

NUMBER 6

# CMI REPORT

NOVEMBER 2022



**AUTHOR**

**Jens Vedsted-Hansen**  
Professor of law  
Aarhus University

## **Refugees as future returnees? Anatomy of the ‘paradigm shift’ towards temporary protection in Denmark**



## CONTENTS

<b>1. Introduction</b>	<b>5</b>
<b>2. Refugee protection in Denmark: legal framework and historical overview</b>	<b>7</b>
2.1. General legal framework for asylum residence permits	7
2.1.1. Content and duration	7
2.1.2. Requirements for permanent residence permits	8
2.2. Overview over special temporary protection arrangements	9
2.2.1. Bosnian refugees (1992–1995)	10
2.2.2. Kosovar refugees (1999–2000)	10
2.2.3. Evacuees from Afghanistan (2021)	11
2.2.4. Persons displaced from Ukraine (2022)	11
<b>3. The 'return turn' in Danish asylum law</b>	<b>13</b>
3.1. Introduction of temporary protection status (2015)	13
3.2. Limiting the duration of asylum residence permits	16
3.3. Expanded scope of revocation of asylum residence permits (2015)	17
3.3.1. Limiting the requirement of fundamental, stable and durable change	17
3.3.2. Retroactive effect of the expanded revocation grounds	19
3.4. Completing the 'return turn': the official 'paradigm shift' (2019)	19
<b>4. The 'paradigm shift' in practice: review and revocation of Syrian refugees' residence permits (2019–)</b>	<b>23</b>
4.1. Controversies over the application of the amended revocation rules	23
4.2. Appeals Board signals on changed circumstances in Syria	24
4.3. Cautious approach in the initial appeals cases on revocation	25
4.4. Political push for further revocations, procedural irregularities on appeal	25
4.5. Mainstreaming revocation, increasing disparities	27
<b>5. The rights of refugees and the 'return turn'</b>	<b>31</b>
5.1. Unintended consequences of limited refugee rights	31
5.2. Suspension of family reunification	32
<b>6. Post-revocation: return, deportation or relocation of refugees?</b>	<b>35</b>
6.1. Relocation to deportation centres	35
6.2. Refugees moving to other EU member states upon or before revocation	36
<b>7. Conclusion</b>	<b>38</b>
<b>References</b>	<b>40</b>



## 1. INTRODUCTION

This report is a mapping study on developments towards temporary protection of refugees in Denmark, produced through the project Temporary Protection as a Durable Solution? The 'return turn' in European asylum law and policies (TemPro).<sup>1</sup>

The TemPro project aims to create new knowledge about the dynamics and effects of asylum policies reinforcing the temporary nature of protection provided to refugees. While the concept of 'temporary protection' has been commonly understood as an exceptional response to large-scale refugee arrivals, current practices of temporary protection are also embedded in the regular application of refugee law. These include explicit measures to reduce the duration of asylum such as the granting of shorter-term residence permits and regular 'safe return' reviews, as well as more indirect ones that make it more difficult for refugees to receive permanent residence or reunite with close family in the country of asylum.

Refugee status is not meant to last indefinitely. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Refugee Convention) secures international protection for people compelled to leave their country of origin 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, labour and welfare. Citizenship or at least permanent residence represents potential *de jure* or *de facto* 'end' to refugee status. On the other hand, refugee status may be withdrawn ('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 international protection (Refugee Convention Article 1C(1)-(6)). In other words, refugee law aims to strike a balance between a secure residence in countries of refuge and the possibility for sustainable return to the country of origin. Temporary asylum policies, in contrast, typically involve limited rights in countries of refuge, and they may compel return to countries at least partly in conflict.<sup>2</sup>

This study traces the 'return turn' in refugee protection in Denmark: policies that have shifted the focus of asylum from integration through time towards a more explicit expectation of return to the country of origin. Such policies were introduced by the special schemes for collective temporary protection of refugees from the Balkan conflicts in the 1990s and currently from the war in Ukraine, and in particular the recent policies that render *all* protection of refugees more temporary, according

---

1 Norwegian Research Council project nr. 303529. See the TemPro website: [Temporary protection as a durable solution? The 'return turn' in asylum policies in Europe \(TemPro\) \(cmi.no\)](#). This report benefitted significantly from constructive comments on earlier drafts from Jessica Schultz, Nikolas Feith Tan, Sarah-Louise Japhetson Mortensen and Stinne Østergaard Poulsen. Any errors as well as all legal conclusions and assessments remain the sole responsibility of the author.

2 See Jessica Schultz, 'Temporary protection and the erosion of refugee status', in C.M. Jacobsen et al., *Waiting and the Temporalities of Irregular Migration* (1st ed.) Routledge (2020).

to the 'paradigm shift' in Danish asylum law and policy since 2015. Practices of temporary protection include the designation of specific legal statuses for refugees escaping presumably time-bound threats, an intensified focus on cessation and revocation, increased obstacles to accessing permanent residence and citizenship, and limitation of entitlements such as barriers to family unity.

This mapping study is complemented by ethnographic research within TemPro that is looking at the experience of temporary protection 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.

This report is divided into seven sections. Following an introduction, section 2 outlines the general legal framework of refugee protection in Denmark and provides an overview over the special temporary protection schemes that were introduced in the 1990s and again in 2021 and 2022. Section 3 presents the 'return turn' in Danish asylum law and policy by describing the introduction of temporary protection status in 2015, accompanied by the expansion of the scope of revocation of certain asylum residence permits, and followed up in 2019 by the adoption of a stronger and more general focus on return of refugees as soon as conditions in their country of origin are seen to allow for revocation of their residence permits. While the latter was formally termed the 'paradigm shift' in political discourse, the 2019 amendments are in fact to be seen as a completion of the 'return turn' that was initiated already in 2015. Consequently, the terms 'return turn' and 'paradigm shift' are used interchangeably in this report.

Section 4 covers the implementation of the 'paradigm shift' in practice, describing and analysing first and foremost the systematic review and revocation of certain Syrian refugees' residence permits since 2019. Section 5 then examines the limitations on refugee rights that accompanied the introduction of temporary protection status, in particular focusing on the suspension of family reunification for holders of this tertiary status. Finally, section 6 outlines the effects of the 'paradigm shift' by identifying its consequences for refugees targeted by the revocation or non-extension of asylum residence permits in Denmark. Very few are returning voluntarily to Syria, none has so far been deported forcibly, and the 'former refugees' are instead being relocated to deportation centres, staying on in Denmark in irregular situations or moving clandestinely to neighbouring countries. In the light of these effects, the concluding section 7 attempts to draw some longer lines and suggests a tentative explanation of the rationale behind the 'return turn' in Danish asylum law and policy.



## 2. REFUGEE PROTECTION IN DENMARK: LEGAL FRAMEWORK AND HISTORICAL OVERVIEW

### 2.1. General legal framework for asylum residence permits

#### 2.1.1. Content and duration

The Danish Aliens Act<sup>3</sup> distinguishes between two temporal aspects of residence permits that have significant legal and practical implications and shall therefore be briefly explained as a background to the presentation and analysis of the 'return turn' in Danish asylum law. While the terms and distinctions here described apply to all types of residence permits issued under the Aliens Act, they have particular impact on asylum residence permits, i.e. those issued to refugees having either Convention refugee status, subsidiary protection status or temporary protection status.<sup>4</sup> Both the purpose and the duration of residence permits for refugees have been adjusted as part of the policy changes aiming to enhance the chances of revocation of asylum residence permits and return of persons previously granted protection to their country of origin.

First, the Aliens Act provides for a distinction pertaining to the official purpose or content of the residence permit which can, accordingly, be issued either with a *possibility of permanent residence* or for the *purpose of temporary stay* in Denmark.<sup>5</sup> The second distinction relates to the duration, i.e. the *period of formal validity*, of the residence permit which can be issued either for a limited period of time or as a permanent residence permit.<sup>6</sup>

While the detailed rules governing the issuance of residence for various purposes have traditionally been laid down by the Ministry<sup>7</sup> in Executive Orders, this practice was modified in connection with the 'paradigm shift' in 2019 that shall be presented in detail in section 3.4 below. In addition to the rules still provided in the Executive Order,<sup>8</sup> the temporary purpose of asylum permits is now expressly

---

3 Consolidated Aliens Act (bekendtgørelse af Udlændingeloven) no. 1205 of 25 August 2022 (hereafter Aliens Act).

4 See Aliens Act Section 7(1), (2) and (3), respectively. Temporary protection status under Section 7(3) was introduced in 2015 as an essential element of the first stage in the 'return turn', see section 3.1 below.

5 Aliens Act Section 11(1), first sentence.

6 Aliens Act Section 11(2), second sentence.

7 Ministry of Immigration and Integration (Udlændinge- og Integrationsministeriet), hereafter Immigration Ministry.

8 See Section 15(3) of Executive Order no. 1206 of 23 August 2022 (Udlændingebekendtgørelsen).

articulated in the statutory provisions of the Aliens Act,<sup>9</sup> thus signaling the officially intended temporariness for the addressees and possibly for the general public as well.<sup>10</sup>

As regards the distinction in terms of formal validity, the various periods of time for which residence permits with limited duration are valid are laid down in the Executive Order. For asylum residence permits, the period of validity is currently max two years for Convention status refugees, max one year for refugees granted subsidiary protection and temporary protection status, followed by max two years of validity for subsidiary protection and, after three initial periods of one-year permits, a duration of max two years of validity for temporary protection status.<sup>11</sup>

The same rules apply to refugees who have been resettled in Denmark.<sup>12</sup> As far as formal validity of the residence permits is concerned, resettled refugees are generally treated in line with Convention refugees and given a residence permit with a period of validity of max two years.<sup>13</sup> This reflects the fact that the majority of resettled refugees are indeed recognised under the Refugee Convention by the Danish authorities, even while some are granted subsidiary protection notwithstanding their previous recognition under the UNHCR mandate. Nonetheless, resettled refugees are encompassed by the general rules on revocation and non-extension of residence permits that were introduced under the ‘paradigm shift’ as further described in this study (see sections 2.2 and 3 below).<sup>14</sup>

### 2.1.2. Requirements for permanent residence permits

Obtaining a permanent residence permit entails both practical and legal advantages. As to the former, there is no longer a need to apply for renewal of the residence permit each time it is close to expiry, which is in itself a financial cost in addition to the logistical difficulties connected with the application procedure. The specific legal impact of having obtained a permanent residence permit is the inherent protection against revocation in case of changed circumstances. While the Aliens Act does not lay down specific grounds for cessation of status, the provisions on revocation of temporary (time-limited) residence permits operate as a legal basis for bringing asylum to an end if the need for protection is considered to no longer exist due to change of circumstances. Thus, refugees holding a permanent residence permit can no longer be affected by the revocation provision reflecting the cessation clauses in the Refugee Convention or the wider cessation grounds applying to subsidiary protection and temporary protection status.<sup>15</sup>

Importantly, the scope of (implicit) cessation of status and (explicit) revocation of residence permits for the latter two refugee categories, i.e. those with subsidiary protection or temporary protection status, was expanded as the first stage of the ‘return turn’ in Danish asylum law (see section 3.3 below). It may therefore be useful to give a short overview of the requirements to be fulfilled to obtain a permanent residence permit that is protected against revocation as a result of changed circumstances. Regardless whether it is an asylum residence permit or a residence permit issued to an immigrant with non-protection status, the holder will generally have to fulfil the following requirements in order to have it converted to a permanent residence permit:

9 Aliens Act Section 7(1) on Convention refugee status, Section 7(2) on subsidiary protection status and Section 7(3) on temporary protection status, all with similar wording: ‘A residence permit will be granted to an alien upon application for the purpose of a temporary stay ...’.

10 See Bill no. L 140/2018–19, explanatory remarks, p. 12.

11 See Section 16(1) of Executive Order no. 1206 of 23 August 2022.

12 Aliens Act Section 8(1) and (2).

13 See Section 16(1), first sentence, of Executive Order no. 1206 of 23 August 2022.

14 For an analysis, see Nikolas Feith Tan, ‘The End of Protection: The Danish ‘Paradigm Shift’ and the Law of Cessation’, *Nordic Journal of International Law* (90, 2021) pp. 60–85. See also letter of 11 September 2020 from the Immigration Ministry to the Danish Parliament, answering question no. 401 from the Committee on Immigration and Integration.

15 See Section 19(1)(i) of the Aliens Act, *ex contrario*. Only the stronger revocation grounds in Sections 19(2)–(6) apply to permanent as well as temporary residence permits.



- Lawful residence for a period of eight years that may be reduced to four years if additional integration requirements are fulfilled (see below)
- No serious criminal convictions, failing which the applicant is either excluded from permanent residence permit or suspended from obtaining it for significant periods of time
- General integration requirements concerning in particular
  - Economic self-support, including non-receipt of social welfare cash benefits under the Act on Active Social Policy or the Integration Act for 4 years
  - Signing of a document previously titled 'integration contract' which is now, under the terms of the 'paradigm shift', renamed as a 'residence and self-support declaration'
  - Passing a test in Danish language
  - Having been in ordinary full-time employment or self-employment for 3½ years during the past four years, and being currently active in the labour market
- Two out of four supplementary integration requirements or, in order to reduce the required residence period and obtain a permanent residence permit already after four years, fulfilment of all the four supplementary integration requirements concerning
  - Civic test or 'active civic engagement' in community activities
  - Ordinary full-time employment or self-employment for 4 years during the past 4½ years
  - Minimum level of income during the past 2 years as well as
  - Passing a Danish language test at higher level than normally required.<sup>16</sup>

While the rules on permanent residence permits have significantly tightened as regards the required period of residence and additional requirements during the past two decades, with slight modifications between 2012 and 2016,<sup>17</sup> they have not been subject to further restrictions in direct connection with the legislative amendments in 2019 constituting the 'paradigm shift' by way of mandatory application of the revocation grounds (see section 3.4 below). However, the expanded scope of application of the revocation grounds for refugees with subsidiary protection status that was introduced in 2015 (see section 3.3 below) was followed up by the extension of the general residence requirement for obtaining a permanent residence permit from a period of five years to six years in 2016, further extended to a period of eight years in 2017.<sup>18</sup> Thus, the 'cessation window', i.e. the period during which asylum residence permits can be made subject to review and revocation if the need for protection is considered to no longer exist,<sup>19</sup> has been extended in domestic legislation in recent years, although not explicitly as part of the 'paradigm shift'.

## 2.2. Overview over special temporary protection arrangements

As a complement to the asylum residence permits issued under the Aliens Act in accordance with the rules described above, temporary protection schemes have been established for certain groups of refugees on a collective basis. When introduced in the 1990s, such protection schemes were the first to deviate from the expectation that refugees would be in need of protection for an indefinite period of time that had been the general assumption in Danish asylum law and policy, and indeed

16 Sections 11(3)(i)-(ix), 11(4)(i)-(iv) and 11(5)-(9) of the Aliens Act. Some of the requirements may be dispensed with under certain rather narrow conditions, see Sections 11(12)-(18). For a detailed account of the requirements and dispensation rules, see Jens Vedsted-Hansen, 'Tidsbegrænsning, forlængelse og tidsubegrænset opholdstilladelse' in Eva Ersbøll et al., *Udlændingeret* (4. edition, vol. 2, 2021), pp. 225-72.

17 As a significant example, the employment requirement in Section 11(3)(viii)+(ix) was modified in this period to the effect that education would count on equal terms with ordinary employment or self-employment. This modification was abandoned as part of the restrictions adopted by amending Act no. 102 of 3 February 2016.

18 Amending Acts no. 102 of 3 February 2016 and no. 436 of 9 May 2017.

19 The term 'cessation window' amply illustrates the scope of potential review of the need for protection in order to apply the cessation grounds, cf. Nikolas Feith Tan, 'The End of Protection: The Danish 'Paradigm Shift' and the Law of Cessation', *Nordic Journal of International Law* (90, 2021) pp. 60-85, at p. 83. As mentioned above, the cessation grounds are not explicitly stipulated in Danish law, but they are reflected in the provisions on revocation of temporary asylum residence permits due to changed circumstances.

underlying the 1983 Aliens act. The following sections briefly outline the terms of these special protection arrangements.

### 2.2.1. Bosnian refugees (1992–1995)

In line with the other Scandinavian countries, Denmark adopted special legislation on temporary protection on a collective basis in the early 1990s, aimed at granting protection to people fleeing the armed conflict in former Yugoslavia, in particular persons who had been forcibly displaced from the atrocities, indiscriminate violence and human rights violations, including ethnic cleansing, in Bosnia.<sup>20</sup>

The special protection scheme for Bosnian refugees was accompanied by the suspension of the processing of individual asylum applications, which they might have submitted, for as long as the temporary protection was granted, yet for a maximum period of two years.<sup>21</sup> While under temporary protection, the Bosnian refugees were not allowed to take up employment or self-employed activities, and they had very limited entitlements to social welfare benefits, education etc. However, these limitations were gradually lifted, in particular as regards children's access to primary education.

When the suspension of the asylum procedure was lifted, and individual asylum applications were processed on the basis of general guidelines with a kind of *prima facie* criteria for the various subgroups of applicants, the vast majority of the Bosnian applicants were considered still being in need of protection and granted asylum under the ordinary provisions in the Aliens Act. A significant, yet rather narrow subset of the applicants was recognised as refugees under the UN Refugee Convention, while most of the Bosnians were granted asylum under the then existing provision on *de facto* refugees.<sup>22</sup>

### 2.2.2. Kosovar refugees (1999–2000)

Like the armed conflict in Bosnia a few years earlier, the civil unrest and escalating threats of ethnic cleansing in Kosovo in 1998 reached such a level of intensity and caused such numbers of people seeking protection in various European countries, including Denmark, as to prompt the introduction of special legislation on temporary protection. Similar to the temporary protection scheme for Bosnian refugees, temporary protection for Kosovars was granted on a collective basis. The granting of such protection precluded the processing of individual asylum applications for a period up to two years.<sup>23</sup>

The special legislation on temporary protection for Kosovars was repealed already in 2000.<sup>24</sup> In contrast to the situation for Bosnian refugees as described above, those displaced by the conflict in Kosovo did not face high chances of obtaining residence permits under the ordinary asylum provisions in the Aliens Act. Instead, a special provision was adopted with a view to granting continued residence to those Kosovars who were to be considered in need of temporary protection beyond the scope of the ordinary asylum provisions.<sup>25</sup>

20 For an overview, see Jan-Paul Brekke, Rebecca Thorburn Stern and Jens Vedsted-Hansen, *Temporary asylum and cessation of refugee status in Scandinavia* (EMN Norway 2020), pp. 7–9. More detailed accounts of the policies and legal issues of temporary protection of Bosnian refugees in Aina Tollefsen Altamirano et al., *En ny flyktningpolitikk i Norden? Midlertidig beskyttelse på 1990-tallet* (Nord 1998:17, Copenhagen 1998), Jens Vedsted-Hansen, Kim U. Kjær, Terje Einarsen and Janina W. Dacyl, *Midlertidigt asyl i Norden* (Nord 1999:3, Copenhagen 1999), and Eva Haagensen (ed.), *Midlertidig beskyttelse og tilbagevendning. Bosniske flyktninger i Norden* (Nord 1999:4, Copenhagen 1999).

21 See Sections 14 and 15 of Act no. 933 of 28 November 1992 on temporary residence permits for certain persons from the former Yugoslavia etc.

22 Section 7(1) and (2) of the Aliens Act, respectively. The *de facto* refugee status according to Section 7(2) has subsequently been replaced by the subsidiary protection status, which is strictly in line with Article 3 ECHR.

23 See Section 26 of Act no. 251 of 28 April 1999 on temporary residence permits for people in emergency from the Kosovo Province in the Federal Republic of Yugoslavia.

24 Act no. 427 of 31 May 2000 repealing Act no. 251 of 28 April 1999 on temporary residence permits for people in emergency from the Kosovo Province in the Federal Republic of Yugoslavia.

25 Section 9(2)(v) of the Aliens Act, adopted by the Act mentioned in the previous note. The special provision on Kosovars was later moved to the current Section 9 e of the Aliens Act, cf. Bill no. L 152/2001–02, explanatory remarks, p. 69.

### 2.2.3. Evacuees from Afghanistan (2021)

Responding to Taliban's takeover of power in Afghanistan in the summer of 2021, a special arrangement was established to grant temporary residence permits to persons who had assisted Danish authorities, their partners or NGOs in Afghanistan and who had been evacuated by the Danish authorities due to the deteriorated security situation in Afghanistan.<sup>26</sup> As this residence scheme was introduced as an *ad hoc* response to the Taliban takeover, covering a very limited number of persons among whom a significant part were subsequently offered resettlement in other countries, in particular USA, it shall not be further described in this context.

### 2.2.4. Persons displaced from Ukraine (2022)

A few days after the Russian invasion of Ukraine on 24 February 2022 the EU decided to activate the Temporary Protection Directive that had been adopted back in 2001 as a framework instrument for protection of displaced people in mass influx situations.<sup>27</sup> The Directive had never been applied until the armed conflict in Ukraine was causing displacement in what was soon expected to become of large scale.<sup>28</sup>

Due to the Danish opt-out from supranational EU harmonisation of asylum policy under the provisions of Article 78 TFEU, Denmark is not bound by the Temporary Protection Directive, and hence also not by the Implementing Decision.<sup>29</sup> Nonetheless, on 4 March 2022 the Danish government agreed with a number of political parties to introduce special legislation providing for the issuance of temporary residence permits to displaced Ukrainians. As a result, a Bill was launched on 14 March 2022 which was soon adopted as a separate Act on temporary residence permits to persons who are displaced from Ukraine.<sup>30</sup>

Although the Danish legislation on temporary residence for displaced Ukrainians has established protection arrangements that are largely similar to those provided for in other EU member states according to the Temporary Protection Directive, there are a few quite remarkable differences. First, the personal scope of the Danish temporary protection system is more narrowly delimited than the EU Implementing Decision, given that residence permits under the Danish Act can only be issued to Ukrainian nationals and stateless persons and nationals of third countries who benefited from international protection in Ukraine, while other third country nationals are not included in the Act as they were assumed to be able to take up residence in their country of origin, as opposed to refugees.<sup>31</sup> Second, the Danish Act explicitly excludes temporary residence permits being issued to persons who would otherwise be eligible if they have already obtained a residence permit in another state outside

26 Act no. 2055 of 16 November 2021 on temporary residence permits to persons who in Afghanistan assisted Danish authorities, etc.

27 Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, activated by Council Implementing Decision (EU) 2022/382 of 4 March 2022 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.

28 On the previous non-application of the Temporary Protection Directive, see Meltem Ineli Ciger, '5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022', *Odysseus Blog on EU Immigration and Asylum Law and Policy*, 7 March 2022 (5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022 – EU Immigration and Asylum Law and Policy (eumigrationlawblog.eu), accessed 8 November 2022).

29 Cf. Protocol no. 22 on the position of Denmark, annexed to the TEU and the TFEU, and recital 26 of Implementing Decision (EU) 2002/382.

30 Bill no. L 145/2021–22 on temporary residence permits to persons displaced from Ukraine, adopted as Act no. 324 of 16 March 2022.

31 Section 1(1)–(3) of Act no. 324 of 16 March 2022. The abovementioned reasoning behind this narrow delimitation was stated in Bill no. L 145/2021–22, explanatory remarks, p. 14. Cf. Article 2(2) and (3) of Implementing Decision (EU) 2022/382 of 4 March 2022, stipulating that temporary protection be granted on a mandatory or optional basis, respectively, to stateless persons and third country nationals having resided legally in Ukraine on non-asylum basis, but unable to return in safe and durable conditions to their country or region of origin.

Ukraine, at clear variance with the EU Implementing Decision.<sup>32</sup> Third, the duration of the temporary residence permits issued under the Danish legislation will be two years with the possibility to extend them for a third year, i.e. until March 2025.<sup>33</sup>

---

32 Section 5 of Act no. 324 of 16 March 2022, cf. EU member states' explicit agreement reflected in recital 15 of Implementing Decision (EU) 2022/382 of 4 March 2022 not to apply Article 11 of the Temporary Protection Directive. See the scarce motivation for the opposite Danish approach in Bill no. L 145/2021–22, explanatory remarks, p. 16.

33 Section 3(1) and (2) of Act no. 324 of 16 March 2022, cf. Article 4 of the Temporary Protection Directive.

### 3. THE 'RETURN TURN' IN DANISH ASYLUM LAW

In contrast to the special temporary protection arrangements just described, general legislative changes have increasingly made regular asylum residence permits more temporary. This section describes the various stages of this 'return turn' in Danish asylum law that has reoriented refugee protection from the initial grant of a secure legal status with well-defined prospects of permanent residence to an increasing focus on return of refugees to the country of origin as soon as conditions there are considered to allow for revocation of their residence permits. This was completed with the 'paradigm shift' adopted in 2019 that will be further analysed in section 4. However, the introduction of temporary asylum formally started in 2015 as a first stage in Denmark's responses to the increased number of asylum seekers during the general European asylum and migration crisis.

Informal 'temporary protection' arrangements had already been implemented at the administrative level in 2011, when the Refugee Appeals Board decided to suspend deportations of those asylum seekers from Syria who were not considered eligible for either Convention refugee status or subsidiary protection status.<sup>34</sup> Lacking any legislative basis and arguably incompatible with the Aliens Act, this administrative practice of *de facto* temporary protection appeared to be motivated by unclear reasoning.<sup>35</sup> Although similar arrangements have been implemented towards other groups of rejected asylum seekers over time, it has to be considered legally questionable at least as far as the Syrians are concerned. In any case, the practice of suspended deportations affected a rather limited number of asylum seekers as recognition rates for Syrian asylum seekers were relatively high already at that stage.<sup>36</sup>

#### 3.1. Introduction of temporary protection status (2015)

The administrative practice of *de facto* temporary protection ended in September 2013 when the Refugee Appeals Board adjusted its asylum practice so as to grant *prima facie* subsidiary protection status to all asylum seekers not found eligible for Convention refugee status, if they were originating

34 Refugee Appeals Board, Annual Report 2011 (2012), pp. 149–50 ([Formandskabets-2011-beretning.pdf \(fln.dk\)](#), accessed 8 November 2022).

35 Cf. Refugee Appeals Board, Annual Report 2012 (2013), pp. 340–41 ([Formandskabet-21-beretning-2012-WEB.pdf \(fln.dk\)](#), accessed 8 November 2022).

36 In 2011, 59% of asylum seekers from Syria were recognised as Convention refugees, 5% were granted subsidiary protection status, see Refugee Appeals Board, Annual Report 2011, p. 311. In 2012, recognition rates dropped to 40% and 5%, respectively, see Annual Report 2012, p. 360. Notably, statistics from the Danish Immigration Service as the first instance are not included in these figures. Here the recognition rate for asylum seekers from Syria was 64% in 2011, 89% in 2012 and increased to 96% in 2013, 97% in 2014 and 98% in 2015, see Danish Immigration Service, Tal og fakta på udlændingeområdet 2015 (2016), p. 15 ([https://us.dk/media/9230/tal\\_og\\_fakta\\_2015.pdf](https://us.dk/media/9230/tal_og_fakta_2015.pdf), accessed 8 November 2022).

from parts of Syria affected by armed conflict or attacks against civilians.<sup>37</sup> In the general decision to adjust the practice in cases concerning Syria, the Appeals Board referred to the recent intensification of the armed conflict in the country, causing huge civilian losses, the many refugees and internally displaced persons as well as attacks against the internally displaced and other civilian targets. The legal reasoning behind the change of practice was primarily based on the criteria laid down by the European Court of Human Rights in its 2011 judgment *Sufi and Elmi*.<sup>38</sup> Following the Appeals Board's change of practice, the Danish Immigration Service adjusted its practice accordingly, resulting in the grant of asylum to applicants from major parts of Syria on a *prima facie* basis, still provided that the exclusion grounds were to be applied if relevant.

In November 2014, the Danish government tabled a proposal to amend the Aliens Act in order to introduce *temporary protection status* as a separate asylum category.<sup>39</sup> The act introducing this explicitly temporary form of protection was adopted by the Parliament in February 2015.<sup>40</sup> The new provision in Section 7(3) of the Aliens Act was meant to encompass asylum seekers falling within the scope of Article 3 ECHR or Article 1 ECHR Protocol 13. As opposed to subsidiary protection status under the already existing Section 7(2) that was based on the same human rights obligations, the new provision on temporary protection status would be applicable to those asylum seekers whose risk of death penalty or ill treatment was resulting from a *particularly serious situation* in the country of origin characterised by *arbitrary violence* and *ill-treatment of civilians*.

Notably, the government stated several times in the explanatory remarks to the Bill that the proposed provision would not expand the scope of the right to asylum in Denmark. The Bill was rather intended to ensure that those falling within the new category of temporarily protected persons could be more readily returned to their country of origin once the worst hostilities had ended. Thus, it was stated repeatedly in the explanatory remarks that the need for protection of persons whose protection need was due to the general situation in their country of origin, such as a particularly serious situation in connection with an armed conflict as indicated in the proposed Section 7(3), would generally be of a more temporary nature than those in need of protection due to special individual circumstances.<sup>41</sup>

In the Bill's explanation of the proposed new provision on temporary protection status, the government referred to the case law of the European Court of Human Rights and the Danish Refugee Appeals Board.<sup>42</sup> As regards the latter, referring to the Appeals Board's change of practice concerning Syrian asylum seekers in September 2013, as described above, the government stated that this new practice had been established notwithstanding the fact that this approach was not in full accordance with the original intentions behind Section 7(2) of the Aliens Act on subsidiary protection status.<sup>43</sup> While the statement is formally correct insofar as general conflict in the asylum seeker's country of origin was initially considered to fall outside the scope of this provision when it was adopted in 2002, this justification of the proposed amendment is substantively inaccurate because it disregards an unequivocal stipulation in the 2002 Bill that introduced Section 7(2). It was here explicitly stated that the asylum authorities' application of the proposed new provision on subsidiary protection status would have to be in compliance with the evolving case law of the European Court of Human Rights under Article 3 ECHR.<sup>44</sup>

37 Refugee Appeals Board, Annual Report 2013 (2014), pp. 420–25 ([Formandensbetning2013\\_WEB.pdf \(fn.dk\)](#), accessed 8 November 2022).

38 Ibid., pp. 421–22. Cf. ECtHR judgment of 28 June 2011, *Sufi and Elmi v. United Kingdom*.

39 Bill no. L 72/2014–15 of 14 November 2014.

40 Amending Act no. 153 of 18 February 2015, in force the first day after promulgation and applicable to asylum applications submitted as from 14 November 2014.

41 Bill no. L 72/2014–15, explanatory remarks, pp. 3, 7 and 19.

42 Ibid., pp. 4–6.

43 Ibid., p. 3.

44 Cf. Bill no. L 152/2001–02 of 28 February 2002, explanatory remarks, pp. 28 ff. This statement was quoted in the explanatory remarks of Bill no. L 72/2014–15, p. 4, yet disconnected from the abovementioned justification of the proposed new provision on temporary protection status.



Against the background of this official motivation, it is inevitable to see the government's introduction of the new Section 7(3) on temporary protection status in 2014–15 as a kind of countermeasure following up on the Refugee Appeals Board's adjustment of its practice concerning Syrian asylum seekers the previous year. Implicitly questioning the legitimacy of that decision, or at least of its general legal basis and implications, the government invoked only one side of the legislative assumptions underlying the adoption of the provision on subsidiary protection status back in 2002, whereas the clear stipulation to the opposite effect of keeping Danish asylum practice in accordance with the ECHR, as interpreted and applied by the European Court of Human Rights, was remarkably omitted from the Bill's explanation of the reasoning behind the proposal on temporary protection status.

For refugees granted temporary protection status under the new Section 7(3), the *right to family reunification* with spouses and children would be suspended for a period of one year, according to the 2015 legislation.<sup>45</sup> This suspension period was formally in line with the duration of validity of the first residence permit to be issued under the temporary protection scheme, and family reunification was made contingent on the extension of the residence permit beyond the first year. Thus, in policy terms it appeared to be in line with the rationale behind the legislative amendment. However, as the suspension was extended to three years in 2016, its human rights implications became clear and were openly admitted by the Danish government. Finally in 2021, the legislation on suspended family reunification was held by the European Court of Human Rights to be in violation of Article 8 ECHR, as further analysed below (see section 5.2).

In the 2014 Bill, the Danish government stated its intention to uphold a humane approach to asylum policy issues and expressed the basic position that Denmark ought to take its part of the responsibility for the world's refugees, live up to international obligations and secure the protection of asylum seekers from Syria for as long as they need it. At the same time, pointing to the significant increase in the number of arrivals of asylum seekers both in Denmark and in neighbouring countries during 2014, the government expressed its intention to make sure that such refugees, whose need for protection it posited to be of a more temporary duration due to the generalised nature of the extreme and arbitrary violations causing their flight and need for protection, could be returned as soon as the situation in their country of origin would make it possible.<sup>46</sup>

While the approach and rationale behind the legislation introducing temporary protection status in 2015 was therefore, at least in a general sense, protection-related and relatively inclusive, the policy objectives and the accompanying rhetoric changed significantly one year later as the new Danish government launched its response to the asylum and migration crisis that had manifested itself across Europe during the summer and autumn of 2015. The 2016 legislation did not affect the provision on temporary protection status as such, but aimed at restricting the conditions for those who are granted asylum by tightening the requirements for permanent residence permits (see section 2.2.2 above) and the rules on revocation of refugees' residence permits and, of particular relevance for this report, extending the suspension of the right to family reunification for refugees with temporary protection status, as mentioned above.

In order to illustrate the significant change of policy objectives and political rhetoric, it may be relevant to quote the official motivation of the new restrictions in this context. The Danish government here again pointed to the high number of refugees arriving in Europe putting pressure on all countries, including Denmark. It further argued:

We assume a shared responsibility, but in the Danish Government's opinion, we should not accept so many refugees that it will threaten the social cohesion in our own country, because the number of

45 Cf. Section 9 (1), (i) (d), (ii) (d) and (iii) (d) of the Aliens Act, as amended by Act no. 153 of 18 February 2015.

46 Bill no. L 72/2014–15, explanatory remarks, p. 3.

newcomers has an impact on the subsequent success of integration. It is necessary to strike the right balance to maintain a good and safe community.<sup>47</sup>

The government then accounted for various other policy measures on asylum and continued with a quite remarkable statement:

However, there is a need to do more. ... the conditions within the area of asylum have an *impact on how attractive it is to seek towards Denmark*. Therefore the government ... created a new and reduced integration benefit ...

With the present proposal the government wants to *further restrict the conditions of asylum* and access to Denmark, so that it will become *markedly less attractive* to seek towards Denmark.<sup>48</sup>

In addition to serving rhetorical purposes at the domestic political level, the bluntness of this governmental statement arguably reflects the indirect deterrence strategy of which these legislative measures were a central part.<sup>49</sup> The additional developments that shall be accounted for in the following sections can be seen as part of a similar strategy.

### 3.2. Limiting the duration of asylum residence permits

The adoption of the new Section 7(3) of the Aliens Act, providing for temporary protection status, resulted in limited duration of validity for residence permits issued to refugees under this provision until they might qualify for a permanent residence permit. Notably, however, the possibility to limit the period of validity of asylum residence permits was introduced for the pre-existing categories of refugees before the 2015 legislative amendments that created temporary protection status.

Previous to the 2015 amendments, asylum residence permits had generally been issued for a limited period of max five years, yet with the possibility for the Danish Immigration Service to limit the period to two years if the general conditions in the country of origin gave reason to expect that the criteria for granting asylum would not be fulfilled for the entire period of five years.<sup>50</sup> In practice, however, the Immigration Service apparently did not apply the optional provision allowing for limitation on the period of validity for asylum residence permits. Thus, among the 3.367 asylum residence permits issued from January to August 2014, approximately 98,5% were issued for a period of five years while only 1,5% of these refugees were given residence permits with a validity period of two years.<sup>51</sup>

In any case, asylum residence permits would normally be issued with the *possibility of permanent residence*.<sup>52</sup> Following the introduction of temporary protection status, however, residence permits issued on the basis of Section 7(3) were, logically, issued for the purpose of temporary stay, and the duration of validity was limited to one year with possible extension for a period of max two years. For Convention refugee status and subsidiary protection status, the abovementioned rules prevailed.<sup>53</sup>

Already before the introduction of the 2019 'paradigm shift' legislation (see section 3.4 below), the duration of validity for residence permits issued to Convention refugees and holders of subsidiary protection status was reduced to two years and one year, respectively, with possible extension of the

47 Bill no. L 87/2015–16 of 10 December 2015, explanatory remarks, p. 8. The citation above is based on the translation in *M.A. v. Denmark*, ECtHR Grand Chamber judgment, 9 July 2021, para. 33 (discussed in section 5.2 below).

48 Ibid. (italics added). Author's translation as this passage was interestingly not included in the translation quoted by the ECtHR in *M.A. v. Denmark*.

49 Cf. Thomas Gammeltoft-Hansen, 'Refugee policy as 'negative nation branding': the case of Denmark and the Nordics', in Kristian Fischer and Hans Mouritzen (eds.), *Danish Foreign Policy Yearbook 2017* (DIIS, Copenhagen 2017), p. 99, pp. 104–105.

50 Cf. Section 25(1) of Executive Order no. 727 of 28 June 2012. This rule was upheld in Section 25(1) of Executive Order no. 427 of 29 April 2014.

51 Letter of 21 October 2014 from the Ministry of Justice to the Danish Parliament, answering question no. 862 from the Committee on Immigration and Integration. The Ministry emphasised that the figures provided were provisional and potentially inaccurate.

52 Cf. Section 24(1) of Executive Orders no. 727 of 28 June 2012 and no. 427 of 29 April 2014.

53 Cf. Sections 15(3) and 16(1) of Executive Order no. 375 of 20 March 2015.

latter's residence permits for a period of two years. For refugees with temporary protection status the issuance of permits with one year validity was prolonged so as to apply for an initial period of three years in total, following which the residence permits could be extended for max two years.<sup>54</sup> The prolonged period of three years during which the residence permit was to be issued with a duration of validity of one year is to be seen as a technical consequence of the extended suspension for three years of the right to family reunification for refugees with temporary protection status (see section 5.2. below).

These periods of validity of asylum residence permits remained in force even after the 2019 legislative amendments described in section 3.4.<sup>55</sup> By contrast, as a consequence of these amendments, all three types of refugees – i.e. those with Convention status, subsidiary protection and temporary protection status – were going to be issued a residence permit for the *purpose of temporary stay*, in accordance with the rationale of the 'paradigm shift' introduced by the 2019 legislation. As part of this legislation, the rule stating the temporary purpose was even elevated to the level of statutory provisions in the Aliens Act (see section 2.1.1 above).

This brief overview allows for two conclusions of particular interest in the context of the 'return turn' in Danish asylum law:

- First, the legislative option to limit the period of validity for asylum residence permits in concrete cases was apparently not utilised in administrative practice, even at the time when high numbers of Syrian refugees were granted asylum on exactly the same basis as that which motivated the introduction of temporary protection status in 2015.
- Second, general limitations on the duration of validity of asylum residence permits were introduced well in advance of the formal introduction of the 'paradigm shift' in 2019, logically reflecting the fact that the possibility to revoke such permits for refugees with subsidiary protection and temporary protection status had been expanded already as part of the 2015 amendments, as shall be described in the following.

### 3.3. Expanded scope of revocation of asylum residence permits (2015)

#### 3.3.1. Limiting the requirement of fundamental, stable and durable change

The 2015 legislative amendments went further than introducing temporary protection status under the new provision in Section 7(3) of the Aliens Act. In addition, the legal threshold for revocation of a significant number of asylum residence permits was lowered not only for refugees holding the new temporary protection status, but also for those with subsidiary protection status according to Section 7(2).<sup>56</sup> Given that the revocation grounds could also operate as a basis for the refusal of extension of residence permits, the terms revocation and refused extension can be used interchangeably for such decisions at this first stage of the 'return turn'.

In administrative practice until 2015, revocation of residence permits issued under the asylum provisions in Section 7 of the Aliens Act due to a general change of circumstances in the refugee's country of origin was generally subject to the requirement that the actual change of circumstances could be considered *fundamental, stable and durable*. In other words, the cessation criteria recognised in connection with Article 1 C(5) of the Refugee Convention, in accordance with the recommendations of the UNHCR Executive Committee,<sup>57</sup> were observed in all cases of revocation of asylum residence

54 Cf. Section 16(1) of Executive Order no. 1197 of 26 September 2016. This rule was upheld in Section 16(1) of Executive Order no. 330 of 24 April 2018.

55 Cf. Section 16(1) of Executive Order no. 317 of 27 March 2019.

56 Section 19(1)(i) of the Aliens Act, as amended by Act no. 153 of 18 February 2015.

57 Cf. UNHCR Executive Committee Conclusion No. 69 (XLIII) (1992) and UNHCR Guidelines on International Protection No. 3: *Cessation of Refugee Status under Article 1 C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)* (2003), paras. 8 and 25. See also James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Second Edition, 2014), pp. 476–94, and Jessica Schultz, *The Internal Protection Alternative in Refugee Law* (2019), pp. 200–203 and 223–224.

permits (reflecting implicit cessation decisions, cf. section 2.1.2 above), regardless whether they had been issued to refugees falling within the Convention refugee definition or to those granted subsidiary protection status according to Section 7(2) of the Aliens Act.

As part of the 2015 amendments, the scope of revocation of the latter category of asylum residence permits was expanded by lowering the legal threshold so as to be in line with that applicable to the new temporary protection status under Section 7(3) of the Aliens Act. The introduction of this new temporary status was actually invoked to justify the simultaneous change of revocation criteria for the pre-existing subsidiary protection status, even arguing that this was merely a matter of clarifying the state of the law.<sup>58</sup>

This official motivation may appear somewhat questionable, however. While there had indeed previously been legislative attempts to limit the requirement of fundamental, stable and durable changes to revocation based on the cessation of Convention refugee status, these attempts had been rather ambiguous and not explicitly aiming to lower the revocation threshold for subsidiary protection status.<sup>59</sup> This is reflected in the fact that the Refugee Appeals Board had apparently routinely applied the Convention-based cessation criteria in all revocation cases, notwithstanding the alleged legislative initiatives.<sup>60</sup> Although the rationale of this apparent ignorance of the legislature's intentions is necessarily speculative, the underlying reasons behind the lack of impact of these previous legislative initiatives on the Appeals Board's revocation practices may be that they were considered insignificant or inconclusive, or the Appeals Board may have considered it necessary to operate a kind of safety margin when assessing the risk of violations of Article 3 ECHR as a result of revocation of residence permits for refugees with subsidiary protection status.

Another problem with the justification of the proposed expansion of the scope of revocation of residence permits for subsidiary protection status is that it appears to be inconsistent with the rationale of the proposal on temporary protection status, despite the claim to the opposite in the Bill. The new temporary status was first and foremost motivated by the notion that the need for protection of persons fleeing generalised risk situations with arbitrary violence and ill-treatment of civilians could in general be assumed to be of a more temporary nature.<sup>61</sup> Given that the Bill aimed to move precisely this category of refugees to the new provision in Section 7(3) on temporary protection status, it may seem to follow that those remaining under subsidiary protection status according to Section 7(2) would fall outside the alleged temporariness of the protection need.

Be that as it may, the Bill's legal reasoning behind the lowered revocation threshold was a formal reference to the requirements for granting subsidiary protection status according to the risk criteria applicable in the context of Article 3 ECHR on which Section 7(2) as well as Section 7(3) of the Aliens Act are based. Thus, according to the Bill, the future criteria for revocation of such residence permits would be linked to an assessment of the need for continued protection in the light of international obligations, in particular Article 3 ECHR. It was explicitly stated that in case of an improved general situation in the country of origin, this criterion would allow for the revocation of the residence permit regardless of the fact that the conditions there were still *serious, fragile and unpredictable*. The only exception should be cases where the changes in the country of origin were considered as being of a *purely temporary* character.<sup>62</sup>

In sum, according to the 2015 amendments of the Aliens Act, the revocation criteria would be similar for all asylum residence permits issued to refugees with subsidiary protection status (Section

58 Bill no. L 72/2014–15, explanatory remarks, pp. 12 and 21–22.

59 See Jens Vedsted-Hansen, 'Bortfald og inddragelse af opholdstilladelser' in Eva Ersbøll et al., *Udlændingeret* (4. edition, vol. 2, 2021), pp. 493–496.

60 Letter of 13 October 2016 from the Immigration Ministry to the Danish Parliament, answering question no. 960 from the Committee on Immigration and Integration. See also Refugee Appeals Board, Annual Report 2005 (2006), pp. 103–106, Refugee Appeals Board, Annual Report 2011 (2012), pp. 182–186, Refugee Appeals Board, Annual Report 2012 (2013), pp. 178–180 and Refugee Appeals Board, Annual Report 2013 (2014), pp. 234–236.

61 Bill no. L 72/2014–15, explanatory remarks, pp. 3 and 7 (see section 3.1 above).

62 *Ibid.*, pp. 12 and 22. The reference to 'serious, fragile and unpredictable' was clearly inspired by the ECtHR judgment of 5 September 2014, *K.A.B. v. Sweden*, para. 91.

7(2)) and temporary protection status (Section 7(3)). Only for refugees recognised with Convention refugee status (Section 7(1)) would it still be a requirement for revocation of the residence permit that the change of circumstances in the country of origin is considered fundamental, stable and durable, in line with the criteria applicable in the context of the cessation clause in Article 1 C(5) of the Refugee Convention.

### 3.3.2. Retroactive effect of the expanded revocation grounds

The significant expansion of the scope of revocation by way of lowering the threshold for such decisions concerning residence permits with subsidiary protection or temporary protection status has subsequently resulted in numerous revocation (and non-extension) cases in particular concerning refugees from Somalia and Syria who were holders of such a residence permit. This administrative practice shall be described and analysed below with a particular focus on revocation of Syrian refugees' residence permits (see section 4).

According to the transitional provisions, the 2015 legislative amendments would not be applicable to cases in which the asylum application had been submitted before 14 November 2014.<sup>63</sup> Nonetheless, the specific amendment of Section 19(1)(i) of the Aliens Act concerning revocation was in practice given effect also in cases concerning revocation of residence permits that had been issued prior to this date. This might be legally questionable inasmuch as it seems to constitute a retroactive effect that was not explicitly stipulated neither in the Bill nor in the adopted act. The wide-ranging temporal effect of the amendment of Section 19(1)(i) is probably to be explained by a pragmatic approach by the Immigration Service as well as the Refugee Appeals Board based on deference to the official – yet questionable – legislative assumption that the expanded scope of revocation under this provision was merely a clarification of the state of the law, as claimed in the Bill.<sup>64</sup>

In practice, the retroactive application of the lowered threshold for revocation of residence permits affected especially Somali refugees who had been granted subsidiary protection status since 2011 in consequence of the European Court of Human Rights' *Sufi and Elmi* judgment. In 2016 the Danish Immigration Service initiated a screening of numerous of these refugees' cases with a view to considering revocation of their residence permits. These were revoked or refused extension in several cases that were subsequently examined by the Refugee Appeals Board in light of the amended revocation criteria.<sup>65</sup>

The 2015 legislative amendments are therefore to be seen as a decisive first stage in the 'return turn' of Danish asylum law and policy, even while the 'paradigm shift' terminology only came into usage at a later stage. The second stage in this policy development, introduced a few years later, aimed to increase the impact of the already expanded revocation rules, as shall be described in the following.

## 3.4. Completing the 'return turn': the official 'paradigm shift' (2019)

The notion of a 'paradigm shift' in Danish asylum policy was introduced at the political level in 2017, predominantly by way of a proposal for policy reform launched by the Danish People's Party in the negotiations on the state budget for 2018, but apparently to no avail. By contrast, the reform proposal succeeded the following year and was soon to be implemented at the level of legislation. As part of the political agreement with the Danish People's Party on the state budget for 2019, concluded on

63 Section 2 of amending Act no. 153 of 18 February 2015, in force the first day after promulgation and applicable to asylum applications submitted as from 14 November 2014.

64 Cf. Bill no. L 72/2014–15, pp. 12 and 21–23 (see critical remarks on this assumption in section 3.3.1 above).

65 See Refugee Appeals Board, Annual Report 2016 (2017), pp. 371–372 and 375–380, Refugee Appeals Board, Annual Report 2017 (2018), pp. 274 and 285–298, Refugee Appeals Board, Annual Report 2018 (2019), pp. 62–68 and 344–356, Refugee Appeals Board, Annual Report 2019 (2020), pp. 78–81 and 411–419, Refugee Appeals Board, Annual Report 2020 (2021), pp. 265–283 and Refugee Appeals Board, Annual Report 2021 (2022), pp. 235–249.



30 November 2018, the government undertook to introduce a new approach in immigration and integration policy with a focus on temporariness and return.<sup>66</sup>

In hindsight, it seems likely that the policy directions inherent in the ‘paradigm shift’ notion were kept in mind at the governmental level during the period between the two annual state budget negotiations. While not expressly using the term as such, what became the legislative basis of the ‘paradigm shift’ was presented by the government already 15 January 2019 as a comprehensive Bill of 175 pages proposing amendments of the Aliens Act, the Integration Act, the Repatriation Act as well as labour market, social welfare, educational and penal laws.<sup>67</sup> Only five weeks later, the Bill was adopted on 21 February 2019, creating the legal basis for rather programmatic policy changes in the field of asylum in its wider sense.<sup>68</sup>

As the first element of the new policy paradigm, all asylum residence permits are to be issued not only as temporary permits with a limited duration of validity, but now explicitly *for the purpose of temporary stay* in Denmark, regardless whether they have been issued to Convention status refugees or to those with subsidiary protection status or temporary protection status.<sup>69</sup> This amendment was intended to signal to everyone granted asylum that protection in Denmark will be temporary and last only for as long as necessary under international obligations, and that the Danish state has both the will and the ability to act swiftly and efficiently when the basis for individual refugees’ residence permits no longer exists.<sup>70</sup>

The temporary perspective was further emphasised by a range of other amendments, including certain terminological changes meant to prevent refugees and their family members from expecting more permanent integration into the Danish society.<sup>71</sup> As noteworthy examples, the Integration Act was amended to the effect that it should henceforth specifically have the purpose of securing that newcomers be aware that the framework of their stay in Denmark is to be defined by the legal basis of the individual’s residence, thereby referring to the temporary purpose of all refugees’ residence permits, as described above.<sup>72</sup> Accordingly, the previous provision stipulating the purpose of making newcomers aware that successful integration would be a precondition for obtaining a permanent residence permit was repealed.<sup>73</sup> As regards the legislative indications of the various prospects of stay in Denmark, the term ‘integration programme’ was replaced by ‘self-provision and return programme’ for all refugees and their family members, just as ‘integration benefit’ was renamed ‘self-provision and return benefit’ in order to emphasise that the efforts aiming at employment and self-provision were not meant to change the fact that the framework of the stay in Denmark is defined by the legal basis of the individual’s residence.<sup>74</sup>

The new focus on temporariness was operationalised by amending the rules on extension and revocation of residence permits issued to all categories of refugees. This was indeed intended to provide the legal mechanism required to expand the scope of non-extension or revocation of asylum permits. Given that the criteria for refusal of extension were previously identical with those on revocation of residence permits,<sup>75</sup> the tightening of the revocation rules combined with the separation of the rules on extension from the revocation criteria is to be considered the most significant concrete impact of the ‘paradigm shift’ in terms of the stability of refugees’ residence in the country.

66 Danish state budget agreement (Aftale om Finansloven for 2019), 30 November 2018, pp. 27–30.

67 Bill no. L 140/2018–19 of 15 January 2019.

68 Amending Act no. 174 of 27 February 2019, in force as of 1 March 2019.

69 Cf. Section 7(1), (2) and (3) and Section 8(1) and (2) of the Aliens Act, as amended by Act no. 174 of 27 February 2019 (see section 2.3.1 above).

70 Cf. Bill no. L 140/2018–19, explanatory remarks, pp. 12 and 24.

71 Ibid., pp. 31–32.

72 Section 1(2) of the Integration Act, as amended by Act no. 174 of 27 February 2019.

73 Section 1(4) of the Integration Act, as before the amendments by Act no. 174 of 27 February 2019. On the reasoning behind this amendment, see Bill no. L 140/2018–19, explanatory remarks, p. 32.

74 Cf. Bill no. L 140/2018–19, explanatory remarks, p. 31, and Section 2(1) and (2) of Act no. 174 of 27 February 2019.

75 Cf. Sections 11(2) and 19(1)(i) of the Aliens Act as before the amendments by Act no. 174 of 27 February 2019.



As a consequence, for asylum residence permits with limited duration of validity – normally for a period of eight years following the issuance of the first residence permit until the refugee fulfils the requirements for a permanent residence permit (see section 2.3.2 above) – *extension of the residence permit* on expiry of each period of validity will no longer be granted on the basis of a presumption in favour of extension. Instead, extension cases shall now in principle be decided in the same manner as the initial applications for asylum. Extension will therefore only be granted if the applicant is still considered to be in need of protection.<sup>76</sup> This amendment of the criteria for extension of asylum residence permits was apparently expected to affect mostly those refugees who have been granted asylum due to the general situation in their country of origin.<sup>77</sup> According to this legislative assumption, the 'paradigm shift' would seem to have relatively limited impact on Convention status refugees and beneficiaries of subsidiary protection status. Insofar as practices concerning the latter category is concerned, however, this seems to be an open question.

As regards the question of *revocation of asylum permits*, it is now stipulated that all asylum residence permits shall be revoked insofar as possible according to the relevant (implicitly underlying) cessation criteria.<sup>78</sup> Perhaps most importantly, the rule on *mandatory revocation* applies to cases in which a change of the general circumstances in the country of origin are considered to bring the need for protection to an end according to international protection standards, i.e. the Refugee Convention and the prohibition of *refoulement* in human rights treaties. In this connection the lowered threshold for revocation of residence permits issued to refugees with subsidiary protection status and temporary protection status, introduced by the 2015 amendments (see section 3.3 above), will significantly impact the administrative assessment of whether there is sufficient basis for revocation of these categories of asylum residence permits in the first place. If so, any derived residence permits for family members of the affected refugees will be revoked as well.

The mandatory revocation rule will only be dispensed with to the extent refusal of continued residence in Denmark would be *contrary to Denmark's international obligations*.<sup>79</sup> This is the central novelty of the 2019 amendments of the revocation rules in that the 'paradigm shift' abolished the administrative assessment of proportionality and reasonableness of revocation that was previously made on the basis of a discretionary domestic provision.<sup>80</sup> Thus, the counter-indications to revocation – or non-extension under similar criteria referring to international obligations – of the residence permits of refugees and their family members have been reduced to those imposed by international law. The relevant international obligations to be taken into account in such cases are mainly those protecting individuals' right to respect for private and family life, in particular Article 8 ECHR. It appears rather clearly from the preparatory works that this amendment is expected to significantly reduce the weight to be given to the degree of integration and other forms of affiliation to Danish society that the individual refugee or family member may have obtained.<sup>81</sup>

To conclude, insofar as the rules on asylum residence permits are concerned, the essence of the 'paradigm shift' legislation can be described in the following elements:

- All asylum residence permits are issued explicitly *for the purpose of temporary stay* in Denmark
- Mandatory application of the rules on revocation (and non-extension) of residence permits towards all categories of refugees and their family members
- The differentiation of (implicit) cessation and (explicit) revocation criteria between Convention refugee status on the one hand, and refugees with subsidiary protection status and temporary

76 Cf. Section 11(2) of the Aliens Act, as amended by Act no. 174 of 27 February 2019.

77 Bill no. L 140/2018–19, explanatory remarks, p. 25.

78 Cf. Sections 19(1)(i) and 19 a(1) of the Aliens Act, as amended by Act no. 174 of 27 February 2019.

79 Cf. Section 19 a(1) of the Aliens Act, as amended by Act no. 174 of 27 February 2019.

80 Cf. Section 26(1) of the Aliens Act, no longer applicable to asylum residence permits and derived residence permits for family members since it was replaced by the new Section 19 a(1) mentioned in the previous note.

81 Bill no. L 140/2018–19, explanatory remarks, pp. 24 and 26–30.

protections status on the other, has been maintained, thus making the two latter categories subject to the most significant impact of the *mandatory application of revocation grounds*

- The impact of integration factors has been limited to the minimum level mandated by Denmark's international obligations, in particular Article 8 ECHR.

As to the last-mentioned element, it is to be noted that in the absence of clear precedents under Article 8 ECHR from the European Court of Human Rights in cases concerning removal of (former) refugees upon revocation of their residence permits – as opposed to expulsion due to criminal offences or fraud in connection with obtaining immigration status – the Bill included strong policy guidance on the balancing exercise to be carried out in presumed accordance with international obligations.<sup>82</sup>

At the same time, it was stated that the asylum and immigration authorities would have to follow the evolving case law of the European Court of Human Rights and other international human rights bodies and adjust their practices accordingly. More specifically, the Bill stipulated that these authorities were to draw up a 'dynamic memorandum' and to update it on a current basis with a view to using it in their preparation of cases on extension and revocation of asylum residence permits. This document was supposed to be made public on the website of these authorities.<sup>83</sup> However, this stipulation has been only partly complied with. In combination with the policy guidance included in the preparatory works of the amending legislation, this is quite likely to have impacted the authorities' actual practices in implementing the 'paradigm shift', as shall be further analysed below in section 4.

---

82 Ibid., pp. 21–23 and 25–30.

83 Ibid., p. 26. This only happened subsequent to the first decision taken under the new balancing rule, and the memorandum was not completed until September 2022 (see section 4.4 below).

## 4. THE 'PARADIGM SHIFT' IN PRACTICE: REVIEW AND REVOCATION OF SYRIAN REFUGEES' RESIDENCE PERMITS (2019-)

### 4.1. Controversies over the application of the amended revocation rules

In the light of the legislative processes behind the 2015 and 2019 amendments of the rules on revocation and extension of asylum residence permits, it is hardly surprising that the implementation of the restricted rules has caused extensive debate, and that the asylum and immigration authorities have been subject to criticism due to their practices. Such criticism has especially been raised against decisions concerning Syrian refugees, and to some extent against the revocation of Somali refugees' residence permits as well.

There are important differences in the strength and nature of criticism levelled against the revocation decisions concerning these two groups of refugees. When Somali refugees were the first group to have their residence permits reviewed under the expanded revocation criteria adopted in 2015 (see section 3.3.2 above), there was relatively little controversy over the general assessment of the security situation in relevant parts of Somalia. In contrast to the revocation of Syrian refugees' residence permits a few years later (analysed below), the decisions to revoke or refuse extension of the residence permits of Somali refugees were taken against the background of assessments of the risk for people returning to Somalia that had been accepted by the European Court of Human Rights.<sup>84</sup>

The second stage of the 'return turn' was similarly first put into practice towards Somalis when the Immigration Service refused to extend the residence permits of some Somali refugees with temporary protection status. These decisions were upheld by the Refugee Appeals Board under the restricted balancing test of integration factors according to Article 8 ECHR that was applicable to refugees with expired temporary protection status permits already from the introduction of this status in 2015, hence not formally linked to the 2019 'paradigm shift' legislation.<sup>85</sup> Here again, negative decisions concerning Somali refugees were met with rather limited public response, although some cases with special features of successful integration into the labour market or with particularly negative impact on families with children attracted significant attention from civil society and the media.

---

84 Cf. ECtHR judgment of 5 September 2014, *K.A.B. v. Sweden*, and ECtHR judgment of 10 September 2015, *R.H. v. Sweden*.

85 Summaries of decisions of 9 December 2019 by the Refugee Appeals Board (EMRK artikel 8 ikke til hinder for at nægte at forlænge en opholdstilladelse - FlN, accessed 8 November 2022).

The revocation or non-extension of Syrian refugees' residence permits has caused far more and wide-ranging criticism and debate than the cases concerning Somali refugees. Much of the explanation of this difference in public and professional responses is probably to be found beyond the legal and administrative spheres and therefore cannot be fully pursued in this report. Nonetheless, there have been certain remarkable features in the administrative implementation of the amended legislation that should be seen in combination with the preceding legislative process described above.

Some of these features shall be highlighted here in order to illustrate the somewhat politicised implementation of the 'paradigm shift' legislation. The more significant among the remarkable legal and administrative features will be presented chronologically followed by some thematic points. It is to be noted that the public debate and the legal criticism has addressed both of the elements that are decisive in cases on revocation or non-extension of asylum residence permits, i.e. the assessment of the refugee's continued need for protection in the light of country of origin information taken together with any individual circumstances relevant to the assessment, as well as the subsequent balancing of the impact of revocation against integration factors in cases where the refugee is found to no longer need protection.

#### 4.2. Appeals Board signals on changed circumstances in Syria

In February 2019 the Refugee Appeals Board issued a public statement concerning the general situation in Syria in which it expressed the view that, according to recent country of origin information, hostilities and civilian casualties had been limited in geographic terms, and that the number of hostilities and casualties had been reduced as compared to earlier stages of the armed conflict. While the general situation in Syria had thus changed, it was pointed out that it would not be for the Appeals Board as the complaint body to take the initial decision as to whether this could provide the basis for adjusting asylum practices. Instead, it would be up to the Immigration Service as the first instance to decide in concrete cases whether, in the light of current country information, there would still be a basis for granting residence permits with temporary protection status to Syrians due to the general situation in the country.<sup>86</sup>

Although this was in itself a most unusual announcement from a quasi-judicial appeals body, the Appeals Board did not explain the reason for making such a public statement. It appears to reflect a discussion in the Appeals Board's Coordination Committee, but the minutes of the meeting also do not contain any information about the background or the purpose of the announcement. The discussion took place under a routine item on the current practice concerning asylum seekers from Syria, and it remains unclear how or why the Committee ended up discussing anticipated future appeals cases that might be based on the first instance assumption that the general situation would no longer warrant the grant of temporary protection status. Neither does it appear from the minutes who raised this somewhat hypothetical discussion, and whether and for what purpose it was formally decided to issue the public statement or this was done informally by the secretariat subsequent to the meeting.<sup>87</sup>

The announcement could most likely not be seen as anything but a signal that the Appeals Board would consider future negative asylum decisions within the relevant area favourably as a point of departure. Given the fact that the meeting discussion and the announcement took place just a few days after the adoption of the 'paradigm shift' legislation, the announcement was furthermore likely to be taken as an invitation to the Immigration Service to start reviewing the residence permits already issued to Syrian refugees in order to consider revocation with reference to the improvement of the general security situation in the country. Indeed, that is precisely what happened. Already the same day, the Immigration Service announced its intention to change practice and refuse asylum and extension

86 Refugee Appeals Board, 'Ændrede forhold i Syrien. Flygtningenævnet vurderer, at de generelle forhold i Syrien er ændrede', news release 27 February 2019 (<https://fn.dk/da/Nyheder/Nyhedsarkiv/2019/27022019>, accessed 8 November 2022).

87 Refugee Appeals Board, minutes of Coordination Committee meeting on 27 February 2019, item 3 (15032019-referat.pdf (fn.dk), accessed 8 November 2022).

of temporary protection status to a selected number of Syrians from the Damascus province in order to enable the cases to be examined by the Appeals Board.<sup>88</sup>

### 4.3. Cautious approach in the initial appeals cases on revocation

In June and September 2019, the Refugee Appeals Board examined the first series of cases in which the Immigration Service had refused asylum or extension of the residence permits issued to Syrians with temporary protection status. Due to the principled nature of these cases and the impact of the Appeals Board decisions on a potentially large number of future cases, they were specifically treated as 'test cases' and therefore examined in line with the special procedural arrangements normally applied by the Appeals Board in such test cases so as to secure thorough consideration of the various factual circumstances and legal issues at stake.

While confirming in some of its decisions that the general situation in Damascus was no longer such as to imply a risk of ill-treatment under the terms of Article 3 ECHR for any person being present there, the Appeals Board refrained from taking a position on whether this improvement was to be considered purely temporary, or it would be sufficient as a basis for revoking the residence permits. It was considered unnecessary to decide on the latter question because all of the appellants were found to be in need of protection on individual grounds, due to a variety of circumstances that provided the basis for granting asylum either with Convention refugee status or, in most of the cases, with subsidiary protection status.<sup>89</sup>

These findings in the individual cases reflected an expressly cautious approach by the Appeals Board, based on consideration of the general human rights situation in the areas controlled by the Syrian government. In the Appeals Board's view, the Syrian authorities' assessment of which persons were to be considered a security threat was arbitrary and unpredictable, and the authorities' violations of the human rights of any person considered to be a threat would be serious. Hence, the Appeals Board found good reasons to apply a cautious approach and give appellants the benefit of any reasonable doubt.<sup>90</sup>

A similarly cautious approach was taken in the seventh test case examined in September 2019, yet with a rather more conclusive position on the non-temporary nature of the improved general security situation in Syria warranting non-extension of the appellant's temporary protection status. Again here, however, the appellant was found to be in need of protection on individual grounds and granted asylum with Convention refugee status.<sup>91</sup>

### 4.4. Political push for further revocations, procedural irregularities on appeal

While three decisions late 2019 upholding the refusal of asylum to Syrian applicants did not necessarily reflect a less cautious approach than that expressed in the seven test cases concerning refused asylum or extension of the temporary residence permits for refugees already granted asylum as mentioned above, due to the very concrete reasons given by the Refugee Appeals Board and the fact that the appellants in these three cases clearly did not appear to be at risk towards the regime in Syria,<sup>92</sup> the Appeals Board's decisions in another four or five cases in May and June 2020, also upholding the refusal of asylum, seem to have been perceived differently at the political level. Referring to these decisions as well as the fact that a number of Syrian refugees and their family members voluntarily

88 Danish Immigration Service, 'Udlændingestyrelsen ændrer praksis i sager vedrørende de generelle forhold i Syrien', news release 27 February 2019 (<https://www.nyidanmark.dk/da/Nyheder/2019/02/Udl%C3%A6ndingestyrelsen-%C3%A6ndrer-praksis-i-sager-vedr%C3%B8rende-de-generelle-forhold-i-Syrien>, accessed 8 November 2022).

89 Refugee Appeals Board, 'Status på prøvesager vedrørende personer fra Syrien', news release 27 June 2019 with link to summaries of appeals decisions of 21, 24 and 25 June 2019 (<https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/27062019>, accessed 8 November 2022).

90 Ibid.

91 Refugee Appeals Board, 'Ny afgørelse vedrørende syrisk statsborger fra Damaskusområdet', news release 2 October 2019 (<https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/02102019>, accessed 8 November 2022).

92 Refugee Appeals Board, 'Flygtningenævnet stadfæster afslag på asyl til syriske statsborgere', news release 17 December 2019 (<https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/17-12-2019>), accessed 8 November 2022).

repatriated during 2019, the Immigration Minister instructed the Immigration Service to accelerate the review of asylum cases concerning Syrians who had been granted temporary protection status due to the general security situation in the Rif Damascus province.<sup>93</sup>

This ministerial instruction initiated or systematized the large-scale ‘Damascus project’, leading to numerous decisions on revocation or non-extension of the residence permits of Syrians from the Rif Damascus province with temporary protection status. Notably, the instruction was somewhat at odds with the arm’s length principle that has traditionally been practised between the government and the asylum authorities.<sup>94</sup> Regardless of its legal nature, the instruction was a key factor in the politicisation of the revocation process and may well have impacted the subsequent implementation of the ‘project’. As described below, the practices of the Immigration Service and the Refugee Appeals Board have raised important legal and factual issues and caused rather extensive criticism from various circles.

Meanwhile, the Refugee Appeals Board had examined its first case on the basis of the 2019 ‘paradigm shift’ introducing the mandatory revocation rule to be dispensed with only if required by Denmark’s international obligations. This case was not part of the ‘Damascus project’ but concerned a Somali refugee whose residence permit had been revoked by the Immigration Service under the new restricted rules. The decision was upheld by the Appeals Board, probably well in line with similar decisions based on Article 8 ECHR before the ‘paradigm shift’ was formally introduced (see section 4.1 above).<sup>95</sup>

Given that this was the very first case to be examined by the Appeals Board on the basis of the new legislation, it was clear that the interpretation and application of the mandatory revocation rule as a core feature of the ‘paradigm shift’ would in all likelihood be of decisive importance for many revocation cases to follow. It was therefore to be expected that the Appeals Board would adhere to the special procedural setup normally applied in test cases or cases raising principled legal issues. That would have implied a number of cases with varying factual circumstances being examined in at least two Board meetings with a different composition of members of the Appeals Board, and with specifically experienced and well- prepared lawyers representing the appellants. According to the available information, however, neither of these special safeguards applied in this single case, and there also does not seem to have been any more general discussion of the legal issues raised by the case at official level within the Appeals Board.<sup>96</sup>

As another peculiarity that may potentially be considered an irregularity reaching beyond the procedural level, neither the Appeals Board nor the Immigration Service had, as a basis for this initial decision applying the new mandatory revocation rule, produced and published the ‘dynamic memorandum’ on the impact of international obligations, as stipulated in the Bill (see section 3.4 above). This document was published only a month after the decision, and as it was dated on the same date as its publication,<sup>97</sup> it does not appear to have been available to the parties and the decision makers in this appeals case. Furthermore, the memorandum was incomplete in that the crucially relevant sections on

93 Immigration Ministry, ‘Regeringen sætter gang i genvurdering af syriske flygtninges behov for beskyttelse’, government news release 28 June 2020, referring to five cases concerning Syrians from Damascus (<https://www.regeringen.dk/nyheder/2020/regeringen-saetter-gang-i-genvurdering-af-syriske-flygtninges-behov-for-beskyttelse/>, accessed 8 November 2022).

94 Thus, a few months earlier the arm’s length principle had been emphasised by the Immigration Ministry in a letter of 31 January 2020 to the Parliament’s Ombudsman, also communicated to the Parliament Committee on Immigration and Integration (UUI 2019–20 Alm.del - Bilag 63). While the letter concerned cases in which the Immigration Appeals Board had processed appeals against decisions to revoke the residence permits of refugees’ family members in violation of administrative law, the legal reasoning behind the alleged arm’s length principle would seem to apply similarly to the Ministry’s position towards the first instance in asylum cases. See also letters of 27 and 29 November 2018 from the Immigration Ministry to the Danish Parliament, answering questions no. 81 and 93, respectively, from the Committee on Immigration and Integration (<https://www.ft.dk/samling/20191/alm.del/UUI/bilag/63/2143771/index.htm>, accessed 8 November 2022).

95 Refugee Appeals Board, ‘Første afgørelse i sag om inddragelse efter udlændingelovens § 19 a (det såkaldte paradigmeskifte)’, news release 1 July 2020 concerning decision of 27 May 2020 (<https://fn.dk/da/Nyheder/Nyhedsarkiv/2020/01-07-2020>, accessed 8 November 2022).

96 See Refugee Appeals Board, minutes of Coordination Committee meeting on 18 June 2020, item 11 (Ref-af-moede-i-kudvalget-den-18-juni-2020.pdf (fn.dk), accessed 8 November 2022).

97 Refugee Appeals Board, ‘Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN’s konventioner’, news release 30 June 2020 (<https://fn.dk/da/Nyheder/Nyhedsarkiv/2020/30-06-2020-1>, accessed 8 November 2022).



private life in practice and on family life under Article 8 ECHR were still under preparation.<sup>98</sup> This has long gone largely unnoticed but was recently raised as an issue and may well be one of the reasons for the disparities in the administrative practices within the Refugee Appeals Board and between the Appeals Board and the first instance decisions of the Immigration Service.<sup>99</sup>

Only in September 2022 did the authorities publish an updated version of the memorandum, completed with extensive sections accounting for private life and family life in the practice of the European Court of Human Rights, including several subsections pertaining to revocation or non-extension of residence permits in cases where no criminal offence has been committed.<sup>100</sup> The updated memorandum does not provide any explanation for the delayed completion.<sup>101</sup>

#### 4.5. Mainstreaming revocation, increasing disparities

Under the 'Damascus project' the Danish Immigration Service reviewed the cases of all Syrian refugees from Damascus and Rif Damascus who had been granted subsidiary protection or temporary protection status due to the general security situation. Thus, refugees with Convention refugee status were exempt from the review exercise.

1,115 asylum cases were reviewed by the Immigration Service from June 2019 until the end of December 2021, resulting in 381 decisions (34%) to revoke or refuse extension of the residence permit and 734 decisions (66%) to extend or refrain from revocation. The negative decisions were automatically brought before the Refugee Appeals Board, which by mid-April 2022 had examined 329 of the cases concerning Syrians.

Among these cases examined by the Appeals Board, the negative first instance decision was set aside in 161 cases (49%), upheld in 121 cases (37%) while the Appeals Board requested the first instance to reconsider its decision in 47 cases (14%).<sup>102</sup> For the year 2021, the official statistics for appeals cases concerning revocation or non-extension of Syrians' residence permits are: negative decisions set aside in 52% of the cases, upheld in 48% of the cases.<sup>103</sup>

For a slightly longer period from January 2021 until 4 February 2022, a study found the similar figures to be 45% and 47%, respectively.<sup>104</sup> Interestingly, this study found in the 45% appeals decisions setting aside the negative first instance decision that 33% of the appellants were recognised as Convention status refugees while 10% were granted asylum with subsidiary protection status and 2% had their temporary protection status extended.<sup>105</sup> Thus, successful appeals frequently result in the refugee being granted asylum on individual grounds, implying a more secure residence status in particular for those with Convention refugee status.

98 Danish Immigration Service, Refugee Appeals Board and Immigration Appeals Board, 'Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner', memorandum of June 2020 (dated 30 June 2020, re-dated April 2022 on cover page), pp. 2, 3 and 64 (Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner (fn.dk), accessed 8 November 2022).

99 Cf. Nadja Filskov et al., *Man kan aldrig føle sig sikker. En analyse af de retssikkerhedsmæssige udfordringer, når flygtninge mister deres opholdstilladelse* (Danish Institute for Human Rights 2022), pp. 49, 60–61 and 102–103.

100 Danish Immigration Service, Refugee Appeals Board and Immigration Appeals Board, 'Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner', memorandum of September 2022 (dated 30 June 2020, updated 7 September 2022) (Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner (fn.dk), accessed 8 November 2022).

101 Ibid., introduction at pp. 7–8.

102 Nadja Filskov et al., *Man kan aldrig føle sig sikker. En analyse af de retssikkerhedsmæssige udfordringer, når flygtninge mister deres opholdstilladelse* (Danish Institute for Human Rights 2022), pp. 36–37 and 101, and letter of 16 May 2022 from the Immigration Ministry to the Danish Parliament, answering question no. 371 from the Committee on Immigration and Integration.

103 Refugee Appeals Board, Annual Report 2021 (2022), p. 559.

104 Stinne Østergaard Poulsen, *Praksisoversigt over Flygtningenævnets afgørelser i inddragelses- og forlængelsessager. Periode: 1.1.2021–4.2.2022* (research note, VIA University College 2022) (Praksisoversigt over Flygtningenævnets afgørelser i inddragelses- og forlængelsessager. Periode: 1.1.2021–4.2.2022 — UC Viden - Professionshøjskolernes Videndatabase, accessed 8 November 2022).

105 Ibid. In the official statistics for 2021, the corresponding figures are 32%, 16% and 4%, cf. Refugee Appeals Board, Annual Report 2021 (2022), p. 559.

These statistics illustrate significant disparities between the first instance decisions of the Immigration Service and those of the Refugee Appeals Board as second instance in Syrian revocation and non-extension cases. This is clearly illustrated by comparing with the general practices according to which the Appeals Board upholds on average close to 80% of negative asylum decisions in ordinary cases and overturns only 15–18%.<sup>106</sup> The disparity seems to have increased during 2022 in that the Appeals Board set aside 61% of the first instance decisions on revocation or non-extension of Syrians' residence permits during the first four months of 2022, and even 70% as the average for the first five months of 2022.<sup>107</sup>

A central question arising from these statistics is whether they primarily reflect the Refugee Appeals Board's diverging assessment of the country of origin information concerning the risk for returnees in Syria, or whether the high degree of first instance decisions being overturned on appeal is due to a different balancing of the appellants' integration into and affiliation with Danish society under Article 8 ECHR. An unofficial account of the decisions taken by the Appeals Board in the period from 1 January 2020 until 22 August 2022, overturning the revocation or non-extension of residence permits issued to Syrians from Damascus and Rif Damascus, shows the following outcomes and underlying reasons:

- 86 persons granted asylum with Convention refugee status (Section 7(1) Aliens Act) based on individual grounds for assuming risk of persecution, including some persons deriving that status from family members.
- 22 persons granted asylum with subsidiary protection status (Section 7(2) Aliens Act) among whom
  - 8 decisions based on individual risk
  - 14 decisions based on balancing under Article 8 ECHR.
- 11 persons granted extension of their temporary protection status (Section 7(3) Aliens Act) due to Article 8 considerations, many concerning children and a few concerning elderly persons with a need for care or support.<sup>108</sup>

Given the unofficial nature of the account, these statistics may not be entirely complete. Nonetheless, they can be considered a valid indication of the main tendencies in the quite significant divergences in reasoning and outcomes between the Immigration Service and the Refugee Appeals Board in the current practices concerning Syrian refugees, as described above. As far as the risk assessment is concerned, it is to be noted that in some instances the differences in assessment of the individual risk in case of return to Syria are based, at least in part, on *sur place* considerations due to the fact that the appellant has been involved in activities in the public sphere or has otherwise become identifiable as a person that may be perceived as dissident or non-loyal to the Syrian regime or other actors of persecution or harm in Syria. Nonetheless, substantive divergences in the risk assessment between the first instance and the Appeals Board seem to persist.<sup>109</sup>

Despite the relatively high rate of cases being changed in favour of the appellant by the Refugee Appeals Board, criticism has been raised against the practices of the Appeals Board in cases concerning Syrians. Such criticism has primarily addressed the way in which the Appeals Board selects and applies country of origin information concerning specific risk profiles among returnees to Syria, and the apparent inconsistencies in the way in which the Appeals Board has been applying the 'principle of caution' that was demonstrated in the initial test cases in 2019 (see section 4.3 above),<sup>110</sup> and which

106 Refugee Appeals Board, Annual Report 2021 (2022), p. 560. Interestingly, the latter figure increased to 24% in 2021.

107 Ibid., p. 3, and *Information* 13 June 2022 (<https://www.information.dk/indland/2022/06/dramatisk-stigning-70-procent-sager-syreres-opholdsgrundlag-inddrages-omgjort>, accessed 8 November 2022).

108 Statistics provided by the Danish Refugee Council 9 September 2022 (email on file with author).

109 Cf. Refugee Appeals Board, Annual Report 2021 (2022), p. 3, and newspaper article in *Information* 13 June 2022 (<https://www.information.dk/indland/2022/06/dramatisk-stigning-70-procent-sager-syreres-opholdsgrundlag-inddrages-omgjort>, accessed 8 November 2022).

110 See newspaper article 'Flygtningenævnet vurderer risikoen ved at sende syrere hjem forskelligt trods samme grundlag', *Information* 21 March 2022 (<https://www.information.dk/indland/2022/03/flygtningenaevnet-vurderer-risikoen-ved-sende-syrere-hjem-forskelligt-trods-samme-grundlag>, accessed 8 November 2022).

is officially still the basic approach to examining cases on revocation or non-extension of the residence permits of Syrian refugees.<sup>111</sup> One of the reasons behind the lack of consistency could be that this approach does not seem to have been operationalised, and hence not systematically applied, within the Appeals Board. Another possible, and potentially interrelated, reason may be the Appeals Board's insufficient incorporation and application of relevant recent case law from the European Court of Human Rights in its practice concerning revocation or non-extension of asylum residence permits and consequent return of Syrian refugees.

In this connection, the official position taken by the Refugee Appeals Board on the European Court of Human Rights' 2021 judgment on return to Syria appears questionable. Even though the European Court of Human Rights did not go into detail concerning the general security situation in Syria in its judgment in the case of *M.D. and Others v. Russia*, it did include observations to the clear effect that the general conditions would seem to prevent the forcible return to Syria, at least of Syrians previously granted asylum ('forced returns of refugees').<sup>112</sup> However, the Refugee Appeals Board unconvincingly discarded this part of the judgment by way of artificial *ex contrario* reasoning based on the Court's additional, and more detailed, statements concerning the personal circumstances of the applicants in the case.<sup>113</sup> The Appeals Board further seemed to misinterpret the Court's assessment of the general security situation in Syria in the previous case of *O.D. v. Bulgaria*.<sup>114</sup>

At any rate, even assuming that the European Court of Human Rights did not include an assessment of the general security situation in Syria, or at least not a conclusive one in terms of risk under Articles 2 and 3 ECHR in *M.D. and Others v. Russia*, it has been convincingly argued that the judgment has been inconsistently implemented by the Appeals Board in its subsequent decisions in terms of assessing the individual risk of returnees in the light of their personal circumstances.<sup>115</sup> As an illustration of the apparent difficulty for the Appeals Board in coming to terms with the requisite standard for risk assessments according to Articles 2 and 3 ECHR, it may be relevant to refer to a written comment from the Appeals Board to a Danish newspaper investigating the evidentiary basis for the Appeals Board's assumption – routinely stated in decisions upholding revocation or non-extension of Syrian refugees' residence permits – that people returning to Syria would not risk persecution or ill-treatment due to the very fact of having fled the Syrian regime. It was here argued by the Appeals Board that the reports from Amnesty International and other organisations on such risks did not posit that *all Syrians* returning from abroad would be at risk of persecution for the sole reason of having left the country.<sup>116</sup> Although probably drafted by the secretariat, such an official statement appears to reflect a legal misperception that may possibly explain a degree of inconsistency in the legal standard applied by the Refugee Appeals Board as such when examining decisions on revocation or refusal of extension of asylum residence permits.

Finally, a separate important factor in explaining the high rate of overturned first instance decisions on revocation or non-extension of Syrian refugees' residence permits is most likely the diverging

111 See Refugee Appeals Board, minutes of Coordination Committee meeting on 16 December 2021, item 5 ([Referat af møde i k-udvalget den 16. december 2021 \(fn.dk\)](#), accessed 8 November 2022), and Refugee Appeals Board, Annual Report 2021 (2022), pp. 542–44.

112 ECtHR judgment of 14 September 2021, *M.D. and Others v. Russia*, para. 109. See also paras. 104–106 and in particular para. 111 where the Court refers to its recent findings 'in respect of the general security situation in Syria' in the case of *O.D. v. Bulgaria*, discussed below.

113 See Refugee Appeals Board, 'Drøftelser vedrørende Syrien-praksis på møde i Flygtningenævnets koordinationsudvalg den 28. oktober 2021', news release 29 October 2021 (<https://fn.dk/da/Nyheder/Nyhedsarkiv/2021/29102021>, accessed 8 November 2022). See also Refugee Appeals Board, Annual Report 2021 (2022), pp. 254–55, 277 and 285 with concrete decisions based on this understanding of the ECtHR judgment.

114 ECtHR judgment of 10 October 2019, *O.D. v. Bulgaria*. Paras. 51 and 53–54 of this judgment clearly testify to the general security situation falling within the scope of Articles 2 and 3 ECHR as an impediment to forcible return to Syria. Cf. Refugee Appeals Board's statement on the judgment in the news release quoted above.

115 See Stinne Østergaard Poulsen, 'Tilbagevendt til Syrien. Flygtningenævnets forsigtighedsprincip i Syrien-sager i lyset af *M.D. and Others v. Russia*', *EU-ret & Menneskeret* (2, 2022) pp. 67–77.

116 Written statement from the Refugee Appeals Board, quoted in the newspaper article 'Vi har set nærmere på en central påstand fra Flygtningenævnet i sager om syriske asylansøgere. Og dokumentationen er tynd', *Information* 8 January 2022 (<https://www.information.dk/indland/2022/01/set-naermere-paa-central-paastand-flygtningenaevnet-sager-syriske-asylansoegere-dokumentationen-tynd>, accessed 8 November 2022).

understanding and application of international obligations relevant to the protection of private life aspects of their integration into and affiliation with Danish society, in particular Article 8 ECHR. In turn, this may have been influenced by the failure of the various authorities to comply with the stipulation that they produce and update a 'dynamic memorandum' on the impact of international obligations. Thus, lack of clarity over the relevant and non-relevant precedents from the European Court of Human Rights may explain divergences between the first and second instance in balancing the refugee's integration and affiliation against the impact of revocation or non-extension of the residence permit. In addition, such lack of clarity may be a reason behind possible inconsistencies between the practices of the Refugee Appeals Board and those of the Immigration Appeals Board examining cases of revocation or non-extension of the residence permits of refugees' family members,<sup>117</sup> or even internally in the practices of the two separate Appeals Boards.<sup>118</sup>

---

117 See Immigration Appeals Board, Annual Report 2021 (undated, 2022), pp. 422–41 for an account of practices on revocation or non-extension of family members' residence permits following such decisions affecting their Syrian refugee sponsor's residence permit. The cases here reported seem to reflect a somewhat standardised examination of the appellants' rights under Article 8 ECHR. As regards cases concerning children, the Appeals Board based certain decisions on insufficient application of the UN Convention on the Right of the Child (referring to Article 3(2) while omitting Article 3(1), pp. 428 and 437) and apparent misreading of the ECtHR judgment of 14 June 2011, *Osman v. Denmark*, para. 60 (generally limiting the formative years to the age from 7 to 15 years, pp. 427 and 430, cf. p. 436).

118 Cf. Nadja Filskov et al., *Man kan aldrig føle sig sikker. En analyse af de retssikkerhedsmæssige udfordringer, når flygtninge mister deres opholdstilladelse* (Danish Institut for Human Rights 2022), pp. 49 and 60–61. See also expert comments and official responses in the article 'Udlændingemyndigheder har efter mere end tre år ikke efterkommet lovkrav. Det skaber usikkerhed i asylpraksis', *Information* 4 July 2022 (<https://www.information.dk/indland/2022/07/udlaendingemyndigheder-mere-tre-aar-efterkommet-lovkrav-skaber-usikkerhed-asylpraksis>, accessed 8 November 2022).

## 5. THE RIGHTS OF REFUGEES AND THE 'RETURN TURN'

### 5.1. Unintended consequences of limited refugee rights

With a view to reinforcing the focus on return that is the overarching rationale of the 'paradigm shift' and the wider 'return turn' in Danish asylum law and policy, various derived rights of refugees were restricted or suspended for those granted temporary protection status following the introduction of this status in 2015. Among the restrictions, the most far-reaching was the suspension of the right to family reunification that was modified in 2022 as a result of a judgment in which the European Court of Human Rights held it to be in violation of Article 8 ECHR (see section 5.2 below). Other restrictions were gradually abandoned, but only reluctantly. This probably happened because it was realised that they had clearly discriminatory effects or otherwise negatively impacted human rights, and at the same time they could be expected to have limited impact on the affected refugees' preparedness to return in case of changed circumstances in their country of origin.

That was in all likelihood the case for specific limitations on the rights of refugees with temporary protection status to separate or divorce a spouse, due to their perceived lack of 'residence' in Denmark. This precondition for Danish competence to decide on such family matters was traditionally considered identical with 'domicile', and the family law authorities had refused access to separation or divorce proceedings for refugees with temporary protection status, arguing that they did not fulfil this condition due to the temporary nature of their stay in Denmark. The administration apparently supported this position by reference to a high court ruling from 1995 concerning asylum seekers who were found not to have 'residence' in Denmark.<sup>119</sup> However, this was a rather unexpected consequence of the introduction of temporary protection status, and the official interpretation did not reflect the significant difference between the legal status of asylum seekers and that of persons who have been granted an asylum residence permit, yet with only temporary status.

These limitations were lifted only in 2020 following litigation challenging the restrictive interpretation of the residence requirement for obtaining separation or divorce. Quite remarkably, the family law authorities insisted on their interpretation and only modified it after two negative court rulings.<sup>120</sup> The

119 High Court for Western Denmark, judgment of 27 June 1995, *Ugeskrift for Retsvæsen* (1995) p. 789.

120 While a judgment of 15 August 2018 from Frederiksberg City Court approved the family law authorities' practice, Odense City Court set it aside in a ruling of 27 November 2018. The administration challenged this ruling before the High Court which dismissed the case as the appeal deadline was exceeded. Nonetheless, only when the Copenhagen City Court in a ruling of 7 January 2020 had similarly found a refugee with temporary protection status to have domicile, and therefore residence as well, in Denmark – also pointing out that this interpretation was the one in better accordance with Article 8 ECHR – did the Agency of Family Law accept its competence, and hence the obligation, to process such separation and divorce cases.

government deferred to the family law authorities' interpretation<sup>121</sup> although the new government in i 2019 was prepared to amend the legislation if the then-pending court case confirmed all refugees' right to be divorced, regardless of their protection status.<sup>122</sup>

Similarly, initial restrictions on the access to free higher education and funding of studies with study grants for refugees with temporary protection status were not lifted until several years after the introduction of this status. These restrictions appeared to affect first and foremost refugee women from Syria, due to the fact that temporary protection status was granted primarily to women, children and older people since male Syrian asylum seekers between 18 and 42 years of age were normally recognised as Convention refugees as a result of being subject to military conscription and consequently at risk of persecution due to desertion or other non-compliance with military requirements and the consequent imputed political opinion. While the consequences of lacking access to education, not least the clear discriminatory effects of distinguishing between the various refugee groups, had attracted public attention and criticism for some time, it was only abandoned in July 2020 as a result of a decision taken by the new government.<sup>123</sup>

## 5.2. Suspension of family reunification

One restriction has not only been maintained but was even reinforced as part of the general tightening of Danish asylum policy in response to the 2015 asylum and migration crisis. As described earlier (see section 3.1), the suspension of the right to family reunification for persons granted temporary protection status under Section 7(3) of the Aliens Act, adopted along with this new status in 2015,<sup>124</sup> was extended from one year to a period of three years in 2016.<sup>125</sup> This was an essential part of the rationale of the 2016 legislative amendments aiming to make Denmark relatively less attractive for asylum seekers, and the amendment was one of the most controversial parts of the restrictions introduced in 2015–16.

Already during the legislative process, doubts were raised about the compatibility of three years' suspension with human rights standards, in particular Articles 8 and 14 ECHR, and the government actually realised the potential risk that the general suspension for three years might be considered a violation of Article 8 ECHR.<sup>126</sup> Unsurprisingly, the suspension rule, combined with administrative refusals to apply narrow exception criteria for the three years' waiting period gave rise to judicial proceedings. The Danish Supreme Court upheld the suspension in two judgments.<sup>127</sup>

The first of these cases was brought before the European Court of Human Rights, which after protracted deliberations delivered its judgment in July 2021, finding a violation of Article 8 ECHR.<sup>128</sup> The judgment has been analysed from varying perspectives, such as being 'a signal from Strasbourg to Copenhagen that the Danish strategy of consistently adopting a minimalist reading of its international

121 See letter of 14 January 2019 from the Immigration Ministry to the Danish Parliament, answering question no. 111 from the Committee on Immigration and Integration.

122 See letter of 27 August 2019 from the Immigration Ministry to the Danish Parliament, answering question no. 53 from the Committee on Immigration and Integration.

123 See letter of 27 August 2019 from the Immigration Minister to the Danish Parliament, answering question no. 53 from the Committee on Immigration and Integration, and letter of 9 April 2021 from the Minister of Education and Research to the Danish Parliament, answering question no. 349 from the Committee on Immigration and Integration and referring to the new government's policy platform of 25 June 2019.

124 Section 9(1), (i)(d), (ii)(d) and (iii)(d) of the Aliens Act, as amended by Act no. 153 of 18 February 2015.

125 Section 9(1), (i)(d), (ii)(d) and (iii)(d) of the Aliens Act, as amended by Act no. 102 of 3 February 2016.

126 Bill No. L 87/2015–16, explanatory remarks, p. 13.

127 Supreme Court judgment of 6 November 2017, *Ugeskrift for Retsvæsen* (2018) p. 688, and judgment of 14 May 2019, *Ugeskrift for Retsvæsen* (2019) p. 2828.

128 ECtHR Grand Chamber judgment of 9 July 2021, *M.A. v. Denmark*. The ECtHR had communicated the case to the Danish government on 7 September 2018, the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 19 November 2019, and a hearing on the case took place on 10 June 2020.



human rights obligations is not without limits.<sup>129</sup> In terms of the standards for the right of refugees to family reunification, the Court's reasoning may not seem entirely clear, insofar as it states that there is no common ground at national, international and European levels in regard to the length of waiting periods and at the same time indicates a kind of limit at two years, apparently inspired by the EU Family Reunification Directive.<sup>130</sup> While implicitly setting a standard, this is not necessarily an absolute time limit for the duration of suspended family reunification, nor an acceptance of any waiting period below this limit. The EU law reference is not the only and probably not even the primary reason for the Court's conclusion that the Danish three-year waiting period was incompatible with Article 8 ECHR. Rather, the specific circumstances of the case, its conduct at domestic level and the disputed legislation seem to have significantly influenced the conclusion.

Certain features of the Danish waiting period scheme and its application in the concrete case appear to have effectively narrowed the margin of appreciation afforded by the European Court of Human Rights. The fact that there was no precedent from the Court on which to base the assessment of whether a 'fair balance' had been struck between the individual's right to respect for family life and the state interests in restricting that right could in itself warrant closer scrutiny by the Court and might favour a narrower margin. In the same vein, the Danish Supreme Court had not conducted an independent and thorough balancing exercise in the case, but effectively deferred to legislative decisions and considerations and even observed in its conclusion that the required waiting period was *within the margin of appreciation enjoyed by the state* when balancing the interests in respect for family life against those of the society under Article 8 ECHR.<sup>131</sup>

Thus, a rather decisive element in the reasoning of the European Court of Human Rights seems to have been the domestic decision-making process. Having referred to its own case law on the *procedural requirements* for processing requests for family reunification of refugees and noted that these requirements should apply equally to beneficiaries of subsidiary protection,<sup>132</sup> the Court made some observations on the 'quality of the parliamentary and judicial review', including the following:

It falls to the Court to examine carefully the arguments taken into consideration during the legislative process and leading to the choices that have been made by the legislature and to determine whether a fair balance has been struck between the competing interests of the State or the public generally and those directly affected by the legislative choices ...

In this respect, the Court also recalls that the domestic courts must put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, with any real balancing of the interests in issue being absent, this would be contrary to the requirements of Article 8 of the Convention ....<sup>133</sup>

With reference to the procedural requirements in such cases, the Court stated that 'the said fair-balance assessment should form *part of a decision-making process* that sufficiently safeguards the

129 Thomas Gammeltoft-Hansen, Mikael Rask Madsen and Henrik Palmer Olsen, '*The Limits of Indirect Deterrence of Asylum Seekers*', *VerfassungsBlog*, 12 July 2021 ([www.verfassungsblog.de/the-limits-of-indirect-deterrence-of-asylum-seekers/](http://www.verfassungsblog.de/the-limits-of-indirect-deterrence-of-asylum-seekers/)), accessed 8 November 2022). For additional perspectives, see Nikolas Feith Tan and Jens Vedsted-Hansen, 'How long is too long? The limits of restrictions on family reunification for temporary protection holders', *Odyssey Blog on EU Immigration and Asylum Law and Policy*, 27 September 2021 (<https://eumigrationlawblog.eu/how-long-is-too-long-the-limits-of-restrictions-on-family-reunification-for-temporary-protection-holders/>), accessed 8 November 2022), Jens Vedsted-Hansen, 'Legislative and Judicial Strategies in Danish Law. Accommodation or Evasion of International Obligations?', *Nordic Journal of International Law* (91, 2022) pp. 139–143, Louise Halleskov and Johan Næser, 'Adgangen til familiesammenføring for udlændinge med midlertidig beskyttelsesstatus – EMD's dom i M.A. mod Danmark', *Juristen* (2022) pp. 35–47, and Helga Molbæk-Steensig, 'How to Deal with Really Good Bad-Faith Interpreters: M.A. v. Denmark', *Utrecht Journal of International and European Law* (37, 2022) pp. 59–65.

130 ECtHR Grand Chamber judgment of 9 July 2021, *M.A. v. Denmark*, paras. 160 and 162.

131 *Ibid.*, para. 189, cf. Supreme Court judgment, p. 715.

132 *Ibid.*, paras. 137–139 and 146.

133 *Ibid.*, paras. 148–149.

*flexibility, speed and efficiency* required to comply with the applicant's right to respect for family life under Article 8 of the Convention ...'<sup>134</sup>

The Court may here be seen as implicitly demonstrating a certain scepticism towards the procedures at the domestic level in the adoption and administration of the statutory waiting period of three years. Without dissociating itself expressly from the Danish authorities' processing of the waiting period scheme, the European Court of Human Rights noted that the Danish Supreme Court had 'accepted' that the spouses were facing insurmountable obstacles to cohabiting in Syria, and that it had found that the three-year waiting period 'fell within the margin of appreciation enjoyed by the State'. As regards the legislature, the Court observed that the sharp fall in the number of asylum seekers in 2016 and 2017 did not prompt the Parliament to avail itself of the possibility under the 'revision clause' to review the duration of the waiting period.<sup>135</sup>

The Court ultimately considered that the Danish three-year suspension rule had not allowed for an *individualised assessment* of the interest of family unity in the light of the concrete situation of the persons concerned beyond the very limited exceptions falling under Section 9 c(1) of the Aliens Act, nor did it provide for a review of the situation in the country of origin with a view to determine the *actual prospect of return* or obstacles thereto:

Thus, for the applicant, the statutory framework and the threeyear waiting period operated as a *strict requirement* for him to endure a *prolonged separation* from his wife, *irrespective of considerations of family unity in the light of the likely duration of the obstacles*. In these circumstances, it cannot be said that the applicant was afforded a real possibility under the applicable law of the respondent State of having an individualised assessment of whether a shorter waiting period than three years was warranted by considerations of family unity.<sup>136</sup>

The Court's careful wording left the impression that it had been influenced by the rigidity of the Danish waiting period scheme and the almost non-existent possibility to dispense with the suspension rule. This has probably impacted the Danish responses to the judgment, first at the administrative level<sup>137</sup> and finally by way of legislative amendment that formalised the reduction of the waiting period from three to two years as the general rule.<sup>138</sup>

134 Ibid., para. 163 (italics added).

135 Ibid., paras. 188–191.

136 Ibid., para. 193 (italics added).

137 Immigration Ministry, 'Juridisk vurdering af Den Europæiske Menneskerettighedsdomstols dom af 9. juli 2021 i sagen M.A. mod Danmark (appl.no. 6697/18 [GC])', memorandum 1 October 2021.

138 Section 9(1), (i)(d), (ii)(d) and (iii)(d) of the Aliens Act, as amended by Act no. 915 of 21 June 2022.

## 6. POST-REVOCAION: RETURN, DEPORTATION OR RELOCATION OF REFUGEES?

### 6.1. Relocation to deportation centres

Under the general scheme of the Aliens Act, revocation or non-extension of residence permits, including those issued to refugees, results in the loss of lawful residence in Denmark and the stipulation of a time-limit for leaving the country that can be enforced through deportation as well as other coercive measures once the decision has become final.<sup>139</sup> This notwithstanding, so far none of the Syrians whose asylum residence permits were revoked or refused extension have been deported from Denmark. This is the consequence of a formal decision adopted by the Danish government not to establish any official connections with the Syrian government and its authorities, based on foreign policy considerations in line with the general position taken by the EU and (most of) its member states. This position entails *de facto* non-enforcement of the requirement imposed on Syrian 'former refugees' to leave Denmark.

As a result, upon revocation or non-extension of their residence permits, Syrian (former) refugees find themselves in a kind of limbo situation. Given the loss of lawful residence they can no longer have regular employment, attend educational institutions, send their children to school or receive other public benefits, and they consequently also have to give up their normal housing. Instead, they are generally required to stay in specific deportation centres ('udsendelsescentre') where they will be offered accommodation and other kinds of services at a minimal level.

The special regime applied in deportation centres shall not be described here, but it should be noted that relatively few of the refugees having lost their asylum residence permit in fact take up residence in such centres. While their alternative places of residence and means of livelihood are by the very nature of the situation unknown, it seems reasonable to assume that some of these (former) refugees may continue staying in Denmark in various irregular situations. A similarly unknown, yet probably quite significant number of Syrians are moving clandestinely to neighbouring countries, some of them

---

139 Aliens Act Sections 33, 33 b and 53 a(2) in conjunction with Section 1 of Return Act (Hjemrejseloven) no. 982 of 26 May 2021. The Return Act also provides the legal basis for the Danish Return Agency or the police to decide on 'return contracts' as well as reporting obligations, residence restrictions, detention and other control measures directed towards 'former refugees', especially those who are considered not to contribute actively to the efforts to secure their return to the country of origin.

even before they actually become subject to a decision to revoke or refuse extension of their asylum residence permit.<sup>140</sup>

The *de facto* non-enforcement of the requirement to leave Denmark may ultimately have negative impact on the (former) refugees' possibility to have the Danish authorities' decision on revocation or non-extension of their asylum residence permit reviewed by international human rights monitoring bodies. The European Court of Human Rights has at least in one instance declared a complaint by a Syrian, alleging that return to Syria would entail risks in violation of Article 3 ECHR, inadmissible on the ground that this complaint was considered premature.<sup>141</sup> While adding a legal dimension to the limbo situation of the (former) refugee, the Court's response simultaneously serves to shield the Danish authorities from having their often controversial revocation decisions scrutinised at international level. As illustrated below, individual outcomes of the 'paradigm shift' in terms of revocation of asylum residence permits may nonetheless become subject to judicial review in other EU member states and, indirectly, by the EU Court of Justice.

## 6.2. Refugees moving to other EU member states upon or before revocation

The neighbouring countries to which Syrian (former) refugees are supposed, and in some instances actually known, to move are primarily EU member states such as Germany, Sweden, the Netherlands and Belgium.<sup>142</sup> Unless they succeed in living clandestinely, their legal situation may vary depending on the procedural stage at which they left Denmark, and probably also the host member states' varying administrative and legal responses to secondary movements of people in search of international protection.

If the person in question has left Denmark before any formal decision on revocation or non-extension of the residence permit has been taken, it will normally be possible for the host member state to return that person to Denmark in accordance with the Return Directive<sup>143</sup> and any bilateral readmission rules applicable between the two EU member states. If, by contrast, the person has left Denmark following a final decision to revoke or refuse extension of the residence permit, and he or she applies for asylum in another EU member state, the question arises whether Denmark will be required to take the person back in accordance with the Dublin Regulation.<sup>144</sup>

Although it can be argued that the Dublin Regulation no longer applies since a final decision on the initial asylum application was already taken by the Danish authorities,<sup>145</sup> the new application in the second member state may possibly be considered to reactivate the Dublin Regulation. In practice Denmark has apparently been accepting requests from other member states to take back persons in such situations. The question then arises as to whether the affected persons can object to being transferred back to Denmark by invoking a risk of indirect *refoulement* to Syria. So far, the answers to

140 See news articles 'Syrians Fleering Denmark', *Lighthouse Reports*, 10 January 2022 (<https://www.lighthousereports.nl/investigation/syrians-fleeing-denmark/>, accessed 8 November 2022), and 'Repressive Asylpolitik: Wie Dänemark Syrer in die Flucht treibt', *Der Spiegel*, 11 January 2022 (<https://www.spiegel.de/ausland/repressive-asylpolitik-wie-daenemark-syrer-in-die-flucht-treibt-a-5726a990-ca73-4eaf-b8a8-a84e7f24a8a5>, accessed 8 November 2022).

141 ECtHR letter of 16 April 2021 to the Syrian's legal representative, application no. 15977/21 (on file with author).

142 See detailed account in 'Syrians Fleering Denmark', *Lighthouse Reports*, 10 January 2022 (<https://www.lighthousereports.nl/investigation/syrians-fleeing-denmark/>, accessed 8 November 2022).

143 Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. As stipulated in recital 25, the Directive does not apply to Denmark, but Denmark has undertaken to implement it in its national law and is therefore bound by the Directive as an obligation under international law.

144 Regulation (EU) No. 604/2014 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Although the Regulation does not apply to Denmark, cf. recital 42, Denmark is bound by the Regulation on the basis of a parallel agreement as approved by Council Decision 2006/188/EC.

145 Cf. Article 2(c) of the Dublin Regulation.

these questions are uncertain, and at the moment they seem to depend on the outcome of cases pending before the EU Court of Justice<sup>146</sup> as well as before administrative authorities in the Netherlands.<sup>147</sup>

---

146 CJEU cases C-254/21, *DG v. Ministero dell'Interno*, C-297/21, *XXX.XX v. Ministero dell'Interno* and C-315/21, *PP v. Ministero dell'Interno*.

147 See press release of 6 July 2022 from Raad van State, the highest administrative court in the Netherlands, overturning two decisions on transfer of Syrians to Denmark under the Dublin Regulation and requesting the Ministry of Justice to provide better motivated concrete decisions on transfer.

## 7. CONCLUSION

As pointed out in the introduction to this report, the Refugee Convention aims to strike a balance between a secure residence status with protection of the stipulated rights for refugees and the possibility for their sustainable return to the country of origin, should their need for international protection cease to exist. Accordingly, the Convention leaves states some scope of manoeuvre to design their asylum policy so as to secure protection and facilitate integration of refugees on the one hand, while on the other hand allowing for cessation of refugee status and revocation of their residence permits if or when they no longer need international protection. For forcibly displaced persons falling outside the scope of the Convention refugee definition, states will generally have wider discretion in terms of setting the protection standards as well as bringing protection to an end.

In light of the international legal framework of refugee protection the ‘return turn’ in Danish asylum law represents a significant change of orientation within the scope of manoeuvre thus open for states’ policy choices. This change has been proclaimed to represent a ‘paradigm shift’, thus emphasising the fundamental reorientation of the approach to refugee protection. At the same time, it has been officially argued that Danish asylum policy was never meant to result in nine out of ten refugees remaining in the country permanently.<sup>148</sup> The two statements are not easily reconcilable as the latter logically contradicts the very notion of ‘paradigm shift’. In reality both representations seem to be questionable. The latter statement is historically inaccurate insofar as Danish law and policy has for decades been premised on the assumption that asylum residence permits should be temporary and revocable for a shorter period of time, following which a refugee should normally be offered permanent residence with prospects of becoming a naturalised citizen. In this sense, the enhanced focus on temporariness and return to the refugee’s country of origin is indeed a ‘paradigm shift’ which fundamentally reorients the approach to protecting refugees in Denmark.

At the same time, the 2019 legislative amendments officially proclaimed as a ‘paradigm shift’ were not the first step in the reorientation. As shown in section 3, the ‘return turn’ was initiated in 2015 with the introduction of temporary protection status and not least the expansion of the scope of revocation of residence permits for refugees granted subsidiary protection. The legislation adopted in 2019 is to be seen as a logical continuation of these initial steps towards an explicit focus on temporariness and return as soon as factually and legally possible. In short, while the 2015 amendments lowered the threshold for revocation of a large part of the asylum residence permits, the ‘paradigm shift’ legislation in 2019 simply just made the application of the already expanded revocation rules mandatory. Only

---

<sup>148</sup> See letter of 27 August 2019 from the Immigration Minister to the Danish Parliament, answering question no. 53 from the Committee on Immigration and Integration.



international legal obligations should henceforth set the barrier for Danish authorities' decisions to revoke or refuse extension of asylum residence permits.

This change of approach to the protection of those granted asylum has not been a stand-alone phenomenon. It has been accompanied by numerous changes of law and policy concerning refugees and other migrants, among which many have been manifestly or latently aimed at deterring asylum seekers from moving to Denmark in the first place. In this respect the reorientation towards temporary protection distinguishes itself significantly from the special temporary protection arrangements that were introduced in the 1990s with the clear and predominant purpose of maintaining protection capacity in order to secure access to protection for those in need of it who were arriving in high numbers as part of mass influx of displaced persons into European countries. Despite the restrictive objectives underlying the general shift towards temporariness and return in current Danish asylum policy, the more protection-oriented rationale behind temporary protection appears to have been re-established in connection with the Danish and EU responses to the forcible displacement caused by Russia's invasion of Ukraine in February 2022, yet exclusively to the benefit of the victims of this particular crisis.

As regards the consequences of the general 'return turn' in Danish asylum law, various dilemmas seem to be inescapable. Even while recognising the legal principle that refugee status is not indefinite as such, this report has identified certain problematic issues in the implementation of the restricted rules that were introduced in 2015 and completed with the 'paradigm shift' in 2019. Some of these issues seem to be rather narrowly linked to the various forms of politicisation in the preparation and in particular in the implementation of the legislation providing the basis for the enhanced focus on return of 'former refugees' to their country of origin, as illustrated in sections 3 and 4 of the report.

The rules constituting the 'paradigm shift' have first and foremost been applied to review the asylum cases concerning Syrian refugees among whom both the rules and their actual implementation have caused uncertainty, anxiety and despair.<sup>149</sup> While such impact on the human condition appears to be widespread within the affected refugee groups, the number of residence permits that have been revoked or not extended is relatively low in comparison with the number of persons who have been subject to review of their need for continued protection.<sup>150</sup> For those persons having received a final decision on revocation or non-extension of the residence permit, that decision will be enforced by way of various coercive measures, mostly resulting in their obligation to reside at a deportation centre. Importantly, however, so far none of the Syrian 'former refugees' have been deported from Denmark. Instead of actual return or deportation, the decisions to end protection will lead to the creation of irregular situations for an unknown number of affected persons, either in Denmark or in neighbouring countries. Finally, some of the Syrians who moved on from Denmark are likely to reapply for asylum so that these other EU member states will have to process their cases, which may or may not ultimately result in the applicants' relocation back to Denmark.

---

149 See illustrative accounts in Nadja Filskov et al., *Man kan aldrig føle sig sikker. En analyse af de retssikkerhedsmæssige udfordringer, når flygtninge mister deres opholdstilladelse* (Danish Institute for Human Rights 2022), pp. 38–44, 68–74, 80–85 and 89–92. Other studies within the TemPro project will further elucidate such effects of the 'paradigm shift' as well as its wider consequences for integration and inclusion of refugees.

150 *Ibid.*, pp. 36–37. By February 2022 the number of final revocations or refusals of extension of asylum residence permits under the 'Damascus project' was estimated at 116 persons. In light of the information on subsequent developments in the practices of the Refugee Appeals Board, this number is unlikely to have increased significantly at the time of writing this report.

## REFERENCES

- Altamirano, Aina Tollefsen et al. *En ny flyktningpolitik i Norden? Midlertidig beskyttelse på 1990-tallet*. Copenhagen, 1998.
- Bill no. L 72/2014–15.
- Bill no. L 87/2015–16.
- Bill no. L 140/2018–19.
- Bill no. L 145/2021–22.
- Bill no. L 152/2001–02.
- Bolliger, Monika, Mais Katt, Maximilian Popp, and Lina Verschwele. 'Repressive Asylpolitik: Wie Dänemark Syrer in die Flucht treibt.' *Der Spiegel* (11 January 2022).
- Brekke, Jan-Paul, Rebecca Thorburn Stern, and Jens Vedsted-Hansen. *Temporary asylum and cessation of refugee status in Scandinavia*. European Migration Network (ENM Norway), 2020.
- Dahlin, Ulrik. 'Dramatisk stigning: Over 70 procent af sager, hvor syrerers opholdsgrundlag inddrages, bliver omgjort.' *Information* (13 June 2022).
- 'Udlændingemyndigheder har efter mere end tre år ikke efterkommet lovkrav. Det skaber usikkerhed i asylpraksis.' *Information* (4 July 2022).
- Danish Immigration Service. 'Udlændingestyrelsen ændrer praksis i sager vedrørende de generelle forhold i Syrien', news release 27 February 2019.
- Danish Immigration Service, Refugee Appeals Board and Immigration Appeals Board. 'Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner', memorandum of June 2020.
- Danish state budget agreement (Aftale om Finansloven for 2019).
- Filskov, Nadja et al. *Man kan aldrig føle sig sikker. En analyse af de retssikkerhedsmæssige udfordringer, når flygtninge mister deres opholdstilladelse*. Danish Institute for Human Rights, 2022.
- Gammeltoft-Hansen, Thomas. 'Refugee policy as 'negative nation branding': the case of Denmark and the Nordics.' In *Danish Foreign Policy Yearbook 2017*. DIIS, Copenhagen, 2017.
- Gammeltoft-Hansen, Thomas, Mikael Rask Madsen and Henrik Palmer Olsen, 'The Limits of Indirect Deterrence of Asylum Seekers.' *VerfassungsBlog*, 12 July 2021.
- Haagensen, Eva. *Midlertidig beskyttelse og tilbagevending. Bosniske flygtninger i Norden*. Copenhagen, 1999.
- Halleskov, Louise and Johan Næser, 'Adgangen til familiesammenføring for udlændinge med midlertidig beskyttelsesstatus – EMD's dom i M.A. mod Danmark.' *Juristen* (2022).
- Hathaway, James C. and Michelle Foster. *The Law of Refugee Status* 2nd ed. Cambridge University Press, 2014.
- Immigration Ministry. 'Regeringen sætter gang i genvurdering af syriske flygtnings behov for beskyttelse.' Government news release, 28 June 2020.
- Ineli-Ciger, Meltem. '5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022.' *Odysseus Blog on EU Immigration and Asylum Law and Policy*, 2022.
- Larsen, Rasmus Bøgeskov. 'Flygtningenævnet vurderer risikoen ved at sende syrerer hjem forskelligt trods samme grundlag.' *Information* (21 March 2022).
- 'Vi har set nærmere på en central påstand fra Flygtningenævnet i sager om syriske asylansøgere. Og dokumentationen er tynd.' *Information* (8 January 2022).
- Lighthouse Reports*. 'Syrians Fleeing Denmark' (10 January 2022).
- Molbæk-Steensig, Helga 'How to Deal with Really Good Bad-Faith Interpreters: M.A. v. Denmark.' *Utrecht Journal of International and European Law* vol 37 (2022).
- Poulsen, Stinne Østergaard. *Praksisoversigt over Flygtningenævnets afgørelser i inddragelses- og forlængelsessager (2022)*.
- 'Tilbagevenden til Syrien. Flygtningenævnets forsigtighedsprincip i Syrien-sager i lyset af M.D. and Others v. Russia.' *EU-ret & Menneskeret* no. 2 (2022).
- Refugee Appeals Board, Annual Report 2005 (2006).
- 2011 (2012).
- 2012 (2013).
- 2013 (2014).
- 2016 (2017).
- 2017 (2018).
- 2018 (2019).
- 2019 (2020).
- 2020 (2021).
- 2021 (2022).
- 'Ændrede forhold i Syrien. Flygtningenævnet vurderer, at de generelle forhold i Syrien er ændrede', news release, 27 February 2019.
- Minutes of Coordination Committee meeting on 27 February 2019.
- Minutes of Coordination Committee meeting on 18 June 2020.
- Minutes of Coordination Committee meeting on 16 December 2021.
- 'Status på prøvesager vedrørende personer fra Syrien', news release, 27 June 2019.
- 'Ny afgørelse vedrørende syrisk statsborger fra Damaskusområdet', news release, 2 October 2019.
- 'Flygtningenævnet stadfæster afslag på asyl til syriske statsborgere', news release, 17 December 2019.
- 'Første afgørelse i sag om inddragelse efter udlændingelovens § 19 a', news release, 1 July 2020.
- 'Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner', news release, 30 June 2020.

— 'Drøftelser vedrørende Syrien-praksis på møde i Flygtningenævnets koordinationsudvalg den 28. oktober 2021', news release, 29 October 2021

Schultz, Jessica. 'Temporary protection and the erosion of refugee status'. In *Waiting and the Temporalities of Irregular Migration*. Routledge, 2020.

— *The Internal Protection Alternative in Refugee Law*. Brill | Nijhoff, 2019.

Tan, Nikolas Feith. 'The End of Protection: The Danish 'Paradigm Shift' and the Law of Cessation.' *Nordic Journal of International Law* vol 90 (2021).

Tan, Nikolas Feith and Jens Vedsted-Hansen, 'How long is too long? The limits of restrictions on family reunification for temporary protection holders.' *Odysseus Blog on EU Immigration and Asylum Law and Policy*. 27 September 2021.

Vedsted-Hansen, Jens 'Tidsbegrænsning, forlængelse og tidsbegrænset opholdstilladelse'. In *Udlændingeret* 4. ed., vol. 2. Jurist- og Økonomforbundets Forlag, 2021.

— 'Bortfald og inddragelse af opholdstilladelser.' In *Udlændingeret*, 4. ed, vol. 2. Jurist- og Økonomforbundets Forlag, 2021.

— 'Legislative and Judicial Strategies in Danish Law. Accommodation or Evasion of International Obligations?' *Nordic Journal of International Law* vol 91 (2022).

Vedsted-Hansen, Jens, Kim U. Kjær, Terje Einarsen, and Janina W. Dacyl. *Midlertidigt asyl i Norden*. Copenhagen, 1999.

UNHCR Executive Committee Conclusion No. 69 (XLIII) (1992).

UNHCR Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1 C(5) and (6) of the 1951 Convention relating to the Status of Refugees (2003).





The 'paradigm shift' in Danish asylum policy, officially introduced in 2019, implied the adoption of quasi-mandatory rules on revocation of asylum residence permits as soon as the circumstances in the country of origin are supposed to have changed so as to bring the need for protection to an end. However, these changes were an extension of the tendency towards temporariness of refugee protection in Denmark that started already in 2015 with the introduction of temporary protection status and expansion of the scope of revocation of residence permits for large groups of refugees, primarily those who fled generalised risks in Somalia and Syria.

This report describes these policy changes and identifies problematic issues in the implementation of the 'return turn' in Danish asylum law. Some of these issues are linked to politicised implementation of the legislation that created the basis for focusing on return of refugees to their country of origin. While the number of refugees whose residence permits have actually been revoked or denied extension is rather low compared to the number of persons who have been subject to review of their continued need for protection, the 'paradigm shift' has caused legal and human uncertainty for especially Syrian refugees. As Denmark currently does not deport persons to Syria, the decisions to end protection are likely to create irregular situations for an unknown number of affected persons, either in Denmark or in neighbouring countries to which some of them move on from Denmark.

**Chr. Michelsen Institute (CMI)** is an independent, non-profit research institution and a major international centre in policy-oriented and applied development research. Focus is on development and human rights issues and on international conditions that affect such issues. The geographical focus is Sub-Saharan Africa, Southern and Central Asia, the Middle East and Latin America.

CMI combines applied and theoretical research. CMI research intends to assist policy formulation, improve the basis for decision-making and promote public debate on international development issues.

#### Engage with us



#### Contact us

Phone: 47 93 80 00 (from Norway)  
Phone: +47 55 70 55 65 (from abroad)

cmi@cmi.no  
www.cmi.no

P.O. Box 6033,  
N-5892 Bergen, Norway  
Jekteviksbakken 31, Bergen

**CMI**  
CHR.  
MICHELSEN  
INSTITUTE