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The temporary turn in Norwegian asylum law and practice

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CONTENTS

ABBREVIATIONS

CA	Citizenship Act
CJEU	Court of Justice for the European Union
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ERPUM	European Return Platform for Unaccompanied Minors
FGM	Female Genital Mutilation
IA	Immigration Act
IMDi	Directorate of Integration and Diversity
InA	Integration Act
INCOR	Information and Counseling on Repatriation
IOM	International Organization for Migration
IPA	Internal Protection Alternative
IR	Immigration Regulations
KoS	Knowledge of Society
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex +
MUF	Temporary protection without the right to family reunification
NOAS	Norwegian Organization for Asylum Seekers
RC	Refugee Convention
TPD	Temporary Protection Directive
UAM	Unaccompanied Minor
UDI	Immigration Directorate
UNHCR	United Nations High Commissioner for Refugees

1. INTRODUCTION

This report is a mapping study produced through the project *Temporary Protection as a Durable Solution? The 'return turn' in European asylum law and policies* (TemPro).[1]

The TemPro project aims to create new knowledge about the dynamics and effects of refugee policies that reinforce the temporary nature of asylum in Europe. While the concept of 'temporary protection' is commonly understood as an exceptional response to large-scale refugee arrivals (Durieux 2015; Ineli-Ciger 2018), states increasingly grant temporary protection to individual refugees by giving them a time-limited status and/or a temporary residence permit. Indirectly, temporary protection is also produced through policies that prevent the inclusion of refugees in their countries of residence over the long-term.

Refugee status is not meant to be permanent. The 1951 Convention on the Status of Refugees and its 1967 Protocol (Refugee Convention, RC) secures protection in a third state for people compelled to leave their homes for their safety. Unless and until safe return is viable, states must facilitate refugees' inclusion in their host communities by extending, *inter alia*, rights to property, education, labor, and welfare. Refugee status is subject to withdrawal ('cessation') if a refugee either voluntarily avails herself of another state's protection, or when conditions have changed so that she no longer has a need for asylum (1C(1)-(6) RC). In other words, refugee law strikes a balance between a secure residence in countries of refuge and the possibility for sustainable returns to the country of origin. Temporary protection practices, in contrast, typically involve limited rights in countries of refuge, and they may compel repatriation to countries at least partly in conflict (Schultz 2021).

This study provides a systematic overview of temporary protection practices in Norway, from the collective temporary protection granted to refugees from the Balkans conflict and the war in Ukraine to more indirect measures that reduce the security previously associated with refugee status recognized on an individual basis. These practices of temporary protection are motivated by multiple policy objectives and implemented through different legal regimes. Some are products of the 'deterrence paradigm' animating asylum policies in Europe (Gammeltoft-Hansen & Tan 2017), which also includes efforts to externalize asylum processing, and to contain refugees in their regions of origin. But making Norway a less desirable destination is not the whole picture. Other interests underpinning these practices include state security, criminal justice, and migrant integration. As Eggebø and Staver (2020) point out, the effects of policy interaction are not always fully considered by lawmakers and politicians when new measures are introduced. Their collective impact, though, is clear: they render refugees more easily

1 See the TemPro website at: http://www.cmi.no/projects/2506-temporary-protection. Thank you to my generous colleagues Kari Anne Drangsland, Marthe Engedahl, Marry-Anne Karlsen, Esra Kaytaz and Hilde Lidén for their constructive comments on a draft of this report.

deportable, restrict mobility within and outside the country, and deny even long-term residents the possibility of full membership in Norwegian society.

This mapping lays the groundwork for ethnographic research looking at the experience of temporary protection in Norway from the perspective of those affected: refugees, their families and communities, as well as bureaucrats and service providers with a mandate to support long-term integration. It first describes how the discourse of temporary protection as a solution to refugee situations has developed since the late 1980s. While temporary protection has for decades been promoted as part of a holistic approach to refugee policy, until recently it has mainly been implemented vis-à-vis specific refugee groups. Today, meanwhile, a broader principle of temporary refuge arguably permeates all categories of protection, even though repatriation to a refugee's country of origin remains a rare outcome. After tracing this 'temporary turn' in Norwegian law and policy, I present the current legal framework for asylum permits and refugee rights in Norway. The final part of this study analyses four practices of temporary protection that limit refugee rights and reduce the security of residence: 1) the proliferation of residence statuses and differentiation of rights within them; 2) scrutiny of a refugee's right to remain; 3) obstacles to accessing permanent residence and citizenship; and 4) barriers to family unity.

2. THE TEMPORARY TURN IN REFUGEE POLICY

Norway has a long tradition of global engagement in humanitarian action and refugee protection (Gammeltoft-Hansen 2021). The Norwegian explorer Fridthjof Nansen became the League of Nations High Commissioner for Refugees in 1921 and famously introduced the refugee travel document known as the 'Nansen certificate', which allowed stateless Russian and Armenian refugees to travel to third countries to find work. The Norwegian government also participated in the Conference of Plenipotentiaries that adopted the Refugee Convention and was one of the first to sign the treaty in July 1951.

During the decades following World War II, refugee admissions was not a politically charged issue in Norway. Of the refugees that did arrive, from places like Hungary, Vietnam, and Chile, many came via formal resettlement programs or with the assistance of voluntary groups.[2] In the mid-1980s, however, the number of asylum applications lodged by 'spontaneous' arrivals in Norway increased significantly from approximately 800 in 1985 to over 8600 in 1987 (NOAS 2013:1). Like other destination countries, Norway responded by introducing visa requirements, carrier sanctions, and 'safe third country' rules enabling the removal of asylum seekers to countries of transit where they could presumably receive protection. Politicians, influenced by the debates elsewhere in Europe and at UNHCR headquarters, began discussing a 'comprehensive approach' to refugee protection which combined asylum in country with humanitarian aid and efforts to address 'root causes' of displacement abroad (Bølstad et al. 1995; Brekke 2001).

The implications of such an approach were reviewed by a working group convened by the Bruntland government in 1991. One issue discussed in its report 'Comprehensive refugee policy' ('Helhetlig flyktningpolitikk') was the practice at the time of granting refugees and humanitarian protection beneficiaries permanent residence in Norway.[3] Despite acknowledging that a predictable residence status enabled integration, the group was concerned that current practice undermined the institution of asylum by attracting migrants with primarily economic motivations. It also expressed optimism about possibilities for conflict resolution and repatriation in the post-Cold War political landscape. It therefore proposed that the first three years of a refugee's residence should not form the basis for a permanent residence permit, and that return could be enforced when conditions in the country of origin changed.

2 There were around 3000 refugees from Eastern Europe and Germany in Norway between 1945-1950 including the 1500 displaced persons (mainly Poles) already in the country at the end of WWII. Approximately 1500 refugees from Hungary came in 1956-1957 (Tjore 1997: 28-29).

3 Ministry of Local Government, 'En helhetlig flyktningpolitikk' ['A Comprehensive Refugee Policy'], Working group report, November 1992. Discussed in Brekke 1998, 45-51.

Interestingly, refugees resettled from third countries would be exempt from this probationary regime because they had already suffered from prolonged 'temporariness' in refugee camps (Brekke 2001:128).

A new working group was immediately convened to further develop the proposed principle of temporary protection, a task that coincided with the arrival of Bosnian refugees in 1992 and 1993. Its final report, 'Protection in Focus' ('Beskyttelse i fokus'), was colored by the situation at hand, but confirmed the position taken earlier that all protection should, in principle, be temporary.[4]

2.1 Temporary protection in practice: refugees from the Balkans

In October 1992, Norway agreed at the request of UNHCR to accept Bosnian refugees on a group basis. These were granted temporary permits on humanitarian grounds (§8 IA 1988) and in 1995 were given protection according to a temporary law on labor and residence permits to persons from Bosnia-Herzegovina ('Mellombels lov om arbeidsløyve eller opphaldsløyve til personar frå Bosnia-Hercegovina'). 14,000 Bosnian refugees sought protection in Norway over the course of the conflict, with most arriving in 1993 and 1994 (Dzamarija 2016).[5] In this context, collective, temporary protection was a practical tool for avoiding time-consuming individual asylum assessments and coordinating the response with other countries in Europe. As promoted by UNHCR and implemented throughout the region, collective temporary protection was also seen to be compelled by the nature of the conflict itself. If states offered permanent refuge to victims of ethnic cleansing, they undermined possibilities for minority returns when the war ended.

This collective, temporary protection regime distracted attention from the wider proposal to establish temporary protection as the default rule for all refugees. However, it fit well with other aspects of the 'comprehensive approach'. A program for voluntary return, administered by UDI and IOM, had already been established in 1990 for Chilean refugees, and by 1992 was expanded to encompass all people with asylum or residence on humanitarian grounds.[6] Under the umbrella 'return projects', UDI also supported numerous national and local efforts to provide information about return options, for example the Norwegian Refugee Council's Information and Counseling on Repatriation (INCOR) project from 1995. In 1994, the government formalized the link between asylum and country of origin assistance by placing reception center costs in Norway in the budget for international development aid (Bølstad et. al. 1995: 93).

The first government White Paper focused solely on refugee policy, No. 17 (1994–5), 'On Refugee Policy' ('Om flyktningpolitikken') solidified a reorientation of refugee assistance towards areas of refugee origin. Presenting this report on behalf of the government, the Minister for Local Government Gunnar Berge emphasized the logic in spending money where it had the most impact. As he explained:

> Protection is a limited good … Protection must primarily be given in the vicinity. That is where the most refugees are found, and there is where money stretches longest. We can help ten times as many in Croatia as in Norway for the same amount.[7]

Meanwhile, increasing returns of refugees *from* Norway was understood to keep the doors open for future arrivals (NOAS 2013:6). The White Paper emphasized the need to intensify work on voluntary return from an earlier stage (arrival) for *all* refugees – not only those with collective protection. The idea was not to push return, but rather to encourage it through incentives such as cash grants, legal

4 Ministry of Justice and Ministry of Local Government and Labor, 'Beskyttelse I focus. Prinsipper, konsekvenser og løsningsforslag når oppholdets varighet knyttes til beskyttelsesbehovet' [Protection in Focus'], Working group report, March 1993.

5 There were three main categories of Bosnian refugees who came to Norway: asylum seekers, formerly interned and other groups relocated in collaboration with UNHCR, and family members of Bosnians in Norway. UDI, Årsmelding 1995, 47.

6 White Paper no. 17 (2000-2001), 159.

7 16 December 1994, quoted in Bølstad et al. 1995: 93.

assistance and even needed medical supplies.[8] However, in contrast to the previous working group reports, this document did not propose protection checks after each of the first years of residence for all refugees. Instead, it recommended formalizing the existing regime of collective protection in situations of 'mass influx'. Accordingly, if the the need for protection ceased within a period of three years (plus one year if the situation after three years remained uncertain), a refugee would be expected to return to her country of origin.[9] After the first period, which did not provide the basis for permanent residence, a new permit could be granted to those who still need protection – and which would provide the basis for permanent residence.

2.1.1 The terms of temporary protection: a two-track approach

Despite policy and budgetary links between humanitarian aid in the Balkans, foreign policy, and asylum, temporary protection holders in Norway were afforded relatively generous access to rights and benefits compared to the national regimes adopted elsewhere in Europe. Norwegian policymakers pursued what became known as the 'the two-track approach' ('det to-sporete løpet'). This meant facilitating *both* possible outcomes of a refugee situation simultaneously: eventual return to the home country or permanent residence in Norway.[10] The reasoning provided for this approach was that integration would support a 'better' return and was inspired by research from 1993 showing that Chilean refugees who had developed strong social and economic attachments in Norway were also the most successful at reestablishing themselves in Chile (Brekke 2001: 141). Thus, although residence permits were issued for one year at a time, Bosnians were permitted to work, settle in local municipalities, and granted the right to family reunification with close family members.[11] There were, however, some distinctions compared to people recognized as Convention refugees. As beneficiaries of collective humanitarian protection, they did not receive a refugee travel document, which made it difficult to travel to other countries (Einarsen 1997: 121). They were not eligible for refugee stipends for higher education. Nor did they benefit from the 'special' welfare rights accorded refugees at the time. This included an exemption from the normal 40-year residence requirement for receiving a full pension.[12] This 'temporary integration' therefore had limits, with policy explanations as well as legal ones linked to the fact that Bosnians were granted a collective *humanitarian* status.

When the Dayton Agreement was signed in 1995, it was clear that many of the Bosnian refugees could or would not return. A political decision was made in 1996 that collective protection would be withdrawn but that Bosnians could, if they wish, apply for permanent residence. That same year, the financial component of return support was raised from 4500 NOK/person to 15,000 NOK.[13] Since Bosnians by that time knew they could apply for permanent residence, it was perhaps easier for social workers and other public employees who interfaced with them to promote a real 'informed choice' on whether to return or to stay in Norway.[14]

For those who stayed in Norway, prolonged insecurity associated with temporary protection had human costs. Despite Norway's more inclusive policies compared, for example, to Denmark and Germany, some refugees described the fact of temporary protection as a chronic stress and degrading, particularly those who could not imagine a time in the foreseeable future when conditions would be

8 For example, a Nordic program for elderly refugees provided full financial support for three years, legal help to resolve property issues, and covered the costs of medicine. White Paper no. 17 (2000-2001), 161.

9 White Paper no. 17 (1995-1996), 84.

10 White Paper no. 17 (2000-2001), 160.

11 The right to family reunification first applied to spouses and minor children, and later expanded to include unmarried children over 18 years old and parents. Einarsen 1997: 120.

12 Utrop, 'Norsk-bosniere bekymret for pensjonsrettigheter', 13 March 2019.

13 White Paper no. 17 (2000-2001), 159.

14 For example, several brochures for public employees were provided by the Regionalt Ressurssenter for Returtiltak (RRR), an 'intermunicipal project for the voluntary return of refugees'. In these materials, it was emphasized that refugees themselves 'owned' their decisions. Also, interestingly, the term 'cessation' was used in conjunction with 'exile' rather than 'protection' ('cessation of exile') to emphasize the possibility of supporting refugees who longed to return home (Eide et al. 1997).

conducive to return (Eide et al., 1997: 5). It was well-known early on that some refugees were victims of torture and former prisoners of war, or from mixed-ethnicity families that would find it hard to reintegrate into the ethnically homogenous states which emerged from the conflict.[15] Nonetheless, the suspension of individual asylum claims during the period of collective, temporary protection is an aspect of Norwegian practice that remains to this day.

The experience with Bosnian refugees motivated lawmakers to codify a general provision on 'collective protection in a mass influx situation' in the 1988 IA (§8a IA, in force January 1997). It did not take long before Kosovar war and NATO's bombing campaign created an opportunity to use it. Following intense debate within the Norwegian bureaucracy about whether to grant ordinary asylum or collective protection to Kosovar Albanian refugees, Norwegian authorities decided on the latter in April 1999. The approximately 8000 beneficiaries included 6000 evacuees from Macedonia. As with Bosnia the choice to apply collective protection was in part based on an assumption, given the tremendous NATO mobilization, that the war would brief (Brekke 2002: 35). Indeed, collective protection was withdrawn a mere three months later, and about 3600 people returned by the end of the year.[16] Of those who did not, only a small percentage were recognized with regular refugee status (Brekke 2002: 100).

2.2 Temporary protection for Kurds from Iraq

Until early 2022, with the Russian invasion of Ukraine, the opportunity to grant temporary status on a collective basis had not been exploited since the arrivals of Kosovar Albanians at the end of the 90s. However, another ad-hoc form of 'temporary protection without the right to family reunification' ('midlertidig beskyttelse uten rett til familiegjenforening', MUF) was applied in 1998 and 1999 to approximately 2000 asylum seekers, mainly with Kurdish background, from Northern Iraq. These refugees were granted a year-long permit with the expectation of return after that time, but continued instability meant that they were unable to do so. For political reasons their cases remained outside the normal asylum channels; instead, 'MUF-ers' received ad hoc residence permits based on work vias or humanitarian status. Eventually, most people originally granted MUF permits received long-term residence status in Norway.[17]

2.3 Reducing the security of residence in Norway

In 2008, following a significant increase in the number of asylum seekers in Norway,[18] the government announced '13 points' to deter future arrivals and reign in the rights of those already present.[19] Among the measures of relevance to this study included a new requirement of four years' work or education on the part of a refugee sponsor seeking to bring a new family member to Norway for family establishment,[20] and a policy of 'deferred deportation' for older unaccompanied minors (UAMs). According to previous Norwegian practice, youths who did not qualify for asylum but could not be returned in the absence of an identified caregiver would receive a residence permit on humanitarian grounds for one year at a time, with the opportunity to apply for permanent residence if

15 For example, Norway relocated at the behest of UNHCR approximately 900 people who had been forcibly interned during the war, together with close family members. White Paper no. 17 (1995-1996), 73.

16 NOAS, 'Kosovo flyktninger: hjem til hva?' 2001. Available at: https://www.noas.no/kosovoflyktninger-hjem-til-hva/.

17 NOAS, 'Bakgrunnsartikkel om MUF-saken'. Available at https://www.noas.no/bakgrunnsartikkel-om-muf-saken/.

18 Asylum applications increased from 6500 in 2007 to 14,400 in 2008, and were primarily lodged by citizens of Iraq, Eritrea, Afghanistan, Somalia, Russia, as well as stateless Palestinians. UDI Statistics, available at https://www.udi.no/globalassets/global/aarsrapporter_i/tall-og-fakta-2008.pdf.

19 Stoltenberg II Government, 'Innstramming av asylpolitikken', 3 September 2008. Available at: https://www.regjeringen.no/no/dokumentarkiv/stoltenberg-ii/aid/Nyheter-og-pressemeldinger/pressemeldinger/2008/innstramming-av-asylpolitikken/id525564/.

20 This new rule applied only to family establishment cases, not to reunification cases involving people who were close family members – spouses and minor children – already at the time protection was granted. The same requirements were also introduced for humanitarian protection holders, for both family reunification and family establishment cases.

return remained impossible after three years.[21] Under the new rules, which came into effect in 2009, UAMs who were at least 16 years old could receive a limited, non-renewable permit until the age of 18 (§8-8 IR). This policy was complemented by intensified efforts to establish return agreements with countries of refugee origin, for example through the EU-led European Return Platform for Unaccompanied Minors (ERPUM) (Lemberg-Pedersen 2015).

In 2015, the 'summer of migration' to Europe by over one million asylum seekers from Syria, Afghanistan, and elsewhere triggered intensified efforts to deter arrivals in Norway.[22] In September 2015, an Asylum Agreement was reached among all but two parties in the Norwegian parliament to address this perceived crisis of refugee arrivals.[23] Several of these measures involved making refugee protection *explicitly* more temporary, by authorizing more active reviews of refugees' continued needs for protection and the development of new forms for temporary protection status which do not provide the basis for permanent residence. Other measures made protection *implicitly* more temporary, by proposing new requirements for permanent residence and directing authorities to continue trying to establish care centers in countries of origin for UAMs without identified caregivers. This would enable return of these UAMs before the age of 18. A third category of measures relevant to this study relates to the quality of protection provided, by reducing the rights of refugees to ensure that conditions in Norway were not more attractive than in other countries. In this regard, the Agreement directed the government to propose limits to family reunification as well as to review pension rights and certain other 'special benefits' enjoyed by refugees·

In December 2015, the Ministry of Justice followed up the Asylum Agreement by releasing a comprehensive set of proposals known as Restrictions II (Innstramninger II).[24] This 150-page hearing document included a proposal to distinguish between 'refugee status' under §28 para 1(a) (based on the criteria under the 1951 Refugee Convention) and §28 para 1(b) (covering persons protected from return under human rights law, i.e. article 3 ECHR). Recognition as a refugee under §28 para 1(a) would give the status holder those rights and benefits that attach under the Convention while persons whose claims currently fall under §28 para 1(b) would receive a subsidiary protection status (new §28a). This status would effectively suspend family reunification (since beneficiaries would have to fulfill the maintenance requirements demanded of non-refugees) and would be presumably easier to withdraw even if the strict requirements for ceasing refugee status are not met.[25] Further, the Ministry proposed a new §28b, which opened for future regulation of mass influx situations, including by granting a limited two-year permit that does not form the basis for permanent residence or family reunification.[26] A third suggestion was to establish a new temporary status for unaccompanied minors whose refugee status was based on a 'child-sensitive' interpretation of the risks they would face upon return. Instead of receiving a regular refugee status, these minors would receive a limited one until the age of 18, at which point their continued protection needs would be reevaluated.[27] Meanwhile, children 'without a protection need' who receive residence on humanitarian grounds because they lack a caregiver in the

21 Stoltenberg II Government, 'On temporary permits to unaccompanied minor asylum seekers over 16 years old', published on September 5, 2008. Available at: https://www.regjeringen.no/no/dokumentarkiv/stoltenberg-ii/aid/Nyheter-og-pressemeldinger/nyheter/2008/om-midlertidig-tillatelse-til-enslige-mi/id525802/.

22 In 2015, the number of people seeking protection in Norway rose to over 31,000, compared to around 11,000 per year in 2013 and 2014. UDI Statistics available at https://www.udi.no/statistikk-og-analyse/statistikk/?year=0&filter=42&page=1.

23 Norwegian Parliament, Asylum Agreement of 19 November 2015. Available at https://www.nrk.no/norge/her-er-asylavtalen-1.12662331.

24 Ministry of Justice, 'Høringsnotat – Endringer I Utlendingslovgivningen (Innstramninger II)' ['Proposal for Hearing – Changes in Immigration Legislation (Restrictions II)'], December 2015. Available at: https://www.regjeringen.no/contentassets/2ff18fdc06674a43ae3fa26da4532abc/horingsnotat.pdf.

25 Ibid., 6.2.4. According to the proposal, subsidiary protection holders would not benefit from favored treatment accorded to refugees related to family reunification, pension rights, disability benefits and so on, nor would their close family members benefit from derived refugee status. Another difference is the point in time from which their residence in Norway begins to count towards permanent residence. For a Convention refugee it would be at the time of the asylum application, whereas for other refugees it would be at the time the residence permit is granted.

26 Ibid., 6.3.4.

27 Restrictions II, 6.4.3 (proposal for a new §28 c).

country of origin would also be granted a permit until the age of 18, no matter how old they were at the time of their arrival in Norway.

Other proposals included longer qualification periods for permanent residence; sharpened requirements for permanent residence in terms of income, Norwegian language skills and knowledge of Norwegian society; and removing the favorable conditions refugees have for family reunification – by introducing a maintenance requirement, the requirement of four years' work or education and the requirement that there are no other countries in which the family could reunite.[28] The Ministry also advocated removing the 'reasonableness' test for application of the 'internal protection alternative' (IPA) as a basis for refusing or withdrawing refugee status if the person concerned could safely relocate within their country of origin.

Following feedback from the hearing process, a new proposal was presented to Parliament in April 2016,[29] and final positions clarified through a Parliamentary committee review in June of the same year.[30] Parliament approved an amendment to the Immigration Act removing the 'reasonableness' criterion for application of the IPA as a ground for refusing refugee status. This change to IPA practice particularly affected Afghan families and UAMs without networks in the proposed place of return, for whom relocation would previously be considered 'unreasonable' (Schultz 2017). In addition, as described below, changes to permanent residence criteria were adopted.

Among the proposals not approved at this time: temporary protection for all UAMs, the new category for subsidiary protection, the special rules in situations of large-scale arrivals, additional requirements for refugee family reunification, and extending the residence period for permanent residence from three to five years. A proposal for subsidiary protection in times of mass influx was reintroduced several years later, and the extension of temporary residence from three to five years was eventually passed in December 2020 (see 4.3.1).

2.3.1 Recent developments: controlling the right to remain

The combined interests in deterrence, security and integration evidenced in the restrictive policies triggered by higher arrival numbers in 2008 and 2015 continue to shape Norwegian asylum practice despite a substantial fall in asylum claims after the EU-Turkey Agreement came into effect.[31] Resources mobilized for asylum processing in 2015-2016 were shifted instead in 2016–2017 to pursue the control of (im)migrants present in Norway.[32] As elsewhere in Europe (EASO 2021), Norwegian immigration authorities intensified application of cessation and revocation grounds in order to permit removal of (former) under refugees. These grounds are set out in four provisions of the Immigration Act: §31 (revocation of refugee status on grounds of serious criminality), §37 (cessation of refugee status), §63 (the cancellation of temporary or permanent residence permits on the basis of fraud) and §126 (deportation on grounds of fundamental national interests) (Brekke et. al., 2019). Somewhat confusingly, since 'cessation', 'revocation' and 'cancellation' have distinct meanings in refugee law (UNCHR 2003: para 4), they are collectively termed 'revocation' ('tilbakekall') in Norwegian policy

28 The reasoning for the changes to family reunification was tied in the formal legislative proposal to the reinvigorated cessation practice, which undermines the presumption of stay for refugees in Norway during the years prior to receiving permanent residence. See Prop 90L (2015-2016), 'Endringer i utlendingsloven mv. (innstramninger II)' [Proposed Changes to the Immigration Act, etc (Restrictions II)], 5 April 2016, 7.1.6.1. Available at https://www.regjeringen.no/no/dokumenter/prop.-90-l-20152016/id2481758/. After committee review, the position eventually presented to Parliament (but which was not approved) reduced the proposed work or education requirement from four years to three, as a temporary policy to be reviewed in 2019. See Innst. 391 L (2015–2016), 4.1.1.6. Available at https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2015-2016/inns-201516-391.pdf.

29 Prop. 90 L (2015–2016).

30 Innst. 391 L (2015-2016).

31 Only 3640 asylum seekers came to Norway in 2016, the lowest number in 20 years. Statistics available from UDI at: https://www.udi.no/statistikk-og-analyse/statistikk/asylsoknader-etter-statsborgerskap-aldersgruppe-og-kjonn-2016/.

32 Aftenposten, 'Norge har nå den største nedgangen i asylankomster i Europa – derfor kan UDI nå bruke ressurser på å granske asyljuks', 12 January 2017.

and practice.[33] As discussed in section 4.2.3, this elision of terminology has influenced legal reasoning in some cases, distorting the scope of protection against return for refugees with criminal records or suspected of misleading authorities about aspects of their original claim.

Externally, Norway has continued to pursue return agreements with major refugee sending states and make explicit links between its aid and asylum policies.[34] Norwegian authorities contribute to Frontex operations that control Europe's outer borders. They have also participated in unsuccessful efforts to establish centers for UAMs in Kabul.[35] Thus, maintaining the possibility of return for people not in need of international protection has remained a strong priority in both the domestic and international aspects of Norway's refugee protection regime.

2.4 Collective protection revisited: refugees from Ukraine

Following the Russian invasion of Ukraine, the Council of Europe unanimously decided on March 4, 2022 to activate the 2001 Temporary Protection Directive (TPD).[36] Although Norway is not bound by the TPD, the government announced the same day it would apply the long-dormant domestic provision on 'collective protection' codified in §34 IA to refugees from Ukraine.[37] The personal scope of collective protection includes: 1) Ukrainian nationals resident in Ukraine before 24 February 2022; 2) Ukrainian nationals legally resident in Norway before 24 February 2022, or who came to Norway later on the basis of a residence permit; 3) third country nationals and stateless people who had received international protection or similar protection in Ukraine before 24 February 2022; and 4) third country nationals and stateless people who are close family members of people in the other categories, including spouses, partners, children under the age of 18 and other family members who were part of the same household (i.e. grandparents, siblings and adult children) (§7-5a IR).[38] Unlike the TPD, the personal scope for collective protection in Norway does not include stateless persons or third country nationals with permanent residence in Ukraine. Refugees with this profile are instead subject to the normal asylum procedure.

Beneficiaries of collective protection receive a one-year permit renewable for a period of three years. They are granted access to school, the labor market and health care on par with other refugees. As described below, they have the right, although not an obligation, to participate in the introduction program, including language training and career guidance. They also benefit from more relaxed mobility rules: within Norway, refugees from Ukraine can either choose to be settled through official channels or do so on their own (although in the latter case, if the municipality lacks capacity, they may forgo certain forms of support). Unlike other refugees whose travel to their country of origin may provide grounds for withdrawal of refugee status (see 4.2.3), refugees from Ukraine may travel freely. They are also, importantly, exempt from the normal application of the Dublin Regulation which would have required them to seek protection in safe countries closer to home.

What is notable about temporary, collective protection policies in this context is that they are detached from the presumption that protection needs will be temporary. The explicit goal of the

33 From March 2017, UDI's case processing system ('Datasystemet for utlendings og flyktningsaker') started registering revocation as its own category of cases.

34 Bistandsaktuelt, 'Ny regjering vil kople bistand og retur av asylsøkere', 14 January 2018.

35 Terje Einarsen and Jessica Schultz, 'Danish-Norwegian Return Center for Minors in Kabul: Well-Founded Initiative?' The Globe Post, 10 July 2018.

36 Council of Europe, 'Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection', 4 March 2022. Available at https://data.consilium.europa.eu/doc/document/ST-6846-2022-INIT/en/pdf. As a non-EU member state Norway is not bound by the TPD.

37 See the government's press release on 4 March 2022, 'Temporary collective protection for Ukrainians'. Available at https://www.regjeringen.no/no/aktuelt/midlertidig-kollektiv-beskyttelse-for-ukrainere/id2903140/.

38 The new provision of the Immigration Regulations on 'temporary collective protection from persons displaced from Ukraine' (§7-5a) was added on 11 March 2022. Exceptions to the personal scope include people who are excludable from refugee status because they would be excludable from refugee status (§31 IA) or their presence would harm fundamental national interests or foreign policy considerations (§126 IA).

legislative amendments adopted to accommodate refugees from the Ukraine is to facilitate their inclusion in Norway. As explained in the explanatory note to the original proposal:

> it is necessary to plan for the possibility that the need for protection will be *of a certain duration*. The government's basic objective is to ensure that the displaced have a good stay in Norway and can quickly participate in Norwegian society. Children must be allowed to go to school or kindergarten and interact with other children. Adults should be supported to start work or another activity as soon as possible.[39]

At the same time, the suspension of asylum claims during the period of collective protection means that those who may need long-term protection based on their personal circumstances, for example those already displaced within Ukraine when the war broke out, are not able to move on with their lives in the knowledge that they have a secure residence status. While this legal limbo was identified as a problem for Bosnian refugees who knew they could not safely return after the war, it is exacerbated for refugees from Ukraine because of the additional criteria for permanent residence that have been introduced in the intervening decades.

2.5 Taking stock: temporary protection over time

For the first few decades following the end of World War II and the beginning of the international refugee protection regime, countries in the Global North, for ideological as well as practical reasons, tended to grant permanent asylum to people they recognized as refugees. This presumption of permanence shifted in the 1980s with increasingly restrictive asylum policies as well as an optimistic perception that conflicts producing refugees were not as entrenched as they were during the Cold War. Countries in the Global North discussed 'comprehensive approaches' to refugee policy, including conflict prevention, peacebuilding, and aid to regions of refugee origin. This provided fertile ground for the position that asylum in Norway should be preserved for those with a current need for protection. Ensuring that those who can return do so would enable Norwegian society to retain its capacity for future arrivals. This 'recycling' or 'revolving door' argument appealingly reconciled humanitarian imperatives with increasing public skepticism towards the institution of asylum. The crisis in the Balkans provided an opportunity for states, including Norway, to introduce regimes of explicitly temporary protection with a view to eventual return.

While temporary protection was implemented during the 1990s on a group basis, the proposal that all protection should be probationary, at least during the first few years of a refugee's residence, did not take hold for another two decades. It reemerged in the wake of increased refugee arrivals in 2015. Among the restrictive asylum and immigration policies introduced at that time was mandatory application of the Immigration Act's cessation provisions when a refugee no longer has a need for asylum. However, actual returns have only rarely materialized.

The 'recycling' argument from the 1980s and 90s has shifted to rhetoric around the 'sustainability' of asylum policies and the welfare state in the long term.[40] The probationary aspect of residence is no longer limited to proving current protection needs but also extends to non-protection concerns such as adequate income, language proficiency and so on. In other words, a range of state interests directly and indirectly shape the security of a refugee's residence status.

Part 4 describes the various mechanisms through which this 'temporary turn' has been implemented. First, however, it is useful to understand the legal and policy framework through which refugee

39 Ministry of Justice, 'Høring – midlertidige endringer i lovverket som følge av ankomst av fordrevne fra Ukraina med rett til midlertidig kollektiv beskyttelse' ['Hearing – temporary changes to legislation following the arrival of forcibly displaced from Ukraine with a right to temporary collective protection'], 5 April 2022 (my italics). Available at: https://www.regjeringen.no/no/dokumenter/horing-midlertidige-endringer-i-lovverket-som-folge-av-ankomst-av-fordrevne-fra-ukraina-med-rett-til-midlertidig-kollektiv-beskyttelse/id2907456/. In fact, early proposals to limit municipalities' obligations to offer language training were based on perceived limited capacities rather than any idea that this might discourage future returns.

40 See, for example, Innst. 391 L – 2015–2016, 4.1.1.6.

protection is implemented. The following sections describe who qualifies for asylum in Norway, and what rights attach to various protection regimes.

3. THE LEGAL FRAMEWORK FOR REFUGEE PROTECTION IN NORWAY

When collective, temporary protection was introduced in the 1990s, refugee status in Norway had been reserved for a very specific subset of refugees, for example political dissidents who escaped state persecution (Einarsen 1997). Even though the victims of ethnic cleansing in the Balkans clearly meet the criteria for refugee status under the 1951 Refugee Convention and its 1967 Protocol to which Norway is a party, these 'war refugees' were considered outside the normal application of refugee law. In this context, temporary protection was developed within the broadly humanitarian approach to refugee protection that existed at the time.

The extremely low percentage of recognized refugees was heavily criticized by UNHCR and led, with the current 2008 IA and the Immigration Regulations (IR) to an alignment of 'refugee status' with Norway's obligations under the RC and human rights law. One of the main intentions of the new Act was to ensure that people with a claim to protection under international law are recognized as refugees, in contrast to those who cannot or should not be returned for humanitarian reasons. Further, a decision was made to make the rights of RC refugees who face a 'well-founded fear of persecution' equivalent to those people protected from return under human rights law (for example because they risked torture, inhuman and/or degrading treatment upon return). The significant percentage of claimants who receive refugee status today (at a high of 78 percent of cases in 2020) is due to these changes in the legal framework, the fact that many claimants have strong cases and greater awareness of legal obligations within the asylum bureaucracy.

The number of asylum seekers in Norway varies from year to year. Arrivals decreased following the EU-Turkey Agreement in 2016, which prevented many refugees fleeing the Middle East and Africa from reaching the borders of Europe. The Covid pandemic reduced global mobility dramatically, making it even more difficult for refugees to access asylum. In 2021, for example, only 1026 males and 630 females applied for asylum in Norway, including 1208 adults.[41] Among the children were 181 unaccompanied minors, mainly nationals of Afghanistan and Syria.[42]

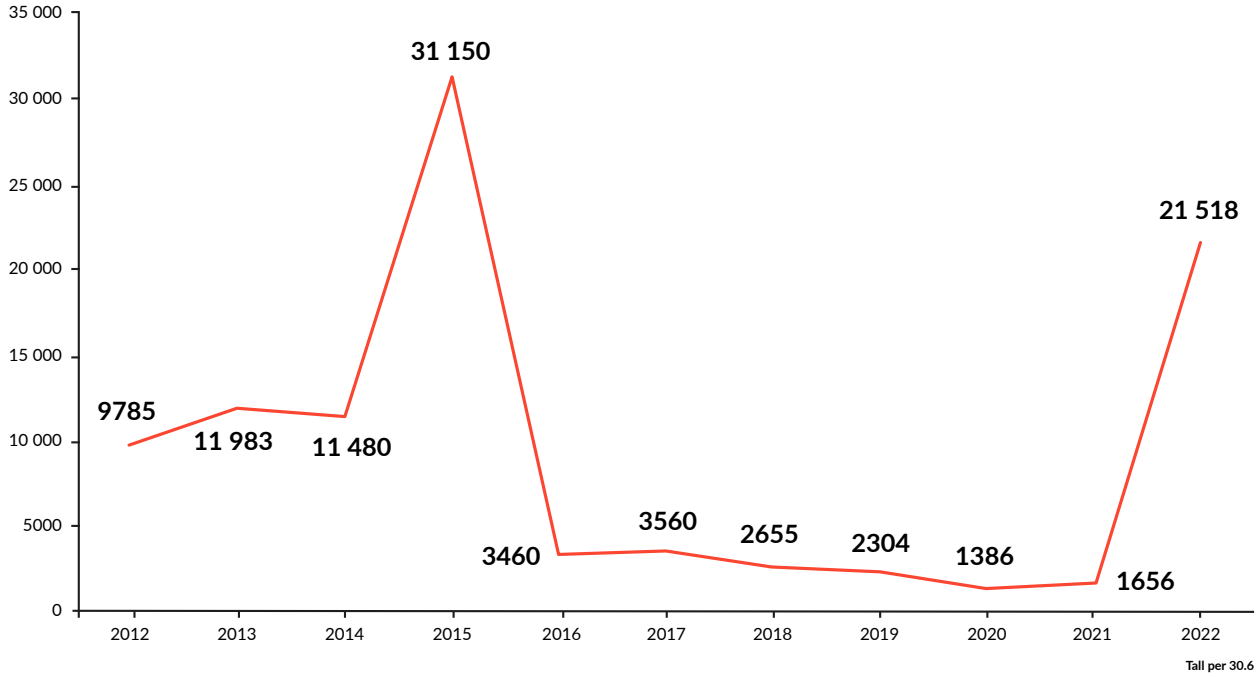
With the outbreak of war in Ukraine in February 2022, this declining trend has reversed. As of July 2022, approximately 22,000 persons from Ukraine had sought asylum in Norway.[43] Most of these, including Ukrainian nationals and people with refugee status in Ukraine, receive collective protection under §34 of the Immigration Act (see 3.2). The large majority are women (approximately 50%), children (30%) and the elderly, since most Ukrainian men between the ages of 18 and 60 are conscripted into military service.

41 https://www.udi.no/statistikk-og-analyse/statistikk/asylsoknader-etter-statsborgerskap-aldersgruppe-og-kjonn-2021/.

42 https://www.udi.no/statistikk-og-analyse/statistikk/asylsoknader-enslige-mindrearige-asylsokere-2021/.

43 https://www.udi.no/statistikk-og-analyse/statistikk/asylsokere-fra-ukraina-i-2022/#Omstatistikken

Figure 1: Number of asylum seekers in Norway, 2012-2020



Source: NOAS, Rikets tilstand 2022

Table 1: The 10 most common countries of origin for asylum claimants in Norway, 2021

No.	Country	Persons
1	Syria	586
2	Afghanistan	261
3	Eritrea	181
4	China	101
5	Turkey	98
6	Colombia	43
7	Iraq	35
8	Stateless	34
9	Ethiopia	34
10	Iran	32

Source: UDI https://www.udi.no/globalassets/global/informasjonsnotater/informasjonsnotat-20210.pdf

In the following discussion, the focus will be on forms of protection granted to persons who either are recognized as refugees or could be, following an individual assessment of their claim. As a point of departure, it excludes 'humanitarian protection holders', i.e. people who do not qualify for asylum but for humanitarian reasons and/or their close attachments to Norway are nonetheless granted residence on humanitarian grounds. However, it is important to note that the distinction between humanitarian protection and asylum – which has historically been rather blurred in Norwegian practice (Bailliet 2003) – is further problematized by domestic interpretations of refugee law that arguably breach treaty obligations. For example, since amendments to the Immigration Act removed the 'reasonableness' requirement from IPA application, refugee claims where 'return' to internal displacement was unreasonable, are either refused entirely or, in the case of UAMs without a caregiver in the return area, result in residence until the age of 18 on humanitarian grounds (§38 IA).

3.1 Qualification for refugee status

Section §28 of the Immigration Act of 2008 (IA) sets out the following criteria for refugee status:

A foreign national who is in the Norwegian realm or at the Norwegian border shall, upon application, be recognized as a refugee if the foreign national

a. has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin, see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or
b. without falling within the scope of (a) nevertheless faces a real risk of being subjected to a death penalty, torture or other inhumane or degrading treatment or punishment upon return to his or her country of origin.

Norwegian law thus recognizes refugee status for persons who meet the refugee definition established in the 1951 Convention as modified by the 1967 Protocol. In addition, it extends refugee status to persons for whom return presents a 'real risk' of torture, inhuman or degrading treatment or punishment in breach of Article 3 ECHR and other human rights instruments. A proposal to distinguish these two grounds for protection and give the latter a 'subsidiary' form of protection in line with practice elsewhere in Europe, was rejected by Parliament in 2016 but has since been re-introduced (see 4.1).[44]

Section §28 IA also, in line with Norway's obligations under the Convention on the Rights of the Child (CRC), confirms that 'account shall be taken of whether the applicant is a child' in the asylum assessment (§28 para 3). This means that the risk of persecution or ill-treatment should be done in a 'child sensitive' manner and recognizes that children are exposed to unique forms of harm (child marriage, underage recruitment, etc). Finally, §28 IA carves out an exception to refugee status when authorities determine that the claimant can access 'effective protection' in another part of his or her country of origin—the so-called 'internal protection alternative' (IPA) (§28 para 5). The legal criteria for application of the IPA have been the subject of much debate through the years, but it undoubtedly remains an important limit on an otherwise broad scope for recognizing refugee status in Norway.

People who are excluded from refugee status because there are reasons to believe they have committed war crimes, crimes against humanity or serious non-political crimes but cannot be deported because they risk serious harms in the country of origin receive 'protection from return' (§74 IA), and a residence permit of normally 6-months duration, which can be extended if the risk in question remains (§15-2 IR). Recipients do not have the right to travel to other countries within the Schengen area.

44 Prop. 90 L (2015–2016), 6.1.2.

3.1.1 Complementary paths to protection: resettlement and relocation

In addition to those who claim asylum at the border or within Norway, refugees and asylum seekers may be admitted from third countries – typically in the region of the refugee-producing country or a so-called 'transit' state (§35 IA). This section describes the two main mechanisms through which such transfers take place.

The first mechanism is resettlement, through which Norwegian authorities accept a certain number of refugees each year from third countries typically hosting a large refugee population. The Norwegian Parliament establishes the size of this quota, based on the government's budget proposal. The Ministry of Justice has, in its instructions on the topic, set out the criteria for establishing 'sub-quotas' for specific refugee groups as well as the individual factors to be taken into account.[45] The latter include, for example,

1. The refugee's need for international protection
2. The need for resettlement
3. Families with children under the age of 18 shall be given priority
4. Women at risk (given priority)
5. LGBTQI+-persons (given priority)

In addition, the 2021 criteria prioritize Christians, Ahmaddiyya-Muslims, and Yezidis who are targets of religious persecution.

Resettlement is facilitated by UNHCR and undertaken as part of Norway's humanitarian obligations in line with, *inter alia*, the Global Compact on Refugees and its Comprehensive Refugee Response Framework.[46] It is designed as a 'durable solution' in cases where neither return to the country of origin nor integration in the country of first asylum are viable. Most beneficiaries of resettlement in Norway receive refugee status, and they are explicitly excluded from cessation practice (see 4.2). In other words, their continued need for protection is not questioned over time. On the other hand, resettled refugees face the same obstacles that other refugees do when it comes to qualifying for permanent residence, family establishment and so on.

In addition to resettlement, Norway participates in EU-organized relocation programs intended to ease pressure on Europe's southern borders by transferring asylum seekers to other countries to have their claim considered. In 2015, the Norwegian Parliament agreed to take 1500 asylum seekers from Italy and Germany who were likely to have a need for protection (mainly Syrians and Eritreans).[47] Unlike resettled refugees, who are already determined to meet the refugee criteria and therefore are immediately settled in local municipality, these asylum seekers relocated in 2016 and 2017 went through the same process as those who come to Norway on their own; that is, they lived in a reception center until their claims were determined. In 2020, the Government decided to relocate 'vulnerable Syrian families with children' from Greece (a total of 50 people). These too were selected because they likely met the criteria for refugee status in Norway: in other words, there was no reason to think that they were 'excludable' on ground of serious criminality, war crimes or other threats to Norway's national interests.[48]

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45 Ministry of Justice, G-15/2020, 5. Available at https://www.regjeringen.no/contentassets/47fe09b332c54f95aad990583df64da6/rundskriv-g-15-2020---retningslinjer-for-arbeidet-med-overforingsflyktninger.pdf. Criteria for selecting the sub-groups include their need for protection and durable solutions; the host-country's need for burden sharing; experiences with operational cooperation with UNHCR at the relevant local office; assessment of the refugee group and whether it consists of many vulnerable refugees (women or girls at risk, or LGBTQI+ persons); integration potential including refugees' skills; and the capacity of receiving municipalities to accommodate the group in question.

46 For data regarding state action to provide 'solutions' through resettlement and complementary pathways under the UN Global Compact on Refugees, see https://globalcompactrefugees.org/article/solutions-grf-anniversary.

47 For an explanation of relocation practice (in Norwegian), see UDI's webpage at https://www.udi.no/ord-og-begreper/relokalisering-av-asylsokere/.

48 Ibid. See also Ministry of Justice, GI-12/2020. Available at: https://www.regjeringen.no/no/dokumenter/gi-122020-frivillig-relokalisering-av-asylsokere-som-befinner-seg-i-hellas/id2741090/.

3.1.2 The rights of refugees

Persons recognized as refugees under §28 para 1 (a) and (b) IA benefit from distinct rights that follow from that status.[49] Compared to other foreign nationals in Norway, refugees enjoy fewer hurdles to family reunification,[50] a right to travel documents, and privileged access to some social welfare benefits including support to higher education. When it comes to accessing permanent residence, the period of consecutive residence in Norway required to qualify starts at the date of their application for asylum, in contrast to the date of an admissions decision which is the case for other migrants (§11-2 IR).

In recent years, however, measures have been adopted to reduce the 'special rights' of refugees. These changes have been justified to secure a sustainable welfare system that isn't perceived to be more generous than that in neighboring countries, and to promote equal treatment between refugees and others with limited periods of residence in Norway. For example, refugees were long excluded from the normal requirement of 40 years' earnings to receive full pension support. Now, both retirement and disability benefits are based on a needs-based system, in which payments are adjusted to the refugee's income and savings and must be applied for each year.[51] Furthermore, a five-year probationary period was introduced before refugees (and others) are able to receive certain benefits, including retirement and disability payments, cash support for children, and transitional support for single parents. These changes have resulted in increased kindergarten enrollment rates for young children of recently arrived refugees, but they create a more precarious economic situation for refugees, particularly women, who have lower rates of employment than the population at large (see 4.3.2).[52]

3.2 Collective protection in cases of mass influx

The provision on collective protection introduced in 1997 was carried over to the current Immigration Act, with the drafting committee citing in support of this decision the new EU Temporary Protection Directive from 2001 which mirrored in most ways the existing provision in Norway. While some actors in the hearing rounds raised concerns about the possibility of postponing individualized asylum assessments during the period of protection, the text was approved without significant debate.[53] Identification of situations of mass influx, as well as the eventual withdrawal of protection, would occur in consultation with UNHCR and other relevant countries.

The original § 34 IA on 'Collective protection in a mass flight situation' provided that

> … Any foreign national who is caught up in a situation of mass flight as mentioned in the first paragraph, and who arrives in the realm or is here when this section becomes applicable, may upon application be granted a temporary residence permit on the basis of a group assessment (collective protection). Such a permit shall not provide the basis for a permanent residence permit. The permit shall apply for one year and may be renewed or extended for a period not exceeding three years from the date on which the foreign national first received a residence permit. A temporary permit may thereafter be granted that may provide the basis for a permanent residence permit. After one year with such a permit, a permanent

49 Articles 2-34 of the 1951 Refugee Convention set out the rights and benefits owed to people with refugee status.

50 Refugees do not need to meet an income requirement for family reunification with their spouse, partner, or children under 18. In the case of unaccompanied minors these rules also apply to parents and unmarried siblings under the age of 18. Refugees also benefit from lower fees for family reunification applications. See UDI, "Lavere gebyr for ektefeller samboere og foreldre til flyktninger." Available at: https://www.udi.no/viktige-meldinger/lavere-gebyr-for-ektefeller-samboere-og-foreldre-til-flyktninger/?fbclid=IwAR2OMmpy1I6TAT6Is8fpBxzmdUbPoGuNvP_rjbjs39Mf_p_0b5ghhOZv4iY.

51 See the discussion (in Norwegian) in Ministry of Labor and Inclusion, Prop. 10 L (2019–2020), 'Endringer i folketrygdloven og enkelte andre lover (samleproposisjon høsten 2019)' ['Changes to the Welfare Act and other laws'] with further reference to Prop. 85 L (2016–2017). Available at https://www.regjeringen.no/no/dokumenter/prop.-10-l-20192020/id2676058/?ch=7.

52 See, i.e. the responses of hearing instances in the legislative proposal. Department of Labour and Inclusion, Prop. 85 L (2016–2017), 'Endringer i folketrygdloven, kontantstøtteloven og lov om supplerande stønad til personar med kort butid i Noreg' ['Changes to the Welfare Act, the Cash Support Act and the Act on Supplementary Support for People with Short Periods of Residence in Norway'], para 5.3. Available at: https://www.regjeringen.no/no/dokumenter/prop.-85-l-20162017/id2546645/?ch=5.

53 Ministry of Labor and Inclusion, Ot.prp.nr. 75 (2006-2007) 5.10.

> residence permit shall be granted provided the conditions for holding the permit are still present and all other conditions are satisfied …

Furthermore, an application for refugee status (§28 IA) may be suspended for a period not exceeding three years from the date of the foreigner's first permit. The possibility of applying for refugee status arises again when the collective protection has ceased, or the three-year time limit has passed.

Subsequent changes to the Immigration Act in 2016 included an extension of the period of temporary residence needed to qualify for permanent residence *after* the initial three years of collective protection from one year to three years. In 2020 this period was extended by a further two years. The current provision on collective protection states that 'after five years with (a temporary residence permit), permanent residence shall be granted as long as the conditions for such a permit are present and other conditions are met under §62 of the Act' (§34 IA). This means that a refugee with collective protection will not be eligible for permanent residence in Norway until at least 8 years have passed since he or she first received protection (see 4.3.1).

During the period of collective protection, it is assumed that the scope of refugee rights approximates that granted to refugees whose claims were assessed individually. The Refugee Convention lacks a formal derogation clause to regulate extraordinary situations, meaning that temporary protection beneficiaries are properly presumed to be refugees until an individualized determination is made. This was noted in the drafting history of the Immigration Act, which cited UNHCR's ExCom pronouncement that 'implementation of temporary protection must not diminish the protection afforded to refugees under the (1951 Refugee Convention and the 1967 Protocol)'.[54] This has generally been followed up in the legislative amendments affecting refugees from Ukraine.

3.3 The legal framework for refugee integration

Despite the increased focus by Norwegian authorities on the possible return of refugees, integration policies during the past decade have shifted to a longer-term perspective that emphasizes achieving qualifications through work and education. The Integration Act (InA) of 2021 accordingly provides for an early mapping of refugees' backgrounds and competencies to tailor an appropriate career plan. The new introduction program varies from three months to four years depending on a person's level of education, age, and goals. Those with the least education have a right, at least on paper, to more intensive forms of support.

The Integration Act establishes the right and duty for refugees between the ages of 18 and 55 to participate in an introduction program, which includes courses in language and Norwegian society, a course in 'life mastery', and a parenting course for participants with children under 18 (§14 InA). In line with other civic integration requirements, outcomes are measured by results rather than effort. Participants in the introduction program receive financial support for their living expenses, which was approximately 220,000 NOK a year (2022), and subject to tax.

People covered by these measures include refugees with a protection need under §28 IA, persons with renewable permits on the basis of 'strong humanitarian considerations' (§38 IA), and even collective protection beneficiaries (§34 IA) with explicitly temporary permits (§9 InA). Program participants also include UAMs whose deportation is delayed until the age of 18, despite the short period of time they are expected to stay. On the other hand, people with limited permits on grounds of identity issues are excluded from introduction programs *even though* their residence permit is renewable. This relates to the fact that municipal settlement occurs as a rule after one's identity has been established. An exception was made for minors and families with children with uncertain identities in 2018; these groups now receive settlement and access to the introduction program.

54 Ministry of Labour and Inclusion, Ot.prp.nr. 75 (2006-2007) 5.10, citing UNHCR, General Conclusion on International Protection No. 74 (XLV) – 1994, 7 October 1994, No. 74 (XLV), paragraph (t). Available at https://www.refworld.org/docid/3ae68c6a4.html.

Beneficiaries of collective protection from Ukraine are, according to temporary legislative amendments, exempt from the requirement to participate in the introduction program and take language courses.[55] However, those who reside in a municipality by formal agreement with the Directorate of Integration and Diversity (IMDi) may do so if they choose.

55 'Lov om midlertidige endringer i lovverket som følge av ankomst av fordrevne fra Ukraina' ['Law on temporary changes to the legal framework following the arrival of displaced persons from Ukraine'] passed on 3 June 2022. Available at: https://lovdata.no/static/LOVVED/lovved-202122-088.pdf.

4. PRACTICES OF TEMPORARY PROTECTION

The 'temporary turn' in refugee protection in Norway is produced directly and indirectly through four main categories of measures: the proliferation of protection categories and differentiation of rights within them; increased scrutiny of refugees' right to remain; non-protection related obstacles to permanent residence and citizenship; and barriers to family reunification. This section looks at each of these practices in turn, demonstrating how they produce a continuum of precarity that disrupts the linear relationship between refugees' length of residence and their (potential) legal, social and economic inclusion in Norway.

4.1 Proliferation of protection categories as a tool of migration control

The proliferation of protection categories with calibrated rights regimes is well-documented technique of migration management (Zetter 2007; Demetriou 2019). This was evidenced in the 1990s with the decision by European states to suspend the assessment of refugee status and instead grant collective protection to Bosnian and Kosovar refugees in the 1990s. Today, a calibration of protection needs and rights appears not only in the temporary protection regimes for refugees from Ukraine, but also in the distinction made in many jurisdictions between Convention refugees, who receive 'refugee status' and those granted 'subsidiary protection' based on other human rights obligations. Subsidiary protection beneficiaries may be granted shorter residence permits and fewer rights in their countries of residence, including more limited access to family reunification. In Norway, lawmakers considered and rejected distinguishing between groups of people with a recognized need for international protection when the current Immigration Act was drafted in the early 2000s. This decision has since been challenged. As described in section 2.3, a proposal to introduce a subsidiary protection status in Norway failed in 2016.[56] A revised proposal in 2020 links subsidiary protection status to situations where the number of arriving asylum seekers has significantly increased.[57] In this proposal, which emerged from the Solberg government's Granavolden political platform,[58] the Ministry of Justice states that Norway's 'expanded' refugee concept provides incentives for asylum seekers to come to Norway instead of other European countries. To reduce this risk, a new subsidiary status could be applied in times of increased arrivals for people protected from return on grounds not covered by the Refugee Convention. Residence permission would be granted for a probationary period of two years. Afterwards, if conditions have not improved in the country of origin, the beneficiary would receive an ordinary temporary residence permit that also provides the basis for permanent residence and family reunification. Thus, the path to permanent residence for this group would be lengthened by two years, extending the possibility for authorities to withdraw protection when the need no longer exists.[59] As of mid-2022, this proposal was still under consideration, its relevance diminished by the activation of the provision on 'collective protection' for refugees from Ukraine.

The government has also suggested making all protection of UAMs granted on the basis of a 'child sensitive' assessment temporary until the age of 18.[60] This permit would not be renewable or provide the basis for family reunification, but at the age of 18 a new assessment would be made of whether the criteria for either asylum under §28 IA or residence on humanitarian grounds (§38 IA)

56 Proposal for the state budget of 2016, Prop. 1 S Tillegg 1 (2015-2016) 18.

57 Ministry of Justice, 'Høring – forslag til endringer i utlendingsloven og -forskriften om oppholdstillatelse på grunnlag av subsidiært beskyttelsesbehov ved en betydelig økning i asylsøkertilstrømningen' ['Proposal for changes to the Immigration Act and Regulations on residence on the basis of subsidiary protection needs when there is a considerable increase in asylum seekers'], 28 May 2020. Available at: https://www.regjeringen.no/no/dokumenter/horing--forslag-til-endringer-i-utlendingsloven-og--forskriften-om-oppholdstillatelse-pa-grunnlag-av-subsidiart-beskyttelsesbehov-ved-en-betydelig-okning-i/id2693027/?expand=horingsbrev.

58 Granavolden Platform, 17 January 2019. Available at https://www.regjeringen.no/contentassets/7b0b7f0fcf0f4d93bb6705838248749b/plattform.pdf.

59 This was one of the explicit purposes of introducing the two-year probationary residence permit. See the Hearing Note to the proposal, n 57.

60 Ministry of Justice, Restrictions II, 6.4.2.

was fulfilled. This proposal was not passed in the end, but echoes of the logic behind it reemerged in the Ministry of Justice's guidelines on the possibility of withdrawing an asylum permit because the basis for a child-sensitive assessment no longer exists (see 4.2.2).

4.1.1 Limited permits: UAMs and people without recognized IDs

In addition to the proposals for new protection categories, temporariness of protection is also produced by the differentiation of rights *within* a given category. This regulatory technique produces hierarchies of protection beneficiaries with the same legal status. From the Norwegian context, there are two main examples: the grant of UAM-limited permits under §38 IA, and the limited but renewable residence permits given refugees and humanitarian protection holders (§§28 and 38 IA) with unclear identities.

The UAM example represents, at first glance, a departure from the focus in this study on persons granted refugee status or collective protection in Norway. However, the temporary residence granted to older UAMs provides a good illustration of the porous distinction that persists between refugee status and humanitarian protection. According to earlier Norwegian practice, UAMs with an established risk of harm vis-à-vis the area where their families had roots usually received refugee status under §28 IA. Following changes to the IPA criteria and security assessments of Afghanistan in 2016, this is no longer the case. By 2017, approximately half of the 713 UAMs from Afghanistan received a temporary permit under §38 IA, while 134 received regular §38 IA permits.[61] Only 129 received refugee status. As a form of deferred deportation, the permit provides no basis for permanent residence or family reunification.

In addition to UAM-limited permits, the grant of short-term residence permits to people whose identity is deemed unreliable is another way in which rights are differentiated within categories of protection. This policy of limited (but renewable) permits was first introduced in 2009 through an instruction by the Ministry of Labor and implemented through changes to the Immigration Regulations. While it originally only affected people with residence on humanitarian grounds (§38 IA), it was extended to refugees as well in 2016.[62] The Regulations provide that a foreigner with refugee status may have his or her residence permit limited to one year or less out of consideration for identity control or for 'other special reasons' (§10-3 IR). While identity is preferably documented with a passport, exceptions may be accepted if it is 'most likely' that the identity presented is correct, if it proves impossible to secure a passport or other reliable documentation, or if it would put the applicant at risk to contact authorities of the home country. Refugees have received limited residence permits in cases where time is needed to investigate a claimant's assertions about the lack of a network in the country of origin or where authorities believe the claimant's identity but expect it to be confirmed (Lidén et al. 2021).

Although the one-year permits given because of identity doubts are renewable and therefore not 'temporary,' they imply a significant reduction of rights compared to refugees and humanitarian protection holders with regular residence permits. For example, they do not provide the basis for permanent residence or family reunification. The former limitation means that municipalities receive no financial incentive to resettle them. Individuals with limited permits living in reception centers are excluded from the introduction program, which includes career development support and Norwegian language instruction (§9 InA).[63] Recent changes to the rules mean that UAMs and families may be settled in a local community following their first residence decision and the first renewal of their limited permit, respectively. However, many people remain in limbo, either because they cannot substantiate

61 UDI statistics, available at https://www.udi.no/statistikk-og-analyse/statistikk/asylvedtak-etter-statsborgerskap-og-utfall-for-enslige-mindrearige-asylsokere-2017/.

62 This was part of the Restrictions II package. For the Ministry of Justice's reasoning, see the Hearing Note at n24, 6.2.4.

63 The decision to extend the rights and duties established in the introduction program to UAMs and families with children was made in 2018. See Prop. 89 L (2017-2018); Innst. 333 L (2017-2018); Lovvedtak 83 (2017-2018). Available at https://www.stortinget.no/nn/Saker-og-publikasjonar/Saker/Sak/?p=72333.

their identities to the satisfaction of authorities or in the case of UAMs/families because municipalities are unwilling to settle them.[64]

Foreigners with year-long permits are poorly positioned to find employment, and even in cases where a person is qualified, employers may be hesitant to hire someone without a predictable right to remain. The reluctance of banks to provide accounts to people without proof of their identity may also dissuade potential employers with nowhere to transfer a salary. As noted by the director of Norwegian's tax authority, restricted residence creates a real risk that vulnerable migrants are pushed into the black market to support themselves.[65] Barriers to banking also prevent access to a driver's license, housing loans and any service dependent on having the ubiquitous 'Bank ID'. The government is currently assessing possibilities to give foreign residents lacking reliable identity documents a national ID card[66] and an electric identity at the security level they need to access rights and benefits in the public sector.[67]

Without a passport, meanwhile, travel outside of Norway is limited. Children may be excluded from class trips or sports competitions, while migrants of all ages may find it difficult to attend funerals or weddings, go on holidays or even take a shopping trip to Sweden (NOAS et al., 2020b). The need to regularly apply for a renewal, the long waiting times that sometimes leave people without any permit at all, and the negative effects of these permit on mental health, motivation, mobility, income, education, and the ability to provide care for children (NOAS et al. 2020a; NOAS et al. 2020b).

From one insecure status to another: the case of the 'October children'

In November 2017, as the period of return loomed for many UAMs who came to Norway during autumn 2015, the Norwegian Parliament decided that these 'October children' (referring to the month when many arrived) should have their cases reconsidered so that those without a network or who qualify under other 'vulnerability criteria' could receive a regular residence permit. In the end, many of the youths covered by this policy had already escaped from reception centers to other European countries, including France and Germany, where the security situation is assessed differently (Garvik & Valenta 2021: 142). And many of those who ended up with a 'regular' §38 status in any case received a limited permit on the grounds of identity doubts – one that must be renewed on an annual basis.

4.2 Scrutiny of refugees' right to remain: cessation and revocation

The second practice of temporary protection relates to the ongoing scrutiny of a refugee's right to protection and residence. The Refugee Convention permits the cessation, or withdrawal, of refugee status under two distinct situations: either because the refugee has voluntarily availed herself of home state protection (Article 1C (1) – (4) RC) or because the 'circumstances in connection with which he has been recognized as a refugee have ceased to exist' ('ceased circumstances', Article 1C (5)-(6) RC). Although these criteria are incorporated into Norwegian law (§37 IA), cessation provisions have historically been rarely applied. Individual cessation processing was deemed both expensive and inefficient since those affected would often have a right to remain in the country on alternative grounds.[68]

64 Between 2015–2019, 1,688 persons received an ID-limited permission. Of those, 67 percent by October 2020 had their restrictions removed, and now enjoy an ordinary residence permit. Source: UDI statistics.

65 Holte, H, 'Utlendinger bør også ha rett til et nasjonalt ID-kort'. The Norwegian Tax Administration, 23 May 2019. Available at: https://www.skatteetaten.no/presse/nyhetsrommet/utlendinger-bor-ogsa-ha-rett-til-et-nasjonalt-id-kort/.

66 Ministry of Justice, 'Høring – utenlandske statsborgeres rett til nasjonalt ID-kort' ['Hearing – foreign nationals' right to a national ID card'], 3 March 2022. Available at https://www.regjeringen.no/no/dokumenter/horing-utenlandske-statsborgeres-rett-til-nasjonalt-id-kort/id2902738/.

67 Ministry of Local Government and Regional Development, 'Høring – utkast til ny strategi for eID i offentlig sektor' ['Hearing – draft of a new strategy for eID in the public sector'], 22 August 2022. Available at https://www.regjeringen.no/no/dokumenter/horing-utkast-til-ny-strategi-for-eid-i-offentlig-sektor/id2919668/?expand=horingsbrev.

68 NOU 2004: Ny Utlendingslov, 6.6. Available at https://www.regjeringen.no/no/dokumenter/nou-2004-20/id387326/.

By the autumn of 2015, it was clear that Norwegian authorities had picked up on broader trends in Europe, where exploiting legal possibilities to end protection was on the legislative agenda of the Common European Asylum System (ECRE 2016). As noted earlier, the Asylum Agreement of 2015 established that immigration authorities may, on their own authority, open cessation cases where the basis for a refugee's temporary protection has disappeared following improvements in the social, political or humanitarian conditions in her country of origin (point 5). Because the legal basis for cessation practice already existed in the Immigration Act §37, the subsequent decision by the Ministry of Justice to *mandate* application of this discretionary provision did not require further legislative action.

Already in January 2016, an Instruction from the Ministry of Justice required caseworkers to investigate refugees' travel to the country of origin as potential evidence of 'voluntary re-availment' of home state protection,[69] while another Instruction issued three months later followed up the Asylum Agreement of 2015 by specifying that cessation provisions related to 'ceased circumstances' must be applied when conditions are met.[70] This Instruction, which has since been amended three times, applies to any refugee status holder (§28 IA) with a temporary residence permit, except for those resettled from third countries. Conditions may include positive changes in the political, security or human rights situation in the country of origin. They may also, however, relate to changes in the foreigner's personal circumstances that can indicate that the need for protection no longer exists. In both cases, cessation may take place even if changes are limited to a particular area of the country of origin (there is an 'internal protection alternative' (IPA)).[71] The justification for reinvigorating the cessation provisions was to prioritize those with a current need for asylum among the large number of people seeking protection in Norway. [72] Legally, it was based on the understanding that international protection is subsidiary to domestic protection, meaning that as soon as domestic authorities can provide protection (somewhere), refugee status may be withdrawn.[73]

4.2.1 Nationality-based cessation practice: the Somalia portfolio

Following the first Instruction in 2016, the Immigration Directorate (UDI) identified approximately 1600 Somali refugees whose cases would be reviewed (the 'Somalia portfolio'). Since al-Shabaab's withdrawal from the Somali capital of Mogadishu in 2012, it was perceived that the situation had stabilized and therefore refugees from that area no longer had a need for protection. The Grand Board of Immigration Appeals reviewed this practice in 2017. It confirmed that the cessation analysis required a 'margin of security,' meaning that improvements in the country of origin not only must extinguish the threat of persecution but also be sufficiently durable. When applying this standard to the facts in Mogadishu, a majority found that despite the state's inability to enforce the rule of law, adequate protection could be secured from the strong clan system—unless the persons can be regarded as 'particularly vulnerable due to their lack of support from their clan or other networks.'[74] Since then, in a similar case from the UK, the Court of Justice of the European Union (CJEU) has clarified that the social and material support provided by private actors or a clan does not constitute 'protection' against persecution or serious harm.[75] This is also the view of UNHCR (UNHCR 2003). Nonetheless, neither UNHCR authority nor the CJEU ruling has had a visible impact on domestic practice so far.

69 Ministry of Justice, GI-01/2016, 14 January 2016. Revised in September 2016, see GI-14/2016; in 2019, GI-03/2019 and finally again in 2020, GI-15/2020.

70 Ministry of Justice, GI-14/2016, 31 March 2016, 4.1.

71 GI-15/2020, 6.3.

72 GI – 04/2016, 2.

73 Ibid.

74 UNE Grand Board of Appeals decision: Cessation of refugee status and revocation of temporary residence (June 2017). Available at: https://www.une.no/kildesamling/stornemndavgjorelser/stornemnd---opphor-av-flyktningstatus/. See also Brekke, Birkvad & Erdal (2019) for an analysis of this caseload.

75 Court of Justice of the EU, C-255/19 Secretary of State for the Home Department v OA, 20 January 2021.

Most of the cessation cases from the Somali caseload have been set aside ('henlagt'), typically because the individuals concerned clearly had other grounds for residence—based on a risk of FGM or forced marriage in Somalia, the lack of a network in Mogadishu, a family member with citizenship or permanent residence, or a child's long residence (4.5 years plus 1 year of schooling) in Norway.[76] As of November 2021, only 42 Somali nationals had their permits revoked on the basis of improved conditions in Somalia.[77] And indeed, active cessation practice directed at particular groups has not since been a prominent feature of refugee management in Norway.

4.2.2 Cessation following changes in individual circumstances

Despite the move away from cessation practices targeting specific national groups, refugees whose individual circumstances may have changed – typically those with age and gender-based claims – remain exposed to cessation decisions. Indeed, refugee status decisions in Norway sometimes explicitly state that status may be withdrawn if, for example, a homosexual refugee establishes him or herself with a partner of the opposite sex, or a single woman without a network upon return is joined by her husband.

When it comes to children, the proposal in 2015 to establish a temporary protection status for UAMs has not materialized. While adults who came to Norway as unaccompanied minors are subject to cessation on the same basis as other (adult) refugees (for example, because conditions in the country of origin have improved), the fact of reaching the age of majority *in itself* is not a sufficient reason to withdraw refugee status.[78] Where cessation has been applied to a refugee granted status as a child, it appears that changes in the security situation of the return area have been considered together with the fact that the refugee is now an adult and no longer subject to a 'child sensitive' assessment of his protection need (Lidén et al. 2021: 100).

For single women 'without a male network', often from Afghanistan, the subsequent arrival of their partners can trigger cessation of refugee status based on a combination of IPA application and the availability of protection by non-state actors – in these cases, male relatives (Schultz 2021). For example, in the *Farida* case, an Afghan family was removed to Kabul even though their area of origin, in Jaghori district, remained insecure. Farida's mother had come to Norway after being separated from her husband during their flight. She received refugee status on the basis that return to Afghanistan, in the absence of a male relative, would expose her to a real risk of serious harm (§28(b) IA)). When her husband arrived in Norway, immigration authorities withdrew her status based on 'ceased circumstances': the conditions for which she was granted asylum were no longer present.

In its first treatment of the *Farida* case, the Norwegian Supreme Court clarified that the cessation analysis required not only an absence of risk in the return area, but also 'significant and stable' changes.[79] In other words, decision-makers must establish that the threat of persecution or serious harm is extinguished for the foreseeable future. The case was remanded, and subsequent decisions expressed uncertainty about security in Kabul but concluded that the conditions giving rise to refugee status – Farida's mother's single status – had changed in a durable manner. The determinative fact was that the couple was reunited and would presumably remain so. The logic underpinning such reasoning has been criticized by UNHCR and scholars for its incompatibility with refugee law (Schultz 2021). For example, it overlooks the requirement of state or state-like protection, leaving individual returnees at the mercy of potentially harmful private relationships. It also, importantly, is premised on continued forced displacement within a fragile country of origin – hardly a 'durable solution' for the refugees

76 The reasons were provided in an email from UDI, November 24, 2020. UDI will consider the risk of FGM at its own initiative even if this has not been raised by the family.

77 Email from UDI statistics, on the number of residence permits revoked following cessation of refugee status according to Instruction GI-15/2020, November 17, 2021.

78 Ministry of Justice, GI-03/2019, 4.4.4. Available at https://www.regjeringen.no/contentassets/ecdd677f1b094d318cffb8b1ecea9dc0/gi-032019-l1050570.pdf. This was confirmed by the Borgarting Appeals Court, LB-2021-78433, judgment of March 11, 2022.

79 Norwegian Supreme Court, HR-2018-572-A.

affected. Application of the IPA in cessation decisions has been highly controversial, with UNHCR pointing out that reliance on an IPA likely indicates that changes in the country of origin are not yet well-enough established to justify the withdrawal of refugee status (UNHCR 2003). This was raised before the Norwegian Supreme Court in its second judgment stemming from the *Farida* case, but the Court approved the government's position that the IPA may be applied.[80] Given the fact that the IPA test in Norway does not require that relocation is reasonable, this reading of refugee law permits the 'return' of people who have been outside their country of origin for years if not decades to areas of that country where they have no connections.

4.2.3 Blurred policy interests: cessation, criminality and control

Arguably at least as significant as cessation practice, in terms of producing insecurity within the refugee community, is the intensified focus on revoking the status and residence permits of refugees whose claims were approved on false premises. Indeed, between March 2017 and December 2018, more than 8000 revocation cases were opened by the Immigration Directorate, of which 2500 pertained to Somali nationals and 500 to Afghans (Brekke et al. 2019: 8). Therefore, the 'cessation' dimension of revocation processing is less numerically significant than revocation on grounds of misleading authorities. Further the latter affects refugees from most of the major countries of origin (Brekke et al. 2019: 38). For example, following a visit in Norway in 2019 by a senior political advisor to the president of Eritrea, an investigation was launched into 150 Eritrean nationals who had fled the same regime but attended an event in his honor. According to some reports, this led to finger-pointing and harmful gossip within the community. At the outset of 2022, this investigation had led to the revocation of 13 residence permits of people whose original claims were deemed to be fraudulent.[81] Importantly, as discussed below regarding citizenship, revocation on the basis of false or inadequate information affects not only the person who misled Norwegian authorities but also their children, many of whom have only known Norway as home.

The use of the term 'revocation' to refer to 1) the withdrawal of protection on the grounds of serious criminality, 2) the withdrawal of residence on the grounds of immigration infractions and 3) cessation of refugee status seems to create confusion also in terms of the *legal standards* to apply in these cases. In a Grand Board of Immigration Appeals decision from 2020, for example, the Board concluded that for refugees with criminal records, the cessation of refugee status only required that conditions underpinning the original claim no longer exist; in other words there is no additional criterion that changes are durable.[82] This so-called 'mirror approach' (in which the cessation analysis is simply a current, rather than future-oriented, protection assessment) has since been rejected by the Borgarting Appeals Court, which correctly concluded that the criteria for the cessation of refugee status are independent of the individual's criminal behavior.[83]

In addition, the continued influence of control interests on the cessation analysis is evidenced in practice applying cessation criteria based on the refugee's 'voluntary re-availment' of home state protection. In the revocation instruction related to refugees' travel to their country of origin, the Ministry of Justice mandated immigration authorities to review refugees' motivations behind any travel, to determine whether the original permission to stay in Norway was granted on false premises *and/or* that they no longer need international protection.[84] In this document, the Ministry states that the main rule is that such travel provides the basis for cessation of refugee status and revocation of

80 Norwegian Supreme Court, HR-2021-203-A.

81 Vårt Land, 'Asyljuks avslørt. Eirtrearar minstar opphaldsløyve', 21 January 2022.

82 Grand Board of Immigration Appeals, N2001850803, July 2020. Available at: https://www.une.no/kildesamling/stornemndavgjorelser/stornemnd-opphor-av-flyktningstatus/.

83 Borgarting Appeals Court, LB-2021-78433, judgment of 11 March 2022.

84 Ministry of Justice, GI-01/2016. Available at https://www.regjeringen.no/no/dokumenter/gi-012016-instruks-om-tolking-av-utlendingsloven--37-og-63-nar-flykt-ningen-har-reist-til-hjemlandet-i-strid-med-forutsetningene-for-opphold-i-norge/id2471001/.

the residence permit;[85] the burden to show otherwise is on the refugee.[86] This establishes a default position of skepticism about the refugee's character already from evidence of travel, that can easily slide into suspicion about the original need for protection. The weight given to travel also seems to depart from the text of the Immigration Act itself, which emphasizes the refugee's own intentions in addition to acts: according to the Act, cessation may be warranted if the individual has 'voluntarily sought protection again' from her country of nationality (§37a) or 'has voluntarily resettled in the country which the foreigner left or stayed outside of because of a fear of persecution' (§37d).

Pending cessation and revocation cases have, clearly, a negative effect on people's quality of life and participation in Norwegian society. The insecurity produced by a notice that a case has been opened and not least the long waiting times (up to several years) for case processing postpones applications for permanent residence and family reunification, and upturns people's plans for education and work (Brekke et al. 2019: 76; NOAS et al. 2018). Children's 'best interests' are established in the final administrative decision (made by the Immigration Appeals Board, no matter how long any challenge in the court system takes). This means that children's evolving needs, and increasing attachments to Norway, may not be legally recognized (Lidén et al, 2021).[87] A final challenge worth mentioning relates to legal security: the hours of legal aid paid for by the state in deportation cases (three hours following notice that a case has been opened and one hour for appeals to UNE) is clearly inadequate given the complexity of these cases.[88]

4.2.4 Revocation of citizenship: children as collateral damage

The precarity of residence for refugees extends to (former) refugees who may lose their right to remain in Norway even after they have become Norwegian nationals. Denationalisation is, as Gibney describes an 'extreme act of the state' (Gibney 2020: 2551) and yet it is one that is increasingly leveraged by governments to punish people outside normal realm of criminal law. This is also the case in Norway. While the Citizenship Act of 2020 (CA) codifies general administrative law by stating that a grant of citizenship may be revoked if the applicant has purposely given incorrect information or concealed matters of material relevance (§26 CA), its broad application penalizes refugees and their descendants for misrepresentations made many years previously, and which may have reasonable explanations.

Citizenship revocation in Norway typically involves people whose initial grant of asylum was based on false information about their nationality (for example they claimed to be Somali or stateless Palestinians) and can take place decades after refugee status was recognized.[89] Drafters of the 2020 Citizenship Act rejected a proposal to introduce a statute of limitations for revocation in favor of a proportionately assessment. Therefore, under current rules, a revocation decision may be taken provided that the reasons on which it is based are deemed proportionate to the impact it has on the individual and/or his or her family, given their level of integration, length of residence, and other attachments

85 Ibid 2.1.

86 Ibid 2.2.

87 The Civil Ombudsman has criticized the UDI's long decision-making in a case involving a woman and her eight-year-old child who waited over five years for a decision on permanent residence because of an ongoing revocation assessment. See https://www.sivilombudsmannen.no/uttalelser/utlendingsdirektoratets-behandlingstid-i-sak-om-permanent-oppholdstillatelse-og-tilbakekall.

88 As of July 2022, an extra three hours of legal advice in deportation cases is granted for each minor child with residence rights in Norway. See NOAS, 'Rettshjelp', Rikets Tilstand På Asylfeltet 2022. Available at https://www.riketstilstand.noas.no/rettshjelp.

89 Adressavisa, 'UDI skal ta jukserne', 29 September 2016. Available at: https://www.adressa.no/nyheter/i/L17vX1/vi-vet-at-det-er-en-del-som-har-lurt-oss.

to Norway.[90] Elsewhere in Europe, by contrast, countries either impose a statute of limitations on revocation and/or limit revocation to cases involving serious crimes. [91]

In cases where citizenship which was applied for or granted to a person under 18 years of age based on incorrect or incomplete information given by the child's parents or grandparents, the Act states that citizenship should *not normally* be revoked (§26 CA). Exceptions may be made if the minor does not have a strong attachment to Norway. In all cases involving children, their best interest must be a fundamental consideration when deciding whether revocation is justified.

In practice, however, there is still a significant number of Norwegian children who suffer the loss of citizenship because of their relatives' mistakes. For example, 44 children lost their citizenship during the period 2020 to early 2022; seventy percent had lived in Norway for longer than five years.[92] By contrast, only 27 children lost their citizenship between 2010-2017, before the new Act came into force. The Immigration Directorate has stated that revocation of citizenship for children who have lived for a long time in Norway would only occur if they no longer had their primary residence there.[93] But this is not, according to the Norwegian Organization for Asylum Seekers (NOAS), always the case.[94] NOAS has also seen revocation decisions involving well-integrated adults with no criminal records and up to 30 years' residence in Norway. Such examples raise important questions concerning the application of the proportionality assessment, while the absence of meaningful juridical oversight and limited access to legal aid makes decisions difficult to challenge.

4.3 Barriers to permanent residence and citizenship

A third practice of temporary protection relates to the increasing obstacles to a secure residence status in Norway. The previous section described how cessation practice on the basis of changed circumstances in the country of origin affects refugees with a temporary residence permit. Barriers to permanent residence leave refugees exposed to the possibility of cessation and revocation for longer periods of time. They also produce long-term resident populations with limited opportunities for mobility, political and social inclusion.

All residence permits in Norway are initially granted for a fixed (temporary) period of time. After this period expires, provided that the original permit provides the basis for permanent residence, foreigners may apply for a permanent residence permit (§62 IA). Permanent residence provides greater protection against deportation not only because cessation criteria are not applied to refugees who are permanent residents, but also because permanent residents are deemed to have a *legitimate expectation* of stay that strengthens their right to remain under the family and private life provisions of European human rights law (see 4.4.3).

During the past two decades, and particularly after 2015, permanent residence has become a more exclusive status, reflecting the 'civic integration turn' in immigration policies in Western Europe more generally (Borevi et al. 2017; Goodman 2018). This involves the introduction or intensification of requirements through which immigrants must 'earn' their right to permanent residence, and the rights attached to it by demonstrating knowledge of the language and society and their integration into the labor market. While such screening mechanisms apply to all immigrants and are not generally linked

90 Ministry of Justice, F-07-20 (2020). Available at: https://www.regjeringen.no/no/dokumenter/f-07-20-instruks-om-tolkning-av-statsborgerloven-26-tilbakekall-av-statsborgerskap-pa-grunn-av-uriktige-opplysninger/id2791590/.

91 In Germany, for example, revocation of citizenship can only take place within five years of the grant of citizenship. In the Netherlands and France, meanwhile, only criminal acts, not fraud, can result in the loss of citizenship. Aftenposten (2017), 'Familie på 12 mister statsborgerskapet etter 27 år i Norge'. Available at: https://www.aftenposten.no/norge/i/zo7Qw/familie-paa-12-mister-statsborgerskapet-etter-27-aar-i-norge. A new proposal to introduce a statute of limitations for revocation of citizenship has been refused several times, most recently in April 2022. For a breakdown of the voting by party, see https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/Voteringsoversikt/?p=87635&dnid=1.

92 Dagsavisen, '44 barn har mistet norsk statsborgerskap på to år', 13 Feburary 2022. Available at: https://www.dagsavisen.no/nyheter/innenriks/2022/02/13/44-barn-har-mistet-norsk-statsborgerskap-pa-to-ar/.

93 Ibid.

94 NOAS, 'Tilbakekall av statsborgerskap på grunn av uriktige opplysninger', June 2021. Available at https://www.noas.no/wp-content/uploads/2021/06/Tilbakekall-av-statsborgerskap-pa-grunn-av-uriktige-opplysninger.pdf.

to return objectives, it is significant that they were introduced in late 2015 as part of the broader efforts to make it 'less attractive to apply for asylum in Norway'.[95] By subordinating integration policies to the goals of migration control these measures increase the number of people with more insecure legal status for indefinite periods of time and ultimately create a two-tiered system of rights for people admitted to Norway on the same grounds, and with the same length of residence. The following sections outline four changes in the rules on permanent residence post-2015 that directly and indirectly prolong refugees' exposure to withdrawal of their refugee status and limit their membership rights in Norwegian society. These changes include increased residence requirements, the introduction of an income requirement, sharpened criteria for language proficiency and civic knowledge, and greater scope for postponing or denying permanent residence on the grounds of criminality. I conclude with a brief overview of how similar changes shape access to citizenship.

4.3.1 Extending the residence requirement

The duration of a migrant's initial period of temporary residence has been the basis of political debate ever since the possibility of extending the residence requirement for permanent residence from three to five years was discussed (and rejected) in preparation of the current Immigration Act of 2008. When the proposal was revived in the spring of 2015, it again failed to secure sufficient political support and was vigorously opposed by several consultation bodies who argued that the change could negatively impact successful integration and may force victims of domestic violence to remain with an abusive partner for a longer period until she received permanent residence on her own right.[96]

In late 2020, the Norwegian Parliament eventually passed a resolution expanding the residence requirement for a permanent residence permit from three to five years, but *only* for refugees and humanitarian protection holders and their families. The decision to expand the residence requirement for refugees was based on a resolution from representatives from the Progress Party (FrP) following a budget agreement between them and the center-right government, which bound the coalition parties to vote for the proposal. The proposal thus circumvented the usual procedures for amending the law, which includes an evaluation of potential consequences and public consultations. Thus neither the reasoning behind nor the effects of extending the residence requirement for only refugees and humanitarian protection holders was clarified in public documents. However, after the resolution was passed in December 2020, the proposers issued a public statement clearly linking the extension of the residence requirement to a desire to expand the window of opportunity for authorities to withdraw residence based on the absence of a person's continued protection need, wrongful claims, and criminal activities.[97]

4.3.2 The introduction of an income requirement

The new income requirement for permanent residence implemented in 2017 means that applicants for permanent residence must demonstrate an income for the last 12 months. The income requirement corresponds to 2.5 G (the basic amount in the National Insurance Scheme), which in 2022 amounts to 278 693 NOK before tax. This is the highest in Europe. While normally this amount must be demonstrated through income and other approved sources during the year prior to the date of application (§11-11 IR), there are exceptions including for some full-time students (§11-12 IR).

The consequences of the income requirement for different groups – in isolation and in relation to other changes – were not investigated or discussed in the consultation or in the law proposal (Eggebø & Staver 2020). Low education levels and discrimination are important obstacles to full-time employment, and many refugees find work in poorly paid sectors where part-time positions are common (cleaning,

95 Restrictions II, n24.

96 Prop. 90 L (2015–2016) 8.5.1.

97 Jensen, S. and Helgheim, J. 'Permanent oppholdstillatelse er ikke noe vi skal dele ut i hytt og vær', Nettavisen, 7 December 2020. Available at https://www.nettavisen.no/permanent-oppholdstillatelse-er-ikke-noe-vi-skal-dele-ut-i-hytt-og-var/o/5-123-361.

health services, sales) (SSB 2022). Indeed, as of 2020, only 52 percent of refugees between the ages of 15 and 66 were employed, and only 63 percent in full-time positions (SSB 2022). Men in general enjoy higher rates of employment, although differences are more dramatic among certain national groups. For example, among Syrian refugees, 44 percent of men are employed compared to only 16 percent of women. Among refugees from Sudan, Eritrea and Afghanistan the difference hovers at around 20 percent (SSB 2022). Increased layoffs due to the Covid19 pandemic – particularly in the service sectors in which many refugees are employed – is yet another factor making permanent residence less attainable, since unemployment benefits are excluded from calculations of income. The income requirement also creates perverse incentives for refugees to pursue short-term goals instead of investing in longer-term language, work or skills training (Lillevik & Tyldum 2018). Many refugees take on multiple part-time jobs or attend elementary or junior high school to secure the discretionary exceptions.

4.3.3 Language and knowledge-of-society

Language and knowledge-of-society (KoS) requirements for permanent residence, initially introduced in 2005, were sharpened further as of January 2017 for all immigrants in Norway. While previously applicants for permanent residence had a duty to complete courses in Norwegian language and society, current requirements require that they master a minimum level of spoken Norwegian (at the A1 level) and pass both Norwegian and KoS tests.

The language and KoS requirements have broad political support in Norway but have been heavily criticized by key linguistic scholars and environments, as well as teachers in the field. The professional critique has questioned both the requirements on democratic principles, and the level considered appropriate (Carlsen & Rocca 2021). Research has shown that language requirements represent real barriers to secure status for certain groups. They are a particular problem for older people, people with learning difficulties and trauma, those with little schooling from their home country. The latter group struggles both due to low reading and writing skills, but also due to low test literacy (i.e. lack of skills and experiences that are relevant to the actual test situation) (Bugge 2021).

4.3.4 'Good character'

Finally, changes to the Immigration Regulations in 2016 introduced the possibility of postponing permanent residence based on criminal convictions, according to a sliding scale – the longer the period of imprisonment or higher the fine the more time is needed before one is eligible to apply for permanent residence (§11-5 IR). A punishment of 90 days imprisonment, for example, can mean a delay of two years. In addition, amendments to the Immigration Act open for denial of permanent residence on the grounds of 'weighty immigration control concerns' including the failure to cooperate in establishing his or her identity or means of arrival in Norway (§62 para 3 IA).

4.3.5 Citizenship requirements

The Norwegian Supreme Court recognized in 2015 that citizenship is 'a fundamental legal, social and psychological tie, which can have decisive meaning for a person's identity and development throughout their whole life.'[98] For some refugees, citizenship in the country of residence also represents the highest degree of legal security, a 'solution' to the problem of failed protection by one's former state of nationality. However, citizenship is increasingly becoming both harder to obtain and less secure once it is granted – in Norway as well as other countries (Fargues, Winter & Gibney, 2020).

Many of the barriers are simply intensified versions for those that exist for permanent residence. Since 2017, all applicants for citizenship are required to pass Norwegian language tests as well as tests to document their knowledge about Norwegian history, culture and society. In 2020, the requirement

98 Norwegian Supreme Court, Rt-2015 s. 93, para 76.

for oral Norwegian was raised from level A2 to level B1[99] with only limited exceptions (for example related to heath reasons or other personal circumstances).[100]

These changes to the citizenship requirements have taken place despite strong criticism from experts in language acquisition and integration.[101] Of the 121 hearing responses to the proposal to raise citizenship requirements, 107 were negative including the Department of Education's own directorate with responsibility for Norwegian language training for adult immigrants (Kompetanse Norge). This agency pointed out that raising requirements will not necessarily lead, as presumed, to more people achieving higher levels of language proficiency.[102]

In 2021, the Norwegian Parliament also decided to differentiate the required residence time to be granted Norwegian citizenship. Whereas the residence time according to the main rule in the Citizenship Act of 2020 was raised from seven of the last ten years to eight of the last eleven years, it was shortened to six of the previous 10 years for applicants with sufficient income, i.e. income at least 3 times the basic amount in the National Insurance Scheme (3G). As of 1 May 2021, 3G amounted to NOK 319,197. Applicants who have been granted asylum in Norway, though, are still only required to have resided in Norway seven out of the last ten years.

The possibility of postponing citizenship based on criminal convictions is, as with permanent residence, based on sliding scale. The longer the period of imprisonment or higher the fine the more time is needed before one is eligible to apply for permanent residence. For example, a prison sentence (or the 'alternative prison sentence' stated in the fine) of between 10 to 15 days, can mean a delay of 2,5 years.

4.4 Limiting the right to family life

Policies that keep families apart are both explicit tools of temporary protection (for example when the right to family reunification is suspended) and implicit ones, in the sense that they make conditions of asylum less secure. Although only 17% of all refugees from 1990-2015 have brought family members to Norway (Dzamarija & Sandnes 2016), restrictions on family immigration have been promoted, particularly in the wake of 2015, as necessary measures to control migration (Brekke & Staver 2018) and ensure the sustainability of a strong welfare state. The proposed 'subsidiary protection' status would suspend family reunification rights for two years.

The importance of protecting family unity has been highlighted by UNHCR as well as advocacy groups working on behalf of refugees. Rather than posing a threat to integration, as is commonly claimed (Brekke & Eggebø 2018), the reality is that for refugees, it is family *separation* that prolongs the displacement experience (UNHCR 2017). Anxiety about one's relatives who may remain in danger negatively effects not only people's mental and physical health, but also their motivation and ability to work and study (Oxfam and Refugee Council 2018; Refugee Council of Australia 2016). Restrictions on family reunification and family establishment are, therefore, sources of insecurity that hinder inclusion in refugees' communities of residence.

4.4.1 Barriers to reunification with pre-flight family members

Refugees with status under both §28 and §34 IA have a right, in principle, to reunification with certain close members of their families. Refugees under §28 IA may sponsor pre-existing spouses or partners as well as minor children. Unaccompanied minors, meanwhile, can sponsor their parents

99 These levels are based on the Common European Framework of Reference for Languages: Learning, teaching, assessment (CEFR).

100 Forskrift om erverv og tap av norsk statsborgerskap (statsborgerforskriften) [Regulations on acquisition and loss of Norwegian citizenship (Citizenship Regulations)] §4. Available at https://lovdata.no/dokument/SF/forskrift/2006-06-30-756#KAPITTEL_4.

101 See Refugee Law and Refugee Lives podcast episode with Prof. Cecilie Hamnes Carlsen, 'Language tests as gatekeepers to residency and democratic rights' Available at https://soundcloud.com/refugeelives/language-tests-as-gatekeepers-to-residency-and-democratic-rights.

102 Prop. 98 L (2019–2020) 5.2.1. Available at: https://www.regjeringen.no/no/dokumenter/prop.-98-l-20192020/id2699960/?ch=5.

and minor siblings (§43 IA). The right to reunification does not extend to adult siblings or parents in the case of adult refugees and children over the age of 18. The collective protection regime applied to refugees from Ukraine includes, in line with the European approach, a broader right to reunification with members of a refugee's pre-flight household.

Refugees seeking to reunite with pre-existing family members are exempted from the prohibitive maintenance requirements that apply to other migrants (including refugees seeking to reunite with family members established post-flight).[103] However, the application fee for refugees at 7,800 NOK remains a significant burden, particularly those with no employment and/or caregiving responsibilities. For example, it prevents the unlawfully resident parents of children recognized as refugees (typically on grounds of FGM risk in the country of origin) from regularizing their status.[104]

In addition to the considerable cost, the strict time limits for sending relevant documents pose another set of challenges. The reference person must submit an application and pay a fee within six months of receiving a residence permit, while the applicant(s) for family reunification must normally meet at the relevant Embassy or office within a year (§10-8 IR). In countries lacking a Norwegian representation office, this means that family members must travel to another country to confirm their identities and submit the relevant papers.

In some countries, like Eritrea, it is difficult to get the necessary exist visa, so applicants are forced to make an illegal border crossing to Ethiopia or Sudan. Long processing times at various embassies and the expense of staying in another country while waiting for papers are other barriers that prevent people from applying in time. Many unaccompanied minors do not know where their family members are and may not be able to locate them before the deadline has past – much less have the money for the application fee.[105] Once the application and supporting documents are submitted, the processing time in Norway (currently at 20 months for applicants from Somalia, Eritrea, and Afghanistan) creates further delay. Refugees who do not manage to submit the relevant documents in time must apply for family reunification on the same basis as non-refugees, with the expense and rules that entails.

4.4.2 Barriers to family establishment in Norwegian law and practice

Refugees face even more significant barriers to reuniting with family members whose formal relationship to them (usually through marriage) post-dates the recognition of their refugee status. The biggest challenge in these family establishment cases is the income requirement, which was introduced in 2010 and has gradually increased to today's rate of approximately 300,000 NOK a year.[106] An additional demand is that the sponsor must have worked or studied for four years, and not taken social support during the previous twelve months. This distinction between pre- and post-flight partnerships disadvantages people in same-sex unions that might not have been legal or accepted in the country of origin.

In a recent policy change, the approximately 200,000 NOK that refugees receive in integration support while they learn the language and pursue training to enter the workforce no longer counts as part of their overall income. Since the payments were temporary, this policy's proponents argued, they

103 In Prop. 90 L (2015-2016) the government proposed to introduce a maintenance requirement as a general requirement for family reunification with refugees for a temporary period of 3 years, but this proposal was not approved by the Parliament.

104 In January 2022, the Immigration Appeals Board (UNE) determined that the appropriate response to these kinds of cases was to grant humanitarian status to the parent rather than requiring her to apply for family reunification. Norwegian Immigration Appeals Board, Grand Board decision N2205490120, January 2022.

105 This was noted by the Guardianship Association (Vergeforeningen) in its hearing response to the Restrictions II proposals. Available at: http://vergeforeningen.no/vergeforeningens-horingssvar-til-horingen-om-endringer-i-utlendingslovgivningen-innstramninger-ii.

106 Directorate of Immigration, Income requirement in family immigration cases. Available at: https://www.udi.no/en/word-definitions/income-requirement-in-family-immigration-cases-/-

are an unreliable proxy for the sponsor's actual ability to support their family members in Norway.[107] The practical impact of this rule is tempered by the fact that the criterion of four years' work or school means that the income requirement is relevant only after the introduction program (normally less than three years) has in any case ended.

Another challenge to family establishment, in addition to the financial requirements, relates to the higher age limits for partners to join their spouses in Norway. The main rule, designed in part to reduce forced marriage, is that a person applying as the spouse of a reference person must be 24 years old or older unless 'it is obvious that the marriage or partnership is voluntary' (§41a IA). In practice, however, advocates report that exceptions are rarely granted even for bona fide relationships.[108]

And finally, in addition to application fees, tight deadlines, age limits and (for some) income requirements, another barrier to family life for refugees is the attachment requirement for family immigration introduced in 2017 (§51 IA; §9-9 IR). This requirement means that Norwegian authorities must decide whether family life can be enjoyed in another safe country – typically where members have citizenship or a secure residence status. Factors that are considered include the length of residence in a given place, language, education, work, relatives and other forms of network. Importantly, the attachment requirement only applies for as long as the sponsor has temporary residence – this means that new rules extending this period have direct consequences for the scope of family reunification.

4.4.3 Consequences of temporary protection on the right to family life

Another relevant aspect of the right to family life for refugees is the fact that temporary residence itself suspends the establishment of a refugee' right to private and family life under European human rights law (article 8 ECHR). In other words, when determining whether deportation would breach a person's right to exercise their private or family life in Norway, the fact that their permission to stay is *temporary* means that the state's interest in deporting them is likely to be decisive to the case's outcome. The European Court of Human Rights (ECtHR) has found that in cases where a foreigner's residence is 'precarious' at the outset, usually because it is unlawful, only in 'exceptional circumstances' will her private and family life interests prevent expulsion.[109] The conclusion that a temporary (but lawful) residence permit renders its holder a 'precarious' migrant in the same way was approved by the Norwegian Supreme Court explained in its interpretation of caselaw from the ECtHR:

> a temporary residence permit under §60 IA to foreigners with refugee status does not normally provide the basis for establishing a private life which is protected under article 8 ECHR … if permanent residence is granted under §62 IA, the situation is different… For foreigners with permanent residence it seems more relevant to characterize them as 'settled migrants' with a legal right to private life under article 8 ECHR.[110]

While private life interests do attach, despite a person's precarious status, after long periods of residence (measured in term of decades, not years), there is no doubt that extended periods of temporary residence leave people more exposed family separation (Schultz 2021).

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107 Ministry of Justice, 'Høringsnotat – forslag til endringer i utlendingsforskriften – intorduksjonsstønad skal ikke medregnes i underholdskravet' ['Hearing Note: Proposal for changes to the Immigration Regulations – Introduction support shall not be included in the maintenance requirements'], January 2021. Available at: Høringsnotat - forslag til endringer i utlendingsforskriften - introduksjonsstønad skal ikke medregnes i underholdskravet.pdf

108 Interview with a staff member of SEIF, 1 December 2020.

109 See ECtHR, Alleleh and Others v Norway, App. No. 569/20, judgment of 23 June 2022, para 90 with further references.

110 Norwegian Supreme Court, HR-2018-2133-A, 8 November 2018, para 58.

5. CONCLUSION

In Norway during the 1990s, a concept of temporary protection developed both as a principle of asylum for all refugees *and* as a tool for facilitating and coordinating asylum in situations of rapid and large-scale arrivals. Underpinning both applications was a presumption that protection needs for most refugees would resolve in the foreseeable future. During the subsequent two decades, however, policies making refugee protection less secure have intensified together with the fact that displacement worldwide is an increasingly protracted phenomenon. Temporary protection as a strategy of migration management is increasingly detached from durable solutions.

Temporary protection may refer to a specific legal status, or a short-term residence permit. The collective protection granted refugees from the Ukraine is an example of both – and framed as an exception to the normal application of refugee law. However, the term 'temporary protection' also describes the increasingly insecure terms of asylum for *all* refugees. This study has outlined four practices that contribute to this phenomenon: 1) the proliferation of protection categories and differentiation of rights within them; 2) scrutiny of a refugee's right to remain; 3) obstacles to accessing permanent residence and citizenship; and 4) barriers to family unity.

Additional protection categories as well as distinctions within them reinforce temporariness by, among other things, limiting the duration of residence permits for people with a recognized need for protection. Deferred deportation for older UAMs and one-year permits for people unable to resolve identity doubts are two examples, motivated by different policy objectives but with similarly disruptive consequences for the lives of those affected. The proposed subsidiary protection status, meanwhile, is explicitly designed to offer a contingent form of asylum, with suspended rights of family reunification and less stringent standards for withdrawal as soon conditions in the home country improve.

The second practice of temporary protection is the increased scrutiny of a refugee's continued need for protection. For example, intensified cessation and revocation practice since 2016 means that people's right to remain in Norway is interrogated more systematically. While cessation practice targeting Somali nationals starting in 2016 led to few returns, it created widespread anxiety and other negative consequences within immigrant communities. This insecurity persists with continued focus on fraud or other unlawful activities which can lead to the revocation of permanent residence permits and even citizenship. Indeed, research by Brekke et al. shows that people receiving notice that a case is being opened are often unaware of the basis on which their continued residence is at risk (Brekke et al. 2019). The muddled distinctions between revocation and cessation and proliferating sources of law make this quickly shifting legal landscape challenging for even the most seasoned practitioners to navigate.

Cessation practice in individual cases, meanwhile, continues to affect women and other members of a 'social group' whose present need for asylum after several years abroad may be difficult to establish, or who have caregiving responsibilities that require travel to the country of origin in conflict with their terms of asylum. Meanwhile, reliance on 'internal protection alternatives' within the country of origin to justify cessation decisions dissociates withdrawal of refugee status from the availability of a durable solution.

The third practice of temporary protection refers to the obstacles to permanent residence for refugees unlikely to return to their country of origin. Not only has the minimum length of time before a refugee can apply for permanent residence increased, but onerous non-protection related requirements exclude many people who cannot afford it or pass the requisite tests. Intersectional factors (gender, age, nationality, education) play out in different ways to make access to the labour market – and therefore permanent residence – more difficult for some refugees than others. Without the possibility of permanent residence and eventual citizenship refugees remain limited in their mobility and denied fundamental rights to political participation despite their long periods of stay in the country. They also remain more exposed to deportation since there is a wider scope for withdrawing refugee status and residence permits for people with temporary residence.

Finally, policies that keep families apart affect refugee inclusion in Norway, making protection less secure for those unable to live with their loved ones. The proposed category of subsidiary protection

would suspend the right to family reunification, while refugees with this right in principle face practical and administrative obstacles as well as long waiting times. Meanwhile, new attachment requirements mean that family immigration may be denied if family life can be pursued elsewhere, make the outcome of an application less predictable.

The 'temporary turn' in Norway is not a new policy orientation. Instead, it describes the direction in which varies policies and legal culture are shaping the contours of refugee protection. While exceptional measures such as the collective status given to refugees from Ukraine represent the most visible face of temporary protection, temporary protection is also a strategy pursued through the interpretation of refugee law and national legislation setting stricter conditions for secure residence.

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In Norway during the 1990s, a concept of temporary protection developed both as a principle of asylum for all refugees *and* as a tool for facilitating and coordinating asylum in situations of rapid and large-scale arrivals. Underpinning both applications was a presumption that protection needs for most refugees would resolve in the foreseeable future. During the subsequent two decades, however, policies making refugee protection less secure have intensified together with the fact that displacement worldwide is an increasingly protracted phenomenon.

This study provides a systematic overview of temporary protection practices in Norway, from the collective temporary protection granted to refugees from the Balkans conflict and the war in Ukraine to more indirect measures that reduce the security previously associated with refugee status recognized on an individual basis. It shows how temporariness results from 1) the proliferation of protection categories and differentiation of rights within them; 2) scrutiny of a refugee's right to remain; 3) obstacles to accessing permanent residence and citizenship; and 4) barriers to family unity.

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