

Current tendencies towards temporariness of protection: rationale and rhetoric



The Future of Nordic Immigration Policies

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Temporary Protection in the 1990s

- International framework for TP arrangements
 - UNHCR plan for coordinated and comprehensive response to the humanitarian crisis in ex-Yugoslavia
 - International efforts to bring the civil war to an end
 - Expected temporary nature of the need for protection
 - Focus on repatriation as soon as possible
- Ex post reflections on the TP strategy
 - Temporariness as prevention of ethnic cleansing?
 - TP as a slow way of accepting permanent residence?
 - Temporariness as a vehicle for early repatriation?



Rationale of Nordic TP in the 1990s

- Responding to a European crisis in line with international agreements
- Enhancing asylum capacity
 - Granting protection on *prima facie* basis
 - Protection of displaced persons from Bosnia on the basis of UNHCR criteria
 - Suspension of individualised examination of asylum cases (except Sweden)
 - Special protection arrangements outside ordinary asylum system
- Different models and standards of protection
 - Explicitly temporary permits in Denmark and Norway (shift to permanent permits in Sweden and Finland after rather short period)
 - Ordinary protection and integration standards (except Denmark)



Tendencies towards temporariness

- Varying European responses to the influx of people displaced by generalised violence
 - Convention refugee status
 - Subsidiary protection status
 - Tertiary protection status?
- Eroding protection standards for subsidiary and tertiary protection
 - Reduced certainty of residence status
 - Limited or suspended family reunification
 - Delayed or limited access to integration assistance?
- Towards TP 2.0 without international coordination or EU standards



The Danish 'paradigm change'

- Introduction of tertiary status ('temporary protection status') 2015
 - Aimed at people at risk of ill-treatment (ECHR art. 3) due to 'particularly serious situation' with indiscriminate violence and assaults on civilians
 - Suspension of family reunification (1 year > 3 years)
- Lower threshold for revocation of SP + TPS residence permits 2015
 - Sufficient condition: absence of real risk of ill-treatment (ECHR art. 3)
 - Revocation despite serious, fragile and unpredictable situation
 - No requirement of fundamental, stable and durable change of circumstances in the country of origin
- Mandatory revocation ('paradigm change') 2019
 - Exception only if revocation would violate international obligations > vague criteria
 - Explicitly temporary stay for all refugees > reformulation of integration strategy?



Cessation of refugee status

- Refugee Convention art. 1 C (5)
 - Circumstances in connexion with which he has been recognized as a refugee have ceased to exist
 - General interpretation: fundamental, stable and durable change of circumstances
- UNHCR Handbook
 - Pr. 112: Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses. This strict approach towards the determination of refugee status results from the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes – not of a fundamental character – in the situation prevailing in their country of origin.
 - 135: 'Circumstances' refer to fundamental changes in the country, which 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 sense of security, which international protection is intended to provide.



Cessation of status in EU law

- Qualification Directive art. 11(2)
 - 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.
- Qualification Directive art. 16(2)
 - Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.