglected to consider the claimant's written submissions, and referred the case back to the OFPRA. The OFPRA argued that it did not consider the written submissions because they arrived after the given delay (1 month)[356]. In July 2022, after an appeal in cassation, the *Conseil d'Etat* annulled the CNDA decision, holding that, as a court of full jurisdiction, the CNDA should still rule on the maintenance of the claimant's international protection, taking into account the written observations submitted to the OFPRA[357]. This example shows the lack of clarity about the scope of procedural safeguards and the potential lack of consideration for difficulties that may exceptionally prevent status holders from complying with the indicated procedures.

Thirdly, in some recent CNDA cessation cases, it appears that the OPFRA can also take a long time to issue its decision after the first information letter sent to the status holders. In a 2022 case, the wait was longer than 2 years[358]. From the point of view of status holders with no permanent residence permit, this situation can cause much anxiety due to the uncertainty of their future status and the difficulties in projecting themselves into the future. The information provided through the written submission or interview may also be outdated by the time the OFPRA makes its decision, and status holders will not have the opportunity to address any changes of circumstances which may have occurred in the country of origin

[355] EASO, *Practical guide on the application of cessation clauses*, 2021, p.31, url
[356] CNDA, *Décision N°19057404*, 23 March 2021
[357] CE, *Décision N° 452868*, 27 July 2022
[358] CNDA, *Décision N°21024225*, 15 June 2022

in the meantime. For all these reasons, it might be useful to define a maximum time limit for the OFPRA to make its decision, or at least to renew a request for information from the beneficiary of international protection.

Fourthly, free legal assistance could be improved. Indeed, according to the ECRE, firstly, free legal assistance is not available at the first instance level (status holders can however try to ask for the assistance of civil society organisations)[359]. Yet, such assistance could be useful to understand the cessation procedure, translate the request for information and assist them in drafting their written submission. Moreover, although the current level of compensation for lawyers was raised in 2022, it is insufficient to allow them to provide serious and quality work for each case. Indeed, a lawyer working with legal aid receives 576 euros per appeal with a hearing, tax excluded (instead of 512€ previously)[360]. Since most lawyers are based in Paris, and claimants may live elsewhere in France, these fees are generally insufficient to cover taxes, potential train tickets and an interpreter for the preparation of the case. Many lawyers therefore only meet their clients on the day of the hearing[361]. The low level of compensation also often pushes lawyers to take on too many cases, reducing the time they can dedicate to each claimant. These different factors make it difficult for asylum-seekers or beneficiaries of international protection to properly prepare their hearing. It could therefore be interesting to increase, more significantly, the remuneration of lawyers paid with legal aid.

Finally, the cessation procedure, particularly regarding the ceased circumstance clauses, raises the question of respect for the right to an adversarial hearing. According to the ECtHR, this right consists of "the opportunity for the parties to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision"[362]. Yet, the notes of the DIDR and the CEREDOC, the respective research departments of OFPRA and CNDA, are for internal use only. Although these are based on public sources (and therefore accessible to all), many lawyers demand access to the institutional notes in order to know the sources on which the decisions of the determining authorities are based. Therefore, a reform of the cessation procedure could be envisaged to allow lawyers access to DIDR (and potentially also CEREDOC) notes created in relation to

[359] ECRE, *Country Report: France*, Asylum Information Database, 2021 Update, p. 147, url
[360] They receive 16 credits for an appeal with a hearing, and each credit is paid 36 euros (cf. ECRE, "Regular Procedures. France", *Asylum Information Database*, url (Accessed: 4 November 2022))
[361] ECRE, "Regular Procedures. France", *Asylum Information Database*, url (Accessed : 4 November 2022)
[362] ECtHR, *Guide on Article 6 of the European Convention on Human Rights*, updated in 2022, p.34, url

a change of circumstances in a given country and its impact on the different communities of asylum-seekers and status holders.

In summary, while French procedural safeguards are often stronger than in other European countries, there is still substantial room for improvement in cessation procedures. In particular, the use of interviews for first instance decisions could be increased, clearer rules could be established for taking into account the contributions of status holders (on deadlines for making submissions but also for issuing a decision after reception of written observations) and free legal assistance could be enhanced. Despite these points, the current French conception of cessation can be described as rather protective, refusing cessation sometimes 40 years after the events that gave rise to protection and always considering compelling reasons not to cease protection and potential other grounds for persecution or serious harm. Accordingly, France seems to have a conception of asylum more oriented towards permanent protection and integration than towards temporary protection and return. However, the situation may change in view of the increase in the number of cessation cases and the forthcoming reform of the CEAS, which aims to promote greater recourse to cessation. To what extent are French practices likely to be influenced by the evolution of national and international debates on the end of refugee status? Could the French perception of the duration of asylum be affected by the development of anti-immigration discourses, which are increasingly gaining ground in the public debate, in parallel with the rise of the far-right anti-immigration party *Rassemblement National*, which scored 41.45% in the second round of the 2022 presidential elections?

3. Perspectives on the evolution of French cessation practices

3.1. The indirect increase in cessation decisions through public order grounds

Even though it is placed under the administrative and financial supervision of the Ministry of the Interior, the OFPRA enjoys functional independence: it is not supposed to receive political instructions in the performance of its missions. Does this mean that political developments and national debates have no impact on its cessation policy? This is not sure. As stated in Chapter II, part 3.2, France adopted 21 laws on immigration, asylum or nationality between 1986 and 2018. A new immigration bill is expected to be presented by

the Minister of Interior in early 2023[363]. For journalist Marianne Skorpis, these legislative developments are not unrelated to the rise of the *Rassemblement National* (then *Front National*) and anti-migration rhetoric in the public debate[364]. For cessation practices, the main impact come from the July 2015 law which introduced the possibility to withdraw protection statuses on public order grounds[365]. As discussed previously, these lead to more status reviews and, indirectly, to more cessation proceedings, due to the hierarchy of norms.

Moreover, the increase in cessations from 2015 and again in 2021 (discussed in Chapter IV, Part 2.1) coincides with the 2015 migration crisis, but also with major security events that deeply shocked French public opinion and were associated with immigration, asylum-seekers and refugees. Indeed, the increase in cessations from 2015 overlapped with the January 2015 Charlie Hebdo shooting (12 deaths including 8 journalists), the November 2015 Paris attacks (130 deaths) and the July 2016 Nice attack (86 deaths). It is particularly striking that the withdrawal of status on public orders grounds was introduced in July 2015, shortly after the Charlie Hebdo Attacks, whereas it was possible to implement it since the 2004 Qualification Directive[366].

In addition, the spike in cessations between 2020 and 2021 can also be linked to an attack that had massive national resonance: the assassination of teacher Samuel Patty in October 2020 by a Chechen refugee. In May 2021, French NGOs denounced, since the murder of Samuel Patty, a wave of withdrawals of status against Chechen refugees, on the request of the Ministry of Interior[367], as well as deportation measures despite the persistence of fears of persecution in case of return. Of the ten or more nationals deported, at least one was tortured and two disappeared for several weeks upon their return to Russia[368]. There again, the increased number of notifications concerning Chechens to the OFPRA may have led to a higher number of cessations, especially under clause 1C1, if the refugees had returned

[363] Groupe d'information et de soutien des immigré·e·s (GISTI), "Genèse du projet de loi asile et immmigration, la future « réforme Darmanin » du Ceseda", url (Accessed: 12 November 2022)
[364] Marianne Skorpis, *op.cit*, url (in French)
[365] France, *LOI n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile*, url (in French)
[366] Indeed, Article 14 already provided for the possibility to withdraw refugee status when someone represents a danger to the security of the State or, after having been convicted by a final judgment of a particularly serious crime, to its community; and Article 17 already provided for the exclusion from subsidiary protection for someone who constitutes a danger to the community or security of the State.
[367] Notwithstanding the functional independence of OFPRA, the administrative authorities may ask it to consider end of protection in accordance with Article L511-8. It is noteworthy that this possibility of requesting the administrative authority is not mentioned in the case of Article L.511-7, even though it is the article that is most mobilised for the Chechens
[368] Comité Tchétchénie, Amnesty International France, Ligue des droits de l'Homme, "Expulsions de réfugiés tchétchènes : La France doit cesser immédiatement d'être complice d'actes de torture et de disparitions forcées", 2021, url

to their country of origin or contacted their national authorities. It is consequently not so surprising that out of the 40 refugee status cessation cases processed by the CNDA between January and July 2022, 12 of them concerned refugees of Chechen origin or provenance (30%). Among these decisions, the ending of protection was confirmed in 10 cases: 7 on the basis of clause 1C1, 2 on the basis of divorce and clause 1C5, and 1 on the basis not of clause 1C1 as requested by the OFPRA but of fraud. Furthermore, the number of Chechen cessation cases is likely to increase further: given the remedies processing time, a certain number of appeals against the 2021 OFPRA decisions still have to be processed by the CNDA. This tends to validate the hypothesis that the growing concern for security issues may have motivated an increase in status reviews against Chechen nationals, which in turn may have led to the discovery of the applicability of clause 1C1. More generally, it seems that status reviews triggered by information about possible Islamist radicalisation and support for terrorism have increased since 2015 and particularly in 2021, potentially leading to more cessations.

This growth of end of protection due to public order information is moreover likely to increase further. Indeed, in 2022, a new section on public order and ends of protection has been created within the DAJEI. This section provides legal support for public order cases and their follow-up before the CNDA in case of appeal. Its creation seems to reflect a willingness by the OFPRA Board of Directors (whose members include representatives of the State, of legislative institutions, of French deputies in the European Parliament and one representative of the OFPRA staff) to intensify their activity in the area of public order and end of protection For the public order section, cessation is a secondary issue: indeed, legal officers of this section only oversee cessation cases to be heard before the CNDA if there are also public order grounds to defend in the alternative (i.e. if the CNDA rejects the application of cessation)[369]. Yet, the activity of the section will probably induce an increase in status reviews, which should automatically lead to more cessations through the hierarchy of norms.

In summary, security considerations appear to trigger more ends of protection and cessations since 2015. This increase places France in 3rd place among the countries having withdrawn the most protections in 2021, according to the Eurostat database (in absolute

[369] At the CNDA, the OFPRA defends all the justifications for termination of protection that it considers applicable. The main ground for its decision must be the highest in the hierarchy of norms (fraud, cessation, exclusion and then public order) but the other relevant reasons can be defended as subsidiary grounds (cf. Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 August 2022.)

numbers, since in proportion to the refugee population, the result could be quite different)[370]. However, this increase is also driven by a high number of withdrawals of status on public order grounds, even if it remains lower than the number of cessations[371]. At present, judging by the population of protected persons in France (nearly 500,000 people as of 31 December 2021[372]), cessation still does not seem to be a major enough phenomenon to significantly affect the French perception of asylum as durable and encouraging local integration. However, the upcoming CEAS reform and the introduction of mandatory status reviews could potentially change this situation.

3.2. The possible challenges in the implementation of the CEAS reform

As discussed in Chapter III, part I of this thesis, the CEAS reform implies several changes to the European States' cessation practices. The most important ones are linked to the new mandatory status reviews and the common analysis of COI. During my interview with OFPRA's legal officers Johan Ankri and Enguerrand Gatinois, I had the opportunity to briefly discuss the possible impacts of this reform on their cessation practices.

Concerning status reviews, following the stakeholder consultation on the reform (in 2016), the European Commission noted that several States warned of the administrative burden that could result from the obligation to do a cessation check each time a residence permit is renewed[373]. According to Johan Ankri, the situation is the same in 2022: OFPRA's resources would have to be considerably increased, in view of their current financial means, staffing levels and the size of the protected population in France, for them to be able to carry out these new compulsory status reviews[374]. The concerns about the reform are therefore primarily based on the question of resources. The change in activity would be all the more important as France currently grants ten-year residence permits to refugees and four-year permits to holders of subsidiary protection, instead of three and one years respectively as planned in the proposed Qualification Regulation. The reform would therefore also increase the activity of the administrative authorities responsible for renewing residence permits. Moreover, those new status reviews would have an impact on the number of hearings at the CNDA too. Yet, the Court, despite a record activity in 2021, still had more than 33,000

[370] Cf. Annex 1
[371] Cf. Annex 3
[372] OFPRA, *Rapport d'activité 2021*, 2022. p.134, url (in French)
[373] EU, *Proposal for a Qualification Regulation*, 2016, Explanatory Memorandum, url
[374] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 August 2022.

pending cases at the end of the year, which represents more than five months of workload[375]. Without additional funding, the CNDA would probably not be able to cope with the increase in appeals that might result from mandatory status reviews. However, given the policy of budgetary rigour announced by the new French government, which wishes to return below the 3% public deficit threshold by 2027[376], it is hardly plausible that such a major investment will be made in the budget of the OFPRA and the CNDA in the near future. Indeed, in the new draft law on immigration, asylum and integration of the Ministry of Interior, additional funding for the status determination authorities and more frequent status reviews are not considered at all[377]. Therefore, if the proposed Qualification Regulation was adopted in the coming years, complying with the rules of mandatory status reviews would be a major challenge.

The second major change concerns the common analysis of COI and determination of changes of circumstances, which would also lead to mandatory status reviews. The main question here is whether the threshold for determining the existence of a change in circumstances will be harmonized upward, downward, or more probably in some middle ground. In this respect, France expects a generally higher threshold than other European countries. Indeed, it has been established in chapter 2, part 2.3, that the CNDA is more demanding than the UK Immigration Appeal Tribunal regarding the presence of adequate institutions in the country of origin, and in particular of an efficient and accessible judicial system for the detection, prosecution and punishment of acts constituting persecution. Although the United Kingdom is no longer a member of the EU, it is likely that the French cessation standards are also higher than those of some other EU Member States. For example, in 2020, the Netherlands established that there had been a change in circumstances in the level of violence in some parts of Sudan, although this did not lead to any cessation[378]. Before the Taliban takeover, Hungary, as well as Austria to a lesser extent, applied cessation in some parts of Afghanistan (using notably the IPA concept)[379]. In a more general way, Maria O'Sullivan has established that, in Europe, many status holders who had their protection

[375] CNDA, *Rapport d'Activité 2021*, 2022, p.12, url (in French)
[376] Guillaume Gaven, "Économie : pourquoi l'Etat veut réduire le déficit de la France sous la barre des 3%", *Franceinfo*, 2022, url (in French)
[377] Groupe d'information et de soutien des immigré·e·s (GISTI), "Genèse du projet de loi asile et immmigration, la future « réforme Darmanin » du Ceseda", Premiers drafts de l'avant-projet de loi, url (Accessed: 12 November 2022)
[378] ECRE, "Cessation and review of protection statuses. Netherlands", *Asylum Information Database*, url (Accessed: 6 November 2022)
[379] ECRE, "Cessation and review of protection statuses. Hungary", *Asylum Information Database*, url (Accessed: 6 November 2022); Austria, Supreme Administrative Court, *Ra 2019/14/0153*, 27 May 2019, url

withdrawn under the ceased circumstances clauses came from Iraq, Afghanistan, Somalia or Syria (however, this comment relates to the entire Europe, including Norway, the United Kingdom and Denmark)[380]. Yet, these are all countries where neither OFPRA nor the CNDA usually practice cessation based on changed circumstances[381].

Consequently, in view of France's protective cessation approach, the questions that arise are similar to those in Chapter 3, part 1.3: would France be able to dismiss the existence of a sufficiently significant and durable change of circumstances in a given country if it is recognized in an EU-level guidance note after consultation with the other Member States? If so, will the OFPRA have to carry out mandatory status reviews for all status holders coming from those countries anyway, thus leading to a (too) high administrative burden? The eventual implementation of a common analysis of COI and the possible mandatory status reviews that would follow could therefore pose another challenge for French institutions.

In any case, these different developments are likely to lead to a greater increase in cessation cases in France. This brings us back to our main question about the potential shift in the perception of asylum away from permanent protection and local integration towards temporary protection and return.

3.3. A shift in the French perception of asylum?

Historically, France has been one of the main, if not the main, country behind the inclusion of the cessation clauses in the Refugee Convention. Moreover, France has never been totally disinterested in the cessation clauses, which it notably applied to the Spanish refugees from 1979, to Chileans from 1994 and to Romanians from 1995. Nevertheless, French institutions have established rather high cessation standards, especially for assessing a change of circumstances, and triggers for status reviews. In practice, this has led to an asylum policy that favours permanent protection and local integration, since most refugees have retained their status throughout their lives.

Since 2015, the number of decisions to end protection, including cessation decisions, has increased. This growth has been probably driven by security considerations related to the

[380] ECRE, Maria O'Sullivan, *op.cit,* p.2-3, url

[381] For example, the CNDA recently recognised that there had been a change in the level of violence in Afghanistan after the Taliban took power, in relation to the granting of subsidiary protection. However, for Johan Ankri, head of the DAJEI, the situation is not conducive to the application of the ceased circumstances cessation, and there is certainly not the necessary hindsight. This shows that getting the status is perceived to bring an additional degree of stability in one's situation.

migration crisis, a series of attacks, as well as, according to the DAJEI[382], a better communication of information on allegiance issues (return to the country of origin, contact with national authorities, etc.). The proportion of decisions to terminate protection nevertheless remains minimal in relation to the total number of OFPRA decisions (864 ends of protection decisions, including 475 cessations out of a total of 140,000 decisions in 2021)[383]. This proportion is however likely to increase with the reform of the CEAS and the introduction of the new section on public order and ends of protection.

Are these developments sufficient to say that there is a shift in the perception of asylum away from permanent protection and local integration towards temporary protection and return? It seems too early to reach any definitive conclusion. To start with, the CEAS reform is not moving fast. While it was introduced in 2016, the negotiations are progressing rather slowly, several deadlocks have been encountered, a new pact on migration and asylum was proposed in 2020 (which retains the changes on cessation practices) and the European institutions now hope to finalize the negotiations by 2024 (further delays cannot be excluded)[384]. Yet, the adoption of the EUAA regulation at the end of 2021 may suggest that the reform is heading back on track. Therefore, it remains to be seen if all regulations will be adopted, if the measures on cessation will be retained, and how the French institutions will plan to adapt to the new rules at that time.

Furthermore, given internal French developments and the increase in cessation cases that are already taking place, several things need to be considered. On the one hand, one could argue that there is a risk of emergence of a dual temporality of asylum: on one side, some status holders who are subject to regular status reviews, and on the other, some who are never subject to status reviews. Indeed, it cannot be excluded that discriminatory police practices, which have in been documented by numerous reports[385], would lead to higher rates of notifications to the OFPRA of people from religious or ethnic minorities background (especially Muslims). Indirectly, this could trigger more cessation in this population. On the other hand, even with different status review rates, it remains unlikely for people who have

[382] Interview with Mr. Johan Ankri and Mr. Enguerrand Gatinois, legal officers of the OFPRA, 23 august 2022
[383] Cf. Annex 3 and OFPRA, "Premières données de l'asile 2021 à l'Ofpra", *OFPRA website*, 2022, url (in French)
[384] France terre d'asile, "Is a reform of European asylum policy still possible?", *European insights*, 2020, url; Agenzia Nazionale Stampa Associata, "EU Council and Parliament agree on plan to reform migration policy by 2024", *Infomigrants*, 2022, url
[385]: Council of Europe, "Anti Racism Commission calls for French progress on police identity controls and minority rights", 2022, url; Human Rights Watch, "France: End Systemic Police Discrimination, 2021, url; United Nations, Office of the High Commissioner for Human Rights, "France: UN expert says new terrorism laws may undermine fundamental rights and freedoms", url

not committed any act of allegiance and do not come from a country where cessation is generally practiced, to have their international protection withdrawn on cessation grounds. Moreover, although it cannot be ruled out that individual protection officers and judges may display prejudice and discriminatory practices, the control of each decision of the protection officers by the OFPRA management and the collegiality of the CNDA decisions reinforce impartiality and mitigate risks[386]. Finally, for the withdrawal of status on public order grounds, there are guarantees established by the jurisprudence of the CNDA and the *Conseil d'Etat*, but the complete study of which could be the subject of another entire thesis.

In response to the question of this chapter, which was whether France was also affected by the change in the perception of asylum observed in European institutions and other Member States, I would personally argue that France still has a conception of asylum more oriented towards permanent protection and local integration than temporary protection and return. Not because the OFPRA and the CNDA are completely immune to the influence of public debate and government policies, which is sociologically impossible, but rather because the OFPRA does not seem to have any intention of setting up periodic status reviews in the near future and the residence permits of beneficiaries of international protection are quite long anyway. Furthermore, although it might be useful to make additional comparisons of national and foreign case law, the CNDA appears to apply higher standards of cessation than other States and rarely resorts to concepts like IPA or cessation in conflict situations. Overall, it seems that French institutions are more interested in terminating the protection of those who are regarded as disturbing public order, and are thus deemed underserving of protection (revocation issues), than those for whom protection is no longer considered necessary (cessation issues). Therefore, there does not seem to be a major shift of the French perception of asylum toward more temporary protection. It remains to be seen, in the years to come, how French institutions will be able to adapt their practices to possible reforms of the common European asylum policy.

[386] It should however be noted that the French Ministry of Interior has announced his intention to propose a law which could make "single-judge" hearings (with only one judge ruling) the norm at the CNDA. Only the most complex cases would then benefit from collegiality.

Conclusion

As an answer to the observations of several researchers about a 'revival of interest' in the cessation clauses in Europe, this thesis aimed to address the following question: is the whole European Union experiencing a shift in its perception of asylum away from permanent protection and integration towards temporary protection and return, evidenced by a tendency to increase and simplify cessation proceedings? Or is this new approach to cessation and international protection in fact limited to certain States or situations, thus not entailing a real global change in the conception of the temporality and purpose of asylum?

As a starting point, it should be noted that the drafters of the Refugee Convention did not intend international protection to be permanent. Yet, the crucial issue was to agree on the appropriate moment to end protection. Eventually, the matter was left in the hands of the States, which can decide on a case-by-case basis through their application and interpretation of cessation clauses. However, in Europe, most States have not frequently invoked the cessation clauses, except for Germany. International protection has thus become *de facto* permanent and oriented towards local integration as a durable solution. Subsequently, although the cessation clauses were reinstated in the EU Qualification Directive, which even includes its own cessation clause for subsidiary protection, Member States have continued to make rare use of these provisions.

However, the situation has been slowly shifting since the 2015 migration crisis, the growing importance of far-right political parties and the rise of security concerns linked to the fight against terrorism in Europe. Several EU states have increased their use of end-of-protection processes, including cessation. This development has also been reflected in numerous asylum reforms, the introduction of frequent status reviews and the reduction of the duration of residence permits. However, these reforms of asylum policies and the increased use of cessation are not witnessed in all EU countries. In particular, Denmark, which is not bound by the common EU asylum rules, has operated a real 'paradigm shift' by introducing quasi-constant status reviews and return-oriented forms of protection which can be ended upon the slightest change of circumstances in the country of origin. Moreover, Germany and Austria have multiplied their number of end-of-protection decisions since 2015. The Netherlands has attempted, without much success, to initiate collective status reviews for all subsidiary protection holders from the Darfur, Blue Nile and Kordofan regions of Sudan. Hungary has pursued a policy of ceasing subsidiary protection for nationals from

very fragile countries, such as Afghanistan before the Taliban took power. On the contrary, other countries do not seem to adopt this more temporary approach to asylum. This is for instance the case of France which, despite an increase of end of protection and cessation decisions, has not put in place periodic status reviews or reduced the duration of residence permits, and has maintained fairly high cessation standards. Finally, countries such as Ireland, Croatia and Spain are still barely using the cessation clauses.

Now, even though European cessation policies seem to be increasingly diverse and disharmonised, there is one actor that has the power to standardise asylum practices: the European Union. In 2016, the European Commission proposed a reform of the Common European Asylum System, of which the first measures were adopted in 2021. While cessation is a secondary issue in this reform, the Commission has announced that it wants to increase the recourse to the cessation clauses, as international protection was originally supposed to be granted only for as long as the risk of persecution or serious harm persisted. The proposed new regulations thus provide for the introduction of mandatory status reviews, the limitation of the duration of residence permits, a common analysis of COI and the harmonisation of procedural guarantees. These various measures are likely to lead to a rise in cessation in many States. Thus, the Commission's reform proposals and statements suggest a desire to promote a more temporary conception of international protection. As for the question of return, this would be left to the discretion of each Member State, which retain the possibility of granting residence permits on other grounds than asylum after cessation, but also to status holders who may decide to voluntarily resettle in their country of origin.

Furthermore, recent developments, such as the activation of temporary protection in the EU or the introduction of complementary forms of protection with lowered cessation thresholds in Denmark, show that the question of the duration of protection and of the definition of cessation standards are topical issues. In order to avoid distortion of a key concept of international protection and to ensure legal certainty for status holders, certain cessation issues could benefit from better guidance by the CJEU and multilateral discussion forums. This is notably the case for the definition of cessation standards for subsidiary protection and other forms of complementary protection, and for the assessment of changes of circumstances in conflict or post-conflict situations.

As a conclusion to this work, I would like to share some suggestions on the interpretation and application of cessation provisions, with particular reference to Georgia

Cole's own recommendations[387]. These suggestions are intended to promote the best possible protection for the fundamental rights of beneficiaries of international protection and to encourage local integration when possible, while acknowledging the States' right to terminate international protection when it is no longer justified. Firstly, it would be useful to disentangle the concepts of return and cessation. Indeed, despite the ExCom's general conclusion[388] encouraging States to consider alternative residence permits for status holders who have been living on their territory for a long time, State practices still tend to associate cessation with return. This is particularly apparent in Denmark's legislative amendments which justified the adoption of temporary protection by the desire to return beneficiaries to their countries of origin as soon as the worst hostilities have ended; but also in the Netherlands' policy of not applying cessation to those with permanent residence permits (presumably because they cannot be deported); or in Poland, where the Refugee Board's cessation decisions entail an obligation to leave the territory within 30 days (cf. Chapter II, part 3.2). Yet cessation could be a less controversial issue, causing less anxiety for status holders and resulting in fewer undocumented persons, if it were not so clearly associated with the end of residence rights and return. For example, in France, residence considerations are raised at a later stage, after cessation, by the non-asylum authorities.

Secondly, Georgia Cole has reported attempts by some States to justify the denial of protection to asylum-seekers by the previous invocation of the ceased circumstances clauses in relation to their country of origin[389]. This kind of pitfall should be avoided. Indeed, there are different reasons for receiving international protection, and while some persecutions could be punished by national authorities, others may not be. This is clearly apparent when one distinguishes between 'social' persecution (female genital mutilation, homophobia, forced marriages, etc.) and 'political' persecution (such as the fear of a particular government). A change of government will not have the same effect on these different factors of persecution, just as the end of persecution against a former group of political opponents does not mean that new political opponents are not likely to be persecuted. Therefore, the possibility of invoking cessation for certain status holders must be distinguished from the evaluation of international protection claims of other asylum-seekers.

[387] Georgia Cole, "Cessation" in Costello Cathryn, Foster Michelle, and McAdam Jane, *The Oxford Handbook of International Refugee Law*, June 2021, p. 1030-1045, url
[388] ExCom, *General Conclusion No. 69,* 1992, url
[389] Georgia Cole, *op.cit.*, url

Third, adjustments could be made to clauses 1C1 and 1C4 so that refugees can visit their countries of origin in order to assess the situation there, without fear of losing their rights to international protection. According to Georgia Cole, "evidence suggests that individuals are more likely to repatriate if they know that attempts to re-establish themselves in potentially volatile contexts would not signal a hard end to their rights as a refugee"[390]. Indeed, it cannot be excluded that these attempts will not be successful, due to continued protection needs, and the fear of cessation may prevent refugees from trying such a return. Under the proposed provisions, refugee status would be withdrawn only when a durable and ongoing presence in the country is established. However, this approach would also raise questions about the length of the trial period.

Fourth, the distinction between clauses 1C5 (for refugees with nationalities) and 1C6 (for stateless refugees) must be emphasised. Indeed, as discussed previously, several countries have merged these clauses in their national law (Cyprus, Croatia, Sweden, Spain for instance). However, in cases where cessation might lead to the loss of residence rights, the application of clause 1C6 without considering the concrete possibility for stateless persons to return to their country of former habitual residence risks creating undocumented persons in the host State. Moreover, if the country of origin accepts them back but continues to deny citizenship, UNHCR urges host States to consider alternative arrangements "for those former refugees whose children would risk to become *de jure* or *de facto* stateless"[391].

Finally, stricter procedural guarantees could be introduced in EU law. In particular, it would be interesting to ensure in all EU countries an automatic consideration of other possible grounds for protection after having established that the initial fears have ended, as well as of compelling reasons not to re-avail oneself of the protection of the country of origin. Indeed, too many EU States indicated that they did not have an established practice or practical examples of the use of compelling reasons during the EMN study on this topic[392]. Therefore, a generalisation of these considerations could be beneficial.

Hence, this conclusion put forward a set of ideas for improving cessation practices in the European Union. Today more than ever, cessation is a key concept to ensure that States are not too strict in granting international protection, as they know that protection can be

[390] *Ibid*.
[391] UNHCR, *Applicability of the "Ceased Circumstances" Cessation Clauses to Pre-1991 Refugees From Ethiopia, 1999,* url
[392] European Migration Network (EMN), *Applying the principle of compelling reasons in asylum cases*, 2021, url

ended when it is no longer needed. Nevertheless, clear rules need to be defined and updated to contemporary challenges to avoid cessation being instrumentalised by States in order to minimise their protection obligations.

Annexes

Annex 1: Number of first instance decisions withdrawing refugee status in the European Union (2008-2021)

TIME	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
GEO (Labels)														
European Union (UK included)	6 320	4 950	2 825	945	665	790	1 060	460	885	1 395	2 335	5 790	8 755	6 180
Belgium	20	55	60	25	40	60	60	50	:	165	165	155	115	135
Bulgaria	:	0	0	0	0	0	0		10	5	250	190	55	85
Czechia	0	0	0	0	0	0	5	0	190	175	0	0	0	0
Denmark	:	:	:	25	25	10	20	15	20	35	55	125	50	170
Germany	6 045	4 635	2 320	620	445	425	600	235	235	270	575	3 475	6 475	3 270
Estonia	0	0	0	0	0	0	0	0	0	5	5	5	0	5
Ireland	10	10	25	25	:	10	10	5	5	:	0	0	0	5
Greece	0	0	0	0	0	:	5	25	0	0	0	0	0	20
Spain	0	0	0	0	0	:	5	:	0	0	0	0	0	0
France	140	75	80	45	65	50	70	:	145	240	360	:	255	870
Croatia	:	:	:	:	:	0	0	5	0	0	0	0	0	0
Italy	15	80	35	15	15	20	20	10	15	45	20	20	15	55
Cyprus	:	0	0	0	:	0	0	0	0	:	:	:	0	5
Latvia	0	0	0	0	0	0	0	0	10	0	:	5	0	0
Lithuania	0	0	0	0	:	0	0	:	0	:	:	5	5	0
Luxembourg	5	0	5	0	0	0	0	0	0	0	0	:	5	0
Hungary	5	0	5	5	:	:	25	0	5	0	20	15	25	150
Malta	0	0	0	0	:	0	0	0	0	0	0	:	0	0
Netherlands	:	:	:	:	:	:	25	:	25	30	65	40	30	160
Austria	35	60	180	130	:	165	150	90	160	325	715	1 575	1 520	895
Poland	5	5	5	5	15	5	0	0	0	0	0	5	0	5
Portugal	0	0	0	:	:	0	0	:	0	0	0	0	0	0
Romania	0	0	:	15	15	15	20	15	10	15	25	30	40	15
Slovenia	0	5	10	:	5	0	0	5	0	5	5	5	5	0
Slovakia	20	5	0	:	25	0	:	0	0	0	0	0	0	0
Finland	0	:	:	:	:	:	:	0	0	0	0	0	0	110
Sweden	20	20	90	25	:	15	5	0	50	80	75	140	155	220
United Kingdom	:	:	10	10	15	15	40	5	5	:	0	0	:	:

Source: Eurostat, Decisions withdrawing status granted at first instance decision by type of status withdrawn, citizenship and reason - annual aggregated data (Accessed on 2 October 2022)

Annex 2: Number of first instance decisions withdrawing subsidiary protection in the European Union (2008-2021)

TIME	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
GEO (Labels)														
European Union (UK included)	465	1 080	1 435	525	290	540	1 140	875	1 055	1 420	3 060	6 165	4 005	2 590
Belgium	0	485	760	5	20	30	10	10	:	80	115	110	50	65
Bulgaria	:	0	0	0	0	0	0	:	25	20	495	2 395	835	15
Czechia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Denmark	:	:	:	0	10	5	75	35	20	430	230	195	100	265
Germany	240	155	195	150	115	85	45	30	40	35	185	935	1 020	1 260
Estonia	0	0	0	0	0	0	0	0	0	10	15	15	20	5
Ireland	0	0	0	0	:	0	5	0	0	:	0	0	0	0
Greece	0	0	0	0	0	:	0	0	0	0	0	0	0	0
Spain	0	0	0	0	0	:	0	:	0	5	5	0	0	0
France	0	5	0	0	5	5	5	:	5	10	45	:	45	30
Croatia	:	:	:	:	:	0	0	0	0	0	0	0	0	0
Italy	0	55	45	20	25	15	10	35	110	215	160	185	105	20
Cyprus	:	0	0	0	:	0	0	10	0	:	:	:	0	10
Latvia	0	0	0	0	0	0	0	0	0	0	:	0	0	0
Lithuania	5	10	5	0	:	0	0	:	10	:	:	5	10	0
Luxembourg	0	0	0	0	0	0	0	0	0	0	0	:	0	0
Hungary	0	20	0	5	:	:	145	15	70	80	230	65	115	140
Malta	0	0	0	0	:	0	555	555	445	170	80	:	0	15
Netherlands	:	:	:	:	:	:	150	:	80	40	60	50	25	60
Austria	85	225	385	310	:	235	65	75	120	170	1 175	1 890	1 440	440
Poland	0	0	15	25	90	35	20	15	20	80	150	100	90	25
Portugal	0	0	0	:	:	0	0	:	0	0	0	0	0	35
Romania	0	0	:	0	0	10	5	15	10	30	25	30	20	25
Slovenia	0	0	0	:	0	5	5	10	5	5	0	0	0	0
Slovakia	65	40	25	:	25	65	:	0	5	0	5	5	0	0
Finland	0	:	:	:	:	:	:	0	0	0	0	0	0	60
Sweden	70	85	5	10	:	50	45	70	90	40	85	185	120	115
United Kingdom	:	:	0	0	0	0	0	0	0	:	0	0	:	:

Source: Eurostat, Decisions withdrawing status granted at first instance decision by type of status withdrawn, citizenship and reason - annual aggregated data (Accessed on 2 October 2022)

Annex 3: Number of decisions of end of protection and cessation taken by the OFPRA per year (2005-2021)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
1. Maintenance of protection	/	/	/	/	133	200	123	97	141	123	71	109	182	157	125	121	188
2. Cessations, exclusions and withdrawals of status	106	21	99	147	85	79	47	73	56	85	146	151	258	414	263	312	864
2.0. Cessations of refugee status AND subsidiary protection	106	21	99	147	/	/	/	/	/	/	/	/	/	/	/	/	/
2.1. Cessation of refugee status (current article L.511-7)	/	/	/	/	/	75	45	60	50	77	132	107	239	305	188	191	475
2.2. Exclusion, fraud or "error"	/	/	/	/	/	4	2	10	2	2	5	24	/	/	/	/	/
2.3. Withdrawal of refugee status (current article L.511-8)	/	/	/	/	/	/	/	/	/	/	2	15	8	65	47	77	231
2.4. End of subsidiary protection (all grounds)	/	/	/	/	/	/	/	3	4	6	7	5	11	44	28	44	158
3. Naturalisations	2 203	2 197	849	1 946	1 250	1 635	1 398	1 127	1 072	4 236	4 776	4 092	4 615	2 732	3 100	2 515	3 720
4. Renunciations	1 101	668	2 384	938	914	823	1 022	956	816	1 097	1 014	1 210	1 127	1 313	1 255	949	1 291

Source: OFPRA, Activity reports from 2005 to 2021 (in French)

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