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Temporary asylum and cessation of refugee status in Scandinavia

Policies, practices and dilemmas

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2020

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Temporary asylum and cessation of refugee status in Scandinavia – policies, practices, and dilemmas

Abstract

Following the 2015 asylum crisis in Europe, the Scandinavian countries introduced new forms of temporary asylum permits. In this paper we compare these emerging temporary regimes. We draw on the experiences of temporary protection in Scandinavia dating back to the Bosnian war in the 1990s.

This paper is based on a review of the current legislative and political basis for the different temporary asylum policies in Denmark, Norway, and Sweden. Referring to the UN Refugee Convention and the EU Qualification Directive, particular attention is paid to the use of the cessation of refugee status and the revocation of asylum permits in Denmark, Norway, and Sweden.

Applying a strict comparative matrix analysis, we identify similarities and differences in the three countries, highlighting the dilemmas facing the governments and immigration authorities that implement temporary asylum policies. While providing the potential for a rotation of permits, securing protection to those who need it the most at any given time, the temporary asylum instrument poses a list of challenges to governments, immigration authorities, and refugees. These include a lack of motivation to integrate, unclear status for immigration authorities providing integration support and preparation for return, and long-term risks if after a lengthy processs the refugees still end up staying in the host country. In such cases, the hosting society will bear the costs of the instrument without getting the upside of the policy, securing rotation and deterrence.

The temporary instruments were relaunched as immediate responses to the 2015 crisis in Norway and Denmark. Temporary permits were issued without signaling cessation in the case of improvements in the home countries. This left both governments and refugees unprepared for the changing practices that followed. The policy changes were made in haste, and sorting out of the legal consequences has taken nearly five years in the Norwegian case. The paper outlines three new overlapping national practices of temporary protection in Scandinavia.

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Innhold

Introduction

As a response to the record number of asylum arrivals in 2015, European governments introduced restrictive immigration regimes. The goal was to regain control and keep new arrivals to a minimum (Brekke & Staver, 2018). Five years after the event, we are starting to see the effects of the new regimes.

Reflecting a broader international trend of increased use of temporary protection after the 2015 asylum crisis, Norwegian and Danish governments have reintroduced the principle of temporary protection, that is, protection as long as needed – return when possible. Pointing to the cessation clause in the UN Refugee Convention, these governments have, as part of this new practice, increased the use of the cessation of status and the withdrawal or revocation of permits. In Sweden, temporary permits were at the core of the post-2015 asylum regime.

This is not the first time the Scandinavian governments have made use of temporary protection. In the 1990s, Bosnian refugees were provided different versions of temporary protection in the three countries (Altamirano et al., 1999). However, they received protection on a collective basis, not as individuals, setting this earlier use of temporary protection apart from the reintroduced version we see today, where individuals are recognized as refugees but lose their permits when conditions in their home countries improve. However, the experiences with the Bosnians and later groups enjoying temporary group protection are highly relevant in order to understand the gravity of the latest immigration reforms in Scandinavia. The protection principles are similar and so are the legal, policy, practical, and humanitarian challenges.

The temporary instruments were relaunched through political decisions as immediate responses to the 2015 crisis. Due to time contraints, it was left for later to sort out the detailed legal consequences of the changes of practice. This led to protracted processes of establishing the legal details of the new practices. In Norway, it was left to the Norwegian Immigration Directorate, the Immigration Appeals Board, and the courts to secure consistency between the new legal norms and the detailed practice in case processing. Neither the authorities nor the refugees knew that the permits would turn out to be de facto temporary. Therefore, permanent residency was still the default expectation for everyone involved when the practice changed, possibly explaining the reactions and resistance when the temporary principle was flagged and implemented.

Over the past five years, the reformation of the immigration policy regimes have dominated political debates in the Scandinavian countries. In Denmark and Norway, the reintroduction of the principle of temporary protection is perhaps the most profound change to the national asylum regimes. Despite this, these changes have received relatively little attention. Similar changes have been proposed on the EU level (European Commission, 2016), so these pioneer experiences in Scandinavia are of great political relevance.

In the literature, the post-crisis policy developments in Europe have been well documented (Brekke & Staver, 2018), yet the reintroduction of temporary permits has thus far received less scholarly attention (Schultz, 2019; Brekke et al., 2019; Brekke & Staver, 2019). We seek to contribute to filling this gap by providing conceptual clarification, pointing to prior experiences, and comparing how temporary permits play very different roles in three apparently similar national contexts.

In this paper, we explore the newest forms of temporary protection and temporary permits in Norway, Denmark, and Sweden. We ask: How is individual temporary protection for refugees conceptualized and practiced in the Scandinavian countries today? What are the differences between the current form of individual temporary protection and the prior forms of collective temporary protection? Based on prior experiences and current practice, which political and practical challenges can we expect from this new temporary regime?

To answer these questions, we first describe the conceptual basis for temporary protection and the cessation of status. We then provide the key lessons from the use of temporary collective protection in Scandinavia from the 1990s and onward, including a list of potential advantages and challenges inherent in this version of temporary policy. Next, we give a brief introduction to the current status of temporary protection and permits in the three countries. This is followed by a discussion of the international and European legislative basis for temporary asylum permits leading into a thorough presentation of the current proliferation and practice of cessation in the three Scandinavian countries, providing examples of groups affected by the new practices in Denmark and Norway.

In the final section, we discuss the challenges posed by the new temporary protection practice in Scandinavia on two levels. On the national policy level, we discuss the meeting point between tempoary permits and the principles of international law. On the implementation level, we discuss the challenges of a revitalized temporary protection policy within the framework of time, integration, and return. Key elements in these discussions are the duration of temporariness, affiliation to the country of asylum, conditions during the period of protection, and the reasonableness assessment in case of return.

Conceptual clarifications – Temporary protection and cessation

(a) Temporary vs. permanent residence permits

Some of the concepts pertaining to "temporary asylum" refer to the way in which residence permits are being issued to those asylum seekers whose application has been accepted. The specific form and content of the residence permit may impact the situations in which the permit may be brought to an end as well as the criteria and procedures for such decisions.

First, we have to distinguish between residence permits with temporary and permanent validity. In most Scandinavian countries, residence permits will initially be issued for a limited period of time as *temporary residence permits*.[1] Such time limits refer to the *duration of validity* of the residence permit, implying that the permit will have to be extended or renewed at the time of expiry of the period of validity. Decisions on the extension or renewal of the residence permit give the authorities the opportunity to assess the continued need for protection of the individual beneficiary. Therefore, the rules governing extension or renewal normally imply some kind of reassessment of the protection need (see section b below). The formal procedure may either require the beneficiary to apply for the extension or renewal of the permit, or it may be incumbent on the authorities as an *ex officio* duty to consider the beneficiary's continued protection need and, when relevant, to extend or renew the residence permit accordingly.

Second, there may be differences between the *purpose* or the *content* of the residence permit. Even residence permits that are initially of temporary validity may be issued with a view toward, or with the possibility of, long-term residence. This will typically give the protection beneficiary some kind of legitimate expectation as to the prospects of obtaining a permanent residence permit at some stage.

At a certain point in time, residence permits issued with limited duration of validity may be changed into *permanent residence permits*.[2] The period of time required and the additional conditions for that transition to take place vary according to domestic legislation and, in the case of Sweden, also EU legislation concerning long-term resident status. Obtaining a permanent residence permit implies official recognition of the protection beneficiary as a long-term resident. Such status generally provides the beneficiary with a more secure residence status that gives stronger protection against revocation of the

[1] Cf. Norwegian Aliens Act (Utlenningsloven) Section 60, Danish Aliens Act (Udlændingeloven) Section 11 (1), Swedish Aliens Act (Utlänningslagen) Chapter 5 Sections 1 and 7 and the Temporary Law Section 5.
[2] Cf. Norwegian Aliens Act Section 62, Danish Aliens Act Section 11 (3)-(18), Swedish Aliens Act Chapter 5 Section 1, Temporary Law Sections 17-18 a.

residence permit. Therefore, the conditions for issuing permanent residence permits are key elements of temporary asylum policies.

(b) Non-extension and revocation of residence permits

The decision by the host state's authorities to bring the protection of an individual to an end may have different forms and follow different procedures under domestic law. In line with the distinction above, one could generally think of two main forms, either (1) refusal of the extension or renewal of the residence permit[3] or (2) revocation of the residence permit.[4] While the terminology and the procedural details may here again vary from country to country, there are some distinctive features of each of these two types of decisions resulting in the denial of continued protection.

As regards (1), refusal of extension or renewal results in the *non-extension* of the residence permit. This type of decision will be the logical step taken by the authorities if the need for continued protection is being reassessed in connection with the expiry of the validity of a temporary residence permit. In cases where the authorities conclude that the individual is no longer in need of protection, the beneficiary will consequently be refused such extension or renewal of the residence permit. As a consequence, unless s/he obtains a new residence permit on other grounds, s/he will be required to leave the host country.

By contrast, (2) *revocation* of the residence permit is a decision based on domestic legislation that provides for the possibility to bring the validity of the permit to an end while the residence permit is still valid. This type of decision may in principle affect both temporary and permanent residence permits. The criteria for the revocation of these two forms of residence permit may, however, differ, reflecting the more secure residence status typically linked to obtaining a permanent residence permit. It is therefore conceivable that persons holding a permanent residence permit will essentially be protected in absolute terms against the revocation of their permit.[5]

(c) Cessation of refugee status or other forms of protection status

Whether the formal decision to bring protection to an end is termed as non-extension or as revocation of the residence permit under domestic law, the substantive criteria for such decisions are bound to be in conformity with international law. While the terminology may differ somewhat, domestic legal provisions largely reflect the cessation grounds in Article 1 C of the UN Refugee Convention, whether they provide specifically for the cessation of refugee status[6] or more generally for the revocation (or lapse) of residence permits issued to persons falling within the definition of the Refugee Convention.[7] As regards persons granted subsidiary protection or other forms of protection beyond the scope of the Refugee Convention, the domestic criteria for the cessation of protection status, and the ensuing non-extension or revocation of the residence permit, may be different depending on the standards of international law and EU law with which they are intended to conform.[8]

Unless the individual beneficiary of protection is allowed to remain in the territory as a worker or self-employed person; as a student; on the basis of family links, affiliation to the country, or humanitarian considerations – that is, on grounds not related to asylum – s/he will have to leave the host country as a result of the non-extension or revocation of the residence permit. Therefore, in addition to the cessation criteria mentioned above, such decisions on non-extension or revocation must respect international

[3] Cf. Norwegian Aliens Act Section 61 and Danish Aliens Act Section 11 (2). Swedish law does not have any specific provision similar to the aforementioned.
[4] Cf. Norwegian Aliens Act Section 63, Danish Aliens Act Section 19, and Swedish Aliens Act Chapter 7 on the revocation of residence permits and Chapter 4 Sections 5 b and 5 c on the revocation of protection status.
[5] In Norway, persons with permanent residency are outside the scope of Aliens Act Section 37 (cessation) but not of Aliens Act Section 63.
[6] Cf. Norwegian Aliens Act Section 37.
[7] Cf. Norwegian Aliens Act Section 63, Danish Aliens Act Section 17 (1) and (4) and Section 19 (1), and Swedish Aliens Act Section 5.
[8] See, for example, Danish legislation as described below.

standards that limit the possibilities to expel or remove non-citizens, in particular human rights law standards. Of specific relevance for Sweden, EU law may have additional impact on policy and practice concerning residence permits to persons hitherto granted protection.

Unless otherwise indicated, in this study the term cessation is used with reference to the *cessation of status*, whether Convention refugee status or other forms of protection status. In contrast, the terms *non-extension* and *revocation* refer to decisions concerning residence permits that have been issued to persons with the various forms of protection status. While we will refer to domestic law on the cessation of status,[9] the rules on the non-extension and revocation of residence permits will be the primary focus of this study.

(d) Revocation, removal, and expulsion: Delimitation of the study

When the residence permit has been revoked or its extension or renewal has been refused, as described above in section b, the beneficiary will not necessarily be expelled or removed from the host country. Even if the revocation or non-extension of the residence permit was decided in accordance with the international standards on the cessation of protection status, and no *legal barriers* consequently seem to prevent removal from the territory, that decision cannot always be enforced by way of expulsion or forcible removal of the person despite the lack of a valid residence permit.

As a well-known issue in practice, the former protection beneficiary may be non-deportable for *practical reasons*, such as a lack of logistical possibilities to transport that person to the country of origin. While this does not as such call for a reassessment of the need for protection, there may be more complex cases where the reason for non-deportability cannot be considered as a purely logistical matter. In particular, if the person is not being readmitted to the country of origin, this may indicate that his/her relation to the authorities of that country is more problematic than assumed when deciding to bring protection to an end. In such cases it may be relevant to reconsider the need for protection, either by reassessing the question of the cessation of protection status or by examining whether the refusal of readmission to the country of origin might reflect a new basis for the applicant's need for protection, separate from the initial basis. In both alternatives, the result can potentially be the extension or renewal of the residence permit previously issued or the issuance of a new residence permit based on the current circumstances. In addition, human rights obligations such as CRC Article 3 and ECHR Article 8 may be the basis for a new residence permit.

If, alternatively, the refusal of readmission is exclusively caused by the individual's lack of an identity document or objection to signing an application for such a document, this will normally not in itself provide grounds to question the decision on the cessation of protection status and the non-extension or revocation of the residence permit. Such cases will therefore not be analyzed in legal terms even though it may be relevant to consider them from a feasibility perspective to discuss the practical realism of policies aiming to increase the use of temporary asylum with stronger emphasis on cessation of protection.

Finally, given the temporary asylum context of this study, we do not focus on the revocation of residence permits resulting from a *misrepresentation of facts or evidence* in connection with the initial application for protection. Similarly, the study does not include legal standards and practices dealing with expulsion due to *criminal offences* or alleged risk to the *national security* of the host country.

Prior experience with temporary protection in Scandinavia

Norwegian authorities were already exploring ways to make temporary protection the norm for refugees when the Bosnian war peaked in 1993 and sent refugees fleeing across Europe (Brekke, 2001). Swedish, Danish, and Norwegian authorities responded by providing temporary permits to all Bosnians who

[9] See, in particular, Norwegian Aliens Act Section 37.

arrived. By September 1993, Sweden had received 65,000 refugees, Denmark 15,000, and Norway 13,000, and by then, all three countries had introduced visa requirements that stopped new refugees from arriving.

The principle of temporary protection on a group basis meant that the processing of individual claims to asylum were put aside for later. If conditions in the home country would allow for return within a reasonable period of time, then the individuals' applications would be dusted off and processed. The duration of the temporary period was a major topic of discussion at the time (Brekke, 2001).

However, the war was raging in Bosnia, and the three governments handled the situation differently. In Sweden, the decision to introduce visa requirements was combined with a decision to grant permanent residence to the whole group (Altimirano et al., 1998, p. 103). In Denmark, the immigration authorities started the processing of individual cases after an initial two-year temporary period had passed in the summer of 1995. The Norwegian Government stayed with the temporary principle the longest, promoting simultaneously both potential outcomes to the refugees and the public – integration into the country of asylum or return to Bosnia. In the fall of 1996, the government backed down and granted permanent residence to the group.

The UN High Commissioner for Refugees played a key role in opening up for the use of temporary collective protection during the Bosnia war. In the summer of 1992, the UNHCR presented a comprehensive approach to the Balkan refugee crises. Temporary protection was central in this approach, where the High Commissioner argued that although the instrument needed further elaboration, it "should include, at a minimum, admission to the country where such protection is being sought, respect for the principle of non-refoulment and basic human rights […] as well as repatriation when conditions so allow in the country of origin."[10] In other words, the UNHCR saw temporary protection as a way to secure that European receiving states kept their borders open for as long as possible. The UNHCR also saw collective temporary protection in this particular instance as a way to discourage ethnic cleansing by the parties in the war. The instrument would encourage the return of the refugees to their home country.

Despite the experiences with the Bosnian refugees in Norway, where the group did not return as part of the temporary policy, the Norwegian Government applied temporary protection again in 1999 related to the Kosovo crisis. This time, the situation in the home country improved quickly, and two-thirds of the refugees returned within a year after they had arrived (Brekke, 2002). In Denmark, temporary protection permits were also implemented during the Kosovo crisis. In Sweden, the government introduced a special regulation on temporary residence permits for individuals seeking protection from the Kosovo crisis, limiting the first period of protection to 11 months.[11]

Based on the Scandinavian experiences from the Bosnian and Kosovo cases, the following list of stated and actual pros and cons of collective temporary protection can be comprised.

Table 1. Stated and experienced advantages and challenges of the collective temporary protection model (1990–2010).

	Advantages	Challenges
International level	Keeps borders open	Difficult to secure repatriation and returns over time
	Deters ethnic cleansing	Unclear and undecided status with regard to integration and return

[10] https://www.refworld.org/docid/438ec8aa2.html
[11] Instruction (Förordning) (1999:209) on temporary residence permits in certain (vissa) immigration cases (utlendingsärenden).

	Returnees can rebuild	
	Maintains focus on situation in country of origin	
National level	Popular support for reception	May hamper integration
	Political support for reception	Increasing popular and political pressure to let the refugees stay as time passes
	Circulation may help more people	Seductive, postponing forced return
	Reduce administration/processing	
	Demonstrate that *real* refugees want to leave when return is possible	
Local level		Conflict integration and return
		Securing local integration, motivation
Individual level	Protection	Unclear future
	Offers integration efforts (in addition to preparing for return)	Dilemma for the individual – prepare to stay OR pretpare to return? Dual strategy is possibile short term only
		Loss of motivation to integrate and to return
		Loss of key integration opportunities

Table 1 presents a list of selected advantages and challenges stemming from the experiences with collective temporary protection over two decades. As can be seen, there are more advantages listed on the international and national levels than on the individual level. The key element for the individual refugee is that s/he is secured the most important asset – protection. For later discussions in this paper, there is an overarching point to be made on the basis of these experiences: The model shows most of its benefits connected with the initial phase when the instrument is applied, such as gaining political and popular acceptance for receiving larger groups and focusing on potential peace and rebuilding in their country of origin. The political and humanitarian costs appear at later stages, including potentially hard fought forced returns and the consequences of lacking integration.

The question is to what extent these advantages and challenges are present in the current evolving version of temporary protection, where temporary asylum permits is practiced on an individual basis. We will return to this question in the final section of the paper.

Cessation of protection status in international and European law

The EU standards on the cessation of protection status generally reflect the cessation criteria in the instruments of international refugee law and human rights law that are the basis of the Common European Asylum System.[12] Thus, the EU Qualification Directive[13] first restates the cessation criteria in Article 1 C (1)–(6) of the UN Refugee Convention.[14]

[12] See Article 78 (1) of the Treaty on the Functioning of the European Union, stipulating that the common EU policy on asylum, subsidiary protection, and temporary protection must be in accordance with the UN Refugee Convention and "other relevant treaties." The latter is generally understood to be a reference, in particular, to the European Convention on Human Rights as well as to UN human rights treaties providing protection against *refoulement*.

[13] Directive 2011/95/EU of the European Parliament and of the Council of December 13, 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ 2011 L 337/9. Unless otherwise specified, references to the Qualification Directive are based on this 2011 recast Qualification Directive.

[14] Qualification Directive Article 11 (1) (a)–(f).

According to Article 1 C (5) of the Refugee Convention, a person shall cease to be considered a refugee if the circumstances in connection with which s/he has been recognized as a refugee have ceased to exist, and s/he can therefore no longer continue to refuse to avail him/herself of the protection of the country of nationality.[15] As opposed to such general change of circumstances in the country of origin, Article 1 C (1)–(4) provides for the cessation of refugee status in various situations where the refugee has individually demonstrated to no longer be in need of international protection, such as by voluntarily re-availing him/herself of the protection of the country of nationality or voluntarily reestablishing him/herself in the country which s/he left or outside which s/he remained owing to fear of persecution.[16]

Article 1 C (5) of the Refugee Convention is generally interpreted as requiring, for the cessation of refugee status to occur, that the change of circumstances in the refugee's country of origin can be considered *fundamental, stable, and durable*. This interpretation is based on the consideration that there is a need to provide refugees with the assurance that their status will not be subject to constant review in light of temporary changes – not of a fundamental character – in the situation prevailing in their country of origin.[17] This interpretative approach is further explained by the following reasoning:

"Circumstances" refer to fundamental changes in the country that can be assumed to remove the basis of the fear of persecution. A mere – possibly transitory – change in the facts surrounding the individual refugee's fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable. A refugee's status should not in principle be subject to frequent review to the detriment of his/her sense of security, which international protection is intended to provide.[18]

In EU law, the Qualification Directive reflects this well-established interpretation of the Refugee Convention by adding a significant limitation as regards the application of cessation grounds concerning Convention refugees in the case of a general change of circumstances in the country of origin:

In considering points (e) and (f) of paragraph 1, member states shall have regard to whether the change of circumstances is of such a *significant and non-temporary nature* that the refugee's fear of persecution can no longer be regarded as well-founded.[19]

As regards the cessation of subsidiary protection status, the Qualification Directive states that a third-country national or stateless person shall cease to be eligible when the circumstances that led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.[20] The application of this cessation ground is then qualified in a manner similar to the limitation of the provision concerning Convention refugees, as follows:

In applying paragraph 1, member states shall have regard to whether the change of circumstances is of such a *significant and non-temporary nature* that the person eligible for subsidiary protection no longer faces a real risk of serious harm.[21] It is thus apparent that the EU standard on the cessation of eligibility for protection due to a change of circumstances in the country of origin is essentially the same for both

[15] Article 1 C (6) of the Refugee Convention provides for similar cessation grounds concerning stateless refugees yet modified to the effect that the ceased circumstances enable them to return to their country of former habitual residence, in line with the particular inclusion criteria in Article 1 A (2) of the Convention for stateless persons who, due to their statelessness, have no country of nationality.
[16] Article 1 C (1) and (4) of the Refugee Convention, respectively.
[17] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1979/1992), para. 112.
[18] Ibid., pr. 135. On the interpretation and application of Article 1 C (5) and (6), see UNHCR Executive Committee Conclusion No. 69 (XLIII), 1992, and UNHCR, *Guidelines on International Protection: 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,* February 10, 2003. See also James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, Second Edition, 2014, pp. 476–90.
[19] Qualification Directive Article 11 (2) (italics added). Points (e) and (f) of paragraph 1 are restating Article 1 C (5) and (6) of the Refugee Convention.
[20] Qualification Directive Article 16 (1).
[21] Qualification Directive Article 16 (2) (italics added).

Convention refugee status and subsidiary protection status.[22] It should also be noted that the requirement of a "significant and non-temporary" change of circumstances has remained unchanged in the two versions of the Qualification Directive.[23]

So far, the Court of Justice of the European Union has not issued any judgments specifically dealing with the interpretation of the requirement that the change of circumstances must be of a "significant and non-temporary nature" in the sense of Articles 11 and 16 of the Qualification Directive.[24]

As regards the procedure to be followed in cessation cases, the Qualification Directive provides that member states shall revoke, end, or refuse to renew the refugee status of a third-country national or a stateless person if s/he has ceased to be a Convention refugee in accordance with Article 11, as described above.[25] In identical terms, it is stipulated that member states shall revoke, end, or refuse to renew subsidiary protection status if the beneficiary has ceased to be eligible in accordance with Article 16.[26]

Specific procedures for such decisions, generically termed "withdrawal of international protection," have been established in the Asylum Procedures Directive.[27] It is here first stated that member states shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of that person's international protection.[28] Where the competent authority considers withdrawing international protection in accordance with Articles 14 or 19 of the Qualification Directive, as stated above, it is further specified that the person concerned must enjoy certain procedural guarantees. These include the right to be informed in writing that this authority is reconsidering his or her qualification as a beneficiary of international protection and to submit reasons against withdrawal either in a personal interview or in a written statement.[29] The right to free legal assistance and representation, as well as the right to be in contact with UNHCR, is only secured once the decision to withdraw international protection has been made.[30]

Danish legislation and practice

Temporary protection status as a new tertiary asylum status

The legislative changes toward temporary asylum started even before the increased number of asylum seekers turned into the asylum and migration crisis of 2015. An implicit form of temporary protection had already been introduced in administrative practice in April 2011 when the Refugee Appeals Board decided to suspend deportations of those asylum seekers from Syria who were not considered eligible

[22] Cf. Ingo Kraft and Hugo Storey, comments on Articles 11 and 16, respectively, of the Qualification Directive, in Kay Hailbronner and Daniel Thym, eds., *EU Immigration and Asylum Law. A Commentary*, Second Edition, 2016, pp. 1196–98 and 1243–44.

[23] Paragraphs 1 and 2 of Articles 11 and 16 are essentially the same in the 2011 recast Qualification Directive (2011/95) and the 2004 Qualification Directive (2004/83), the only real difference between the two versions being the insertion of the "compelling reasons" exception as paragraph 3 of both articles in the 2011 recast Qualification Directive.

[24] Search in the CJEU case-law database, February 13, 2020. The search included Articles 11 and 16 of the 2011 recast Qualification Directive (2011/95) as well as of the 2004 Qualification Directive (2004/83). In the joined cases of the C-175/08, C-176/08, C-178/08, and C-179/08 *Salahadin Abdulla and Others* judgment of March 2, 2010, the CJEU interpreted Article 11 (1)(e) of the 2004 Directive yet with no particular focus on the specific meaning of the requirement of "significant and non-temporary" change of circumstances.

[25] Qualification Directive Article 14 (1).

[26] Qualification Directive Article 19 (1).

[27] See Chapter IV of Directive 2013/32/EU of the European Parliament and of the Council of June 26, 2013 on common procedures for granting and withdrawing international protection, OJ 2013 L 180/249, on "Procedures for the withdrawal of international protection."

[28] Asylum Procedures Directive Article 44.

[29] Asylum Procedures Directive Article 45 (1).

[30] Asylum Procedures Directive Article 45 (4).

for Convention refugee status or subsidiary protection status.[31] This practice of *de facto* temporary protection was legally questionable because it was arguably incompatible with the Aliens Act, and the factual reasoning underlying the practice was unclear.[32] At the same time, however, the practice of suspended deportations affected a limited number of asylum seekers as the recognition rate for Syrian asylum seekers was relatively high.[33]

The *de facto* temporary protection arrangement was brought to an end in September 2013 due to the Refugee Appeals Board's decision to adjust its practice so as to grant *prima facie* subsidiary protection status to all asylum seekers from those parts of Syria that were affected by armed conflict or attacks against civilians in cases where they were not found eligible for Convention refugee status.[34] In so deciding, the Appeals Board referred to the recent intensification of the armed conflict in Syria, causing huge civilian losses, many refugees, and internally displaced persons as well as attacks against the internal 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*.[35] Following the Appeals Board's change of practice, the Danish Immigration Service adjusted its practice accordingly, resulting in the granting of asylum to applicants from major parts of Syria on a *prima facie* basis, this still presupposing the application of the exclusion grounds where 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.[36] This explicit form of temporary protection was adopted by the parliament in February 2015.[37] The new provision in Section 7 (3) of the Aliens Act was meant to encompass asylum seekers falling within the scope of ECHR Article 3 or Protocol 13 Article 1. As opposed to subsidiary protection status under the already existing Section 7 (2), which 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 characterized by *arbitrary violence* and *ill treatment of civilians*.

In line with this, the government emphasized in the explanatory remarks to the Bill that the proposed provision would not expand the scope of the right to asylum in Denmark. Instead, the Bill was 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, the government stated repeatedly in the explanatory remarks that the need for the protection of persons whose protection need was due to the general situation in their country of origin, such as a particularly serious situation

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[31] Refugee Appeals Board, Annual Report 2011, pp. 149–50 (https://www.fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/Formandskabets-2011-beretning.pdf?la=da&hash=D1CB9BF0E72DA55947788FEEAD0857000F8F22A8, (February 21, 2020).

[32] Cf. Refugee Appeals Board, Annual Report 2012, pp. 340–41 (https://www.fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/Formandskabet-21-beretning-2012-WEB.pdf?la=da&hash=A3A6B78B4846E0E4C3A06EB7913972F730345376, accessed February 21, 2020).

[33] In 2011, 59% of asylum seekers from Syria were recognized as Convention refugees, and 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, 96% in 2013, and 97% in 2014 (https://www.nyidanmark.dk/da/Numbers/tal_fakta, accessed February 25, 2020).

[34] Refugee Appeals Board, Annual Report 2013, pp. 420–22 (https://www.fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/Formandensbetning2013_WEB.pdf?la=da&hash=00489734C97DCB2143B6F32C1F4D41BCED5A6CE2, accessed February 21, 2020).

[35] Ibid., pp. 420–21. See ECtHR judgment of June 28, 2011, *Sufi and Elmi v. United Kingdom*.

[36] Bill No. L 72/2014-15 of November 14, 2014.

[37] Act No. 153 of February 18, 2015, in force the first day after promulgation and applicable to asylum applications submitted from November 14, 2014.

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.[38]

As part of its motivation for 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.[39] As regards the latter, referring to the Appeals Board's change of practice concerning Syrian asylum seekers in September 2013, the explanatory remarks 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.[40] While the statement was nominally correct insofar as general conflict in the asylum seeker's country of origin was considered as falling outside the scope of this provision when it was adopted, this justification of the proposed amendment appears to disregard the general stipulation in the preparatory works accompanying the adoption of Section 7 (2), according to which the asylum authorities' practice concerning subsidiary protection status under this provision would have to be in compliance with the evolving case law of the European Court of Human Rights under ECHR Article 3.[41] Thus, the government's introduction of the new Section 7 (3) on temporary protection status is to be seen as a policy response to the Refugee Appeals Board's adjustment of the practice concerning Syrian asylum seekers in 2013, while implicitly questioning the legitimacy of that decision, or at least of its general implications, in light of one side of the legislature's expectations when adopting the provision on subsidiary protection status back in 2002.

Importantly, for persons granted temporary protection status under the new Section 7 (3), the *right to family reunification* would be suspended for a period of one year.[42] This suspension period formally corresponded to the duration of validity of the first residence permit to be issued to persons with temporary protection status. In more substantive terms, it can be considered as being well in line with the political rationale behind the legislative amendment. An important element in this was indicated in the explanatory remarks to the Bill, albeit rather discreetly, by reference to the historically high numbers of asylum seekers arriving in Europe, generally, and in Denmark, specifically.[43] Notably, however, the government simultaneously stated its intention to uphold a humane approach to asylum policy issues and expressed as its basic position that Denmark ought to take its part of the responsibility for the world's refugees, live up to international obligations, and ensure the protection of asylum seekers from Syria as long as they were in need of it.[44]

One year later, in the Danish Government's legislative response to the events during the summer and autumn of 2015, the policy objectives and not least the corresponding protective rhetoric changed remarkably. As part of the legislative initiatives addressing the asylum and migration crisis, at the same time reflecting the political program on the basis of which the new government had been elected in June 2015, the provisions on temporary protection status were amended in February 2016. The purpose of this amendment, in line with other parts of the government's legislative package on asylum and migration, was here explicitly presented as that of making it significantly less attractive to apply for asylum in Denmark.[45]

The amending Act extended the suspension of the right to family reunification for persons with temporary protection status from one year to a period of three years.[46] For Convention refugees and persons with subsidiary protection status, it was decided to reduce the normal duration of the validity of

[38] Bill No. L 72/2014-15, explanatory remarks, pp. 3 and 7.
[39] Ibid., pp. 4–6.
[40] Ibid., p. 3.
[41] Cf. Bill No. L 152/2001-02 of February 28, 2002, explanatory remarks, pp. 28 ff.
[42] Cf. Section 9 (1), (i) (d), (ii) (d), and (iii) (d) of the Aliens Act, as amended by Act No. 153 of Feb. 18, 2015.
[43] Bill No. L 72/2014-15, explanatory remarks, pp. 3, 7, and 23.
[44] Ibid., p. 3.
[45] Bill No. L 87/2015-16 of December 10, 2015, explanatory remarks, p. 8 ("Regeringen vil med nærværende lovforslag stramme yderligere for asylvilkårene og adgangen til Danmark, så det bliver markant mindre attraktivt at søge til Danmark").
[46] Cf. Section 9 (1), (i) (d), (ii) (d), and (iii) (d) of the Aliens Act, as amended by Act No. 102 of Feb. 3, 2016.

the initial temporary residence permits from five years to two years and one year, respectively.[47] Additional restrictions of civil and socio-economic rights for asylum seekers and protection beneficiaries were adopted, and others occurred in subsequent practice, specially affecting temporarily protected persons. This category encompassed primarily women, children, and older people,[48] not least due to the fact that male Syrian asylum seekers between 18 and 42 years of age were normally recognized as Convention refugees because of their being subject to military conscription and consequently at risk of persecution due to desertion or other non-compliance with military requirements.

While the *extended suspension of the right to family reunification* for persons with temporary protection status will not as such be further described or analyzed in this study, it should be mentioned that the extension was probably a key part of the rationale of the 2016 amendment in order to make Denmark relatively less attractive to asylum seekers. This amendment was

considered one of the most controversial parts of the legislative package in 2015–16, causing heated political and legal debates. In this connection, the compatibility of three years' suspension with human rights standards, in particular ECHR Articles 8 and 14, was seriously questioned.[49] The suspension, combined with the refusal to allow exemption from the three years' waiting period under narrowly defined criteria, gave rise to judicial proceedings, and the Danish Supreme Court upheld the suspension in two judgments.[50] One of these cases is currently pending before the Grand Chamber of the European Court of Human Rights.[51]

Extending the scope of the revocation of asylum permits

As an additional move toward the temporariness of protection, the threshold for the revocation of asylum permits was lowered in February 2015. Until the amendment of the Aliens Act,[52] the revocation of a residence permit issued for the purpose of asylum was conditional on whether the change of circumstances in the country of origin could be considered *fundamental, stable, and durable*. Thus, the cessation criteria generally recognized under Article 1 C (5) of the Refugee Convention were in practice observed not only when deciding on the revocation of the residence permits of Convention refugees but normally when revoking the permits of those holding subsidiary protection status as well.

For the latter category of protection beneficiaries, the revocation threshold was changed so as to be in line with that applicable to the new temporary protection status, adopted as Section 7 (3) of the Aliens Act. Indeed, the introduction of the latter status was invoked as justifying the simultaneous change of revocation criteria for the preexisting subsidiary protection status, even arguing that this was merely a matter of clarifying the state of the law.[53] Following this change, the modified criteria for the revocation of the residence permit would be based on an assessment of the need for continued protection in light of international obligations, in particular ECHR Article 3. It was explicitly stated that in the 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*

[47] Cf. Ministerial Order No. 109 of February 3, 2016, amending Section 16 of Ministerial Order No. 375 of March 20, 2015.
[48] See statistical overviews 2017, p. 14 and 2018, p. 12 (https://www.nyidanmark.dk/da/Numbers/tal_fakta, accessed February 25, 2020).
[49] Cf. Louise Halleskov Storgaard, «Om de menneskeretlige problemer ved at indskrænke adgangen til familiesammenføring for personer med midlertidig beskyttelsesstatus,» *Juristen* no. 3, 2016, pp. 124–38. During the legislative process, even the government realized the potential risk that the general suspension for three years might be considered a violation of ECHR Article 8, cf. Bill No. L 87/2015-16, explanatory remarks, p. 13.
[50] Supreme Court judgment of November 6, 2017, published in *Ugeskrift for Retsvæsen* 2018, p. 688 and judgment of May 14, 2019, published in *Ugeskrift for Retsvæsen* 2019, p. 2828.
[51] *M.A. v. Denmark*, application no. 6697/18, communicated to the Danish Government by the European Court of Human Rights September 7, 2018. On November 19, 2019, the Chamber to which the case had been allocated relinquished jurisdiction in favor of the Court's Grand Chamber.
[52] Act No. 153 of February 18, 2015.
[53] Bill No. L 72/2014-15, explanatory remarks, pp. 12 and 21–22.

unpredictable. The only exception should be cases where the changes in the country of origin were considered as being of a *purely temporary* character.[54]

As a result of the 2015 amendment of the Aliens Act, the modified revocation criteria were to be similarly applied to residence permits issued to the beneficiaries of subsidiary protection status as well as those holding temporary protection status. Only for Convention refugees would the threshold still require that the change of circumstances be considered fundamental, stable, and durable. This amendment, significantly lowering the threshold for the revocation of such residence permits, has been applied in practice in a number of revocation cases in particular concerning persons from Somalia and Syria who were beneficiaries of subsidiary or temporary protection status.[55]

General system of temporary asylum permits ("paradigm shift" 2019)

The "paradigm shift" in Danish asylum policy during 2017–18, included the issuing of temporary permits *with a view to temporary residence* only.[56] Among the amendments emphasizing the temporary perspective, we find a range of amendments and terminological changes pointing to return as the prefered outcome of the applicants' stay.[57] In addition to the more formal amendments, the focus on temporariness was operationalized by way of amending the rules on the extension and revocation of residence permits issued to all protection beneficiaries. While both amendments were intended to expand the scope of the non-extension or revocation of asylum permits, the tightening of the revocation rules seems to be the most significant impact of the "paradigm change." At the same time, the speedy adoption of the legislation did not seem to allow for more systematic consideration of the impacts on integration policy and practice.

For as long as asylum permits are still issued with temporary validity, that is, normally during a period of eight years following the issuance of the first residence permit, the *extension of the residence permit* on the expiration of each period of validity will no longer be granted on the basis of a presumption in favor of extension. Instead, such cases are now in principle to be decided in the same manner as the initial application for asylum. In other words, extension will only be granted if the applicant is still considered to be in need of protection.[58] This amendment of the procedure for the extension of residence permits was apparently expected to primarily affect those who have been granted asylum due to the general situation in their country of origin.[59] This part of the "paradigm change" may therefore seem to have relatively limited impact on Convention refugees and beneficiaries of subsidiary protection status.

As regards the question of the *revocation of asylum permits*, it is now stipulated that all asylum permits shall be revoked to the extent that is compatible with the relevant cessation criteria.[60] Perhaps most importantly, this mandatory revocation rule will be applied in the case of a change in the general circumstances in the country of origin that can be considered to bring the need for protection to an end according to international protection standards, that is, the Refugee Convention and the prohibition of *refoulement* in human rights treaties. In this connection, the lowered threshold for revoking residence permits issued to beneficiaries of subsidiary protection status as well as those holding temporary protection status is likely to have a major impact when deciding whether there is sufficient basis for

[54] Ibid., pp. 12 and 22.
[55] While the amendments of Act No. 153 of February 18, 2015 should, according to the transitional provisions in Section 2, not be applicable to cases in which the asylum application had been submitted before November 14, 2014, this particular amendment of Section 19 (1) of the Aliens Act seems to have been given effect also in cases of revocation of residence permits issued prior to this date, probably due to the official assumption that it was merely a clarification of the state of the law, as insistently stated in the explanatory remarks to Bill No. L 72/2014-15, pp. 12 and 21–22.
[56] Cf. Section 7 (1) and (2) and Section 8 (1) and (2) of the Aliens Act, as amended by Act No. 174 of February 27, 2019.
[57] Cf. Bill No. L 140/2018-19 of January 15, 2019, explanatory remarks, pp. 24 and 31–32.
[58] Cf. Section 11 (2) of the Aliens Act, as amended by Act No. 174 of February 27, 2019.
[59] Bill No. L 140/2018-19, explanatory remarks, p. 25.
[60] Cf. Sections 19 and 19 a (1) of the Aliens Act, as amended by Act No. 174 of February 27, 2019.

revocation in the first place. As a consequence, the derived residence permits for family members will also be revoked.

The only exception from the mandatory revocation rule is that continued residence in Denmark will be allowed if revocation would be contrary to Denmark's international obligations.[61] Here the "paradigm change" has abolished the administrative assessment of proportionality and reasonableness, previously made on the basis of a discretionary domestic provision,[62] by restricting the counter-indications to those imposed by international law. In this regard, the relevant international obligations are those protecting individuals' private and family life, in particular ECHR Article 8. 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 into and other forms of affiliation to Danish society that the individual protection beneficiary may have obtained.[63] So far, only three revocation decisions concerning asylum permits have been examined and upheld under the new restricted balancing rule by the Refugee Appeals Board.[64]

Revocation of residence permits for selected nationalities

In 2016 the Refugee Appeals Bard decided on the revocation of the subsidiary protection status of five Somali nationals. These individuals had originally been granted subsidiary protection status on a *prima facie* basis due to the general level of violence in their country of origin, especially in the Mogadishu region, between 2011 and 2013. The Refugee Appeals Board upheld the decision of the Danish Immigration Service to revoke the five asylum permits.

The Appeals Board here referred to the 2015 legislative amendment intending to lower the threshold for revocation. They consequently considered whether the return of these Somalis would still be a violation of Denmark's international obligations, including ECHR Article 3. Against the background of the country of origin information available, the Appeals Board considered the general situation in Mogadishu to have improved, while still describing conditions in the city as serious, fragile, and unpredictable. As the change of circumstances was not of a purely temporary character, the Appeals Board held that return of the appellants would no longer violate ECHR Article 3. Finally, under the domestic proportionality test, the appellants' affiliation to Denmark and other personal factors were not considered to make the revocation and return a particular strain or otherwise unreasonable.[65]

A year later, similar revocation decisions concerning Somalis were examined and upheld by the Refugee Appeals Board. Sof of these cases concerned people with origins outside of Mogadishu.[66] In light of the test cases, the Danish Immigration Service developed a larger project on the revocation or non-extension of numerous residence permits that had been issued to Somali asylum seekers on a *prima facie* basis between 2011 and 2013. This in turn resulted in a significant increase in revocation and non-extension decisions brought before the Appeals Board in 2018. Many of these decisions were upheld, while a number of the first instance decisions were quashed. In these cases, the Appeals Board considered the

[61] Cf. Section 19 a (1) of the Aliens Act, as amended by Act No. 174 of February 27, 2019.
[62] Cf. Section 26 (1) of the Aliens Act, no longer applicable to asylum permits and derived residence permits for family members.
[63] Bill No. L 140/2018-19, explanatory remarks, pp. 26–30.
[64] See summaries of December 9, 2019 of the Refugee Appeals Board decisions (https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/09-12-2019, accessed February 25, 2020). As regards the revocation of derived residence permits for family members, the Immigration Appeals Board appears to have made no final decisions under the amended balancing rule.
[65] Cf. Refugee Appeals Board, Annual Report 2016, pp. 375–80 with summary of the decision in two of the test cases in which the Appeals Board by a majority upheld the revocation of the asylum permits (https://www.fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/Beretning-2016-WEB.PDF?la=da&hash=FB75F45480BA19BB2B9D425D60A4180F12158A2E, accessed February 25, 2020).
[66] Cf. Refugee Appeals Board, Annual Report 2017, pp. 285–98 with summary of three decisions (https://www.fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/291964-Beretning-2017_low.pdf?la=da&hash=81A0C6357BB1A72E17703ADE974A56645046342E, (February 25, 2020).

appellant to be individually exposed beyond the general risk of ill treatment in Somalia or, in exceptional cases, due to a particularly strong affiliation to Danish society.[67]

As the next step in operationalizing the shift toward temporariness, the Danish Immigration Service initiated the reassessment of the protection needs of Syrians originating from the Damascus area who had been granted temporary protection status. The first seven test cases were examined by the Refugee Appeals Board in June and September 2019, all resulting in the appellants being granted continued residence permits in Denmark either as a Convention refugee or with subsidiary protection status. Although agreeing that the general situation in Damascus had improved so that there was no longer a basis for considering every person to be at a real risk of being exposed to ill treatment in violation of ECHR Article 3 due to his or her mere presence in the area, the Appeals Board found the appellants to be individually at risk of persecution or ill treatment.[68]

Thus, largely based on *sur place* considerations, the Appeals Board took the view that the individual circumstances, due to the very flight from Syria and in some of the cases also the appellants' activities in Denmark or the activities or profiles of their family members, would entail the risk of being subjected to arrest, detention, and interrogation upon return to Syria. Due to the well-documented risk of serious human rights violations in conjunction with arbitrariness and unpredictability on the part of the Syrian authorities, these individual factors replaced the general risk of ill treament that had initially been the basis for granting temporary protection status to these Syrian applicants.

Specific issues pertaining to children

As a result of the "paradigm change" described above, the revocation rule concerning asylum permits, as well as the derived residence permits for family members being reunified with the beneficiaries of protection, refers to international obligations as the only exception from mandatory revocation.[69] The explanatory remarks of the "paradigm change" Bill provides a rather extensive description of the international obligations that may be releveant as a potential basis for securing continued residence in Denmark.[70] Notably, however, the exclusive focus is on the European Convention on Human Rights, first and foremost ECHR Article 8, protecting the right to respect for private and family life. Other human rights treaties such as the UN Convention on the Rights of the Child are mentioned yet only in passing with the remark that they contain provisions relevant to this regulatory area.

Norwegian legislation and practice on cessation

In the aftermath of the 2015 record number of arrivals, the Norwegian Government increased its focus on cessation (Immigration Act § 37) and revocation (Immigration Act § 63). While revocation includes persons who have achieved permanent residency or citizenship, cessation pertains only to refugees (§ 28 a, b) with temporary permits.

The Immigration Act has not been amended as part of the post-2015 renewed focus on temporary protection in Norway. Instead, the Ministry of Justice and Public Security has secured the changes through a series of instructions to the Directorate of Immigration (UDI). The process started with a political agreement between most parties in the parliament in the immediate aftermath of the 2015

[67] Cf. Refugee Appeals Board, Annual Report 2018, pp. 3, 62–68 and 344–56 (https://www.fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/301535-Beretning-2018-web-version.pdf?la=da&hash=2175AA58056E4A1B9F3666FB55F17EDABB3CD41C, accessed February 25, 2020).
[68] See summaries of the test case decisions on the Refugee Appeals Board's website (https://www.fln.dk/da/Nyheder/Nyhedsarkiv/2019/210602019 and https://www.fln.dk/da/Nyheder/Nyhedsarkiv/2019/02102019, accessed February 25, 2020).
[69] Section 19 a (1) of the Aliens Act, as amended by Act No. 174 of February 27, 2019.
[70] Bill No. L 140/2018-19, explanatory remarks, pp. 26–31.

arrivals.[71] This political agreement stated that there in cases where the basis for temporary protection is no longer be present due "to political, social or humanitarian improvements in the home country, the immigration authorities may, without delay, start the cessation of the residence permits" (Norwegian Ministry of Justice, 2016),

These intentions were followed up by the Ministry of Justice and Public Security and resulted in a series of Instructions to the Directorate.[72] The current practice is outlined in GI-03/2019. Here, the Ministry acknowledges that the activation of the UN Refugee Convention's cessation clause 1 C is a clear break with prior Norwegian as well as international standard practice.[73] The details of today's legal framework for cessation in Norway is given below (see section on Norwegian legislation and practice).

Ministerial instructions on cessation (§ 37)

The legal basis for cessation in Norway is the Immigration Act § 37, where the interpretation and applicability is laid out in instructions from the Ministry of Justice and Public Security to the implementing body, the Directorate of Immigration. Since the cessation clause was reactivated after 2015, there has been a list of such instructions and continous follow-up communications between the Ministry and the Directorate (Brekke et al., 2018). The current instruction (GI-03/2019)[74] goes into detail on how § 37 shall be applied.[75] We will refer to a few of the key points in this instruction.

The cessation instruction pertains to the Immigration Act § 37, section 1, letters e and f.[76] The instruction covers recognized refugees (Immigration Act § 28 a and b). The instruction does not distinguish between the refugee (§ 28 a) and subsidiary protection (§ 28 b). The following groups explicitly do not fall under the cessation paragraph (§ 37): UN quota refugees, those who enjoy temporary protection on a group level, those with permits due to humanitarian considerations or because of attachment to Norway, and persons with permanent residence permits). Cessation applies only during the period before permanent residency is achieved. The criteria for qualifying for permanent residency are therefore important when discussing the Norwegian cessation practice.

Until 2016, persons with refugee status in Norway (§ 28) would in normal cases qualify for permanent residency automatically after three years.[77] In 2016, the government introduced a list of requirements that could extend the period of temporary permits beyond the three-year norm (§ 62).[78] The requirements include achieving economic self-sufficiency during 12 months prior to applying, passing a test in Norwegian language (A2 level), and passing a test in knowledge of Norwegian society (in a language of their choice). These requirements will in many cases lead to an extended period of temporary permits. As we have seen, cessation (§ 37) can only be applied to persons who have not yet achieved permanent status. The reuirements for permanent-stay permits are therefore of key importance because they extend the period when the individual may be subjected to the cessation clause.

Under the cessation regulation, Immigration Act 37 letters e and f, both general improvements in the country of origin (or prior residence) and changes in one's personal situation indicating that the person

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[71] Two parties did not sign – SV (Socialist Left Party) and MDG (the Greens) (Ministry of Justice and Public Security 2016).
[72] Instruks GI-01/2016, GI-04/2016, GI-14/2016, and GI-03/2019.
[73] The rationale for the pre-2015 non-practice of cessation is presented by the Norwegian Government in Ot.prp. 75 (2006–2007) p. 103.
[74] https://www.regjeringen.no/contentassets/ecdd677f1b094d318cffb8b1ecea9dc0/gi-032019-l1050570.pdf
[75] In April 2020, two further instructions describe in detail how the cut-off time for qualifying for permanent residency is to be applied to Somali applicants affected by § 37 e (see instructions GI-05/2020 and GI-06/2020).
[76] Applies when the foreigner "no longer can refrain (nekte) from enjoying the protection of the country of which the person is a citizen, due to the fact that the conditions which qualified the person for recognition as refugee (§ 28) or as needing protection (§ 38), is no longer present."

[77] As part of the post-2015 package of regulations, the government suggested that the minimum period was exented from three to five years. This did not pass parliament. Instead, a list of requirements were introduced.
[78] https://www.udiregelverk.no/rettskilder/lover-og-forskrifter/lover-og-forskrifter2/utlendingsloven---utlendl/#/kapittel/7/paragraf/62

is no longer in need of protection, may, according to the Instruction, lead to the cessation and revocation of permits.[79]

The Ministry of Justice points to the UNHCR guidelines on cessation from 2003 but makes clear that these are guidelines only and not legally binding for Norwegian authorities.[80] They are, however, considered relevant in combination with country reports and other sources when establishing whether there have been sufficient changes in the refugee's country of origin. Particularly in situations where conflict and war have caused the need for protection, extra precaution must be taken when considering cessation, and the need for continued protection in Norway should in these cases be considered on an individual basis.

The Directorate is instructed to "not consider whether cessation of the residence permit is a reasonable (forholdsmessig) measure with regard to the foreigner."[81] Instead, the Directorate shall on its own initiative consider whether the person qualifies for other residence permits, taking into consideration individual humanitarian reasons, the right to family unity (ECHR Art. 8), and the principle of the best interest of the child (UN CRC Art. 3).

The right to family life as a restriction in cessation cases has been tested in Supreme Court rulings. One of these is referred to in the Instruction, pointing out that "a temporary residence permit granted according to the Immigration Act § 60 to foreigners with refugee status does not as a rule form a basis for establishing a private life which is protected by Article 8".[82]

There is also reference to exemptions for persons who have compelling reasons ("tvingende grunner") due to trauma suffered in their home countries (§ 37.2). These are in line with the UNHCR recommendations (UNHCR 2003). UNHCR explicitly mentions that children will be particularly vulnerable and may have such compelling reasons and should be given special consideration.

The Instruction states that the internal flight alternative may be used in cases where the cessation clause applies. This means that the foreigner may be returned to their country of origin, even if they cannot return to the specific area of origin within that country (Schultz 2019).

While both the Norwegian Immigration Act (§ 37 e and f) and the cessation clause in the UN Convention on refugees state that the cessation clause *may* be used if the criteria are fulfilled, the Instruction emphasizes that the Directorate *shall* reach a decision of cessation in cases where the requirements are met (GI-03/2019).

According to the Ministry, the clause applies to cases where there have been changes in the home country (or country of prior residence) regarding safety, political stability, or the human rights situation, which, on a general level, make it safe for many people to return (GI-03/2019:9).

The improvements in the home country must be *substantial* ("vesentlig") and of a *certain* ("av en viss") *duration* ("varighet")(stability). The individual's fear of persecution shall no longer be well-founded, nor shall the individual risk serious harm after return.

For the changes in personal life to be considered, they have to be concrete indications that the personal situation is changed in a way that leaves the person without the need for protection outside the country

[79] Norwegian High Court decision: Jf. Rt-2010-858 Section 50. See also Instruction from the Ministry of Justice GI-04/2019:4.
[80] Guidelines on International Protection: 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) pkt. 11. Referred to in Instruction from the Ministry of Justice GI-04/2019:4-5.
[81] https://www.regjeringen.no/contentassets/ecdd677f1b094d318cffb8b1ecea9dc0/gi-032019-l1050570.pdf, pp. 5 and 9 Se HR-2018-572-A avsnitt 47–51. https://www.domstol.no/globalassets/upload/hret/avgjorelser/2018/avgjorelser-november/saknr-2017-2179-anonymisert.pdf
[82] Argument hinges on whether these are considered as "settled migrants," (ref 1951 Convention Article 1 C).

of origin (or prior residence). These cases, for example, involve family members believed to be lost who are found and can provide protection for the individual.

The Instruction from the Ministry points to the EU Status directive (26), which is in fact identical on this point to the Qualification Directive with regard to the criteria for who (government, parties to conflicts, NGOs, and others) can be seen as providing protection in a geographical area.

Research on revocation and cessation

In 2018, the legal basis for this practice and the quality of case processing done by the Directorate of Immigration was analyzed (Brekke et al., 2018). Based on a review of 100 case files, the practice was found to be generally in line with the legal framework (Brekke et al., 2018, p. 56). Among the critical points made by the researchers, we find inconsistencies with regard to the application of proportionality judgments ("forholdsmessighetsvurderinger") under § 37, the use of personal social media profiles in gathering information, and a lack of statistical data on revocation and cessation. A High Court decision (HR 2018-57 2-A) from 2018 established that there is no requirement to include proportionality judgments under the cessation clause (Immigration Act § 37 e and f).

In 2019 a second report was published, looking at the effects of the revocations and cessation practice in Norway (Brekke et al., 2019). This research was based on interviews with Somali and Afghan refugees and family migrants who had been affected by the practice and statistical data provided by the Directorate of Immigration. Covering the 2017–2018 period, the report presents statistics that show the substantial volume of revocation and cessation cases where the processing had been started but where cases had not been closed. One example would be that cessation procedures were initiated related to 1,400 Somali nationals during this period. After close to two years, 300 of these had been processed, and only 30 cases ended with the cessation of permits (Brekke et al., 2019, p. 41). None of the Somalis affected by cessation were returned to Somalia by force during the period covered.

Both refugees and bureaucrats were caught in a situation where cases were opened but where many were left hanging. The process itself was challenging to both parties, and the communications were often halted. The reasons for this slow case processing included the complexity of cases, test cases being processed in the courts, and limited resources.

With regard to the effects on the foreigners themselves, the report documented withdrawal from integration and widespread confusion within the Somali group in Norway and among those affected regarding the different legal bases for "losing one's permit" (Brekke et al., 2019, p. 88).

The confusion reported by the Somali community reflects the complexity and seeming overlap of reasons one can lose one's residence permit given following applications for protection in Norway – revocation (Immigration Act § 63), revocation of citizenship (Nationality Act § 26), and cessation of temporary permits (Immigration Act § 37). In the current report, we focus on cessation and temporary asylum permits.

Increased use of temporary asylum permits?

As of 2020, the Norwegian Government continues its focus on the revocation and cessation of refugee permits. Looking back at the period since the political statement in November 2015 and the research that has been done on revocation and cessation in Norway, a few key points can be identified that will impact the future of temporary asylum permits and systematic cessation practices. Have the intended consequences been realized? What challenges can be identified based on the experiences?

The intended consequences of cessation

In contrast to revocation (§ 63), the intentions behind the revitalization of the cessation clause (§37e, f) have not been fully spelled out. The general rationale behind the clause is that protection in a country of asylum is secondary to the protection in one's home country. Further, the current Instruction from the

Ministry of Justice and Public Security points out that during periods with a high number of arrivals of asylum seekers, there is substantial economic stress and a heavy burden on the reception system, case processing, efforts to secure integration, and settlement. As a consequence, it is argued, priority should be given to those most in need of protection (GI-03/2019).

However, the reason why the regulation received renewed focus in 2015 was the record influx of asylum seekers. As part of the cross-party agreement in November that year, cessation was placed on a list of restrictive measures meant to bring down the number of arrivals. There were two ways that an increased use of cessation could bring down the number of asylum seekers in Norway – those that lost their permits could leave the country, and in addition the new policy could deter future arrivals.

Have these intended consequences been realized? Asylum numbers to Norway plummeted around the time of the agreement in 2015 and have remained low ever since. However, the new practice was not implemented until late 2016 and with a push for the cessation portfolio in the spring of 2017 (Brekke et al., 2019). The effect of the cessation practice on the general number of arrivals is believed to be minimal. It should be noted that there is always the possibility that the cessation efforts may have some impact as part of a broader set of restrictive measures in the current Norwegian immigration regime.

Furthermore, the cessation clause has been applied almost exclusively to the Somali group in Norway. Has the new practice had an effect on new arrivals from that country? Again, the answer appears to be negative. The number of asylum seekers from Somalia was low in the years leading up to 2015 and has remained low over the past five years.

The second intended effect, securing a rotation so that persons who need protection the most can enjoy it, is formulated at a level that makes it hard to evaluate looking forward. In the aforementioned Instruction from the Ministry of Justice to the Directorate of Immigration, another reason for implementing cessation is mentioned – that protection is resource intensive and, hence, a scarce good. Those who need protection should be prioritized (GI-03/2019). This resembles the core message of the 1993 protection report in focus: "Protection for as long as it is needed – return when possible" (Ministry for Municipalities and Labour, 1993).

Will the Norwegian authorities achieve such a rotation? For the group currently being affected in Norway, the Somalis, there is little chance that we will see a subtantial number of returns following cessation decisions. As a result, one should not expect there to be such a rotation. It is, however, not easy to predict how a policy based on the premise of temporary protection will play out if applied to future groups. If the premise is well known from the outset, the response from stakeholders may be different. Specifically, the resistance to forced returns may be weaker from local and national actors.

Cessation and return

Securing the return of foreign nationals without permits is a key priority in Norway, as in other European countries. Motivating for assisted voluntary returns has proven to be a challenge for many receiving states, and forced returns are resource intensive. The refugees losing their permits under the Norwegian cessation clause (§ 37) have so far not adhered to the expectations to use assisted voluntary return schemes, nor have they been returned by force.

Achieving returns may, however, prove to be easier for Norwegian immigration authorities as cessation becomes more well known within affected immigrant communities. However, , the outcome of many cessation cases may must still be expected to be continued stay in Norway on a basis other than the need for protection. Still, for there to be rotation in the population enjoying temporary asylum permits in Norway, return is a logical prerequisite.

The experience so far is that both revocation and cessation cases are resource intensive (Prop 1 S, Ministry of Justice, 2019–2020, p. 32). Research has shown that they are also complex to process, and often end with being dismissed (80% of processed cessation cases in 2017–2018 were dismissed)

(Brekke et al., 2019, p. 41). The complexity and limited resources within the Directorate of Immigration led to a substantial backlog. By January 2020, the total number of active revocation cases was 4,200, of which 1,400 were pending cessation cases, the majority of which pertained to Somali nationals.

Disrupting immigrant integration

Research has shown that being directly affected by cessation and revocation has, unsurprisingly, negative consequences for the individual (Brekke et al., 2019). Typically, this leads to withdrawal from practical and social integration processes and may give rise to adverse physical and mental symptoms. Research also points to the risk of dis-integration at the group level for the Somali group, which has been particularly affected by the revocation and cessation practices in Norway.

So far, no research has been done on individuals or groups of refugees in Norway who know that they risk cessation if the conditions in their home country improves. The Somali group in Norway was wholly unaware of this risk, which was not communicated to them until the new cessation practice was initiated (Brekke et al., 2019).

Earlier research on the effects of temporary protection on individuals has shown that there is a delicate interaction between the motivation to integrate and the outlook of having to return or being allowed to stay. The uncertainty regarding future place of residence may create an ambivalence, making integration harder to achieve for both the individual and for those involved in the introduction program, local authorities, and civil society.

The effect of raising the bar of permanent protection

As we have seen, a list of requirements for achieving permanent protection has been introduced. So far, there has not been any research on the consequences of these changes for refugees with temporary permits. To what extent will the income requirement, language test, and knowledge test delay their transfer to permanent residency? And if there is such a delay, are there any consequences with regard to cessation? In theory, there is a potent mix of measures that may prolong the period of temporary permits and thereby increase the length of the period in which cessation may occur. If clearly communicated, this may affect the motivation of individuals and groups to take part in the necessary integration efforts to achieve the requirements for permanent residency. The result may be substantial groups in prolonged periods with temporary permits.

Swedish legislation and practice

In response to the large influx of asylum seekers to Sweden in the autumn months of 2015 (149,000 applications by November that year),[83] the Swedish Government in late November 2015 announced changes to Swedish migration policy and legislation. They were supported by a majority of the political parties in the Riksdag. These changes aimed to significantly curb the number of arrivals in Sweden by both making it more difficult to reach Swedish territory and there to submit an asylum application. Sweden was to become less attractive as a destination country.

To achieve this, border and identity controls were put in place along the Swedish border, most importantly on the southern border with Denmark (the Öresund Bridge). Thereby, in January 2016, individuals without proper identification were prevented from reaching Swedish territory. Border controls have been prolonged on several occasions, for the time being until November 2020.

[83] Migration Agency statistics on asylum seekers in 2015 www.migrationsverket.se/download/18.7c00d8e6143101d166d1aab/1485556214938/Inkomna%20ans%C3%B6kningar%20om%20asyl%, last visited February 14, 2020.

The restricive measures were established by the 2016 Temporary Law.[84] Restrictions include limiting asylum grounds to what is required in Sweden's obligations under public international and EU law (i.e., refugee status and subsidiary protection status), limiting family reunification to apply only to certain categories (as well as introducing strict economic conditions), and making temporary residence permits the main rule instead of permanent permits, which had previously been the case. The Temporary Law, which is to be applied instead of the Aliens Act whenever they overlap, entered into force in June 2016 with a duration of three years. In July 2019, the law, with some revisions, was prolonged until July 2021. Whether the restrictive measures established by the Temporary Law will be made permanent is an issue currently being discussed by a cross-party commission of inquiry established in 2019 tasked with developing suggestions for the future Swedish migration policy.[85] The commission of inquiry is to present its proposals in August 2020.

Temporary protection status as the new general rule

Before the introduction of the Ttemporary Law, permanent residence permits had been the rule both for individuals granted asylum and those granted a residence permit on humanitarian grounds, the main rule in Swedish migration law today regarding duration of residence permits directly or indirectly linked to asylum is that residence permits are temporary. Only individuals having arrived in Sweden through established resettlement schemes are entitled to permanent residence permits from the start. The law entered into force in July 2016 but applies, with certain exceptions for children and families, also to applications submitted before the legislation's entry into force.[86] This retroactive application was criticized by a number of the consultative bodies given its negative effects for applicants and for the lack of clarity as to whom and from when the law actually applies.[87]

Permits for individuals granted *refugee status* (Aliens Act, Chapter 4, Sections 1 and 3) are as a main rule limited to three years (Temporary Law, Section 5(2)). The duration of the permit, however, can be shorter than three years if there are, for example, security concerns. A residence permit for a person with refugee status is, at a minimum, to be granted for one year. If the residence permit is prolonged – that is, if there are still grounds for refugee status – the prolonged permit shall also be temporary and apply for a maximum of three years. An adult individual with refugee status, however, can be granted a permanent residence permit after the first three years if s/he has gained employment that allows the refugee to support him/herself and for which the terms are not less favorable than what follows from Swedish collective agreements or business practice (Temporary Law, Section 17(2)). For young adults (under 25), additional requirements regarding their level of education apply (Temporary Law, Section 17(3)). An additional condition is that the employer has informed the Swedish Tax Office of the situation (Temporary Law, Section 17(1)). The possibility of being allowed to stay permanently in Sweden thus could be held to be linked to the individual in question not representing an economic burden for Swedish society.

Following the 2016 Temporary Law, residence permits for individuals granted *subsidiary protection status* (Aliens Act, Chapter 4, Sections 2 and 3a) are as a main rule to be granted for no longer than 13 months (Section 5(3)). If there are grounds for prolonging the residence permit, the maximum length for the permit is two years. A person with subsidiary protection status who has gained employment has the same chance of being granted a permanent residence permit as a person with refugee status in the same situation (Temporary Law, Section 17). Corresponding limitations regarding the duration of the residence permit apply to individuals having been granted a residence permit due to *exceptionally distressing circumstances* (Aliens Act Chapter 5 Section 6, Temporary Law Section 11) or *impediments*

84 Law (SFS 2016:752), temporary restrictions, possibilities of being granted a residence permit in Sweden.
85 Dir. 2019:32.
86 The law applies according to the provisional regulations to applications submitted on or after the November 24, 2015 (the day when the new restrictive policy was introduced at a government press conference).
87 Government Bill (prop.) 2015/16:174 pp. 65–67.

to the enforcement of refusal of entry and expulsion orders (Aliens Act Chapter 12 Section 18, Temporary Law Section 15).

The 2016 Temporary Law also introduced temporary residence permits as the main rule for individuals applying for *family reunification* with family members granted asylum in Sweden. Previous to the Temporary Law, members of the nuclear family (spouses/equivalent and underage children) were usually granted permanent residence permits. In the Temporary Law, the duration of a residence permit based on family ties with a person with refugee status or subsidiary protection status residing in Sweden is made conditional upon the duration of the residence permit granted to the person already residing in Sweden and his/her chances of being granted a permanent residence permit (Temporary Law Section 8). If the person already present in Sweden is not deemed to have "well-founded prospects" of being granted a permanent residence permit in the future, family reunification is denied (Temporary Law Section 6 Section 1). Also, special economic conditions apply. These include that the refugee or person with subsidiary protection status has to be able to support him/herself and the family member(s) and to be able to provide housing of an adequate standard and size for the family (Temporary Law Section 9).[88] These economic conditions for family reunification effectively introduce important obstacles to family reunification as they require the person residing in Sweden to achieve a certain economic standard that might take a long time for a former asylum seeker to achieve. This is also the point. The compatibility of the financial requirements laid out in Section 9 with the ECHR's Article 8 is the issue of a case currently pending before the ECtHR.[89]

It can be noted that in the Temporary Law applicable between 2016 and 2019 (before the prolongation of the law until 2021), family reunification was only available to persons with refugee status unless not allowing for family reunification for other categories would constitute a violation of Sweden's international obligations, such as the ECHR and the UN Convention on the Child.[90] The compatibility of these limitations are the subject of another case pending before the ECtHR.[91] Finally, persons who are granted a residence permit based on family ties because it would be a *violation of Sweden's international obligations* not to do so (basically, a violation of ECHR Article 8) are granted a residence permit for a maximum of 13 months, with a possible prolongation of two years.

As shown above, Sweden has transitioned from a system where permanent residence permits were the main rule for individuals having been granted asylum and, in many cases, also for their family members, to a system of temporary permits. This shift was one of the key measures in making Sweden less attractive as a country of asylum, introduced even though the government acknowledged that temporary residence permits are likely to have negative effects on a person's ability to integrate into the host country.[92] The restrictive stance on family reunification adds to the message conveyed to individuals having been granted asylum, or applying for asylum, that remaining in Sweden should not by default be considered a permanent option.

Whether the Temporary Law has fulfilled its main aim – to reduce the number of asylum applications submitted in Sweden – is, however, difficult to say. The number of applications indeed dropped from an all-time high in 2015 (162,877) to 28,939 in 2016 and then steadily decreasing to around 21,000–22,000 in 2018 and 2019, but the link to the Temporary Law is hard to establish.[93] The most important factor in curbing the number of asylum seekers arriving in Sweden instead is likely to have been the

[88] Limited exemptions to this rule, applying, for example, to unaccompanied children having been granted protection in Sweden and as regards time limits for applications, outlined in Section 10 of the Temporary Law.
[89] *Dabo v. Sweden*, Appl. No. 12510/18.
[90] Cf. Government Bill (prop. 2018/19:128, Section 5.4 and the Migration Court of Appeal in MIG 2018:20.
[91] *M.T. and Others v. Sweden*, Application No. 22105/18.
[92] Government Bill (prop.) 2015/16:174.
[93] Migration Agency statistics, available at https://www.migrationsverket.se/download/18.4a5a58d51602d141cf41003/1580829370314/Asyls%C3%B6kande%20till%20Sverige%202000-2019.pdf (last visited February 19, 2020).

increased border controls and other measures in Sweden and throughout the EU aimed at preventing prospective asylum seekers from reaching territory in which they could submit an asylum application. It is interesting to note that while the mid-term evaluation of the effectiveness of the Temporary Law as promised in the 2016 government Bill was never carried out, the law was nevertheless prolonged by two years in 2019 with reference to the continuing challenges posed by the previous influx of migrants and the fear of what would happen if Sweden returned to less restrictive rules on residence permits.[94]

Cessation and revocation of permits in Sweden

The clauses of cessation and exclusion in the Refugee Convention have corresponding provisions in the Aliens Act,[95] and the revocation clauses in the Qualification Directive also correspond with provisions in the Aliens Act.[96] While refugee status and subsidiary protection status shall be revoked if the conditions for the protection status no longer apply or never did in the first place, the issue of revocation is addressed only when there is particular reason for doing so, such as in the case of expulsion due to criminal offences or the issuance of travel documents for aliens. General rules on the revocation of residence permits are found in Chapter 7 of the Aliens Act.

The 2016 Temporary Law did not introduce any restrictions, unlike the 2005 Aliens Act, on the regulation of the cessation and revocation of residence permits granted on the basis of asylum. Following the introduction of temporary residence permits as the norm for those having been granted international protection instead of permanent residence permits, the cessation of the need for protection and thereupon the following revocation of residence permits has become more of an issue when those having had temporary residence permits apply for prolongation. For this reason, the Migration Agency issued a legal position paper (*rättsligt ställningstagande*) in 2018 on when a declaration of protection status shall be revoked and under what circumstances an investigation of the matter should be initiated.[97] The Migration Agency has confirmed its position on revocation in recent legal position papers on the assessment of the need for international protection for persons from Somalia, Syria, and Afghanistan, respectively, where the matter of cessation and revocation of status is specifically addressed in relation to prolongation.[98] In neither of these legal position papers does the Migration Agency signal considerable changes concerning cessation or revocation as such; changes in the assessment of the security situation, however, can in the long-term perspective have effects on applications for prolongation.[99] As regards other guidance, the case law so far from the Migration Court of Appeal on cessation and revocation is relatively limited, and no judgment so far addresses cessation or revocation related to individuals having been granted protection under the Temporary Law.[100]

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[94] Government Bill (Prop.) 2018/19:128.

[95] The cessation clauses in Article 1C of the Refugee Convention and Articles 11 and 16 of the Qualification Directive correspond with Chapter 4, Sections 5 and 5 a of the Aliens Act. The exclusion clause in Articles 1F of the Refugee Convention and Articles 12.2 and 17 of the Qualification Directive correspond with Chapter 4, Sections 2 b and 2 c of the Aliens Act. The exclusion clauses in Articles 1D and 1E of the Refugee Convention and Articles 12.1 of the Qualification Directive are not mirrored by a specific article in the Aliens Act; they are considered to fall within the scope of the refugee definition in Chapter 4 Section 1. The Migration Court of Appeal judgment in MIG 2019:13 points out that, following CJEU case law in *Alheto* (C-586-16), Article 12.1 of the Qualification Directive has direct effect in the member states.

[96] Article 14 and 19 of the Qualification Directive corresponds with the provisions in Chapter 4, Sections 5 b and 5 c of the Aliens Act on the revocation of refugee status and subsidiary protection status, respectively.

[97] SR 19/2018 Rättsligt ställningstagande angående förutsättningarna för att återkalla en skyddsstatusförklaring. Migration Agency legal position papers are not sources of law, but important as guidance for the first instance.

[98] SR 06/2020 Rättsligt ställningstagande angående prövningen av skyddsbehov för personer från Syrien, SR 27/2019 Rättsligt ställningstagande angående prövningen av ansökningar om internationellt skydd m.m. för personer från Somalia and SR 03/2019 Rättsligt ställningstagande angående prövningen av ansökningar om internationellt skydd m.m. från medborgare i Afghanistan.

99 See, e.g., the assessment of the security situation in Syria.

100 See, e.g., MIG 2011:13 on the cessation and revocation of refugee status because the applicant had acquired and used a passport issued by his country of origin and MIG 2019:13 on a Palestinian registered with UNRWA.

Summing up, the cessation and revocation of protection status has not really been on the agenda in the Swedish context although it has become increasingly topical given the limitations imposed on the duration of residence permits on protection grounds introduced through the 2016 Temporary Law. While suggestions on more restrictive rules on the revocation of residence permits generally, including for individuals having sought asylum, have been presented in the political context – by, for example, the Conservative Party in the fall of 2019[101] – the political parties are likely to address such suggestions in the discussions on the future Swedish migration policy held in the context of the aforementioned cross-party commission of inquiry. The tasks of the commission of inquiry are discussed below.

Toward a general system of temporary asylum permits in Sweden?

The cross-party commission of inquiry is, as mentioned above, tasked with developing suggestions for Sweden's future migration policy.[102] The inquiry was established in June 2019 and is to present its proposals in August 2020. All of the political parties in the Riksdag are represented in the inquiry, many of them with their spokespersons for migration issues and/or the leader of the party, thus indicating the weight accorded to the issue. The inquiry is to consider a policy leading to the establishment of a long-term sustainable system of migration in Sweden enjoying broad support in the Riksdag. It is emphasized in the inquiry's remit that temporary solutions should be avoided and that the migration policy must be "humane, legally secure and effective" and in accordance with Sweden's international obligations.[103] The inquiry is to focus on issues concerning asylum and family reunification. One of the issues to be specifically addressed by the inquiry is whether the general rule should be to grant persons in need of international protection temporary or permanent residence permits. So far, it seems as if the majority of the political parties represented in the inquiry want to make temporary residence permits the general rule, that is, to make the changes introduced through the Temporary Law permanent.[104] Several of the parties at the time of writing have been positive toward establishing a limit for how many asylum applications can be submitted in Sweden each year ("volymmål").[105] That such a limit could be established without jeopardizing the right to seek asylum is difficult to envisage.

Specific issues pertaining to children

The Aliens Act contains two overarching provisions on the rights of the child – Chapter 1 Section 10 on the best-interests principle and Chapter 1 Section 11 on the right to be heard. Both these provisions are to be taken into account in all cases concerning children. Whether this is the case in practice can be and has been discussed.[106] The introduction of the Temporary Law also brought restrictions for children as regards the duration of residence permits, which as a main rule are also temporary for children. An exception to the rule is that a permanent residence permit may be issued upon the first application if, after an assessment of the child's whole situation, it is found that there are such exceptionally distressing circumstances related to a lasting health concern that it is absolutely necessary to grant the child a permanent residence permit even though the child otherwise should have been granted a temporary permit (Section 18). A child or young person who seeks the prolongation of a temporary residence permit may be granted a permanent residence permit if he or she is born in Sweden, is born stateless, has been domiciled in Sweden for a certain period of time, and is below 21 years of age (Section 18 a). Special rules also apply to children and young people in upper secondary school (Sections 16 a to 16 i).

101 https://www.svt.se/nyheter/inrikes/moderaterna-debatterar-migration-och-integration (February 25, 2020).
102 Dir. 2019:32.
103 Dir. 2019:32, p. 1.
104https://www.dn.se/nyheter/sverige/socialdemokraterna-berett-att-diskutera-asylmal/ (February 25, 2020).
105 "Steg mot volymmål i migrationspolitiken," Aftonbladet, June 4, 2020, available at https://www.aftonbladet.se/nyheter/a/K30d1M/steg-mot-volymmal-i-migrationspolitiken (June 14, 2020).
106 See, e.g., Lundberg, Anna & Lind, Jacob (2017). Technologies of displacement and children's right to asylum in Sweden. Human Rights Review, 189–208.

It is interesting to note that in the recent Swedish migration debate the fact that the UN Convention on the Rights of the Child became Swedish law as of January 1, 2020 has not really been addressed by politicians when discussing the Temporary Law or the future Swedish migration policy. The importance of adopting a child-rights perspective has been pointed out by academia as well as civil society and others taking part in the debate but is less prominent on the political agenda than what could perhaps be expected. Both the first and the prolonged versions of the Temporary Law were criticized for lacking a child perspective. Also, the remit for the cross-political commission of inquiry only mentions in passing that the inquiry is to look into the consequences of the proposals presented from a child-rights perspective. It thus remains to be seen to what extent the rights and needs of children are addressed in the future policy or if migrant children remain to, in practice at least, be seen as migrants first and children second.

Discussion – Temporary asylum permits in Scandinavia

Temporary permits and revocation have been key elements in the post-2015 restrictive Scandinavian immigration regimes. As shown above, these elements have figured differently in the legislations and practices in the three countries. In this section, we compare legislation, policies, practices, and effects.

Legislation

The legislative basis for temporariness in asylum policies differed remarkably between the three Scandinavian countries. The shift toward temporary asylum policy in Norway was introduced by way of administrative guidelines ("instructions"), and the cessation of protection status and revocation of residence permits were based on already-existing legislative provisions. In Denmark, it was the other way around insofar as the most significant policy changes toward temporary asylum were adopted by amendments of the Aliens Act, and only minor measures were taken at the administrative level and only as an initial response awaiting developments of the conflict in Syria. Sweden introduced temporary asylum permits as a provisional measure in the Temporary Law that was adopted in 2016 and in 2019 prolonged until 2021, while decisions on the cessation of protection status and revocation of residence permits have been made on the basis of the ordinary Aliens Act.

Relation to international law

The relation between the various policy changes and state obligations under international law can be described as slightly complicated, in particular for Sweden and Denmark. Temporary asylum permits do not as such seem to raise any issue under international law, which has been undisputed in all three Scandinavian countries. As regards the cessation of protection status and revocation of residence permits, the rules appear to be compatible with international law, while practice could be partially questioned in respect to both the Refugee Convention and EU standards. The restrictions on family reunification have been seriously challenged in both Sweden and Denmark, and a complaint against Denmark of the violation of ECHR Articles 8 and 14 is currently pending before the European Court of Human Rights.

Types of residence permits during protection

All three Scandinavian countries have traditionally distinguished between Convention refugee status and various forms of subsidiary protection status. As part of the responses to the increased numbers of arrivals, Denmark (in early 2015) and Sweden (in 2016) introduced temporary protection status as a tertiary protection category with reduced rights in certain respects. While asylum permits were previously issued either as permanent residence permits (Sweden) or with a rather long period of validity (Denmark and Norway), all the three Scandinavian countries have adjusted their policy and now only grant initial residence permits for limited periods of time. As a general standard, the initial period of validity seems to be one year (Sweden 13 months) and possibly up to two years for Convention refugees

(Denmark), yet this may vary somewhat in practice. In any case, permanent residence permits can be obtained only after a number of years (Sweden 3 years, Norway 3 years, Denmark normally 8 years) of residence and are contingent on the fulfilment of certain conditions concerning employment, economic self-support, and other integration-related requirements.

Assessment of proportionality and reasonableness of revocation

Decisions on the revocation of asylum permits have traditionally been made in two steps in that it was first examined whether the relevant criteria for the cessation of protection status were fulfilled. If that was found to be the case, the second step would be for the authorities to consider whether the residence permit should actually be revoked. This would normally depend on whether such a measure, resulting in the forcible return of the protection beneficiary to his or her country of origin, could be considered reasonable in the concrete circumstances. That would be decided on the basis of a personal attachment to the host country in terms of family relations, education, work experience, and other individual factors of affiliation. In addition, the anticipated situation in the country of origin upon return there might be a factor to be taken into account even if it was no longer of such severity as to warrant asylum.

In this regard, the policy seems to have developed differently in the Scandinavian countries in that Sweden still applies such a balancing standard in revocation cases, while Denmark has replaced its domestic discretionary rule with a reference to international human rights obligations, that is, primarily ECHR Article 8. Although the previous balancing standard had limited impact in revocation practice, the Danish "paradigm change" has introduced a mandatory revocation rule under which only very few exceptions on human rights grounds are expected.

In Norway, as we have seen, the Directorate shall not consider whether cessation of the residence permit is a reasonable (forholdsmessig) measure, but instead consider whether the person qualifies for other residence permits, taking into consideration individual humanitarian reasons, the right to family unity and the best interest of the child. [107]

Rights of the child and consequences for family members

All three Scandinavian states are parties to the UN Convention on the Rights of the Child, but they have implemented the Convention differently. The CRC has been incorporated into domestic law in Norway and Sweden, while this is not the case in Denmark. The impact of the rights of the child in revocation decisions seems to vary corresponding to the different status of the Convention in domestic law. Both Norway and Sweden appear to consider the rights of the child as a matter of priority (a "primary consideration," according to CRC Article 3) when deciding on the revocation of the parents' asylum permits. At least in the Swedish case, this, however, does not mean that the best interests of the child overrides all other interests, including that of the state to exercise migration control. In Denmark, to the contrary, the CRC was only mentioned in passing when introducing the "paradigm change" by which revocation was made mandatory when the basis for protection no longer exists. Instead, the rights of the child is here in practice being merged with the protection of the right to family life under ECHR Article 8. The relative weight given to the protection of family life in revocation cases cannot be described unequivocally at this stage. Norway and Sweden, however, appear to provide the best protection generally for the rights of the child under international human rights standards given the weight accorded to the Convention on the Rights of the Child, the best-interests-principle, and the right to be heard in particular in national legislation as well as case law.

107 https://www.regjeringen.no/contentassets/ecdd677f1b094d318cffb8b1ecea9dc0/gi-032019-l1050570.pdf, pp. 5 and 9 Se HR-2018-572-A avsnitt 47–51. https://www.domstol.no/globalassets/upload/hret/avgjorelser/2018/avgjorelser-november/saknr-2017-2179-anonymisert.pdf

Impact of cessation clauses (UN/QD) on national legislation, policy, and practice

As a matter of law and policy, all the Scandinavian countries comply with the cessation clauses in the UN Refugee Convention although in practice this has been questioned to a certain extent. When it comes to the cessation of subsidiary protection status, the situation differs across Scandinavia. In this regard Sweden is bound by the EU Qualification Directive, while Denmark has a reservation toward EU asylum standards, and Norway is a non-member of the EU. In Denmark, the Convention cessation criteria were previously also observed when revoking residence permits from persons with subsidiary protection status, but this has been abolished by the amendment of domestic law. In Norway, the Ministry of Justice and Public Security discusses the cessation clause of the UN Refugee Convention. This has been a sleeping clause and has not been practiced since Norway's signing of the Convention and will be addressed after the review of practices following the 2015 asylum crisis.

Before 2015, Norwegian authorities have argued for not applying the cessation clause. The clause was thorougly discussed in the preparations for the revised Immigration Act, implemented in 2010 (Ot. Prp. 75 (2006–2007).[108] In a key green paper from 2006, the immigration revision committee argued against changing its practice because (1) only a limited number of cases are likely to fall under the cessation clause's reference to "changed conditions in the home country," (2) it would appear non-expedient to withdraw permits from persons who may already have integrated well, and (3) the amount of resources need to administer the practice and secure forced returns would not be proportionate compared to the potential benefits. On all three accounts, the committee provided further arguments, including the high probability of refugees being transferred to new permits, securing the best interest of the child, and dragged-out court cases (Ot. Prp. 75 (2006–2007):102).

Policy

In all of the three Scandinavian countries, the shift toward temporariness is to be seen as a policy response to the increased numbers of arrivals of asylum seekers in 2015. Temporary protection status had already been adopted in Denmark in early 2015 as a tertiary status, but the accompanying rules on the limitation of the right to family reunification were significantly reinforced in 2016, combined with a number of other new restrictions, in light of the increased arrivals as well as the policy responses adopted in neighboring countries. The more general measures toward temporary asylum permits have thus been part of a policy package that included increased focus on the cessation of protection status and/or revocation of residence permits as well as further restrictions for asylum seekers and those granted protection. In all cases, there has been broad political agreement on the appropriateness of these new restrictions in asylum policy.

Immigration control considerations

Temporary asylum permits have been introduced both as a direct measure to control immigration and as efforts to make the Scandinavian countries less attractive to future asylum seekers. The new practices involve lower standards for persons granted asylum, including the duration of permits and in some cases suspended rights to family reunification. The enhanced practices of the cessation of protection have been justified by principles of prioritizing asylum capacity for persons in need of protection, i.e. similar arguments made in support of the collective temporary protection provided among others to Bosnian refugees in the 1990s.

Cessation's role in overall policy approach

The general rationale for the introduction of temporary asylum permits has been discussed above. Still, two general observations can be made on the basis of the policy changes described in this study. First,

[108] See also the green paper in preparation of the revised Immigration Act (NOU 2004:20): https://www.regjeringen.no/contentassets/eadd02d12e6340a581c1a85ab738e987/no/pdfs/nou200420040020000dddpdfs.pdf

it seems that the recent introduction of temporary asylum permits has effectively replaced the various types of temporary protection arrangements that were applied in the Scandinavian countries (and elsewhere in Europe) during the Balkan conflicts in the 1990s, generally characterized by offering protection on a collective basis with no or very limited processing of individual asylum applications as long as temporary protection was granted. Second, although temporary asylum permits were initially adopted as an exceptional measure in the Scandinavian countries (at least in Sweden and Norway and to some extent in Denmark) in response to the 2015 record number of arrivals, temporariness may seem to be the emerging new standard in asylum policies. This would reflect a European trend in which governments react to what they see as increased immgration pressure on Europe caused by demographic changes, economic trends, and conflicts. The discussions of mixed flows of migrants have led to national calls for a a possible revision of the UN Refugee Convention.

Revocation and cessation campaigns

In Denmark and Norway, the policy tendencies toward temporariness have been reinforced by the stronger political and administrative focus on the cessation of protection status and/or revocation of residence permits as soon as possible and to the extent possible. This seems to have been backed up most systematically by the Danish "paradigm change," according to which all asylum permits since 2019 are being issued with the purpose of temporary stay and where the revocation of residence permits in the case of changed circumstances in the country of origin has become the mandatory rule with exceptions only insofar as they are required by international obligations. Both the Danish and the Norwegian asylum authorities have initiated administrative campaigns of revoking asylum permits from certain nationalities of persons granted protection. With regard to the Norwegian application of cessation to groups where conditions are held to have improved in the country of origin, specific nationalities have been targeted, in particular refugees from Somalia. In Sweden, there has not yet been a similar focus on the cessation of protection status and revocation of asylum permits.

Practices

The outcome of campaigns' focus on temporary permits

While the responsible ministries and directorates in Denmark and Norway have been instructed to increase attention on revocation and cessation, the outcome of the policy, either new permits or returns, has been limited. In Denmark, there have been numerous decisions on the revocation of asylum permits for Somalis, yet very few of these have led to actual returns to Somalia. Danish authorities have also attempted to end temporary protection status for Syrians. So far, this has failed. The cases that have been tested have resulted in a shift to Convention refugee status or subsidiary protection status due to individual risks. In Norway, both the revocation initiatives and the post-2015 cessation policy have been dominated by long processing times, withdrawals (cases pulled from the process by the authorities), and few, if any, returns (Brekke et al., 2019). The long processing times have had negative consequences for those directly affected and their social networks. In Sweden, the vast majority of the temporary asylum permits, under the Temporary Law, have been prolonged due to protection needs. This practice appears to have produced long waiting times and what could turn out to be unnecessary friction.

Specific nationalities affected

The Somalis have been particularly affected in Denmark and Norway. This group has been identified as the first major nationality to be subjected to the new Norwegian practice of the cessation of permits due to improved conditions in the home country. If we include both cessation and revocation cases, and in addition add families and other persons who have applications for other types of residence permits that pend on the revocation case, more than 5,000 Somali individuals had been affected by revocation and cessation by the end of 2018. This is a substantial proportion of the 43,000 Somalis and decendents of

Somalis living in Norway. Other key nationalities with permits related to protection in Norway are Eritreans, Syrians, stateless Palestinians, and Afghans. In Denmark, Syrians have been particularly targeted with temporary protection status.

Consequences of temporary asylum protection

Effects on integration

In Denmark, the "paradigm shift" may be seen primarily as a policy intended to affect the arrival of future asylum seekers. However, the policy package also has explicit intentions to affect integration.The norm is repatriation and not integration. It is still unclear how this anti-integration strategy will be implemented locally and what the consequences will be. In Norway, opening or signaling revocation and cessation cases creates a limbo situation for those directly affected. Integration is put on hold or reversed. These practices will also have consequences for family members and potentially also for the wider migrant communities, such as the Somalis in Norway. In Sweden, the temporary permits are believed to have negative effects for the integration processes. They also create challenges for those government and local bodies in charge of administering the integration measures. The temporary permits in Sweden, as in Denmark, severely limit the possibility of family reunification.

Temporary asylum protection status – Intended vs. unintended consequences

The temporary regimes in the Scandinavian countries grew out of the 2015 asylum crisis. Despite the earlier antecentants of such policies in Denmark, the crisis elicited a range of stricter policies in all three countries, often as part of a negative branding exercise (Gammeltoft-Hansen & Tan, 2017) intended to deter new arrivals. The predominately unintended consequences, related to stalled integration,[109] drawn-out case processing, and challenging returns, are just starting to appear. The recent Norwegian study on the effects of revocation and cessation indicate the downsides of a policy based on such elements of temporality (Brekke et al., 2019).

In the table below, we present the comparative elements related to the legal basis, policy, practice, and effects of revocation and cessation.

Table 1: Comparative overview of key elements (legal, policy, practice, and effects) of temporary asylum permits.

	Denmark	Norway	Sweden
LEGISLATION			
Legal basis	2015 and 2016 amendments of the Aliens Act, introducing temporary protection status with suspended family reunification and lowering revocation threshold. Additional administrative steps toward temporariness. 2019 legislation on "paradigm change" based on temporary asylum in general. Broad political support.	Anchored in Immigration Act but specifics are formulated and revised in instructions from the Ministry of Justice and Public Security to the Directorate of Immigration; broad political agreement. Immigration Act – Revocation § 63 and cessation § 37.	Based on Temporary Law, Section 5. Cessation of protection status: Aliens Act, Ch. 4 Sections 5, 5 a. Revocation of protection status: Aliens Act Ch. 4 Sections 5 b, 5 c. Revocation of permits: Aliens Act, Ch. 7.
	Claim to compatibility with international law. However, the three-year suspension of family reunification may prove in violation of ECHR Art. 8.	Norway is a front-runner with regard to the implementation of cessation due to improved conditions in the home country	Temporary asylum protection status is in line with international law. Rules on family reunification are

[109] The Norwegian politicians were most probably aware of the possible negative consequences for integration when deciding on the new cessation practice. Still, this was not the intended effect of the measure but rather an unwanted side effect. The post-2015 measures were not sent through a standard public consultation process. Such a process may have highlighted the range of possible negative effects of the measure.

Relation to / in line with international law?	Indications of limited impact of ECHR on revocation decisions.	(along with Denmark and a few others). Government holds that practice is compatible with international law	questionable from ECHR perspective
Types of temporary permits (duration)	Max. 2 years for Convention refugees, 1 year (after 1 year: 2 years) for subsidiary protection status, 1 year (after 3 years: 2 years) for temporary protection status.	Normally, refugees initially receive three-year permits. After the 36-month period, given that the requirements are met, the refugee will obtain a permanent residence permit.	1–3 years for refugees, 13 months subsidiary protection. Prolongation possible, permanent permits possible under certian conditions.
Assessment of proportionality and reasonableness	Previously depending on discretionary rule, in practice limited impact in cases of very strong affiliation/integration. The "paradigm change" resulted in mandatory revocation rule, exempt only under international obligations, i.e., very few exceptions.	The UDI is instructed not to consider reasonableness related to cessation. Instead, on their own initiative, to consider whether the person qualifies for other residence permits, e.g., based on ECHR and UN CRC (3) and the Aliens Act, section 38.	Permanent residence permit for those granted temporary asylum protection status under Temporary Law requires the applicant to be employed (Section 17). In revocation cases (revocation of residence permits), affiliation to host country is to be taken into account (Ch. 7 Section 4).
Rights of the child (and consequences for family members)	No particular considerations for the best interest of the child, only mentioned in passing along with ECHR Art. 8, which is expected to have strictly limited impact on revocation.	Prioritized, a must-be-considered instruction but put up against immigration regulatory considerations.	Must be considered, both according to Aliens Act and the CRC (Swedish law from January1, 2020). Plays a role in duration of residence permit, given very particular conditions (Temp. Law 18).
Impact of cessation clauses UN/QD (on legislation, policy, practice)	The EU Qualification Directive is not applicable in Denmark. Cessation clauses in Refugee Convention apply to Convention refugees, but abolished for the revocation of other asylum permits.	The government has activated the Convention's cessation clause. Not bound by the Qualification Directive	The domestic rules are based on the Refugee Convention and the EU Qualification Directive.
POLICY			
Political push/instrument	Temporary protection status introduced as response to Syrian arrivals in 2014-15. Further legislative restrictions and deterrent rhetoric in 2015-16. All asylum permits temporary since the 'paradigm change' 2019	Part of post 2015 package, agreement within government. This is a button the coalition government can agree on	Broad political agreement on more restrictive rules and on the Temporary Law.
Immigration control considerations	Increasing logic and rhetoric of deterrence.	Deterence, protection is a scarce good.	Deterrence: border controls, restrictive rules
Temporary protection Cessations role in overall policy approach	While temporary protection status was initially a kind of exception, the 'paradigm change' has resulted in all asylum permits being issued with temporary purpose (i.e., not only temporary validity).	Traditional temporary protection on collective grounds is dormant, TAP is potential new norm, cessation during temporary permit period (3 y+), now often longer due to requirements for permanent protection	TAP is the new norm, paradigm shift. Will probably be further established in the new migration policy, currently being negotiated by cross-party commission of inquiry
Revocation/ Cessation	Increased focus on revocation and return. Cessation clauses apply to Convention refugees, but abolished for the revocation of other asylum permits.	Yes, practiced, a key element – a possible de facto paradigm shift, hinging on the courts and swift returns	No focus on cessation/revocation yet (instead «curb the flow»).
PRACTICES			
Policy output	Numerous revocations of asylum permits for Somalis, yet very few actual returns. Attempts to end TAP for Syrians has failed, cases resulted in Convention refugee status or subsidiary protection status due to individual risks.	Over the first three years, few cases have been finalized. Most cases raised have been withdrawn.. Complex and understaffed processing, No returns of SOM cessation cases (as of May 2020),	The vast majority of TAPs under the Temporary Law are prolonged due to protection needs. Long waiting times, unnecessary friction.
Nationalities affected	Somalis, Syrians.	Somalis (cessation), revocation (SOM, AFGH, PAL)	Not applicable
EFFECTS			
Integration	The 'paradigm change' has clear intentions to affect the integration expectations, yet unclear how the integration strategy will be adapted in practice.	Processing challenging, limbo for those affected, halt to integration, consequences for family members, potential collateral damage on group level (SOM).	TAPs negative for integration, creates administrative challenges for integration measures, restrictions affect possibilities to family reunification
	So far primarily based on restrictionist and deterrent rhetoric. Negative effects	What are the intended consequences apart from	Deterrence main intended consequence, negative effects

Intended vs unintended consequences	expected to appear when effects on integration and possibilities of return become clear.	deterrence? Unintended consequences are indicated in NO study on effects of TAP	on integration is a foreseen (but perhaps unintended) consequence

Conclusions

Temporary protection for refugees is an immigration policy instrument that carries with it a set of potential advantages and a list of challenges. The 2015 asylum crisis led to a renewed focus on temporary protection, temporary permits, revocation, and cessation. This led us to coin the term temporary asylum protection status.

Temporary protection is not a new phenomenon in Scandinavian refugee policies. In this article, we draw on research dating back to the 1990s and onward, detailing the pros and cons of temporary protection for refugees. Traditionally, Scandinavian governments have provided temporary protection on a collective basis. For example, all Bosnians coming from the war-torn country registering in Norway before September 1993 were given this status without a processing of their individual cases. In contrast, temporary asylum protection is given on an individual basis. According to the most recent practices in Denmark and Norway, even persons with full refugee status risk losing their permits and being sent back when conditions improve sufficiently. Despite the differences between temporary protection on a group level and an individual level, we hold that the experiences from the 1990s and onward still apply. What can we learn from history? What political and practical challenges can we expect from this new temporary regime? Should we expect the core challenging traits of the 1990s' version of temporary protection also apply to these current versions?

Politically tempting

The current versions of temporary asylum protection in Denmark, Sweden, and Norway appear to be politically appealing, tempting, or even seductive. By this we mean that from a political perspective, the instrument may be seen to have an immediate deterring effect. When the policy is announced, the withdrawing of refugee permits may help to signal a restrictive immigration regime. The challenges connected with the policy appear at a later stage. In particular, this pertains to the effects of stalled integration efforts and the resistance from a range of stakeholders concerning securing returns. By providing the political benefit first – the restrictive signal – and only later revealing its potentially politically burdenshome sides – lack of integration and hard-to-achieve returns, gives the instrument a seductive character (Brekke, 2001).

Time fragility

The experiences with temporary protection from the 1990s and onward identified this protection form as marked by time fragility (Brekke, 2001). By this we mean that as time passes, the incentives to integrate increase, while the chances for a successful return to the country of origin decrease. We expect the same to be the case once the temporary aspect of asylum for refugees is fully communicated in the Scandinavian countries. In Sweden, the principle is not yet implemented. In Norway, the refugees had already been in the country for more than a year when they were told of the temporary nature of their permits. Up to that point, they had believed they were heading for full integration – and, most likely, so did the institutions supporting their integration process. As mentioned above, a key element here may be the expectations about permanency. If this had been established differently from the outset, it may have affected the time fragility. However, the ambivalence infused by clear, pronounced temporary permits may simultanously hamper integration.

In Denmark, the temporariness has been part of the political discussion since 2015. It is still unclear whether the affected stakeholders, both the refugees themselves and their helpers, have realized the fragility of the system as time passes. Will they integrate despite the temporary permits? Will the motivation to return wane as time passes? What about the children? Will public opposition to returns

increase if the authorities wait three, four, or five years and then attempt to push for forced returns? This was the discussion related to the Bosnians and the Kosovars in the 1990s. If the temporary asylum policy policy is embraced by receiving states in Europe, the public and NGOs may push back in a similar manner as in the 1990s. However, there is an important difference between the two situations: While the Bosnians had more or less the same timeline for their cases, individual temporary protection would have different timelines, hence making conserted protests less likely.

Beginning in the 1990s, stakeholders have experienced temporary protection somewhat confusing. The basic question underlying this uncertainty is: Will the refugees stay or go back? This is relevant for national and local authorities simultanously promoting integration and return, but also for the refugees themselves.

Temporary asylum protection status – The new norm?

Temporary asylum protection status has been launched as the new norm in both Denmark and Norway. In Sweden, temporary statuses are likely to be the outcome of current revion processes.

So far, there has been meager outcomes of the Danish and Norwegian ambitions to make temporary asylum protection the new norm. The instrument has been popular among politicians in Denmark, while Norwegian politicians have yet to grasp the radical changes the new cessation policy may have when/if fully implemented. However, the goals of swift case processing, leading to new permits or return, have not been fulfilled.

The temporary asylum policy brings with it the potential of a worst-case scenario: ceasing refugee permits while not being able to go through with returns. Such a situation will lead to political, humanitarian, and societal costs. Politically, the impotence of promising return and not delivering can be costly. For the individual, not being able to get on with one's life, being stuck in limbo, carries grave humanitarian costs. Finally, at a societal level, the risk is that the temporary asylum protection instrument may contribute to existing tendencies of establishing parallel communities, consisting of undocumented migrants who no longer have protection status (and residence permits) but who cannot be returned or who go into hiding (already a growing problem). This would again hinder integration and threaten social cohesion.

One should also ask, seen from the governments' perspective: What would be the best-case scenario for an asylum policy based on temporary asylum permits? Such a policy would include (1) clear communication of the temporary premise before or upon arrival; (2) clear communication of the premise to all local and national government bodies, NGOs, and the general public; (3) finding reception systems, activities, and settlement practices that allow for integration while remaining open for return (temporary integration; Brekke, 2001); (4) effective assisted and forced return practices and the full cooperation of home country authorities; (5) stable political support for the policy throughout the period of temporary residency and political backing of forced return; and (6) international acceptance of the practice, including other European countries, the UNHCR, and international courts. Governments will have to reflect upon whether some or all of these best-case requirements (from their perspective) are likely for each nationality or group in specific political and historical contexts.

As this article has demonstrated, the Scandinavian countries are currently testing grounds for different types of temporary asylum statuses. These countries are moving in the direction that the EU Commission suggested in 2016. It is therefore important to follow, describe, and understand the motivations behind these policies, their legal basis, and their effects on a range of levels (individual, group, local, and national).

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