



**THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS**

## YOU CAN NEVER FEEL SAFE

AN ANALYSIS OF THE DUE PROCESS  
CHALLENGES FACING REFUGEES  
WHOSE RESIDENCE PERMITS HAVE  
BEEN REVOKED

## **YOU CAN NEVER FEEL SAFE**

AN ANALYSIS OF THE DUE PROCESS CHALLENGES FACING REFUGEES WHOSE RESIDENCE PERMITS HAVE BEEN REVOKED

Authors: Nadja Filskov, Trine Otto Hansen, Sidsel Larsen, Marie Juul Petersen, Nikolas Feith Tan (in alphabetical order)

Editors in chief: Maria Ventegodt and Pernille Boye Koch

A special thanks to the Syrian refugees who have shared their experiences with us. Thanks to Louise Halleskov, Dorte Smed and Line Vikkelsø Slot for reading and commenting on the analysis. Thanks to the Danish Immigration Service, the Refugee Appeals Board, the Danish Refugee Council (DRC), DFUNK (DRC Youth), Refugees Welcome, Venligboerne, refugee activists, journalists, researchers, and lawyers for sharing their networks, knowledge, and perspectives with us.

Layout: Hedda Bank

Cover photo: Shutterstock

e-ISBN: 978-87-7570-129-2

© 2022 The Danish Institute for Human Rights

Wilders Plads 8K

1403 Copenhagen K

Phone +45 32 69 88 88

[www.humanrights.dk](http://www.humanrights.dk)

[www.menneskeret.dk](http://www.menneskeret.dk)

This publication, or parts of it, may be reproduced provided that reproduction is for non-commercial use and that the author and source are quoted.

We strive to make our publications as easily accessible as possible. Thus, we use large types, short lines, little hyphenation, ragged right margins and clear contrasts. Read more about accessibility at [www.menneskeret.dk/tilgaengelighed](http://www.menneskeret.dk/tilgaengelighed)

# CONTENTS

<b>SUMMARY</b>	<b>6</b>
<b>CHAPTER 1 – INTRODUCTION</b>	<b>11</b>
1.1 DUE PROCESS PROTECTION OF REFUGEES DURING THE PARADIGM SHIFT	11
1.2 OBJECTIVE, CONTENT AND SCOPE OF THE ANALYSIS	13
1.2.1 OBJECTIVE	13
1.2.2 STRUCTURE	13
1.2.3 SCOPE	14
1.3 METHOD	16
1.3.1 THE LEGAL ANALYSES	16
1.3.2 THE QUALITATIVE ANALYSIS	16
1.3.3 AN INTEGRATED APPROACH	18
<b>CHAPTER 2 – THE PARADIGM SHIFT AND PROJECT DAMASCUS</b>	<b>19</b>
2.1 THE PARADIGM SHIFT	19
2.1.1 INTRODUCTION OF TEMPORARY PROTECTION STATUS	19
2.1.2 NEW STANDARDS FOR REVOCATION	23
2.1.3 CHANGES IN THE ASSESSMENT OF ATTACHMENT TO DENMARK	24
2.2 PARADIGM SHIFT IN PRACTICE: PROJECT DAMASCUS	29
2.3 THE CONSEQUENCES OF THE PARADIGM SHIFT	33
2.3.1 HEALTH	35
2.3.2 SEPARATING FAMILY MEMBERS	36
2.3.3 EDUCATION AND WORK	37
2.3.4 SENSE OF JUSTICE	39
2.4 SUMMARY	39
<b>CHAPTER 3 – THE RIGHT TO REMAIN IN DENMARK</b>	<b>41</b>
3.1 INTRODUCTION	41
3.2 THE DANISH CRITERIA FOR ASSESSMENT OF ATTACHMENT	42
3.3 A PROBLEMATIC COMPARISON	43
3.4 FAMILY LIFE: PARENTS WITH ADULT CHILDREN	44
3.5 THE CHILD'S INDEPENDENT ATTACHMENT	47
3.6 PROCEDURE FOR ASSESSMENT OF ARTICLE 8 AT THE APPEAL LEVEL	52
3.7 LACK OF TRANSPARENT PRACTICE	55
3.8 RECOMMENDATIONS	56

<b>CHAPTER 4 – GUIDANCE AND INFORMATION</b>	<b>57</b>
4.1 INTRODUCTION	57
4.2 WHAT DOES THE LAW SAY?	58
4.3 WHAT ARE THE RESPONSIBLE AUTHORITIES DOING?	60
4.4 WHAT ARE THE CHALLENGES?	66
4.4.1 GENERAL INFORMATION ABOUT CHANGES IN LAW AND PRACTICE	66
4.4.2 GUIDANCE IN RELATION TO THE INTERVIEW AT THE DANISH IMMIGRATION SERVICE	67
4.4.3 LANGUAGE BARRIERS AND UNCERTAINTIES	69
4.4.4 INCONSISTENCY BETWEEN GUIDANCE AND PRACTICE	70
4.5 RECOMMENDATIONS	72
<b>CHAPTER 5 – CONSULTATION ABOUT CHANGED CONDITIONS</b>	<b>73</b>
5.1 INTRODUCTION	73
5.2 WHAT DOES THE LAW SAY?	74
5.3 WHAT ARE THE RESPONSIBLE AUTHORITIES DOING?	76
5.4 WHAT ARE THE CHALLENGES?	77
5.4.1 LACK OF OPPORTUNITY TO PREPARE FOR THE INTERVIEW	78
5.4.2 LAY REPRESENTATIVE	79
5.4.3 INTERPRETATION	80
5.4.4 MINUTES	81
5.5 RECOMMENDATIONS	83
<b>CHAPTER 6 – CASE PROCESSING AND WAITING TIME</b>	<b>84</b>
6.1 INTRODUCTION	84
6.2 WHAT DOES THE LAW SAY?	84
6.3 WHAT ARE THE RESPONSIBLE AUTHORITIES DOING?	85
6.4 WHAT ARE THE CHALLENGES?	86
6.4.1 LONG WAITING TIME	87
6.4.2 INFORMATION ABOUT STATUS AND CHANGES THROUGHOUT THE PROCESS	88
6.5 RECOMMENDATIONS	90
<b>OVERVIEW OF AUTHORITIES</b>	<b>91</b>
<b>NOTES</b>	<b>92</b>



# SUMMARY

## **THE PARADIGM SHIFT AND PROJECT DAMASCUS**

In 2015 and 2019, the Danish government introduced a series of legislative changes that have fundamentally changed Danish asylum practice – referred to as a 'paradigm shift'. Residence permits are now granted with a view to returning refugees to their country of origin as soon as possible, not with a view to integration and long-term residence. Denmark's strong focus on the revocation of refugees' residence permits is unique when compared to other EU countries, and Danish asylum rules provide a significantly lower level of protection for some refugees than that which follows from EU asylum rules in other member states.

In 2019, as a means to implement the paradigm shift, the Danish Immigration Service began reviewing the residence permits of refugees from Damascus and later Rif Damascus in Syria. More than 1,000 Syrian refugees have had their residence permits reviewed, and more than 100 have had their residence permits finally revoked. Since Denmark does not have diplomatic relations with Syria, refugees are not forcibly deported at present. In the next few years, the Danish authorities are expected to review the residence permits of refugees from other areas of Syria, as well as refugees from other countries.

## **DUE PROCESS DURING THE REVOCATION PROCESS**

Due to the paradigm shift, many refugees in Denmark currently live under conditions that are characterised by a much higher degree of temporariness, uncertainty and insecurity than before.

For refugees at risk of having their residence permits revoked, these legal changes are particularly hard-hitting, primarily because the decision resulting from the revocation process has a very significant impact on the lives and futures of those involved. When refugees lose their residence permits, they lose the right to live and work in Denmark and risk being separated from their family. At the same time, the revocation process is complicated and often lengthy which, in itself, can be extremely stressful for those involved, whatever the outcome. Many refugees suffer physical and psychological harm in the process. Some lose their jobs; others have to stop their education.

The intrusive nature of the revocation decision and the stressful consequences of the process, combined with the fact that the Danish standards for revocation are



considerably lower than in other EU countries, makes it especially important to ensure that due process is guaranteed throughout the process.

In this report, the Danish Institute for Human Rights examines the due process rights of refugees during the revocation process. The report consists of a human rights law analysis of the criteria used in revocation cases, an administrative law analysis of case processing and a qualitative analysis of the experiences of Syrian refugees, based on interviews with 23 persons affected by the process.

On the basis of this analysis, we have identified a number of due process issues during the revocation process. In particular, we have focussed on issues relating to:

- The authorities' assessment of refugees' attachment to Denmark
- Guidance and information during the revocation process
- Refugees' right to be consulted in their case
- Processing times

#### **ASSESSMENT OF ATTACHMENT TO DENMARK**

In all cases concerning revocation of a refugee's residence permit, the authorities must make an individual and concrete assessment of whether the revocation would be contrary to the right to private and family life, notably under Article 8 of the European Convention on Human Rights (ECHR). This assessment considers whether the refugee in question has such a strong attachment to Denmark that he or she has a right to remain in the country. The assessment of attachment is decisive for whether a residence permit may be revoked. Assessments of such crucial importance must be founded on guarantees of clarity, predictability and proportionality, based on the fundamental rights to due process.

The Danish Institute for Human Rights finds that in this area, the practice of the Danish authorities, in particular the Danish Immigration Service, risks violating Denmark's Article 8 obligations if refugees are in fact deported to Syria. In general, we consider it problematic from a human rights perspective that the Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board base their assessment of Syrian refugees' attachment to Danish society on practice from the European Court of Human Rights related to the expulsion of criminal foreign nationals and *not* on practice that is directly comparable to the revocation of residence permits of non-criminal refugees.

In addition, the authorities do not seem to sufficiently emphasise family unity and private life in general. More specifically, the Danish authorities' assessment of *when* parents and their (young) adult children can be separated does not consider all aspects of the proportionality assessment, just as the assessment of minor children's right to a private life is not sufficiently emphasised. In 2019, the Danish Immigration Service and the two Boards were asked to prepare a memorandum describing practice in this area. However, this memorandum has not yet been finalised, contributing to the lack of transparency.

Finally, current revocation procedures do not ensure an overall assessment of the family's attachment to Denmark when the case is assessed at the appellate level. Here, the refugee's case is handled by the Refugee Appeals Board, while the cases of his or her family members are handled by the Immigration Appeals Board. This means that no overall assessment is made of the family's attachment to Denmark, which must be a prerequisite for a correct assessment. At the same time, the procedure is confusing and unclear for the parties involved, and it unnecessarily prolongs the total processing time.

### **INSUFFICIENT GUIDANCE AND LANGUAGE BARRIERS**

The Danish authorities are obliged to inform, involve and provide guidance to residents affected by government decisions. Residents have these procedural rights in order to promote the likelihood of correct decisions, and also to ensure that they are aware of the scope and consequences of the case. The information must be given in precise and easily understandable language, and the authorities are obliged to translate relevant documents into a language which the resident concerned understands. The duty to provide guidance is particularly important in relation to decisions which have far-reaching consequences for the parties involved, and the authorities also have a heightened duty to provide guidance to vulnerable groups, such as refugees.

We consider the authorities' guidance to be inadequate in crucial respects. This means that there is an unnecessarily high risk of misinterpretation, lack of knowledge and misunderstanding.

Many of the people we have interviewed say that they have found it difficult to understand the process and consequences of revocation, and they do not feel that they have received sufficient guidance. This is particularly true in relation to the interview at the Danish Immigration Service. The invitation letter contains only sparse information about the purpose of the interview, and no information is given about the criteria on which the assessment by the authorities is based.

The Institute also considers it a significant challenge that both the invitation letter and the decision letter from the Danish Immigration Service are in Danish, in view of the fact that particularly the decision letter contains complicated legal information, and that some refugees do not have the necessary knowledge of Danish to be able to understand its contents.

### **REFUGEES' RIGHT TO BE HEARD IN THEIR OWN CASE**

Consultation is an important administrative law and human rights requirement which serves to ensure that residents can defend their interests in the best possible way, regardless of their resources, language skills and educational background. The duty of public authorities to hear a party before making a decision is crucial in the revocation context. Indeed, it is basically the foundation on which it is decided whether a refugee's residence permit may be revoked. Refugees are consulted



at least twice during the revocation process: once in the form of an interview at the Danish Immigration Service and a second time in the form of a hearing at the Refugee Appeals Board.

The Institute finds that the current practice presents a number of challenges related to consultation. The inadequate guidance prior to the interview at the Danish Immigration Service means that refugees are unable to prepare properly for the interview, e.g., by re-reading the minutes of their initial asylum interview. This hampers their opportunities to comment on, supplement and possibly correct the foundation for the authorities' decision before it is made, which might otherwise help to ensure that the decision is made on the best possible basis.

The Institute finds that the lack of quality assurance of interpretation during the interview, inadequate procedures for correcting the minutes as well as the lack of information to refugees on the possibility of bringing a lay representative contribute to further weakening refugees' possibilities for defending their own interests in the best possible way.

### **LONG WAITING TIMES**

A resident has the right to have his or her case dealt with as quickly, simply and economically as possible. If a case cannot be decided shortly after it has been initiated, or if the case is taking longer than expected, the relevant authority should inform the resident and indicate *when* a decision is expected. Reasonable processing time and continuous information on the status of the case are particularly important in matters involving decisions of a significant nature, such as revocation cases, where the outcome has a major impact on the life and future of the individual.

The Institute finds that the length of time taken to process revocation cases poses a significant challenge to refugees' rights to due process. Many refugees experience a total processing time of more than one year. The long processing time has major consequences for the refugees involved. Several of our interviewees report that the waiting time has led to concentration difficulties, stress, insomnia, depression and anxiety. The authorities' inadequate or irregular practice of informing about delays or changes in the processing further contributes to unnecessary uncertainty among refugees.

## MAIN RECOMMENDATIONS

The Danish Institute for Human Rights recommends that:

- The Danish Immigration Service ensure a thorough human rights assessment of the right to respect for private and family life under Article 8 of the ECHR in cases concerning adult children and children's independent attachment to Denmark, respectively.
- The Ministry of Immigration and Integration take the initiative to amend the competence rules under the Aliens Act so that the Refugee Appeals Board handles the revocation cases of both refugees and their family members, with the aim of ensuring a comprehensive assessment of family life as required under Article 8 of the ECHR.
- The Danish Immigration Service provide written information to the refugees concerned – and any family members – in both their native language and in Danish during the revocation process in order to help the parties involved to understand the process and to ensure compliance with the duty to provide guidance.
- The Danish Immigration Service adjust its invitation and decision letters to refugees and family members with the aim of providing sufficient information and avoiding misunderstandings.
- The Ministry of Immigration and Integration take the initiative to examine the processing times in revocation cases at the Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board to determine whether they are acceptable.

# CHAPTER 1

## INTRODUCTION

### 1.1 DUE PROCESS PROTECTION OF REFUGEES DURING THE PARADIGM SHIFT

'It felt as if I had built a house, only for them to tear it down in an instant. I will never forget that day'. So says Maryam about the day the Danish Immigration Service informed her that her Danish residence permit had been revoked.

In 2019, the Danish Immigration Service initiated a review of residence permits of refugees from Damascus and later Rif Damascus in Syria with a view to determining their need for continued protection.<sup>1</sup> Maryam is just one of more than 1,000 Syrian refugees who have had their residence permits reviewed.<sup>2</sup> So far, more than 100 Syrian refugees have had their residence permits finally revoked.<sup>3</sup> Since Denmark does not have diplomatic relations with Syria, refugees are not forcibly returned at present, but may be subjected to an obligation of notification and stay at a return centre. In the next few years, the Danish authorities are expected to review the residence permits of refugees from other areas of Syria, as well as refugees from other countries.

The revocation of residence permits of Syrian refugees is a direct consequence of the so-called 'paradigm shift' in Danish asylum policy which has fundamentally changed the treatment of refugees in Denmark. Due to legislative changes introduced in 2015 and 2019, refugees are – to a far greater extent than before – granted temporary protection with a view to ensuring that they return to their native country as soon as the authorities find that it is safe to do so. Denmark's strong focus on the revocation of refugees' residence permits is unique compared to other EU countries.<sup>4</sup>

In this report, the Danish Institute for Human Rights seeks to uncover some of the due process issues facing refugees as a result of recent changes to the Danish Aliens Act. More specifically, we examine due process issues facing Syrian refugees in connection with the authorities' review of their residence permits with a view to revoking or refusing to extend them.

Needless to say, the authorities' review of a refugee's residence permit may have a significant impact on the refugee involved as well as his or her family. When refugees lose their residence permit, they lose the right to live and work in Denmark and risk being separated from their family. Thus, several families have seen how

sons of military drafting age have been given an independent residence permit, while their parents and siblings have had their residence permits revoked.

At the same time, the revocation process is complicated and often lengthy which, in itself, can be extremely stressful for those involved, irrespective of the final outcome. Many refugees suffer physical and psychological harm in the process. Some lose their jobs; others have to stop their education.

Finally, the paradigm shift affects persons in a vulnerable situation. Many refugees do not have the necessary knowledge, resources or network to sufficiently understand their rights and the system of which they are part. Some lack the necessary Danish language skills to understand the information they receive from the authorities.<sup>5</sup>

As a consequence, it is especially important to ensure that due process is guaranteed throughout the revocation process.

#### **RULE OF LAW AND DUE PROCESS<sup>6</sup>**

The rule of law and the consequential rights to due process are basic democratic principles that aim to protect all residents from unnecessary or arbitrary interference with their personal integrity by the authorities and to ensure that all residents receive the benefits to which they are entitled under the law – conversely, that no duties other than those warranted by law are imposed on the residents. This also applies to refugees. Both human rights law and Danish administrative law help to ensure that the authorities' practice does not violate due process rights.

Due process may be divided into substantive and procedural due process.

Substantive due process ensures that all decisions by authorities shall be substantively correct. When the authorities make a decision in a case, the decision shall be in accordance with the law, both Danish legislation and international human rights obligations, and the decision shall be based on an objective assessment that is in accordance with the basic principles of law on, e.g., equal treatment and proportionality. Substantive due process ensures that the legal rules are worded in a clear and transparent manner so the residents will know their rights and be able to foresee their legal position.

Procedural due process is about the processing of a case, i.e., the rules that apply to the case handling leading up to the authorities' decision. As per the doctrine of inquisitorial procedure, the authorities shall ensure that the case has been sufficiently informed prior to making a decision. The Public Administration Act dictates that the residents have the right to guidance and consultation before a decision is made, and the doctrine of inquisitorial procedure dictates that decisions

shall be made on a correct legal basis and as quickly as possible. These procedural rules ensure that the aim – a correct and fair decision – is achieved.

In addition, the ECHR contains a number of procedural legal guarantees that protect residents' rights to due process in cases where the authorities interfere with one or more rights. Thus, ECHR, Article 8, which protects the right to private and family life, requires that the national process resulting in any interference with the right be 'fair and sufficient', that the reasons given by the authorities for the decision shall be adequately substantiated, and that the implicated party shall be involved in the decision-making process in a way which ensures that his or her interests are sufficiently protected.<sup>7</sup> These requirements apply to vulnerable groups, e.g., asylum seekers and refugees.<sup>8</sup>

## 1.2 OBJECTIVE, CONTENT AND SCOPE OF THE ANALYSIS

### 1.2.1 OBJECTIVE

The objective of the report is to examine the due process issues facing Syrian refugees during the revocation process. More specifically, the report will:

- Identify due process issues during the revocation process from a human rights and administrative law perspective
- Document refugees' experience with the revocation process
- Recommend improvements and procedural changes to the revocation process

The report will mainly focus on two aspects of the revocation process, i.e.:

- Whether the authorities in their decisions to revoke or refuse to extend a residence permit pay sufficient attention to Denmark's international obligations, especially Article 8 of the ECHR (the right to respect for private and family life).
- Whether the authorities' case processing to a sufficient extent respects fundamental legal guarantees of guidance, consultation and the length of the case processing.

### 1.2.2 STRUCTURE

The report consists of four parts:

Chapter 1 outlines the objective, content and scope of the report as well as the method, including a presentation of the report's legal and qualitative analyses.

Chapter 2 outlines the context and object of the analysis. First, it describes the paradigm shift in Danish asylum policy and the main subsequent changes, including the introduction of temporary protection status, new standards for revocation of a refugee's residence permit and lower priority to attachment when assessing revocation cases. Second, the chapter provides a description of the

paradigm shift and its manifestation in the so-called Project Damascus and, finally, it describes some of the consequences of the revocation process for the refugees affected.

In chapter 3, we analyse the Danish revocation criteria and practice in the light of Denmark's human rights obligations. Here, focus will be on one of most important human rights obligations in relation to revocation practice, i.e., the right to private and family life. The chapter describes the Danish revocation standard, identifying the due process issues pertaining to this standard and practice.

In chapters 4, 5 and 6, we analyse the revocation process from an administrative law perspective focussing on whether the authorities respect the administrative law principles of guidance (chapter 4), consultation (chapter 5) and the duration of the case processing (chapter 6). Each chapter describes relevant legislation, the authorities' practice and the refugees' personal experiences. On this basis, we identify a number of due process issues and make recommendations to improve current practice.

### **1.2.3 SCOPE**

The paradigm shift and the revocation of Syrian refugees' residence permits raise a number of issues. While several of these issues raise human rights concerns, it is not the aim of this analysis to examine the entire range of human rights issues resulting from the paradigm shift.

Rather, this report focuses on refugees' due process rights during the revocation process. This means that we focus on whether the law – both Danish legislation and international human rights obligations – is interpreted and administered in accordance with due process principles. In other words, the report focuses on procedural human rights and administrative law guarantees in the revocation process.

It is beyond the scope of the report to analyse the substantive revocation standards. However, this does not mean that the Institute does not see challenges in this respect. In the Institute's view, the significant difference between Denmark's revocation standards for refugees with a residence permit under Section 7 (2) and (3) of the Aliens Act and the EU provisions in this area creates non-harmonised rights across the EU member state. This is problematic as the due process rights of refugees to some degree depend on harmonised protection and rights throughout the EU. In addition, the difference has caused some refugees who have lost their Danish residence permit to seek asylum in other EU member states, thus challenging the Dublin Regulation – by which Denmark is legally bound – which stipulates that it is the first country of admission to the EU shall offer refugee protection.



It is also beyond the scope of this report (and the expertise of the Institute) to assess the validity of the background information underlying the authorities' assessment of whether Damascus and Rif Damascus are safe for return.

The report focuses specifically on refugees' due process rights in connection with that part of the paradigm shift pertaining to the revocation process. The revocation process is here defined as the process that begins when the Danish Immigration Service invites a refugee to an interview for a review of his or her residence permit and ends with the Refugee Appeals Board's final decision. A negative decision means that the refugee is now in a deportation position. At this point, a new process begins, involving other laws, rules and practices. The Institute has not analysed this process.

More specifically, it means that the report does not concern itself with due process issues resulting from the authorities' practice of subjecting Syrian refugees to an obligation of notification and stay at a return centre where a residence permit has been finally revoked. Furthermore, the report does not concern itself with the conditions at the return centres.<sup>9</sup>

The report focuses on the revocation process of Syrian residents from Damascus and Rif Damascus who have been granted temporary protection status under Section 7 (2) and (3) of the Aliens Act, and their family members who have been granted residence permits under the family reunification rules. Hence, we do not analyse the revocation process in connection with so-called Project Somalia, during which more than 1,000 Somalian refugees have lost their residence permit since 2016. However, this delimitation does not mean that the analysis applies solely to refugees from Damascus and Rif Damascus. Insofar as the authorities find that other parts of Syria – or other countries – are safe for return, the practice outlined in this report will also apply to refugees from these areas.

We analyse both the revocation of and refusal to extend residence permits. 'Revocation' of a residence permit refers to the situation where the Danish Immigration Service – usually of its own motion – assesses whether a residence permit should be revoked. Revocation means that a residence permit is terminated because the person in question is believed to no longer have a need for protection in Denmark. 'Refusal to extend' a residence permit refers to the situation where the authorities automatically assess whether a refugee's residence permit that is about to expire should be extended or not. Aside from a few technical differences, the assessments in these two situations are virtually identical. Where we use the word 'revocation' below, it includes both 'revocation' and 'refusal to extend'.

### 1.3 METHOD

Our study of the due process challenges of the revocation process is based on three analyses of Danish legislation and practice:

- A human rights law analysis of the criteria used in revocation cases
- An administrative law analysis of case handling during the revocation process
- A qualitative analysis of the affected refugees' experience with the process

#### 1.3.1 THE LEGAL ANALYSES

Our legal analysis first and foremost consists of an account of relevant legal standards and legislative history, especially the rules on asylum and revocation. We have thus analysed legal changes since 2015 and described their effect on the revocation process and assessments. In addition, we have explained relevant international human rights law in this area and analysed conformity – and to some extent lack thereof – between the national rules and Denmark's international obligations, especially Article 8 ECHR.

Moreover, we have selected and analysed the most relevant administrative law principles, rules and related sources of law that fall under the case processing rules and compared the principles to the current practice in the revocation process as implemented mainly by the Danish Immigration Service. The practice outlined in the analysis is based on publicly available decisions, an interview with the Danish Immigration Service and subsequent verification of practice through ongoing written and oral communication with the Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board.<sup>10</sup>

There is a natural connection and a legal interface between administrative law and human rights law, and in several respects, the procedural legal guarantees in Article 8 of the ECHR substantiate Danish administrative law. However, we have chosen not to include these guarantees in the administrative law analysis, but rather in the human rights analysis in chapter 3 of the report. We distinguish between the due process aspects of international sources of law and national sources of law, respectively, to gain an overview of Denmark's national and international obligations in this area.

#### 1.3.2 THE QUALITATIVE ANALYSIS

The qualitative analysis of the consequences of Danish legislation and practice is based on 15 interviews with a total of 23 individuals. The objective of these interviews was to give some of the persons affected by the paradigm shift a voice and to shed light on their experiences with the process. Especially with regard to due process rights, it is vital to understand how the legislation works in practice, how it is experienced by the affected persons and which consequences it has for them.

The analysis is a presentation of the perspective of the interviewees. It does not claim to be representative of the experience of the target group in general in connection with the revocation process. Thus, we cannot, on the basis of our interviews, say anything about the number of persons who have faced due process challenges in connection with the revocation process, but we can use the interviews to identify and shed light on some of the types of challenges facing refugees.

We have conducted interviews with 20 persons who have either started the revocation process (13 persons), completed the process (two persons) or are relatives of persons who have started the process (five persons). Moreover, we have spoken to three persons who have lost their residence permit for other reasons.<sup>11</sup> Of the persons who have started the process, five have been granted permission to stay under Section 7 (2), another five under Section 7 (3), and finally three under the family reunification rules (the different types of residence permits will be explained in chapter 2).

We have interviewed 10 women and 13 men aged 19-67 years.

The interviewees were recruited with the help of individuals and organisations who are in contact with Syrian refugees, including Danish Refugee Council (DRC), Refugees Welcome, DFUNK (DRC Youth), Venligboerne, journalists, academics and individual refugee activists.

The interviews were conducted by two interviewers (both employed by the Institute) in the period from December 2021 to February 2022. Nine interviews were conducted at the home of the interviewee, one at an asylum centre, two at a return centre and one at the interviewee's place of study. Two interviews were held over the phone. Ten interviews were individual interviews with a single interviewee, while five were group interviews with the participation of several interviewees (often family members). Four interviews were conducted with the assistance of an interpreter, while the remaining were conducted in Danish as requested by the interviewees. The majority of the interviews lasted approximately one and a half hours, some longer.

All the interviewees either signed a declaration of consent or consented verbally to participating in the research. In the report, all the interviewees have been anonymised. Places and names have either been deleted or changed in quotations, and a few statements have been changed to protect the interviewee's anonymity.

Almost all the interviews were recorded digitally, as agreed with the interviewees. After the report was completed, the recordings were deleted. Audio files have primarily been used to ensure accurate reproduction of selected quotations.<sup>12</sup>

Aside from refugees affected by the revocation process, we have conducted background interviews with authorities, lawyers, civil society organisations and

activists. The background interviews were meant to give us insight into key persons' perspective on the revocation process and answer factual questions concerning the process and authorities' practice.

### **1.3.3 AN INTEGRATED APPROACH**

Our survey is based on an integrated approach, where the two analyses have informed and supplemented each other. The legal analysis identified the general problems and established the framework for the qualitative interviews, which then drew attention to new problems that were integrated into the legal analysis.

The qualitative material was used for different purposes in the different parts of the survey. In the human rights analysis, it provided concrete cases illustrating and exemplifying some of the situations dealt with in the analysis. In the administrative law analysis, the material mainly identified, substantiated and concretised specific challenges in the authorities' practice. Finally, the material is illustrated by brief quotations throughout the report.

## CHAPTER 2

# THE PARADIGM SHIFT AND PROJECT DAMASCUS

### 2.1 THE PARADIGM SHIFT

In 2015 and 2019, the Danish Government introduced a series of legislative changes that fundamentally changed Danish asylum practices – the so-called paradigm shift. In general, the paradigm shift cemented the understanding of refugee protection as something temporary. Residence permits are granted with a view to returning refugees to their country of origin as soon as possible, not with a view to integration and long-term residence.

More specifically, the 2015 and 2019 legislative changes introduced three fundamental changes, addressed in the following:

- A new type of residence permit, i.e., temporary protection status
- A new understanding of the conditions in the country of origin that allow a residence permit to be revoked
- Less emphasis on attachment to Denmark in assessments of whether or not a refugee's residence permit may be revoked

#### 2.1.1 INTRODUCTION OF TEMPORARY PROTECTION STATUS

When a refugee arrives in Denmark as a spontaneous asylum-seeker, the Danish Immigration Service will determine whether the refugee is entitled to asylum based on a so-called information and motive interview. If the person is entitled to asylum, he or she will be allowed to remain in Denmark.<sup>13</sup>

Up until 2015, Denmark distinguished between two types of residence permits for refugees, i.e., convention status under Section 7 (1) and protection status under Section 7 (2). Convention status was (and is) reserved for refugees who face an individual risk of persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion, cf. the Refugee Convention ratified by Denmark in 1952.<sup>14</sup> Convention status is the strongest form of protection granted to refugees in Denmark.

Protection status under Section 7 (2) was (and is) granted to refugees who do not meet the requirements for asylum under the Refugee Convention, but who personally risk capital punishment, torture or inhuman or degrading treatment or punishment if they return to their country of origin, cf. Article 3 ECHR.<sup>15</sup> Prior to 2015, this status was also granted to refugees with a general need for protection.

Thus, many Syrians who came to Denmark in that period were granted protection under Section 7 (2) because of the general conditions in Syria and not necessarily because they were personally at risk.

In February 2015, while thousands of Syrians were seeking asylum in Europe and Denmark, the Danish Parliament passed an amendment introducing a third type of residence permit for refugees: 'temporary protection status', cf. Section 7 (3).<sup>16</sup> Temporary protection status provides a minimal form of protection and thus fewer rights than convention status and protection status. Temporary protection status is granted to refugees who are not individually persecuted, but who are entitled to asylum because the general conditions in their country of origin are 'extremely serious [and] characterised by indiscriminate violence and attacks on civilians',<sup>17</sup> meaning that it would be contrary to Denmark's international obligations to deport them to their country of origin.<sup>18</sup>

According to the Ministry of Justice, the purpose of Section 7 (3) was to emphasise that refugees who are not individually persecuted, but who have fled 'areas that currently witness extreme and indiscriminate attacks on civilians due to the national conflict' shall stay in Denmark on a more temporary basis than other refugees and must return to their country of origin when it is assessed that they no longer need protection.<sup>19</sup>

A few years later, in March 2019, the Danish Parliament adopted another series of changes to the Aliens Act, including the introduction of Section 19a, which further emphasises the temporary nature of the residence permit. Here, it was decided that from now on, all refugees should be granted a residence permit 'aimed at a temporary stay'.<sup>20</sup>

See the box below for an overview of the three types of residence permits that a spontaneous asylum seeker may be granted as a refugee in Denmark today. The different residence permits entail different rights, but also different revocation standards. It may therefore be extremely important for a refugee's situation which protection status he or she receives.



Status	Introduced	Who?	How long time?	When can it be revoked?	Example
Sec. 7 (1) (convention status)	1983	Refugees who are individually persecuted because of race, religion, nationality, membership of a particular social group or political opinion.	Two-year residence permit with the possibility of extension for two years at a time.	Possible after 'fundamental, stable and durable' changes in the country of origin. <sup>21</sup>	Young man from Syria of military drafting age. Syrian woman who is a political activist.
Sec. 7 (2) (protection status)	2002	Refugees who are individually persecuted and at risk of the death penalty, torture or inhuman/degrading treatment. Prior to 2015, refugees who fled as a result of the general situation in their country of origin received this type of residence permit.	One-year residence permit with the possibility of extension for two years at a time.	Possible if revocation not in conflict with Denmark's international obligations. If the residence permit is linked to the general conditions in the country of origin, revocation may take place despite the fact that conditions in the country of origin are still 'serious and must be described as fragile and unpredictable', as long as the improvements cannot be considered 'entirely temporary'. <sup>22</sup>	Woman fleeing from civil law conflict in Syria, e.g., forced marriage.

Status	Introduced	Who?	How long time?	When can it be revoked?	Example
Sec. 7 (3) (temporary protection status)	2015	Refugees who have fled due to the general security situation, but are not at individual risk of persecution (also called war refugees)	One-year residence permit, with the possibility of extension for one year at a time, and after three years for a maximum of two years at a time.	Possible if revocation does not violate Denmark's international obligations. Revocation may take place even if the conditions in the home country are 'serious, fragile and unpredictable', as long as the improvements cannot be considered 'entirely temporary'.	Mother with child who has fled Syria due to the general security situation in the country.  Man over 42 years of age from Syria, who fled due to the general security situation in the country.  Unaccompanied minor from Syria.

**” When we were granted asylum, we got what is called Section 7 (3). To be honest, we didn't know the difference between 7 (1), 7 (2) and 7 (3) when we arrived. The most important thing for us was to live somewhere safe [...]. We didn't know the meaning. We actually only found out about it after we had been refused an extension of our residence permit’.**

(Adnan, 20 år)

### 2.1.2 NEW STANDARDS FOR REVOCATION

The introduction of the temporary protection status (Section 7 (3)) mean that there were new standards for the revocation of some refugees' residence permits.

The question of when a refugee shall no longer enjoy protection in Denmark is based on the revocation rules for residence permits, described in the Aliens Act, Section 19 (1) (i) and (2) – (5).<sup>23</sup> Here it is stated, among other things, that 'a time-limited residence permit may be revoked when the basis for the residence permit is no longer present, and when conditions have changed in such a way that the person concerned no longer risks persecution'.<sup>24</sup> This provision refers to a situation where the situation in the refugee's country of origin has changed and the need for protection of that person has thus ceased.

With the introduction of temporary protection status in 2015, it was decided that in the future, the authorities should make a distinction between refugees' basis for residence when assessing whether the conditions for revocation were met in situations where, e.g., the conditions in the country of origin had changed. In this way, it was made clear that the legislative power wanted to emphasise that there is a significant difference in the conditions that apply to revocation of residence permits, depending on whether it is a matter of convention refugees, refugees with protection status or refugees with temporary protection status.<sup>25</sup>

For convention refugees (Section 7 (1)), a residence permit may only be revoked if there have been 'fundamental, stable and durable' changes in the country of origin, cf. Article 1C Refugee Convention.<sup>26</sup> Since the Danish Immigration Service does not interpret the changed conditions in Syria as 'fundamental, stable and durable, it must be assumed that no Syrians with convention status will have their residence permits revoked due to changes in the country.

However, for refugees with temporary protection status (Section 7 (3)), the residence permit may be revoked even if there have been no 'fundamental, stable and durable changes in the country of origin – as long as there have been changes that are not 'of a purely temporary nature'. This applies even if the conditions in the country of origin are still 'serious and must be described as fragile and unpredictable'.<sup>27</sup>

The amendment also affects refugees with protection status (Section 7 (2)). If you have been granted protection status because of the general conditions in the country and not because of an individual risk, today the authorities may revoke your residence permit on an equal footing with people who have temporary protection status, if the conditions in the country of origin have changed.<sup>28</sup> This means that refugees who have been granted a residence permit pursuant to Section 7 (2) based on the general situation in the country of origin are subject to significantly less protection today than they did prior to the paradigm shift in 2015.

### **LACK OF HARMONISATION WITH EU STANDARDS<sup>29</sup>**

The Danish revocation practice is based on standards that are different from the EU standards in the area, made possible by Denmark's opt-out from the Common European Asylum System. Danish practice results in significantly less protection for refugees with protection status and temporary protection status than what follows from the EU legal obligations for other EU member states.

Under EU asylum law, temporary protection status as in the Danish Section 7 (3), does not exist. In the EU, there is only convention status and subsidiary protection status, the latter corresponding to a mixture between the two types of protection status that exist in Denmark (Section 7 (2) and Section 7 (3)).<sup>30</sup> The EU provisions regarding revocation of residence permits for refugees with subsidiary protection set the bar significantly higher than the Danish Aliens Act. The EU revocation standards for subsidiary protection are almost identical to Article 1C<sup>31</sup> of the Refugee Convention.

According to EU asylum law, refugees with subsidiary protection can only have their residence permits revoked when conditions that were decisive for the basis for residence 'have ceased to exist or have changed to such a degree that protection is no longer required'.<sup>32</sup> Furthermore, the EU Qualification Directive requires that Member States, when revoking subsidiary protection status on the basis of improved conditions in the country of origin, shall ensure that the changes are of such significant and non-temporary nature that the person no longer 'faces a real risk of serious harm'.<sup>33</sup>

### **2.1.3 CHANGES IN THE ASSESSMENT OF ATTACHMENT TO DENMARK**

The paradigm shift from 2019 also has an impact on the emphasis placed on a refugee's attachment to Denmark when assessing whether the person's residence permit may be revoked. With the introduction of Section 19a in the Aliens Act in 2019, it is emphasised that the attachment to Denmark must be very strong if you are to maintain your residence permit.

Before 2019 – and before the introduction of Section 19a – the degree of attachment had a relatively large impact on whether a refugee might lose his or her residence permit. At that time, the authorities – after assessing that the basis for a refugee's residence permit was no longer present – had to assess whether revocation would be 'particularly burdensome' based on the refugee's attachment to Denmark, and whether revocation would be against Denmark's international obligations. In other words, if refugees had a high degree of attachment to Denmark, this might prevent their residence permit from being revoked.

This assessment was based on the Section 26 of the Aliens Act, which included a number of criteria for the way in which a refugee's attachment to Denmark should be assessed (see box below).<sup>34</sup> If a refugee had been in Denmark for more than 10 years, this was given special weight, provided that the person in question had made an effort to integrate into Denmark.<sup>35</sup> In addition, it had significance if a child had been in Denmark for parts of his or her 'formative years', i.e. from the age of 6-7 up to 15.<sup>36</sup>

#### **CRITERIA FOR ASSESSMENT OF ATTACHMENT PRIOR TO 2019<sup>37</sup>**

- Attachment to Danish society
- Age, health and other personal circumstances
- Attachment to people living in Denmark
- Consequences for close family members living here, including considerations regarding family unity
- Lack of or poor attachment to the country of origin or other countries where the person in question might be expected to take up residence

With the introduction of Section 19a, it was decided that such considerations shall not prevent the revocation of a refugee's residence permit to the same extent. Instead, the explanatory memorandum to the legislative amendment emphasised that only Denmark's international obligations, in particular Article 8 ECHR set the limit for when the authorities need to refrain from revoking a residence permit.<sup>38</sup> From the explanatory memorandum to Section 19a, it may also be inferred that the authorities in their decisions shall go to the limit of Denmark's international obligations.<sup>39</sup>

Criteria such as the duration of the residence permit and children's attachment still play a certain role in the assessment, but to a much lesser extent than previously. In the same manner, a refugee's attachment to the labour market and the person's Danish skills shall be given the least possible weight in the revocation assessment.<sup>40</sup> This means that a refugee's residence permit may be revoked regardless of the fact that he or she has a high degree of attachment to Denmark and is fully integrated in the country. See chapter 3 for a detailed analysis of what the new assessment means and the legal security challenges this presents.

## **HYPOTHETICAL EXAMPLE OF THE EFFECT OF SECTION 19A**

### **A family seeks asylum in 2009**

A family applies for asylum in Denmark in 2009 and is granted asylum pursuant to Section 7 (2) (before Section 7 (3) was introduced). The family consists of two parents with their accompanying two children aged five and seven. In 2015, the two adults are invited to a revocation interview as conditions in their country of origin have changed, and it is assessed that the conditions for their residence permit are no longer present. Since the children have been in Denmark for six of their formative years, during which they have gone to school, made friends, participated in leisure activities and developed their social skills, the parents' – and thus the children's – residence permit will probably not be revoked. The parents' rights therefore derive from the children's independent attachment to Denmark, and the residence permit cannot be revoked.

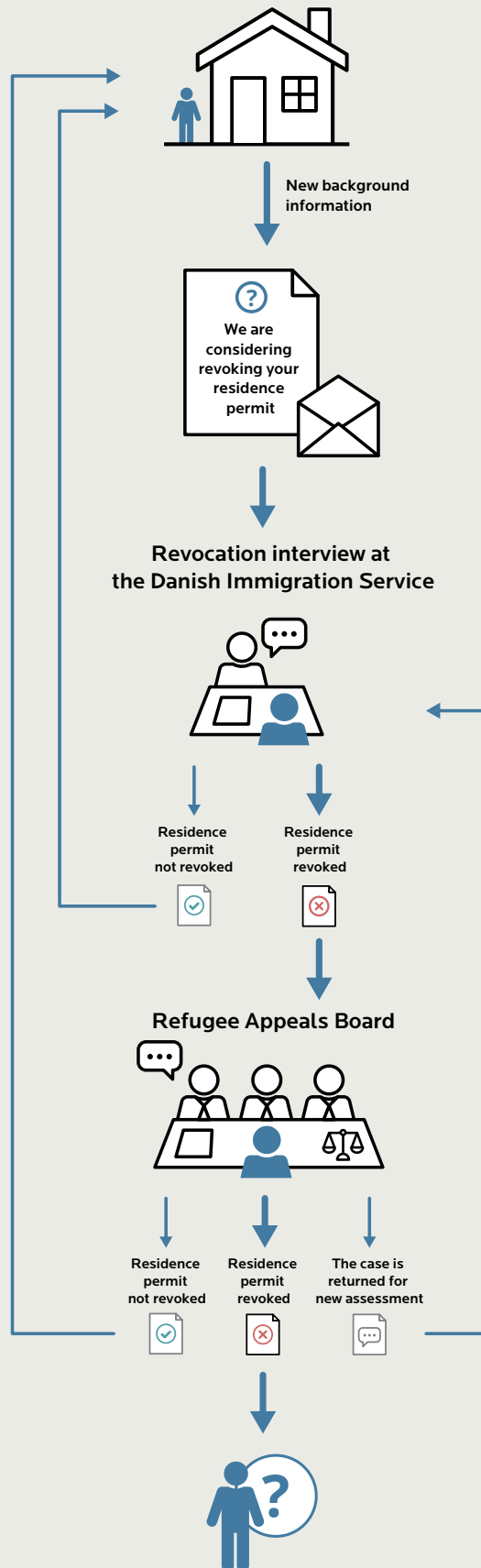
### **A family seeks asylum in 2016**

A family applies for asylum in Denmark in 2016 and is granted asylum pursuant to Section 7 (3). The family consists of two parents with their accompanying two children aged five and seven. In 2022, the two adults are invited to a revocation interview. The conditions for their residence permit are no longer present as the conditions in their hometown, Damascus, have changed. The children have been in Denmark for six of their formative years, where they have gone to school, made friends, participated in leisure activities and developed their social skills. The parents have undertaken education, and the father has had a job for two years. According to Section 19a, the family will probably not be able to maintain their residence permit in Denmark, as their attachment is not strong enough. This is, among other things, due to the fact that Section 19a requires a higher degree of attachment for children than Section 26 did.



## VISUAL OVERVIEW OF THE REVOCATION PROCESS

Refugee with legal residence permit in Denmark



## THE REVOCATION PROCESS<sup>41</sup>

According to the practice of the Danish Immigration Service, everyone who has been granted a temporary residence permit shall regularly have their case reassessed. If the authorities assess that a refugee no longer has a need for protection in Denmark, that person shall have his or her residence permit revoked. The authorities may also initiate a reassessment of residence permits for refugees from a certain country of its own motion if the conditions there have changed. That was the case with Project Damascus.

The Danish Immigration Service is the authority of first instance in the revocation process. When the Danish Immigration Service receives new background information that the conditions in a certain country have changed to such an extent that it may result in a changed need for protection for refugees, the Immigration Service will screen cases concerning refugees with temporary residence permits from the relevant area.

The Danish Immigration Service then invites the refugee to an interview to assess whether the residence permit may be revoked. After the interview, the refugee receives a letter with the Immigration Service's decision. It is the Danish Immigration Service that assesses and makes decisions in the cases of both the key person and any reunified family members.

If the Danish Immigration Service decides that a refugee's residence permit shall be revoked, the case is automatically appealed to the Refugee Appeals Board.<sup>42</sup> The Refugee Appeals Board may choose to return, overturn or confirm the Danish Immigration Service's decision. The Board may, e.g., return a case to the Danish Immigration Service if new information has come to light in the meantime.

Reunified family members may appeal their case to the Immigration Appeals Board within eight weeks.<sup>43</sup> When the Immigration Appeals Board receives a complaint from a family reunified member, the relevant person's case is put on hold until the key person's case has been decided in the Refugee Appeals Board.

If the Refugee Appeals Board reverses or returns the key person's case for a new assessment, the Immigration Appeals Board will also return family members' cases to the Danish Immigration Service.

If the Refugee Appeals Board confirms the Danish Immigration Service's negative decision, a departure deadline of 60 or 90 days will be set for the key person, so the Immigration Appeals Board can finish processing the family members' appeals. If the Immigration Appeals Board finds that the residence permits of the family members shall also be revoked, their departure deadline is aligned with the departure deadline set by the Refugee Appeals Board, with a view to ensuring deportation of the family as a whole.

If, on the other hand, the Immigration Appeals Board finds that revocation of a family member's residence permit would violate Denmark's international obligations, the Danish Immigration Service's decision will be overturned and the residence permit is extended. For example, in situations where revocation would violate a child's right to private life. In such cases, the other family members will have the opportunity to apply for family reunification with the child in question.

Decisions by the Refugee Appeals Board are final and cannot, as a rule, be brought before the courts.<sup>44</sup> Conversely, decisions by the Immigration Appeals Board are final within the administrative area but may – pursuant to Section 63 of the Danish Constitution – be brought before the courts.<sup>45</sup>

If the Refugee Appeals Board or the Immigration Appeals Board decides that a person's residence permit shall be revoked, the case is transferred to the Danish Return Agency.<sup>46</sup> Refugees may, however, apply to have their cases re-opened by the Refugee Appeals Board if new information has come to light or if there is information that has not been ruled upon.<sup>47</sup> If the Refugee Appeals Board decides to re-open the case, refugees have the right to remain in Denmark on a procedural stay while the case is pending.

## 2.2 PARADIGM SHIFT IN PRACTICE: PROJECT DAMASCUS

In the spring of 2019, the authorities initiated Project Damascus with the aim of reassessing the protection needs of Syrian refugees from the Damascus province who had been granted residence permits due to the general conditions in Syria (i.e., refugees with protection status or temporary protection status) and to revoke these refugees' residence permits in cases where there was no longer a need for protection.<sup>48</sup>

**” That was the hardest day of my life. I came home from my job as a waiter. My mother asked if I had checked my e-Box. I could see in her eyes that it was not good. I opened my e-Box. I wanted to cry, but I also wanted to be strong for the sake of my mother and father. I wanted to tell them that I was going to defend our rights – it will be OK. But it was difficult’.**

(Laila, a young woman in her twenties, talks about the day when she and her family received the revocation decision by the Danish Immigration Service)

## PROJECT DAMASCUS

Project Damascus was initiated by the Danish Immigration Service on the basis that the conditions in Damascus had changed, largely due to a country report from the Immigration Service's country documentation office,<sup>49</sup>

In six selected test cases – all concerning persons from Syria who had applied for, or had been granted, a residence permit in Denmark on the basis of the general conditions in their country – the Immigration Service assessed that the conditions for the refugees in question had changed, or that they no longer met the criteria for being granted asylum. The Danish Immigration Service thus refused to grant – or revoked – a residence permit in all six test cases which were subsequently sent to the Refugee Appeals Board.

The Refugee Appeals Board overturned all six cases – not because the Board found that refugees could not be deported to Damascus, but because the persons in question were entitled to individually-based asylum.<sup>50</sup> The Board thus did not decide whether the criteria for revocation based on the situation in Damascus had been met.

However, half a year later, in December 2019, the Refugee Appeals Board upheld three new revocation cases concerning persons from Damascus. Here, the Board assessed for the first time that the changes in Damascus were not of a 'completely temporary nature'.<sup>51</sup>

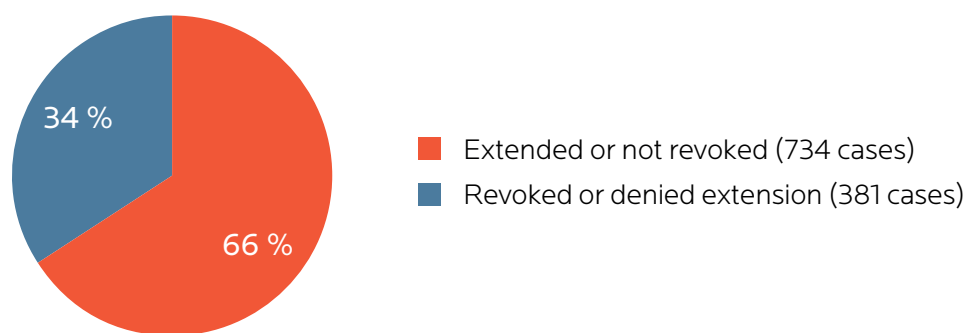
In 2020, the Refugee Appeals Board decided several cases which emphasised that the Danish Immigration Service could continue its practice of revoking residence permits for refugees from Damascus. In February 2021, the Refugee Appeals Board ratified two spontaneous arrival cases and one revocation case from people who came from Rif Damascus, meaning that residence permits could now also be revoked for people from this area.<sup>52</sup>

Subsequently, all Syrian refugees from Damascus and Rif Damascus who have been granted temporary protection status (Section 7 (3)) or protection status (Section 7 (2)) due to the general conditions in Syria, shall have their residence permits reassessed as part of Project Damascus. In the period from June 2019 up to and including December 2021, the Danish Immigration Service has made decisions in 1,115 cases.<sup>53</sup>

In 381 of these cases, or approximately 34 percent, the Immigration Service decided to revoke the residence permits of the refugees concerned. In the remaining 734 cases, or approximately 66 percent, a decision was made that the residence permit may be maintained (see figure 1). Thus, the vast majority of

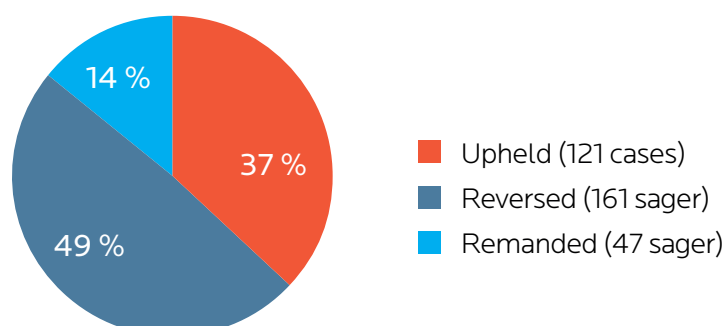
people who have their residence permits reassessed as part of Project Damascus end up having their residence permits extended. In some cases, the refugee's residence permit is not just extended; the person concerned is also granted another status. Among the 734 positive decisions, the Danish Immigration Service has in 159, or almost 22 percent of cases, decided to strengthen the protection status of the persons concerned.<sup>54</sup>

**FIGURE 1. DECISIONS BY THE DANISH IMMIGRATION SERVICE<sup>55</sup>**



The 381 cases where the Danish Immigration Service has revoked the temporary residence permit have been automatically appealed to the Refugee Appeals Board. By the beginning of February 2022, the Board had made a final decision in 288 cases. Of these, 40 cases were returned to the Danish Immigration Service for new assessment. In 116 cases, the Board upheld the decision of the Danish Immigration Service; and in 132 cases, the Board reversed the revocation decision by the Danish Immigration Service.<sup>56</sup> The Refugee Appeals Board has thus arrived at a different decision than the Danish Immigration Service in 46 percent of cases. If we disregard the cases that were returned, the figure is even higher, i.e., 53 percent.

There is thus a large discrepancy between the decisions of the Danish Immigration Service and the Refugee Appeals Board, respectively. Seen in relation to the average reversal rate in spontaneous asylum cases (around 20 percent), the reversal rate is extraordinarily high.<sup>57</sup> Based on publicly available information on the Refugee Appeals Board's decisions, it is difficult to say anything about the background for the discrepancy. The Danish Immigration Service itself points out that a possible explanation might be that the refugee in the period between the Danish Immigration Service's decision and the Refugee Appeals Board's decision has been profiled in the media and therefore now has an independent motive for asylum. Another explanation might be that the Article 8 assessment plays a greater role in the Refugee Appeals Board than in the Danish Immigration Service (see chapter 3). Regardless of what lies behind the high reversal rate, the figure is an expression of how complex the revocation process is.

FIGURE 2. DECISIONS BY THE REFUGEE APPEALS BOARD<sup>58</sup>

Forty-three people who have received a negative decision from the Refugee Appeals Board have requested the Board to re-open their cases.<sup>59</sup> A decision has been made in 23 of these cases as to whether the case can be re-opened. In 17 out of the 23 cases, the Refugee Appeals Board has decided to re-open the case. The Refugee Appeals Board has made a decision in seven of the 17 cases and has overturned the original decision in all seven cases.<sup>60</sup> Even though the numbers are quite small, they contribute to the picture of a high reversal rate.

As of 8 February 2022, an extension of their residence permits was finally refused for 116 persons, meaning that they are now in a return position.<sup>61</sup> Since there are no diplomatic relations between Denmark and Syria, these persons cannot be forcibly deported to Syria, but may be subjected to an obligation of notification and stay at a return centre if they do not return voluntarily. However, only a few actually live at a return centre. Others presumably still live in their own home or have moved on to other EU countries.<sup>62</sup> There are no official figures for how many have left Denmark, but it is estimated that at least 400 people have done so.<sup>63</sup>

## WHO IS AFFECTED BY PROJECT DAMASCUS?<sup>64</sup>

### THREE EXAMPLES

The Yasir family consists of parents, Walid and Rina, and their five children, all under 18. The youngest was born in Denmark. Walid arrived in Denmark in 2014 and was granted protection status (Section 7 (2)) due to the general conditions in Syria. His wife and children arrived via family reunification the following year. Walid was interviewed by the Danish Immigration Service more than a year ago and is still waiting for an answer as to whether he and his family will lose their residence permit.

Zahra arrived in Denmark from Syria in 2014 together with her two brothers. Her brothers were both granted convention status (Section 7 (1)), while Zahra was granted protection status (Section 7 (2)). Zahra had her residence permit revoked by the Danish Immigration Service in autumn 2020. In the summer of 2021, approximately 10 months later, she was finally rejected by the Refugee Appeals Board. She has now been family reunified with her husband according to EU rules and has a five-year residence permit.

Aida Rushdie arrived in Denmark with her father, Kadeem Rushdie, in 2014, where they were both granted protection status (Section 7 (2)). Aida's mother and siblings are family reunified members. At the beginning of 2021, both Kadeem and Aida were refused an extension of their residence permit by the Danish Immigration Service. The family did not wait for the final decision from the Refugee Appeals Board, but instead travelled to another EU country, where they applied for asylum. They have just been sent back to Denmark and are now living in an asylum centre. Because they have been outside Denmark for more than six months, their asylum process starts all over again.

### 2.3 THE CONSEQUENCES OF THE PARADIGM SHIFT

The paradigm shift in Danish asylum policy means that many refugees in Denmark today live under conditions that are characterised by a much higher degree of temporariness, doubt and uncertainty than before. For refugees in the midst of an integration process, the changes to the Act must be seen as particularly intrusive because the revocation decision is of vital importance for the lives and future of those involved. If you lose your residence permit, you lose the right to live and work in Denmark, and you risk being separated from your family. That is a very big thing for a lot of the people we interviewed for this report.

Laila, a young woman who is waiting for a response from the Refugee Appeals Board, says: 'I am talking about a decision that affects my whole life. I'm not talking about whether I can get a student job or not. This is about my life'.

But the process of revocation is also invasive per se. It is a complicated and often protracted affair that can be extremely stressful for those involved, regardless of the outcome.

The people we have spoken to all say that the process has had major consequences for them. As mentioned above, our interviewees are not necessarily representative of the group of Syrian refugees who have been affected by Project Damascus, and based on our interviews, we cannot say anything about the number of refugees who experience the process as intrusive and burdensome. But our interviews can give indications about the types of challenges refugees experience in relation to the revocation process.

In the following, we particularly point to challenges related to:

- Physical and mental health
- Dividing families
- Education and work
- Sense of justice

**” I’ve got high blood pressure, I’ve got diabetes, I’ve got high cholesterol, I’ve got heart disease, my body retains water plus all the little things like trouble breathing and stuff like that. I take 22-23 pills every day. I also have back problems, something with the knee – I don’t know what it’s called. The kidneys are not doing so well either. Two years ago, I was healthy. I miss sleeping deeply. When I go to sleep, my head buzzes. My daughter was eight years old when I last saw her. Now she is as tall as her mother. [...] I thought about suicide at one point. I couldn’t handle it anymore’.**

(Omar, who lives at a return centre, but whose case was just re-opened)



### 2.3.1 HEALTH

All the people we have interviewed say that the revocation process has affected their quality of life and mental health to a great extent. The fear of not being able to live in Denmark, of being sent back to Syria and perhaps of being separated from family, together with the uncertainty and the long waiting time, contribute to stress, insomnia, difficulty concentrating and depression.<sup>65</sup> In addition, older refugees in particular experience deterioration of physical health during the process. 'It's as if they have reduced functional capacity', Yousef says of his parents who are waiting to be summoned to the Refugee Appeals Board. 'Every day something happens to my father's hands, to my mother's feet – I can see it'.

For many, the process of revocation means a confrontation with experiences they have had or losses they have suffered during the war. It can be exhausting and even retraumatising to have to relive memories you may have done everything to suppress. Maryam, a young woman in her 20s, says:

**'During that period [when I was waiting for an answer], I began remembering what had happened – that we had to move from apartment to apartment, that my father was picked up and went to prison, that they started a fight in our home, that they stole money. I remember my mother had to give them a purse with money. They came with weapons, about 25-30 people. Since the interview, I started dreaming about those things'.**

Maryam had moved away from home but had to move back in with her parents while she waited for an outcome in her case because she could not sleep alone. Her case was re-opened, and she ended up getting her residence permit extended, but she still suffers from anxiety and insomnia:

**'Now I am receiving treatment at a psychiatric centre. If I don't get medication, I sleep for three hours at the most. So yes, I got out of it, but I still have things holding me back'.**

Some of the families we have spoken to have minor children. They say that the revocation process has also affected the children. Some have become withdrawn and quiet, others become angry and externalising.

The process does not only affect refugees directly involved. Relatives also talk about stress, apprehension and anxiety. Yousef, for example, talks about an overwhelming sense of responsibility towards his parents. He struggles to keep track of their case and their spirits up. At the same time, he is tormented by guilt, because he feels that he is the one who brought the parents into this situation:

**'My brother and I feel bad because we know they fled because of us. I feel responsible for the situation. It's stressful. I have started calling them every day. I work 3-4 different places, but I try to find time. I have to listen to my**

dad when he's upset. I always have to be in a good mood to keep their spirits up. I wish I could do more for them, but I can't do anything. They are not the same anymore. They used to have fun and tell stories; now they just sit and cry'.

### 2.3.2 SEPARATING FAMILY MEMBERS

Fear of separation from family is very important to the people we have spoken to. The risk of separation applies both to families where a son of military drafting age has the opportunity to apply for an independent residence permit, while his parents and siblings risk losing theirs, and to families where adult children have a residence permit in Denmark while their aging parents are at risk of losing theirs. Some families are forced into difficult situations where they have to choose between keeping the family together or securing residence permits for individual family members in Denmark. Such choices may have far-reaching consequences for the family life, not just in the form of physical separation, but also in the form of psychological harm to family members.

Salma and her husband have had their residence permits revoked by the Danish Immigration Service and are now waiting for the Refugee Appeals Board's decision. During the process, their lawyer recommended that their eldest son, who has just turned 18, apply for asylum independently as he is at risk of being enlisted into the military and thus has an opportunity to obtain a residence permit under Section 7 (1). This may result in the son being able to stay in Denmark, while the rest of the family may lose their residence permits. Salma says that she will do everything to protect her son, but at the same time she is terrified that this will mean that the family is separated:

**'My son cried when I drove him to the interview. He couldn't understand why he had to be put in that situation, why he had to be pressured like that. He was a scout leader. But now he has stopped. He doesn't want to do it anymore. It is incredibly hard on the family. My fear is that some of the children will get asylum, and we won't, and we will be separated. We are already separated from our family in Syria'.**

In some families, siblings find themselves in a situation where a brother of military drafting age has the opportunity to obtain a residence permit, while the sister of the same age stands to lose hers. Laila, whose brother has been granted a residence permit due to the risk of military service, expresses great despair at the prospect of having to separate from him:

**'My brother can stay here. But how can we leave him – and how can he stay here alone and know that we are back in Syria? [...] We can't talk about it with my brother. My father will not split up his family. My brother says he won't leave us. Imagine that – them tearing your family apart'.**

At the same time, she is frustrated by what she sees as discrimination:

**‘I know that Denmark says that women and men are equal – but how can they grant him asylum and not me? When I came to Denmark, I was told that women are strong, they can do anything, they can handle it all. But there was a woman who said to me: ‘Women can always marry another man who has a residence permit’. So, I can’t save myself; I can only be saved by a man. Imagine that I should hear that in Denmark. Women and girls are put in the most difficult situation’.**

Jalal and Nouri are an elderly couple in their late 60s. They have both had their residence permits revoked and have become subject to notification and stay obligations at a return centre. Their case has now been re-opened, and they are waiting to be called to a hearing in the Refugee Appeals Board. Their son Adnan, aged 20, has a residence permit in accordance with Section 7 (1), as he is of military drafting age, while their daughters, who are also in their twenties, have residence permits under Section 7 (2). The parents are ailing, and they depend on help from their adult children in everyday life. The children are deeply worried whether their parents can manage without them – both at the return centre and in Syria, if they end up being rejected by the Refugee Appeals Board. Adnan says:

**‘My father has something with his blood pressure and diabetes; my mother has a herniated disc. They really have a hard time coping with everyday life, so it’s us children who come and help. The Danish Immigration Service did not think that was enough [not to be sent to the return centre]. Then we knew that you have to be terminally ill to be allowed to live in Denmark’.**

### 2.3.3 EDUCATION AND WORK

The revocation process may also have major consequences for the work life and educational situation of the people involved, both in the short and long term.

Virtually all the people we have spoken to say that apprehension about their or family members’ cases means that they have had difficulty concentrating on work or education at times. Khalil, a young man in his early 20s, whose grandmother had her residence permit revoked, says:

**‘It took up a lot of our thoughts in the period when we were waiting for a decision from the Refugee Appeals Board. For the first few weeks we couldn’t eat or sleep. I could not concentrate on attending my classes. All the time I was thinking: What is going to happen? Should we get her over the border so she can apply for asylum there? What the hell are we going to do?’**

Yousef, whose parents are waiting for a decision from the Refugee Appeals Board, also talks about the way in which his parents’ case affects his schooling:

**'I feel the effect at school. I don't have the focus I should have. I am stressed. My parents have a big case; I put a lot of effort into it'.**

The risk of losing a residence permit may also have more concrete consequences for refugees' work lives. Some of the people we have spoken to say there are people who lose their jobs during the process because their employer does not extend their employment. For those without a job, but need to start job hunting, the situation is also difficult. Laila says that her mother has just finished her education and is looking for a job, but she doesn't expect anyone to hire her as she is waiting for a decision from the Refugee Appeals Board: 'Of course, people don't want to hire someone who might have to leave the country'.

Also in the longer term, the revocation process may have consequences for people's education and work lives. The future is uncertain and unpredictable. You live, so to speak, in a 'time without a sense of direction'.<sup>66</sup> Many feel that they have lost control over their own lives and find it difficult to make plans for the future, both short term and long term. This may have major consequences, especially for young people. Adolescence often involves choices that reach far into the future – in particular in relation to education and employment.<sup>67</sup> Having to deal with such choices when you find yourself in a situation characterised by temporariness and uncertainty is difficult. At worst, apathy and despondency can prevent some from looking for work or starting an education – and this may have far-reaching consequences for the rest of their lives.

**” The uncertainty also means that you won't commit to a romantic relationship. I do not want to be attached to another person if I suddenly have to leave the country. I would feel guilty'.**

(Ibrahim, young man in his twenties)

### 2.3.4 SENSE OF JUSTICE

Finally, the process also has major, albeit less tangible, consequences for refugees' sense of justice and trust in the Danish authorities. Many of the people we have spoken to find it difficult to understand the changed criteria for residence in Denmark and feel let down or led astray. Several say that they would not have applied for asylum in Denmark if they had known that the rules would be changed. As Walid puts it: 'I would rather cut off my hand than provide a fingerprint'.

For the refugees who arrived prior to the paradigm shift in 2015, the new rules may be perceived as particularly unfair. Several say that upon arrival in Denmark they got the impression that their chances of obtaining a permanent residence permit were good if they integrated into Danish society, learned the language, got an education and a job. This is what they were told by both the Danish Immigration Service and the municipality in which they took up residence. Maryam says:

**'When we got a residence permit [in 2014], we were told that we had to learn the language, find a job, do everything we could – then we could stay forever. We were not told that the residence permit was temporary'.**

Many have fought hard to learn the language, get an education and get a job, based on the (not unfounded) expectation that attachment and integration would increase their chances of a permanent residence permit. Salma has worked for several years as an assistant in a municipal institution, and her husband has his own shop. The two youngest children attend the local primary school; the oldest attends high school and is a scout leader. They live in a small town and have many good friends among their neighbours. 'We are good at integration', says Salma. She expresses a feeling of having been led astray by the authorities:

**'You should be honest from the start and say: "No, we don't want you". We are also human. We have feelings. To tell us, after seven years, when we have built our lives here, our network, our work'.**

## 2.4 SUMMARY

The paradigm shift in Danish asylum policy has led to a number of legislative changes that have a major impact on *when* a refugee's residence permit may be revoked. A new type of residence permit was introduced, temporary protection status; the assessment of when conditions in the country of origin allow revocation of a residence permit was changed; and the question of a refugee's attachment to Denmark was given less emphasis in the assessment of whether a residence permit can be revoked. Compared to other EU countries, Denmark stands alone with this strong focus on the revocation of refugees' residence permits.

The legislative changes mean that far more refugees than before risk having their residence permit revoked. Since 2019, more than 1,000 Syrian refugees have thus had their residence permits reassessed under the Damascus Project,

as the authorities believe that the security situation in the area has improved. The revocation process is a complicated and often protracted affair that – regardless of the outcome – may have far-reaching consequences for the people concerned, also in relation to their health, family life, work and education.

In the following chapters, we examine refugees' situation regarding due process rights during the revocation process. In chapter 3, we analyse the Danish criteria and practice for revocation in the light of Denmark's human rights obligations pursuant to the ECHR, Article 8, and we discuss which due process challenges this brings up. In chapters 4, 5 and 6, we take a closer look at the process itself and examine whether the authorities' practice complies with administrative law principles regarding guidance, consultation and case processing.

## CHAPTER 3

# THE RIGHT TO REMAIN IN DENMARK

### 3.1 INTRODUCTION

Human rights law does not give people the right to choose which country they want to live in. However, in cases where refugees have been granted protection in Denmark, have lived here for a number of years, completed an education, got a job and perhaps had children, these persons may build up a right to remain in Denmark under Article 8 ECHR, which provides for respect for private and family life.

In all cases concerning revocation of a refugee's residence permit, the authorities shall make an individual and concrete assessment of whether the revocation will be in breach of the Article 8 ECHR.<sup>68</sup> This assessment includes, among other things, how strong an attachment the refugee in question has to Denmark and his or her country of origin, respectively. The assessment is decisive for whether or not the residence permit may be revoked.

As described in chapter 2, the paradigm shift has meant that refugees' attachment to Denmark is given less emphasis than before in the assessment of whether a refugee may have his or her residence permit revoked. In the following, we analyse current Danish practice in the area and identify some of the due process challenges.

The Danish practice regarding the attachment assessment pursuant to Article 8 ECHR is unpredictable, lacks clarity and generally does not take into account that in revocation cases, which are extremely invasive for the parties involved, a thorough proportionality assessment needs to be carried out.

Generally, we find it problematic from a human rights point of view that the Danish Immigration Service and the two Boards in their attachment assessment use practice from the European Court of Human Rights (ECtHR) which deals with the deportation of criminal aliens, which is not directly comparable to the revocation of non-criminal refugees' residence permits.

In addition, the authorities generally do not seem to attach sufficient importance to family unity and private life. In the Institute's assessment, this leads to a risk of violation of Article 8 ECHR if refugees are deported to Syria.

More specifically, we point to three challenges in the authorities' assessment:

- The assessment by the Danish Immigration Service of when parents and adult children may be separated does not include all aspects of the proportionality assessment, and it is unclear when a person has a right to family life in such situations.
- The Danish Immigration Service's assessment of the child's independent right to private life has not been emphasised sufficiently in relation to existing practice from the ECtHR.
- Existing procedures do not ensure an overall assessment of the family's attachment to Denmark at the appellate level, where the refugee's case is dealt with by the Refugee Appeals Board, while the case of reunified family members is dealt with by the Immigration Appeals Board.

The Danish Immigration Service and the two Boards have been asked to prepare a memorandum describing ECtHR practice in the area, however, the memorandum has not yet been completed which, in the Institute's assessment, contributes to a lack of transparency in this area.<sup>69</sup>

Based on our analysis of these challenges, we present a number of recommendations to ensure better balancing of human rights obligations, as well as greater clarity and transparency in this area, including that:

- The Danish Immigration Service ensure a thorough assessment of the human rights criteria as per ECHR, Article 8.
- The procedure for assessing family life is changed so that an overall assessment of family life is guaranteed.
- The Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board finalise the memorandum mentioned above and ensure that the criteria for revocation are published.

### **3.2 THE DANISH CRITERIA FOR ASSESSMENT OF ATTACHMENT**

In revocation cases, Denmark must always assess whether the revocation of a residence permit will be a breach of the Article 8 ECHR (see chapter 2 for a further description of this issue). Article 8 states that 'Everyone has the right to respect for his private and family life, his home and his correspondence.' The right to family and private life is not absolute. Thus, Denmark may interfere with this right if the interference is in accordance with the law, pursues a legitimate aim and is necessary in a democratic society (the proportionality assessment).<sup>70</sup> In such cases, the state's interests are weighed against the rights of the refugee in the assessment of whether the interference with family and private life is proportionate to the legitimate aim identified – for example migration control.



In addition, a number of procedural guarantees follow from the ECtHR's practice in relation to Article 8 of the Convention. The Court has determined that a decision that results in an interference with a right protected by Article 8 shall be reasonable and respect the protected interests.<sup>71</sup> At the same time, the procedural guarantees imply that the authority's reasoning shall be sufficiently substantiated and that the parties involved – as a starting point -- have the opportunity to comment before a decision is made. These measures protect the individual against arbitrary interventions from authorities' exercise of discretionary powers.<sup>72</sup> The ECtHR has also assessed that the national process which leads to interventions shall be 'fair and adequate'.<sup>73</sup> These guarantees particularly apply to vulnerable groups of people, such as asylum seekers and refugees.<sup>74</sup>

When the immigration authorities have to assess whether revocation may take place within the framework of Denmark's international obligations, they make a two-pronged assessment. First, they assess whether the basis for the residence permit is still present (i.e., whether the person still needs protection due to the conditions in the country of origin) and, if this is not the case, whether it would be contrary to Denmark's international obligations to revoke the residence permit as a result of, for example, attachment to Denmark (Article 8 ECHR). Here, criteria such as the duration of the residency and the child's attachment shall be taken into account. However, after the changes to the law in 2019, these criteria are not given the same weight as before, just as consideration of, for example, a refugee's attachment to the labour market and knowledge of Danish language is given the least possible weight in a revocation assessment.<sup>75</sup>

### 3.3 A PROBLEMATIC COMPARISON

The Danish practice is particularly problematic because the cases from the ECtHR which are used by the Danish immigration authorities deal with situations not directly comparable to that of Syrian refugees who have had their residence permits revoked due to changed conditions in their country of origin.

There are no judgments from the ECtHR that directly relate to the issue of when the revocation of a refugee's residence permit will violate Article 8 ECHR in cases where conditions in the country of origin have changed.<sup>76</sup> Almost all ECtHR cases that relate to the question of when revocation of a residence permit will be contrary to Article 8 deal with persons facing deportation because they have committed a crime or who have never had legal residence.<sup>77</sup> In revocation cases where a crime has been committed, the attachment to the receiving country needs to be stronger than in other cases, and a number of factors such as the seriousness of the crime must be considered.<sup>78</sup> Thus, the proportionality assessment will be different in cases involving criminal aliens – with a requirement for stronger attachment to Denmark – than in cases concerning aliens who are not criminals.

Although the Institute agrees that ECtHR judgments regarding criminal aliens may be used to aid interpretation, it is crucial that it is made very clear how these judgments are interpreted and used, and that it is emphasised that the final assessment of the revocation of a residence permit must necessarily be significantly more lenient in situations concerning changed conditions in the country of origin, rather than in situations concerning crime or illegal residency.

With current practice, the Institute finds it difficult to see how the authorities ensure that the proportionality assessment in cases involving refugees differs from the assessment of criminal aliens.

### **3.4 FAMILY LIFE: PARENTS WITH ADULT CHILDREN**

A specific challenge concerns the authorities' assessment of the Article 8 ECHR – in particular in the Danish Immigration Service – in relation to families with adult children.<sup>79</sup> The Institute finds that the authorities' assessment in these cases of when family life is protected under Article 8 ECHR and when it is not appears to be narrow and does not include all aspects of the overall unity of the family. The Institute is aware that particularly the Refugee Appeals Board has developed a practice in several cases, according to which adult children may obtain consequential status from their parents if there is a degree of dependence.<sup>80</sup> Despite this, the Institute still considers it a general challenge, especially in the Danish Immigration Service, that not all aspects of the Article 8 assessment are taken into account.

**” My father is not just my father. We are like one person with two bodies. I am 25 years old, but I still need my parents’.**

(Maryam, in her twenties. Arrived in Denmark with her father, but had her residence permit revoked, while her father was granted an extension)

In their assessment of whether the relationship between parents and their adult children constitutes family life in the context of human rights – where revocation of a residence permit would be in conflict with Article 8 ECHR – the authorities are obliged to follow ECtHR practice. Article 8 does not give parents and their adult children the right to a family life per se, but ECtHR practice includes a number of exceptions in this respect.

First of all, the ECtHR has recognised the existence of family life pursuant to Article 8 in cases where young adults without children of their own have a family life with their parents or other close relatives. The Court has, for example, found that the relationship between young adults and their parents may well involve a family life that is protected by Article 8 in cases where the young adult has not started a family of his or her own and continues to live with his or her parents.<sup>81</sup> Thus, in *Bouchelkia v. France*, the Court found that the complainant – a single and childless young man aged 20 sentenced to deportation to Algeria – had a family life pursuant to Article 8 in France.<sup>82</sup>

The Court has also recognised the existence of family life between parents and adult children in cases where there are ‘additional elements of dependence’ between parents and their adult children.<sup>83</sup> This is exemplified in *FN v. Great Britain* which concerned the deportation of a woman with depression to Uganda, after she had lived with her aunt in the UK for several years. Here, the Court found that, due to the woman’s vulnerable mental state, there was a family life between the applicant and her aunt.<sup>84</sup> However, the Court also found that the interference with the woman’s family life was proportionate to the UK’s interest in maintaining effective immigration control.<sup>85</sup> In *Kwakyie-Nti and Dufie v. the Netherlands*, the ECtHR recognised that economic dependence may give rise to additional elements of dependence between family members.<sup>86</sup>

In the case of *Senchishak v. Finland*, which concerned an elderly Russian woman’s application for family reunification with her daughter in Finland, the Court did not find that there were additional elements of dependence in the relationship. The woman arrived in Finland in 2008 and stated that she was completely dependent on her daughter due to a number of health problems. Her daughter had lived in Finland since 1988. The court found that the relationship between the two did not constitute a family life protected by Article 8 ECHR, noting that the woman and her daughter had lived separately for 20 years, and that the elderly woman also had the opportunity to receive treatment in Russia.<sup>87</sup>

The above means that the Danish authorities in a specific case shall assess the degree of actual dependence between the adults involved, based on an overall assessment of whether or not it is a family life that is protected by Article 8 ECHR.

The Danish Immigration Service’s practice today involves the separation of parents and their adult children in various ways. There are several examples of very young

adults being separated from their parents. In some situations, adult children have their residence permit revoked, while their parents retain theirs, for example because the parties have obtained different types of residence permits at different times. In other situations, parents have their residence permit revoked, while their adult children retain theirs. This may arise, for example, in situations where a son is of military drafting age (between 18 and 42) and is therefore granted convention status and the opportunity to stay in Denmark.

### **EXAMPLE OF SEPARATION OF PARENTS AND ADULT CHILDREN**

The Nazri family consists of two parents, Jalal and Noura, who are both retirees, and their seven children. Gradually, the family has grown with the arrival of nine grandchildren. The family has been in Denmark since 2015, when they fled Syria in three groups. In December 2019, the family members each received a letter from the Danish Immigration Service inviting them for individual interviews regarding the reassessment of their residence permits. The family's adult children all had their residence permits extended, while the parents were refused an extension.

It is the Institute's assessment that Danish practice, especially by the Danish Immigration Service, too often assumes that adult children and their parents do not have a family life that is protected under Article 8 ECHR and, thus, as a point of departure, does not assess that there is a relationship of dependency, unless the parties are heavily dependent on each other, for example as a result of a disability. The Ministry of Immigration and Integration also describes in the explanatory memorandum to the Aliens Act that relationships between adult children and their parents cannot be said to constitute part of the 'core of a family'. Such relationships are thus not protected by Article 8, unless there are demonstrable additional elements of dependence.<sup>88</sup>

### **EXAMPLE OF DEPENDENCE BETWEEN PARENT AND ADULT CHILDREN**

A single woman aged over 70 had her residence permit revoked by the Danish Immigration Service. She was illiterate and needed help and support from her children to cope with everyday life, including shopping, cleaning and personal care. The Refugee Appeals Board found that there was a dependency relationship between the complainant and her children, and that revoking the woman's residence permit would be contrary to her right to a family life pursuant to Article 8 ECHR.<sup>89</sup>

The Institute assesses that the practice of the Danish Immigration Service, in particular, is problematic in relation to ECtHR practice. As described above, the ECtHR's practice establishes that the relationship between parents and adult children may well constitute family life protected under Article 8 in cases where an adult child lives with his or her parents and has not started their own family, or where there is a high degree of dependence between parents and adult children. It is the Institute's assessment that the Immigration Service's current interpretation in this area is too narrow, and that a thorough assessment is not made of all those circumstances in the family's overall situation, which need to be included in the Article 8 proportionality. The result entails a risk of violating Article 8 if refugees are deported to Syria.

### 3.5 THE CHILD'S INDEPENDENT ATTACHMENT

Another concrete challenge in connection with the authorities' attachment assessment concerns revocation cases involving children. In such cases, the Danish authorities are obliged to assess the child's right to private life. However, with the introduction of Section 19a, the standards for children's attachment to Denmark have changed, and consideration of the child's interests weighs less than before when assessing whether revocation is in breach of the Article 8 ECHR.

This challenge is reinforced by the fact that an overall consideration of the best interests of the child does not seem to play a significant role in the authorities' assessment – neither at the first instance level nor at the appellate level – in spite of the fact that this consideration must always be included as a principal consideration as Denmark may be obliged to grant a residence permit based on the best interests of the child and family unity.<sup>90</sup> The ECtHR has also ruled that the child's interests are of decisive importance.<sup>91</sup> The Danish authorities should therefore place significant emphasis on the best interests of the child and the child's interests and well-being in cases involving the revocation of refugee children's residence permits.<sup>92</sup> An example is *El-Ghatet v. Switzerland* which deals with an Egyptian child's application for family reunification with his father, in which the ECtHR ruled that the Swiss authorities had not made a sufficiently balanced assessment of the child's best interests.<sup>93</sup> The Court thus emphasised that the best interests of the child assessment was too summary, resulting in a violation of the Article 8 ECHR.<sup>94</sup>

When refugees' residence permits are revoked, it will in most cases be an interference with the right to private life, as those refugees will generally have established a private life in Denmark. Since adult refugees have often spent the majority of their lives in their country of origin and, as such, can often be said to have a greater attachment to that country, the revocation of their residence permit rarely constitutes a violation of their right to private life.<sup>95</sup> However, it may be different with children who have spent a large part or all of their childhood in the host country.

**” When we arrived in Denmark, my sister suffered from anxiety. What she has experienced has taken a toll on her personality. She is afraid of loud noises, afraid of being separated from my mother. The first year my mother joined her in school every day. They did not include this in the assessment of their case. But they should have. She could deteriorate seriously’.**

(Ibrahim, young man in his twenties)

In their assessment of the child's right to private life, the Danish authorities are obliged to follow the practice of the ECtHR. In assessing whether a revocation would be in breach of Article 8, the ECtHR has placed particular emphasis on the question of whether the child has spent his or her 'formative years' in the host country and whether the child can adapt to the language and culture of the country of origin.<sup>96</sup>

In *Osman v. Denmark*, which concerned the refusal of dispensation when a residence permit had expired after a child had lived in Denmark for eight years, the ECtHR found that Denmark was obliged to grant the relevant residence permit. The child had attended a Danish school from the age of seven until approximately 14 years old and had thus spent 'the formative years' of her childhood and youth in Denmark.<sup>97</sup> This indicates that according to ECtHR's practice, the 'formative years' begin at the age of seven. In another case, *Pormes v. Holland*, the ECtHR found that a 26-year-old man who had lived in the Netherlands since he was four years old had spent 'most of his formative years there'. This judgment thus seems to indicate that the formative years begin even earlier than the age of seven.<sup>98</sup>

The ECtHR has also placed emphasis on the issue of whether the children concerned were 'of an adaptable age' and, as such, had the opportunity to adapt to new living conditions. In the case of *Salija v. Switzerland*, which concerned a family with two children aged five and nine whose father had been deported to Macedonia due to a conviction for manslaughter, the Court ruled that the two children were still 'of an adaptable age', and that the interference with their Article 8 rights was thus proportionate. The Ministry of Immigration and Integration attaches decisive importance to this judgment in their assessment of the child's attachment and the eight-year rule as described below.<sup>99</sup>

The Institute notes that the children in question in the above case were not refugees, and they had maintained cultural ties to Macedonia, having been on holiday in the country every year. Also, they had lived in Macedonia for some years prior to the ECtHR judgment.<sup>100</sup> In addition, in the specific case, the Court emphasised the fact that the age of the children in question was included as one of a number of elements in the proportionality assessment.

**” My youngest son is Danish. He was born in Denmark. [...] My children’s future depends on this. Is there any legislation that guarantees their future? If it goes on like this, I guess they can come and take away my children’s residence permit at any time. [...] The whole family’s situation depends on my residence permit’.**

(Walid, 50 years old)

The Ministry of Immigration and Integration describes in the explanatory memorandum to Section 19a how children’s right to private life shall be assessed in revocation cases:

‘[It is assessed] that, at least until the child reaches the age of eight, additional emphasis may be placed on the fact that the child will be able to easily adapt to the language and culture of the country of origin. The consequence is that, as a starting point, the child cannot be considered to have achieved independent attachment to Denmark until the child turns eight. This means that the attachment that the child has achieved to Denmark in a situation where the child is under eight years old, as a starting point, should not be included in the assessment of whether the residence permit for the child and the members of the child’s family may be revoked. It is noted in this connection that the changed emphasis on the child’s attachment in such situations does not change the fact that there may be other conditions, for example a disability or health condition, which will have to be included in the assessment. If the child has reached the age of eight, this has implications for whether an assessment of the child’s independent attachment needs to be made, of how many of the formative years of childhood and youth the child has spent in Denmark, of how long the child has gone to school during the formative years and of how long the child has resided in Denmark’.<sup>101</sup>

The above is a significant change compared to practice before 2019, where the child's attachment was given much greater weight. In the explanatory memorandum to Section 19a, the Ministry of Immigration and Integration notes that a child's formative years were previously considered to be from around 6-7 years of age to approximately 15 years of age.<sup>102</sup> With the introduction of Section 19a, it is now emphasised that a child cannot, as a starting point, be considered to have achieved an independent attachment to Denmark until he or she turns eight.

**” We were on vacation in Germany, and when my daughter saw a German flag, she burst out: “That is not our flag”. She sees Denmark as her country. She understands Arabic, but it is easier for her to speak Danish’.**

(Salma, mother to a seven-year-old daughter who has lived in Denmark since she was one-year-old. Along with the rest of her family, she has lost her residence permit)

The Institute sees it as a challenge that the Ministry of Immigration and Integration, as expressed in the explanatory memorandum, emphasises an absolute age requirement, implying that the child's attachment to Denmark before the age of eight shall not be included in the attachment assessment.<sup>103</sup>

We find that the authorities' assessment of a child's attachment, including the definition of the 'formative years', does not sufficiently consider the ECtHR's judgments in the area. It is our assessment that the Danish explanatory memorandum contradicts the ECtHR judgments which, as described above, state that the formative years begin at the age of seven, perhaps as early as the age of four.<sup>104</sup>

In addition, the explanatory memorandum lets the age requirement be decisive which, according to the Institute, cannot be inferred from the judgment. Thus, the Danish practice does not consider that the child's independent attachment shall be an overall assessment which shall include a number of factors – not just the question of age.

Based on the above, it is the Institute's assessment that there is a risk that the Danish practice is in breach of the Article 8 ECHR if refugees are deported to Syria. The Institute also believes that in case of deportation, a new Article 8 assessment is required, taking into account the children's attachment to Denmark during the period when they are in a return position.<sup>105</sup>



### **‘THE FORMATIVE YEARS’: EXAMPLE OF A DECISION FROM THE DANISH IMMIGRATION SERVICE<sup>106</sup>**

For XX, it is our assessment that he has not achieved an independent attachment to Denmark. In the assessment, we have emphasised the child’s age [approximately 12 years] and the duration of his stay in Denmark, including that he has resided in the country for six years and four months and has attended an institution and a school in Denmark. We thus assess that XX has not spent such a significant part of his life and his formative years in Denmark that XX has achieved an independent attachment to Denmark. We find that XX is still at an age where he can linguistically and culturally adapt to life in Syria. In this connection, we have given weight to the fact that XX speaks Arabic and that he will be able to take up residence in Syria with you [parent], who was born and raised in Syria, and that through your linguistic and cultural attachment to Syria you can support XX’s residence in the country. We therefore assess that a refusal to extend your child’s residence permit will not be in breach of your child’s right to private or family life, cf. Article 8 ECHR, or Denmark’s other international obligations, including the Convention on the Rights of the Child’.

Furthermore, the practice of the authorities does not seem transparent, and at times unpredictable. Among the publicly available decisions on, for example the Refugee Appeals Board’s website, one can thus find examples of cases that appear to be comparable, but which have different outcomes (see box for an example).

### **DECISIONS FROM THE REFUGEE APPEALS BOARD REGARDING CHILDREN’S RIGHT TO PRIVATE LIFE<sup>107</sup>**

In a decision from 28 October 2021 regarding a Syrian woman with two accompanying children, a daughter aged 13 and a son aged eight, the Refugee Appeals Board assessed whether the family was protected from revocation by Article ECHR. The family arrived in Denmark in November 2015 and was granted a residence permit under Section 7 (3) in July 2016. The children attended school in Denmark. The Refugee Appeals Board concluded that the two children had not acquired a special attachment to Denmark, and that the revocation of their residence permit was therefore not in breach of Article 8, even though the daughter had lived in Denmark from the age of seven to 13.

In another decision from 29 October 2021, the Refugee Appeals Board assessed whether a Syrian woman with two daughters, one aged 13 and an adult daughter aged 20, was protected from revocation by Article 8 ECHR. The family arrived in Denmark in November 2015 and was granted a residence permit under Section 7 (3) in July 2016. The Refugee Appeals Board concluded that the 13-year-old daughter spent a significant part of her formative years in Denmark, and that refusing to extend the complainant’s residence permit would be in breach of Denmark’s Article 8 obligations.

### 3.6 PROCEDURE FOR ASSESSMENT OF ARTICLE 8 AT THE APPEAL LEVEL

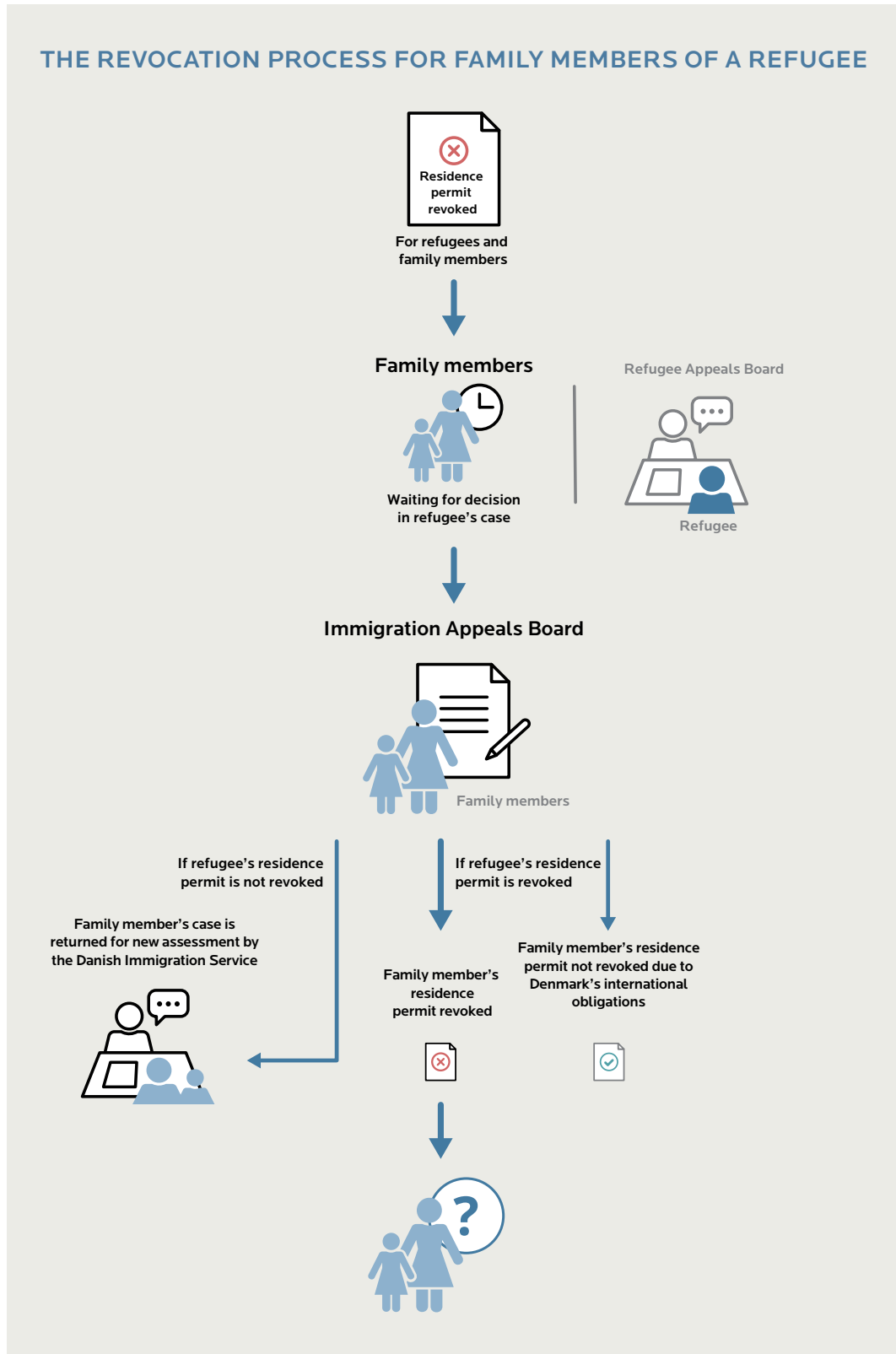
A third concrete challenge we have identified concerns the procedures for assessing family life in cases that involve a refugee and his or her family members. Article 8 ECHR requires the authorities to make an overall assessment of family life. However, the applicable competence rules mean that the assessment at the appellate level is divided. The Refugee Appeals Board handles the refugee's case, while the Immigration Appeals Board handles the family members' case. Thus, an overall assessment of the family is not carried out at the appellate level.<sup>108</sup> This is problematic, as it is assumed under Article 8 that attachment to Denmark shall be weighed via an overall assessment of the family and all its members.<sup>109</sup>

In situations where a refugee needs to have his or her residence permit reassessed with a view to possible revocation, the Danish Immigration Service makes an assessment of the family's overall attachment to Denmark as the authority of first instance. This ensures an overall assessment in relation to Article 8, as required by the ECHR.

The challenge arises at the appellate level, where the assessment is split so that the Refugee Appeals Board handles the refugee's case, and the Immigration Appeals Board handles the case of reunified family members, i.e., two different Boards handle one unified family. The two procedures are also staggered. The Refugee Appeals Board first deals with the refugee's case, including an assessment of the person's attachment to Denmark, but without including the refugee's family members in this assessment. If the Refugee Appeals Board upholds the decision of the Danish Immigration Service and assesses that a revocation does not violate Article 8, the Immigration Appeals Board will subsequently assess the family members' case, including an assessment of their attachment to Denmark. If the Immigration Appeals Board upholds the decision of the Danish Immigration Service, the family's overall situation has thus not been assessed at any time at the appellate level.

If the Immigration Appeals Board assesses that the family members have a strong attachment to the country and thus may retain their residence permit in Denmark under Article 8 ECHR, the Refugee Appeals Board will resume the case of the refugee in question and make another assessment in relation to Article 8. The Article 8 assessment may thus, at least in theory, be made three times at the appellate level. The Immigration Appeals Board informs us, however, that the Board has not reversed any cases with reference to international obligations as of 17 March 2022.<sup>110</sup>

## THE REVOCATION PROCESS FOR FAMILY MEMBERS OF A REFUGEE



In the Institute's view, the above practice is questionable because the Immigration Appeals Board and the Refugee Appeals Board do not make an overall assessment of the family's attachment, which is a prerequisite for being able to assess overall attachment pursuant to Article 8 ECHR. The whole family unit thus requires an overall assessment of all family members, including a thorough review of a number of factors of factual, psychological and medical nature.<sup>111</sup> Parents and siblings in a family may, for example, derive a right to remain from a child who has gained independent attachment to Denmark, or a family member who needs special health care. If family life has been established and is protected pursuant to Article 8, it should be assessed as a whole, which largely does not happen under the current practice with families assessed by two different Boards.

At the same time, it is the Institute's experience that the process is confusing and not transparent for the parties involved, leading to an overall protracted case processing time. In the Institute's view, this seems procedurally unnecessary and concerning from a human rights perspective, as the process does not ensure respect for the involved parties' right to family life.<sup>112</sup>

#### **EXCERPT FROM A DECISION BY THE REFUGEE APPEALS BOARD**

The Refugee Appeals Board notes that the spouse's and daughter's cases regarding the revocation of residence permits as family members are pending in the Immigration Appeals Board which has the competence to assess the individual circumstances of the applicant's spouse and daughter, hereunder in relation to Article 8 of the European Convention on Human Rights. In continuation of this, the Refugee Appeals Board wishes to state that the Board – if the Immigration Appeals Board decides not to revoke the residence permit of the complainant's family members as a reunified family – of its own motion will resume the processing of the present case with a view to a renewed assessment of whether refusal to extend the complainant's residence permit will be contrary to Denmark's international obligations. Likewise, the Refugee Appeals Board shall instruct the complainant that it will be possible to apply for a re-opening of the case if, during the processing of the family members' cases in the Immigration Appeals Board, new information emerges that may be of importance to the complainant's case, hereunder for the assessment pursuant to Article 8 of the European Convention on Human Rights. The Refugee Appeals Board notes that at the hearing in the Board it was stated that the daughter [in the winter of 2021/2022] had applied for asylum. In continuation of this, the Refugee Appeals Board shall advise that, if the complainant's daughter is granted a residence permit pursuant to Section 7 of the Aliens Act, the Board will of its own motion resume the processing of the present case with a view to a renewed assessment of whether refusal to extend the complainant's residence permit will violate Denmark's international obligations.<sup>113</sup>

### 3.7 LACK OF TRANSPARENT PRACTICE

The immigration authorities' omission of balancing relevant human rights criteria, as described above, is reinforced by a lack of clarity and transparency around practice.

In the assessment of whether the revocation of a refugee's residence permit is compatible with the Article 8 ECHR, the Danish Immigration Service and the two Boards are, as previously mentioned, obliged to monitor the practice of the ECtHR in order to be able to assess the outer limits of Denmark's international obligations in relation to the Article 8 ECHR. This is described in explanatory memorandum at the adoption of Section 19a in 2019:

'[It is presumed] that the immigration authorities continuously monitor the practice of particularly the ECtHR and adapt their practice accordingly.'<sup>114</sup>

However, it is difficult for the Institute to see which practice from the ECtHR is emphasised in the Danish practice. In the explanatory memorandum from 2019, it was stressed that the authorities are expected to prepare a memo regarding this issue:

'The immigration authorities shall continuously monitor developments in the decisions by the European Court of Human Rights and other similar international bodies and, in this connection, it is foreseen that they will prepare a memo that will be continuously updated in accordance with new legal practice in the field.'

The immigration authorities are thus expected to monitor practice and prepare and continuously update a dynamic memo on relevant case law for use in the processing of revocation cases pursuant to the proposed provision in Section 19a of the Aliens Act. The memo is to be published on the website of the immigration authorities.'<sup>115</sup>

**” We do not have a book with all the rules. Each time new rules are introduced, they gamble with us and our lives’.**

(Zahra, a young woman in her twenties)

However, key parts of this memo have not yet been finalised. The memo was published in June 2020 and includes an introduction to the ECHR as well as a description of the scope of application for Article 8. However, at this time (May 2022), the part of the memo that relates to the ECtHR's practice in relation to foreign nationals' rights to private and family life has not yet been completed but is listed as 'under preparation'.<sup>116</sup>

Losing a residence permit is particularly disruptive for the individual refugee and his or her family, as described in the previous chapters. It is important that decisions on matters of such crucial importance are based on legal guarantees of clarity, predictability and proportionality. The lack of clarity in relation to case law means that it is difficult to gain insight into the way in which the Danish Immigration Service and the two Boards assess cases of revocation and which judgments they rely on in their interpretation. It is problematic in relation to the rights to due process of refugees that neither they nor their representatives have access to information about the practice the authorities may be expected to follow when they have to make decisions pursuant to Article 8 ECHR in connection with revocation cases.

### 3.8 RECOMMENDATIONS

Based on the above analysis, the Institute for Human Rights recommends that:

- The Danish Immigration Service ensures a thorough human rights assessment of the right to respect for private and family life pursuant to Article 8 ECHR in cases concerning adult children and children's independent attachment, respectively.
- The Ministry of Immigration and Integration takes the initiative to change the competence rules pursuant to the Aliens Act so that the Refugee Appeals Board will process revocation cases for both refugees and family members at the appeal level, with the aim of ensuring the overall assessment of family life required under Article 8 ECHR.
- The Danish Immigration Service, the Immigration Appeals Board and the Refugee Appeals Board as soon as possible finalise the memo from June 2020 with updated legal practice from the ECtHR regarding the right to respect for family and private life, with a view to making practice in this area more transparent, thereby increasing due process protections for refugees.
- The Danish Immigration Service, for example via nyidanmark.dk, publish clear and unambiguous information about the criteria for revoking a residence permit, with the aim of making practice in the area more transparent, thereby increasing due process protections for refugees.

## CHAPTER 4

# GUIDANCE AND INFORMATION

### 4.1 INTRODUCTION

The previous chapter focused on the due process challenges linked to the authorities' assessments in revocation cases in the light of Denmark's international obligations. The next three chapters will focus on the process that precedes these assessments – the so-called revocation process. We identify and analyse some of the most pressing due process challenges that may arise in this process, from an administrative law perspective. Specifically, we discuss refugees' due process rights in relation to the authorities' obligation to provide guidance (chapter 4), consultation of the parties (chapter 5) and case processing times (chapter 6).

This chapter deals with the authorities' obligation to provide guidance. In decision cases, Danish authorities are obliged to provide guidance to the affected residents. The obligation to provide guidance is particularly important in relation to decisions that have far-reaching consequences for the parties involved. This applies, for example, to decisions on the revocation of refugees' residence permits. There may also be a heightened obligation to provide guidance in relation to persons who are in a vulnerable position, such as refugees.

The Public Administration Act does not provide any specific instructions in relation to the content and form of the guidance; the important thing is that the guidance ensures that the resident does not lose any rights due to errors, lack of knowledge or misunderstandings. In relation to the revocation process, it may, for example, be a matter of whether the affected refugees understand the scope of their case, whether they have been sufficiently informed about the basis of their own case, and whether they are aware of their rights during the process.

It is the Institute's assessment that a heightened obligation to provide guidance applies in revocation cases as the decision may have far-reaching consequences for the refugees, who may lose their basis for residence in Denmark. At the same time, it is our assessment, based among other things on the interviews we have conducted, that refugees generally do not have the required knowledge of applicable legal rules, latest practice and the revocation process in general. It appears from our interviews that many have had difficulty understanding the procedure and the consequences of the revocation process, and that they do not feel that they have received sufficient guidance.

The Institute for Human Rights finds, in relation to the authorities' guidance, that four issues in particular are problematic, i.e.:

- Insufficient information in relation to changes in law and practice in the area
- Inadequate guidance in relation to the interview at the Danish Immigration Service
- Language barriers
- Inconsistency between the authorities' guidance and practice.

On this basis, the Institute recommends that the authorities' guidance be strengthened to better ensure refugees' due process rights. The concrete recommendations are presented in detail at the end of this chapter. In summary, the Institute recommends that:

- Standards and criteria for revocation be made publicly available
- All information from the authorities be translated into the recipient's native language
- The affected refugees be adequately informed about the extent of the case and their own rights when invited for the first interview.

#### 4.2 WHAT DOES THE LAW SAY?

An administrative authority is obliged – to the extent necessary – to provide guidance and assistance to residents in decision-making cases, cf. Section 7 (1) of the Public Administration Act. In some cases, the obligation to provide guidance also follows from supplementary legal principles or principles of good administrative practice. The purpose of the obligation to provide guidance is to meet the residents' information needs and avoid that the residents are exposed to loss of rights due to errors, lack of knowledge or misunderstandings.<sup>117</sup>

The obligation to provide guidance does not only apply to persons who of their own free will approach the authority within its area of responsibility.<sup>118</sup> The authority may also have an obligation to provide guidance in situations where guidance has not been requested, if it is deemed relevant and natural for the case, and if there is a risk that the person concerned may lose rights as a result of lack of knowledge of a certain matter.<sup>119</sup>

If the rules are complicated, or if the case may have particularly far-reaching consequences for the resident concerned, there are stricter requirements regarding the guidance.<sup>120</sup> Also, an authority shall provide guidance if it is obvious that the party in question suffers from some misconception that may be expected to have major consequences for that person. At the same time, the authority shall carry out a concrete assessment of whether there are aspects of the individual's situation, hereunder the person's age and communicative abilities, which may contribute to a heightened obligation to provide guidance.<sup>121</sup>



Certain groups of the population may need special guidance and assistance in connection with personal matters. For example, persons with disabilities or missing or limited language skills or others who are in a vulnerable situation. When you are a refugee, you are in a vulnerable position – you are not necessarily fluent in the Danish language, you are not familiar with Danish legislation or practice, and you do not necessarily have a large network or knowledge of where to seek advice and support. A heightened obligation to provide guidance therefore applies in cases involving refugees, including cases concerning the revocation of a residence permit.

There are no provisions in the Public Administration Act that expressly regulate the question of how administrative authorities shall act when a party does not speak Danish, or the case involves documents etc. in another language. However, it follows from the obligation to provide guidance and from the doctrine of inquisitorial procedure that the authority is obliged to provide the necessary interpretation assistance when the person in question does not sufficiently command the Danish language and to ensure that relevant documents are translated into an understandable language.<sup>122</sup> The requirement for an understandable language is coupled with the requirement for good administrative practice, which dictates that the authority should write to the resident in an easy, precise and understandable language and avoid subject-specific phrases and expressions that cannot immediately be expected to be understood by outsiders.<sup>123</sup>

The obligation to provide guidance under Section 7 of the Public Administration Act does not require the authorities to generally provide guidance on practice or rules in the area. However, the Ombudsman has stated that it will be in accordance with the principles of good administrative practice to have an overview on the authorities' website which informs residents about the applicable rules and practices in an easy, clear and understandable language.<sup>124</sup>

In a specific case from 2008 regarding the possibility of family reunification according to the EU rules, the Parliamentary Ombudsman expressed criticism of the then guidance on the website [nyidanmark.dk](http://nyidanmark.dk), which belongs under the Danish Immigration Service. The Ombudsman criticised the guidance for being misleading and insufficient. In that context, the Ombudsman referred to the fact that the more complicated an area of law is, the greater are the demands to the content of the guidance. This applies to both oral and written guidance of the resident and any supplementary written material that is handed out (or that can be found on a website to which the authorities refer).<sup>125</sup>

### **GOOD PUBLIC ADMINISTRATION PRACTICE**

Good public administrative practice is a set of norms which complements applicable rules in the Public Administration Act and – in the words of the Ombudsman – is considered to be an ethical set of rules for the behaviour of the authorities. Good administrative practice may, e.g., be about the way in which residents experience a process from the authorities, and whether this process has been considerate and confidence-inspiring. Bad administrative practice may, e.g., be that you receive a letter that is difficult to understand, that you are greeted in an unpleasant tone, or that it is difficult to get in touch with the relevant authority. All of this may contribute to a weakening of confidence in the authority. One of the duties of the Ombudsman is to monitor whether the authorities have acted contrary to good administrative practice pursuant to Section 21 of the Ombudsman Act.<sup>126</sup>

### **4.3 WHAT ARE THE RESPONSIBLE AUTHORITIES DOING?<sup>127</sup>**

The Danish Immigration Service's guidance to the individual refugees affected by the revocation process primarily consists of written communication, although it is also possible to get (limited) guidance by telephone. Particularly important are the invitation letter and the decision letter from the Immigration Service. Brief instructions are also provided during the interview at the Danish Immigration Service, where the refugee is informed about the purpose of the interview. This is dealt with in chapter 5 on consultation of parties.

In the invitation letter regarding an interview at the Danish Immigration Service, the person concerned is briefly informed about the reason for initiating a revocation case. At the same time, it is mentioned that the person in question at the interview must provide information about his or her motive for seeking asylum. In addition, the letter contains some practical information as well as a request to submit a form with personal information about work, school, education, etc.

## UDDRAG FRA INDKALDELSBREV



Udlændinge- og  
Integrationsministeriet

Udlændingestyrelsen

[REDACTED]  
[REDACTED]  
[REDACTED]

### Du indkaldes til samtale hos Udlændingestyrelsen

Udlændingestyrelsen har modtaget nye oplysninger om den generelle sikkerhedssituation i Rif Damaskus, Syrien, som medfører, at vi skal vurdere, om der er grundlag for at inddrage din opholdstilladelse.

For at kunne gøre dig bekendt med- og give dig mulighed for at kommentere på oplysningerne, indkaldes du til samtale hos Udlændingestyrelsen. I forbindelse med samtalen vil du ligeledes skulle oplyse om dit oprindelige asylmotiv.

#### Tid og sted

**Adresse:** Udlændingestyrelsen, Center Sandholm, Sandholmgårdsvej 40, 3460 Birkerød

**Dag:** [REDACTED]

**Dato:** [REDACTED]

**Starter klokken:** 09:00

**Slutter klokken:** Det er ikke muligt at sige, hvor længe samtalen varer. For en sikkerheds skyld beder vi dig afsætte hele dagen til samtalen.

Der vil være en tolk til rådighed under samtalen.

#### Hvad skal du sende til os inden samtalen

Du bedes udfylde og underskrive vedlagte oplysningsskema om dine personlige forhold. Du bedes sende skemaet i udfyldt stand til os inden du kommer til samtale.

Du bedes også sende dokumentation for evt. uddannelse, arbejde, helbredsforhold mv. inden samtalen.

Skemaet og dokumenterne kan sendes via vores kontaktformular på [www.nyidanmark.dk](http://www.nyidanmark.dk), E-boks eller med almindelig post til: Farimagsvej 51 A, 4700 Næstved.

[REDACTED]  
Udlændingestyrelsen

Farimagsvej 51A  
4700 Næstved  
Tlf.: 35 36 66 00  
[www.nyidanmark.dk](http://www.nyidanmark.dk)

Person ID: [REDACTED]  
Sagsnr.: [REDACTED]  
Sagsbehandler: [REDACTED]

Side [REDACTED]

## **EXCERPT FROM INVITATION LETTER:**

### **You are invited to an interview at the Danish Immigration Service**

The Danish Immigration Service has received new information about the general security situation in Rif Damascus, Syria, which means that we need to assess whether there is any basis for revoking your residence permit.

To inform you about this and give you an opportunity to comment on the information you are invited to an interview at the Danish Immigration Service. In connection with the interview, you will be asked to explain your original asylum motive.

### **Time and place**

**Address:** The Danish Immigration Service, Center Sandholm, Sandholmgårdsvej 40, 3460 Birkerød

### **Date:**

**Starts at:** 09:00

**Ends at:** It is not possible to say how long the interview will last. To be on the safe side, we ask you to reserve the entire day for the interview.

An interpreter will be present during the interview.

### **Material you need to send to us prior to the interview**

You are asked to fill in and sign the attached form about your personal conditions. Please send the completed form to us prior to the interview.

You are also asked to send us documentation for education, work, health etc. prior to the interview.

The form and the documents may be submitted via our contact form at [www.nyidanmark.dk](http://www.nyidanmark.dk), E-boks or by regular mail to: Farimagvej 51 A, 4700 Næstved.

After the interview (provided that the process only requires a single interview), the refugee in question will receive a written decision in Danish in e-Boks, conveying that the residence permit is either maintained or revoked. The decision letter contains information about the reasons, relevant legal rules and the further process regarding an appeal to the Refugee Appeals Board. The decision letter varies in length, but will typically be 10-20 pages long. If a residence permit is revoked, it is stated in the decision letter that the case will automatically be forwarded to the Refugee Appeals Board, which will make a final decision on whether the residence permit should be revoked or not. Furthermore, the refugee is informed that the person in question 'still has the right to stay, work and study in Denmark until a decision has been made in your appeal case'.

In this connection, the immigration authorities also inform potential employers that the residence permit has been revoked, cf. Section 44a (12) of the Aliens Act. 12.

At the same time, any reunified family members receive a letter stating that their residence permits have been revoked as a consequence of the refugee's (key person) residence permit being revoked. This letter also contains information on the reasoning, relevant legal rules and the further process regarding a complaint to the Immigration Appeals Board. However, a family reunified person is informed that he or she 'as a starting point' must leave Denmark after 30 days. It is also stated that you may appeal the decision to the Immigration Appeals Board within eight weeks, and that 'The Immigration Appeals Board will decide as soon as possible whether you will be able to stay and work in Denmark while the complaint is treated in the Immigration Appeals Board'.

In addition to individual guidance and information, the Danish Immigration Service also provides brief information on important changes in the area of asylum and immigration on the website [nyidanmark.dk](http://nyidanmark.dk) and via [us.dk](http://us.dk). However, there does not seem to be any well-established or consistent practice regarding the type of information that is posted on the website. Thus, practical and comprehensible information is given to persons who wish to apply for asylum, with a list of the relevant criteria,<sup>128</sup> while such guidance is not given in relation to the issue of revocation, although the legal basis here is more complicated and thus must be expected to be more difficult to understand for the individual.<sup>129</sup>

## UDDRAG FRA AFGØRELSESBREV TIL FAMILIESAMMENFØRT FAMILIEMEDLEM

### 1. Asylkontor

██████████  
██████████  
██████████

  
**Udlændinge- og  
Integrationsministeriet**  
Udlændingestyrelsen

### Din opholdstilladelse kan ikke forlænges

Udlændingestyrelsen har truffet afgørelse om, at din opholdstilladelse efter udlændingelovens § 9, stk. 1, nr. 1, som du fik den ██████████ 2015 ikke kan forlænges, fordi du ikke længere opfylder en af betingelserne for din opholdstilladelse.

### Hvad betyder det for dig?

Du har ikke længere ret til at opholde dig i Danmark, fordi vi har nægtet at forlænge din opholdstilladelse.

Du skal derfor som udgangspunkt udrejse af Danmark senest den ██████████ 2021.

Du kan klage over afgørelsen til Udlændingenævnet. Se mere herom i afsnittet "Du kan klage over afgørelsen" nedenfor.

Hvis du ikke forlader Danmark frivilligt, kan du blive udsendt tvangsmæssigt.

Du kan også blive udvist og straffet for ulovligt ophold i Danmark. Hvis du bliver udvist af Danmark, betyder det, at du får forbud mod at rejse ind i alle EU- og Schengenlande, herunder Danmark, i op til 2 år.

Hvis du bliver udvist, vil du blive indberettet i Schengeninformationssystemet (SIS) som uønsket i Schengenlandene.

SIS er et fælles informationssystem til brug for udveksling af oplysninger mellem Schengenlandene.

Der foretages rutinemæssigt udrejsekontrol i sager, hvor der er fastsat en udrejsefrist, medmindre vi senest 1 måned efter din udrejsefrist har modtaget dokumentation for, at du har forladt Danmark. Dokumentation kan fx være kopi af ud- eller indrejsestempel i dit pas, eller lignende dokumentation.

Du skal sende dokumentationen til Udlændingestyrelsen, Farimagsgvej 51A, 4700 Næstved. Husk at skrive sagsnummer og personID.

Udlændingestyrelsen kan samkøre oplysninger fra Det Centrale Personregister (CPR), Bygnings- og Boligregistret (BBR) og indkomstregistret med vores egne

██████████ 2021  
Udlændingestyrelsen

Farimagsgvej 51A  
4700 Næstved  
Tlf.: 35 36 66 00

[www.nyidanmark.dk](http://www.nyidanmark.dk)

Person ID: ██████████  
Sagsnummer ██████████  
Sagsbehandler: ██████████

## **EXCERPT FROM DECISION LETTER TO REUNIFIED FAMILY MEMBER**

### **Your residence permit cannot be extended**

The Danish Immigration service has decided that your residence permit pursuant to the Aliens Act Section 9 (1) (i) which you were granted on ..... 2015 cannot be extended because you no longer fulfil one of the conditions for your residence permit.

### **What does it mean to you:**

You are no longer entitled to stay in Denmark because we have refused to extend your residence permit.

As a starting point, you thus need to depart from Denmark no later than ..... 2021.

You may complain about the decision to the Immigration Appeals Board. Read more about this in the below paragraph 'You may complain about the decision'.

If you do not leave Denmark voluntarily, you may be forcibly deported.

You may also be deported and punished for illegal residence in Denmark. If you are deported from Denmark, you will be prohibited from entering all EU and Schengen countries, hereunder Denmark, for up to two years.

If you are deported, you will be registered in the Schengen Information System (SIS) as unwanted in the Schengen countries.

SIS is a common information system used to exchange information among the Schengen countries.

There will be routine departure control in cases where a departure date has been set unless, no later than one month after your departure date, we have received documentation that you have left Denmark. The documentation may, e.g., be a copy of the departure or entry stamp in your passport or similar documentation.

You must send the documentation to the Danish Immigration Service, Farimagvej 51A, 4700 Næstved. Remember to include your case No. and personal identification number (CPR).

The Danish Immigration Service may correlate the information from the Danish Central Person Register (CPR), the Building and Housing Register (BBR) and the income register with our own ...

#### 4.4 WHAT ARE THE CHALLENGES?

Based on our analysis of relevant administrative law and practice in the area as well as interview data on refugees' own experiences, we have identified a number of aspects of the authorities' guidance that we believe pose challenges for their due process rights during the revocation process. We have particularly focused on the first part of the revocation process, where the affected refugee is not represented by a lawyer and therefore needs to seek guidance on applicable rules and practice in the area themselves.<sup>130</sup>

The challenges we have identified, which are explained below, are as follows:

- Insufficient general orientation in relation to changes in law and practice in the area
- Inadequate guidance in relation to the interview at the Danish Immigration Service
- Language barriers
- Inconsistency between the authorities' guidance and practice

##### 4.4.1 GENERAL INFORMATION ABOUT CHANGES IN LAW AND PRACTICE

The Institute finds that the authorities' general information and guidance on changes in law and practice in the area is lacking.

When Project Damascus was initiated, the authorities did not provide any targeted information about it to Syrian refugees in Denmark. Information about the changes in the law was posted on the website [nyidanmark.dk](http://nyidanmark.dk), but nothing was done to ensure that this information reached the target group, for example through a letter or other forms of information campaigns targeted at Syrian refugees.

The people we have spoken to all say that they first heard about the project from family, friends or the media. The lack of information from the authorities has given rise to unnecessary confusion and anxiety among Syrian refugees. Especially in the beginning, many were uncertain what Project Damascus was about, whether it would affect them and, if so, what it would mean.

The lack of information has not only caused anxiety among the refugees who were at risk of losing their residence permit (i.e., refugees from Damascus and Rif Damascus with a residence permit under Sections 7 (2) and (3)), but also among Syrian refugees in general. Ali, who himself has convention status, says: 'You do not feel safe. I don't know if they'll come after me in two years' time'. Khalil, whose grandmother had her residence permit revoked, says: 'Everyone thinks: "It's our turn next time"'.<sup>131</sup>

Some say that they were not aware of their own asylum status, or of the difference between the various types of status, which contributed to further uncertainty. Yousef says that upon his arrival in Denmark he was not given any guidance in relation to the various forms of asylum status and their meaning.<sup>131</sup> Aida says that her father, in



his asylum interview, asked about the difference between Section 7 (1) and Section 7 (2):

**‘And then the case manager says: “It’s almost the same. There is almost no difference”.’**

It is the Institute’s assessment that the Danish Immigration Service to a greater extent should inform and guide not only the individually implicated parties, but also the refugees who are not necessarily directly affected by changes in law and practice. As described above, according to the Public Administration Act, the authorities do not have any legal obligation to inform about changes in law or practice, but according to good public administrative practice, the authorities should at least post an overview on their website that, in easy, clear and understandable language informs residents about the applicable rules and practices.<sup>132</sup>

#### **4.4.2 GUIDANCE IN RELATION TO THE INTERVIEW AT THE DANISH IMMIGRATION SERVICE**

Another challenge concerns the guidance which refugees receive in connection with the interview at the Danish Immigration Service, where it is assessed whether a refugee’s residence permit should be revoked or not.

The invitation letter for the interview contains only sparse information about what the interview is about (see box above). There is, for example, no information on the criteria which will form the basis for the assessment of whether the person’s residence permit may be revoked. Also, there is no guidance on how to prepare for the interview, for example by re-reading the minutes from the first asylum interview. The letter does not contain any information either about where to turn to for legal guidance, assistance and other support during the process.<sup>133</sup>

The lack of guidance means that there is a risk that refugees are not sufficiently informed about the purpose of the interview so they cannot prepare and thus look after their own interests in the case.

Among the people we have spoken to, several tell us that they did not know exactly what the purpose of the interview was. Maryam, a young woman in her twenties, says, for example, that it was not till the interview at the Danish Immigration Service that she understood what it was all about:

**‘I didn’t know that they wanted to revoke my residence permit [...]. I didn’t think they would send me home. So, I went to the interview [...]. During the interview, I began to understand what it was all about’.**

Several of our interviewees also tell us that, prior to the interview, they believed that the purpose was primarily for them to demonstrate whether they were integrated in Denmark. The fact that you have to fill in a form with information

about, among other things, attachment to Denmark (hereunder information about work, education, leisure activities and knowledge of Danish) may contribute to this misunderstanding.

Zahra, a young woman in her twenties, says that she was convinced that she would get her residence permit extended precisely because she considered herself well integrated:

**‘I thought 100 percent that they would say yes to an extension. I am active in this country – they do not pay me. I work in a supermarket as a shop assistant; I have a full-time job. In Syria, I studied at the university; I was against Assad. I thought they would look at that too. Of course, they would accept me right away’.**

In other words, the lack of guidance prior to the interview means that some were unprepared for the fact that the degree of attachment to Denmark was given relatively low weight in the assessment of whether their residence permit could be revoked, and that questions about, e.g., asylum motive and the security situation in Syria are much more important. This has great significance for how the interview is experienced by the refugees. This is discussed in more detail in the following chapter on consultation of parties.

The Institute assesses that there is a need for more detailed guidance prior to the interview at the Danish Immigration Service. According to the Institute, it is both natural and relevant for the refugee who is going in for a revocation interview to be made aware of the precise purpose and content of the interview, hereunder that the original asylum interview, which in some cases dates back several years, is important. The Institute further draws attention to the fact that there are stricter requirements regarding the guidance from authorities if the rules are complicated or if the case may have particularly far-reaching consequences for the resident.

**” There is so much information [in the letters you receive], but there is nothing about who can help you. Or information about the course of the process’.**

(Laila, young woman in her twenties)

#### 4.4.3 LANGUAGE BARRIERS AND UNCERTAINTIES

A third challenge in relation to the authorities' guidance in connection with the revocation process concerns the language in which the guidance is provided. As mentioned above, it is clear both from the obligation to provide guidance and from the doctrine of inquisitorial procedure that the authorities are obliged to ensure that relevant documents are translated into an understandable language, formulated in an easy and understandable manner without the use of unnecessary subject-specific expressions or phrases that cannot be expected to be immediately understood by outsiders.<sup>134</sup>

However, many of the refugees we have spoken to say that they find it difficult to understand the letters they receive from the authorities. For some, it is about the fact that their knowledge of Danish is not sufficient for them to be able to read letters in Danish. Ibrahim says: 'Now I'm lucky that I can understand the letters, but if I wasn't there, I don't know what my family would do'. He says that he often has to help not just family members, but also friends and acquaintances to translate and understand letters from the authorities. 'I always try to help. Imagine if it was my own family'.

The Institute considers it to be a significant challenge that both the invitation letter and the decision letter from the Danish Immigration Service are in Danish, especially in light of the fact that the letters often contain complicated legal information and that at least some refugees do not have sufficient knowledge of Danish to be able to understand the contents of the letters. We note that letters during the asylum process (after arrival in Denmark) are translated into the native language of the persons in question, so it must be assumed that there are no practical obstacles to translating relevant letters during the revocation process.

The linguistic challenges also apply in relation to the legal language used in the letters. The guidance must naturally be legally correct, but it should also be provided in a way that ensures that the person in question understands the guidance and the legal basis. However, several of the people we have spoken to say that they had difficulty understanding the often-complicated legal language in which the letters are written. 'We understood the words, but we did not understand the meaning of the letter', says Amirah, a woman in her 50s.

The Institute sees this as particularly problematic in relation to the letter to reunified family members. As described above, on page 1 of the letter, you are told that you 'as a starting point' have to leave the country within 30 days. This information is followed by a section that describes the consequences of not leaving the country voluntarily, including the risk of forced deportation and punishment for illegal residence in Denmark (see box for excerpt of the letter). This is all legally correct, but in practice it will almost never happen because the case of reunified family members will depend on the family member who has been granted asylum, and that case will rarely (if ever) be decided within 30 days (see box for a description of the process).<sup>135</sup>

However, the information that you have to leave the country within 30 days causes great panic among many. At this point in the process, the refugee with whom the family member has been reunified has had a lawyer appointed by the Refugee Appeals Board, and when the family meets with this lawyer, the lawyer will be able to explain the proper context of the case. But it can take time before you meet your lawyer, and until then many people live with unnecessary anxiety and uncertainty.

Some even choose to leave the country at this point in the process. One of the families we spoke to, chose to leave immediately after they received the letter from the Danish Immigration Service. The eldest daughter in the family, Aida, says:

**‘All others were rejected by the Refugee Appeals Board. We just thought it was a waste of our time. If they don’t believe us the first time, why should they believe us the second time. It was only me and my father who could go in front of the Refugee Appeals Board. The rest of the family, who are family reunified, had one month to leave the country’.**

The family fled to another EU country, where they applied for asylum. They were refused asylum and were sent back to Denmark, where they now have to start over in the asylum system. Aida says that they did not know the consequences of their action:

**‘No one has really told us anything. We just know we have to start all over again. My education does not count, my father’s work does not count. [...] Because we have been away from Denmark for over six months. We didn’t know that either. No one told us that’.**

The Institute considers that the authorities, especially in connection with the dissemination of complicated legal information, should ensure that this information is understood correctly by the target group, for example through dialogue with representatives of the target group.

#### **4.4.4 INCONSISTENCY BETWEEN GUIDANCE AND PRACTICE**

Finally, the Institute sees a challenge in relation to the fact that the authorities’ guidance in certain areas seems to be contradicted by rules and practice in the area. This applies specifically to the issue of refugees’ right to work while they await a decision from the Refugee Appeals Board.

Refugees with a residence permit pursuant to Section 7 (2) or Section 7 (3) receive clear information in their decision letter from the Danish Immigration Service that they have the right to work and study while they await a decision from the Refugee Appeals Board. However, the current rule that the Danish Immigration Service shall notify the employer at this stage in the process creates great confusion.

Some of the people we have spoken to say that the notification from the Danish Immigration Service created doubts among their employers. Maryam, who had a student job during her education, says:

**‘My district manager came up to me and said: “I received a letter that your residence permit has been refused. What shall I do?” I said to him: “Yes, but it also says here in this letter that I am still permitted to work”’.**

In some cases, this has meant that people have lost their jobs because the employer (erroneously) believed that they no longer had the right to work. Hafsa, aged 19, says:

**‘I got fired from my part-time job because my boss says he’s afraid of getting fined, and he can’t understand the documentation I’ve received from my lawyer’.**

For family reunified persons, the situation is even more confusing. Their case is not automatically appealed to the Immigration Appeals Board and, therefore, they do not immediately have the right to continue working following the Immigration Service’s decision. In the decision letter, family reunified persons are informed that they may complain about the decision, and that the Immigration Appeals Board will decide whether they can work while the appeal is being processed. This leaves many at a loss as to what to do about their work and education until they receive a response to their complaint, which may be a lengthy process. The fact that the authorities notify their employer before the complaint has been processed contributes to further uncertainty in relation to whether you have the right to work or not.

The Institute emphasises that it is crucial that the authorities ensure that there are no misunderstandings about the rights of refugees and family reunified persons during the revocation process which may contribute to creating unnecessary uncertainty for the individual refugee. The Institute considers it inappropriate that complaints from reunified family members are not automatically given suspensory effect.

#### 4.5 RECOMMENDATIONS

Based on the above, the Institute for Human Rights recommends that:

- The Danish Immigration Service, for example via [nyidanmark.dk](http://nyidanmark.dk), publish clear and unambiguous information about the criteria for revoking a residence permit with the aim of making practice in the area more transparent, thereby increasing refugees' due process rights.
- During the revocation process, the Danish Immigration Service provide written information to the refugee in question – and any family members – in their native language and in Danish, with the aim of giving the parties involved a better opportunity to understand the process and to ensure compliance with the principles behind the obligation to provide guidance.
- The Danish Immigration Service adjust the invitation and decision letters to refugees and reunified family members with a view to adequately informing the case and avoiding unnecessary misunderstandings, to the effect that:
  - The invitation letter to refugees and family reunified persons contains clear information about the precise purpose and content of the interview and about the possibility of counselling and having a lay representative present from, for example, the Danish Refugee Council, and the minutes from the original asylum interview be attached to the letter.
  - The decision letter concerning reunified family members describe in detail the possibility of appeal and the rights in this respect on the first page of the letter, and information about the consequences of not leaving the country shall be moved to later sections of the letter.
- The Ministry of Immigration and Integration take the initiative to amend Section 44a (12) of the Aliens Act so that the Danish Immigration Service is no longer obliged to notify the employer after a refusal by the authority of first instance or shall as a minimum make it clear in such notification that the refugee in question still has the right to work.

## CHAPTER 5

# CONSULTATION ABOUT CHANGED CONDITIONS

### 5.1 INTRODUCTION

This chapter deals with the issue of consultation of parties. Consultation of parties is an important administrative and human rights requirement. An authority has an obligation to hear the party in a case before a decision is made if that party cannot be assumed to know that the authority is in possession of certain information regarding the actual circumstances of the case or external administrative assessments, and when the information is unfavourable to the party and of significant importance for the decision in the case.<sup>136</sup>

Basically, the Institute presumes that the authorities in a revocation context have an obligation to consult the party because – when there is a risk of the authorities revoking the residence permit – it is a potential interference with the party's sphere of rights. At the same time, there is reason to believe that the refugee in question would be able to supplement or correct the case material in the revocation interview in the form of, for example, new information about the country of origin or follow-up questions to the person's motive for asylum.<sup>137</sup>

The consultation of parties is of decisive importance in a revocation context as, to a high degree, this constitutes the basis on which it is decided whether a refugee's residence permit may be revoked or not. Party consultations take place at least twice during the revocation process: first in the form of an interview at the Danish Immigration Service, second in the form of a hearing at the Refugee Appeals Board. In what follows, we shall focus primarily on the party consultation at the Danish Immigration Service which, in our assessment, is the party consultation that potentially presents the greatest challenges for the refugee's rights to due process as, here, he or she is not represented by a lawyer.

In revocation cases, the refugee is consulted as a party about, for example, new conditions in the country of origin with which the person concerned is not necessarily familiar. During the interview, the refugee has the opportunity to comment on this information and provide any new individual information that may be of importance to both the assessment of the security situation (Article 3 ECHR) and the attachment to Denmark (Article 8 ECHR). The party consultation also gives the refugee an opportunity to note possible misunderstandings, inaccuracies or any incompleteness in the available case material. It all helps to ensure that the authority makes a decision on the best possible factual basis.<sup>138</sup>

From the perspective of due process, it is important to ensure that the party consultation takes place in such a way that the person concerned may look after his or her interests in the best possible way, regardless of resources, language skills and educational background.<sup>139</sup>

However, several of the refugees we have spoken to point to significant challenges with the party consultation as it is held today. They experience the interview, which includes their motive for asylum, as mentally exhausting and as if the authorities try to throw suspicion on them. Several add that they have discovered numerous factual errors and shortcomings during the review of the minutes from their interview. This points to challenges in relation to interpretation, general misunderstandings along the way and, ultimately, doubt as to whether the authority makes a decision on the best possible factual basis.

Based on the above, the Institute recommends that:

- The Danish Immigration Service shall adjust the revocation interview and include a number of guiding measures so that the refugee in question has a better opportunity to protect his or her interests in the case.
- The Ministry of Immigration and Integration shall take the initiative to establish a certification scheme for interpreters.

These recommendations are presented in more detail at the end of this chapter.

## 5.2 WHAT DOES THE LAW SAY?

Pursuant to the Public Administration Act, Section 19 (1), an authority has an obligation to consult the party in a case before a decision is made, if the party cannot be assumed to be aware that the authority is in possession of information about, e.g., the factual basis of the case or external administrative assessments, and if the basis for the decision is unfavourable for the party and of significant importance.

The obligation to consult the parties applies regardless of whether the party already has knowledge of the specific information if the person concerned is not aware that the information will be used in connection with a specific case.<sup>140</sup>

The purpose of party consultation is to ensure that the party has knowledge about the case and knows the factual basis for the decision to be made by the relevant authority – with the aim of giving the party an opportunity to look after own interests and defend and protect him-/herself.<sup>141</sup> At the same time, a party consultation gives the affected person an opportunity to check the factual basis by commenting on, supplementing and possibly correcting the basis for the decision before it is made,<sup>142</sup> thus contributing to the authority making a decision on the best possible factual basis.<sup>143</sup> Party consultation is therefore related to the doctrine of inquisitorial procedure, i.e. the obligation to inform a case sufficiently (see text box on the doctrine of inquisitorial procedure).



## THE DOCTRINE OF INQUISITORIAL PROCEDURE

As per the doctrine of inquisitorial procedure, the relevant authority is responsible for ensuring that a case is sufficiently informed before a decision can be made on a sound and correct basis. This includes verifying that the information used in the case is reliable. If in doubt, this must be clarified.

The doctrine of inquisitorial procedure has not been enacted by law but is a general legal principle.<sup>144</sup> The doctrine is a guarantee provision, and disregarding the doctrine might result in a decision becoming invalid.<sup>145</sup>

The more intrusive a decision is for the individual, the greater is the obligation for the authority to investigate the matter.<sup>146</sup>

The Parliamentary Ombudsman has identified the typical mistakes that authorities make in connection with the doctrine of inquisitorial procedure, among other things, that the authority does not obtain adequate factual and legal material necessary to make a correct decision.<sup>147</sup>

According to Section 8 of the Public Administration Act, a resident has the right to be assisted or represented by others of his or her own choice, when an administrative authority handles the case. The authority may, however, demand that the party participates personally if it is important for the decision.<sup>148</sup> According to the obligation to provide guidance, described in the previous chapter, the relevant authority to a certain extent has an obligation to provide guidance of its own motion. This also applies in relation to the selection of a lay representative.<sup>149</sup>

It is expected that a party consultation is carried out in such a way that it gives the party a reasonable opportunity to safeguard his or her interests.<sup>150</sup> Therefore, it is important that the relevant authority is aware of whether it appears sufficiently clear to the party what he or she shall respond to during the party consultation.<sup>151</sup>

As previously mentioned, it follows from the obligation to provide guidance as well as from the doctrine of inquisitorial procedure that the authority is obliged to provide the necessary interpretation assistance when the case involves a person who does not have a sufficient command of the Danish language, and to ensure that relevant documents are translated into an understandable language.<sup>152</sup> This applies in relation to guidance as well as party consultations.

It is presumed that the authority that makes a decision in the case has the necessary overview of the case before the party consultation takes place, and that the party is involved at a time that is meaningful in order that his or her views may actually be

included in the case material. The Ombudsman has stated that it is a requirement that the party consultation takes place in a certain temporal connection to the decision that triggers the obligation to hold a party consultation, and that several consultations should be avoided if the information might just as well be collected during one consultation. Also, an authority will have to wait for the party's comments before making a decision and will have to deal with the information and potential objections that the party may have.<sup>153</sup>

A party consultation is a guarantee provision. Guarantee provisions are rules, the purpose of which is to ensure the necessary prerequisites for a substantively correct decision. This means that if the party consultation rules are not observed, a decision will generally be invalid, unless the administrative authority can prove that a party consultation in the specific case would not have had any influence on the outcome. In this respect, it is decisive whether the error may be characterised as gross or not.<sup>154</sup>

### **5.3 WHAT ARE THE RESPONSIBLE AUTHORITIES DOING?<sup>155</sup>**

The revocation process for refugees includes party consultations at both the Danish Immigration Service and the Refugee Appeals Board. In the following we will focus on the party consultation at the Danish Immigration Service.

It is current practice that if it is likely that a person may have his or her residence permit revoked, the person in question will be invited to a party consultation in the form of an interview at the Danish Immigration Service. Here, the person in question will have the opportunity to present his or her views on the case, answer any questions that the Immigration Service may have and comment on the Immigration Service's information.

An interpreter will always be present during interviews at the Danish Immigration Service. Denmark does not have an official interpreter education programme or certification of interpreters. The interpreters used by the Danish Immigration Service are recorded in the Danish National Police's register of interpreters.<sup>156</sup>

You have the right to bring a lay representative to the interview. The Danish Immigration Service must be informed accordingly no later than five days prior to the interview.<sup>157</sup>

A revocation interview at the Danish Immigration Service typically takes most of the day, in some cases up to 9-10 hours. In some cases, the refugee in question may be invited to several interviews if, for example, the authorities cannot finish the questioning and incorporate the comments in one day, or if the Danish Immigration Service needs to obtain information from another ministry in Denmark or an authority outside Denmark.

The Danish Immigration Service does not have written guidelines for interviews in revocation cases and in cases regarding refusal of extension in the asylum area. According to the Immigration Service, the cases in this area are very diverse, and therefore there is no set procedure. There are, however, interview templates that contain text with guidance which the caseworker must share in connection with the interview.

At the interview, the Danish Immigration Service will, among other things, present their information about the security situation in Syria and ask why the person in question initially applied for asylum in Denmark. This narrative is compared with the first interview at the Danish Immigration Service at the time when the person in question first arrived in Denmark and applied for asylum.

When the interview is over, the minutes of the interview are translated orally into the refugee's native language by the interpreter. Minutes will typically be between 10 and 20 pages long, depending on the length of the interview and the nature of the case. After translation and possibly reading out loud of the minutes, you have the opportunity to make additions or corrections. If you bring a Danish-speaking lay representative, or if you can read Danish yourself, you can also read through the minutes in Danish. At the interview, the Danish Immigration Service advises that you may submit additions and corrections to the minutes after the interview. There is a deadline of two weeks for submission of additions and corrections. The Danish Immigration Service does not acknowledge receipt of submitted additions and corrections. Also, the submitted additions and corrections are not included in the minutes but are filed with the case and are included in the assessment.

#### **5.4 WHAT ARE THE CHALLENGES?**

Based on our analysis of relevant administrative law and practice in the area, as well as interview data on refugees' own experiences, we have identified a number of aspects of the authorities' party consultation which we believe pose challenges for refugees' due process rights during the revocation process. It is a matter of the following four challenges, which are dealt with below:

- The lack of information prior to the party consultation means that refugees are not sufficiently prepared for what the party consultation is about.
- Refugees do not have sufficient knowledge of the possibility of bringing along a lay representative.
- Refugees are not guaranteed qualified interpretation.
- Procedures for making corrections and additions to the minutes are inadequate and unclear.

#### 5.4.1 LACK OF OPPORTUNITY TO PREPARE FOR THE INTERVIEW

The first challenge stems from the authorities' briefing prior to the interview at the Danish Immigration Service. This means, as described above, that many refugees are unprepared for what the interview is about and – not least – the criteria on which their case will be assessed. This weakens their opportunities to comment, supplement and possibly correct the basis for the authorities' decision before it is made which would otherwise help to ensure that the decision is made on the best possible factual basis.

Especially the fact that the asylum motive plays such a relatively large role in the interview came as a surprise to many of our interviewees. In the invitation letter it is stated that at the interview you 'must disclose your original motive for asylum', but it is not made clear which role this plays in the authorities' assessment of the case. The Danish Immigration Service's practice is to inquire about the asylum motive in order to find out whether the refugee has an individual motive in addition to the original motive based on the general conditions in the country of origin in order that the refugee may have the opportunity to obtain a new residence permit that is providing better protection than temporary protection status. This may, e.g., be the case if the refugee has been in the Danish or international media since his or her arrival in Denmark and thus has an individual conflict with the Syrian regime, or if there is new information to the effect that family members in Syria have been approached by the authorities.

Zahra says that the assessment of her asylum motive took up a lot of time during her interview:

**'They push you. They ask the same things all the time. They cornered me. I asked, "Why are you asking the same thing over and over again?"'**

Some of the people we have spoken to have been advised by, e.g., civil society organisations or people in their network to re-read the minutes from their original asylum interview prior to the new interview, in order to be better prepared. Others have not had this knowledge. The fact that the authorities do not attach the minutes of the original asylum interview or otherwise draw attention to the importance of this in the invitation letter contributes to weakening the refugees' actual opportunity to prepare and thus look after their own interests in the best possible way.

For some, it may also be a problem that they have not had sufficient opportunity to inform about the motive for asylum in their original asylum interview. Many Syrian refugees had very short interviews when they arrived in the country in 2014-2015 – some even talk about interviews lasting less than an hour.<sup>158</sup> In some cases, this means that the refugees have not provided sufficient information about their motive for asylum. Maryam recounts her father's interview:

**'My father did not talk about [him being imprisoned] when he applied for asylum. It wasn't because he didn't want to. But the interview went so quickly – it only lasted 30 minutes. They just had to hear that we were from Syria, and then you got a residence permit'.**

The hasty and sometimes lax procedure in 2015 may now end up being a burden for the refugees involved because, in some cases, supplementary explanations may be considered unreliable. Aida says:

**'Then they start saying: "But that's not true, we don't believe that, you didn't say that at the first interview. Why do you change what you say?"... And if you can't remember the answer to a question, they say: "You have five minutes to remember". You sat there with the feeling that you were not allowed to add anything'.**

The Institute assesses that the lack of information prior to the interview about the purpose of the interview as well as the criteria for revoking a residence permit weakens refugees' ability to protect their own interests in the best possible way during the party consultation. In addition, we consider that the importance of the often-short asylum interviews in 2015 and the consequent lack of information to the refugees are not sufficiently taken into account.

#### **5.4.2 LAY REPRESENTATIVE**

The second challenge we have identified in relation to the consultation of the interested parties concerns the right to bring a lay representative to the interview.

Primarily, it is a problem that the Danish Immigration Service does not provide detailed information about the right to bring a lay representative to the interview.

The Danish Immigration Service points out that the invitation letter contains brief information about the possibility of bringing a lay representative to the interview. However, among the invitation letters we have had access to, there are examples where this has not been the case.

Also, in the cases where the possibility of bringing lay representatives is indeed mentioned in the letter, according to our information, in-depth information about who can act as a lay representative or who to contact to find a lay representative (e.g., the Danish Refugee Council) is not included.

This means that refugees do not necessarily have sufficient knowledge about the possibility of bringing a lay representative. Among our interviewees, some say that they were not aware that they could bring a lay representative, or that they did not know who to turn to find one. There were also some of our interviewees who did not know that they could bring a family member or friend as a lay representative.

The Institute assesses that the lack of guidance in relation to having a lay representative present may mean that some refugees do not make use of this option. This may have consequences for their opportunities to look after their own interests in the best possible way and may weaken the opportunity to protect and defend their own interests, perhaps especially for the refugees who do not have the necessary language skills or who are socioeconomically disadvantaged and who may therefore be expected to need special support during the interview.

Among our interviewees there were some who were aware of – and made use of – the right to bring a lay representative. However, others report that they have experienced obstacles in this respect. A young man, Khalil, refers how he participated as a lay representative during his grandmother’s interview, but that the Danish Immigration Service initially refused to let him participate:

**‘When I got there, they said: ‘You are not allowed to enter. She has an interpreter.’ I said, ‘I am her grandson. I am allowed to join’. You have to show that you know the rules. If you are not strong or know the rules, it may be a problem. Typically, people are afraid of authority figures. After all, it wasn’t long ago that they experienced these things’.**

Thomas, who has been a lay representative at a friend’s interview, also says that he was not immediately granted access, despite the fact that the Danish Immigration Service had been informed:

**‘It was not easy for me to come in as a lay representative. The case manager claimed that the Danish Immigration Service had not been notified that there would be a lay representative. [The Syrian refugee] had provided this information in time, but had not received any confirmation from the Immigration Service. She insisted that she had done nothing wrong, but it took half an hour to clear it up. If she hadn’t known her rights and stood firm, I wouldn’t have come in’.**

Based on our interviews, we cannot say whether the above simply reflects isolated experiences, or whether they are an expression of a more general challenge, but we need to emphasise the importance of the authorities contributing to ensuring refugees’ access to and use of lay representatives during revocation talks (see recommendation on this in the previous chapter).

### **5.4.3 INTERPRETATION**

A third challenge concerns interpretation during the interview. It is crucial that a party consultation takes place in a way that ensures that the party involved understands what is going on. As previously mentioned, it follows from both the obligation to provide guidance and the doctrine of inquisitorial procedure that the authorities shall provide interpretation assistance. However, several of our interviewees mention insufficient interpretation. This means that the refugee

involved does not always fully understand what the caseworker says, and also that the caseworker does not necessarily get a correct representation of what the refugee says. This may impact whether the decision is made on the best possible factual basis.

Some of the people we have spoken to have experienced words or concepts being translated incorrectly. Others point to the omission of important information. Ali, who is active in a Syrian support network, says that it is his impression that Iraqi interpreters are often used, and that this may present challenges, since there are differences between Iraqi Arabic and Syrian Arabic. Adnan talks about an interpreter with a Kurdish background who apparently did not speak Arabic fluently, while Hafsa says that her father had an interpreter with a dialect that differed greatly from his own dialect.

Especially when the minutes are reviewed, factual errors and shortcomings in the interpretation are found. One person mentions that his father discovered several mistakes in the interpretation, e.g., in relation to the father's age and in relation to his brother's desertion from the military. As described below, there is an opportunity to correct such errors and omissions when the minutes are reviewed, but the fact that several interviewees apparently had to correct many errors, in itself points to challenges in relation to the quality of the interpretation.

A problem here is of course that the people who do not speak much Danish themselves and who are therefore most dependent on interpretation also are the ones who have the fewest prerequisites for assessing whether the interpretation is adequate.

The Institute emphasises the importance of quality assurance of interpretation in connection with the Danish Immigration Service's party consultation in order to ensure that the participants understand each other and that the decision is thus made on the best possible factual basis.

#### **5.4.4 MINUTES**

Finally, the Institute points to challenges in relation to the minutes of the party consultation. The minutes play a decisive role in the further case processing and decision. It is therefore important that what is written in the minutes is correct and adequate and, if it is not, that you have the opportunity to add to and correct the minutes, even after the party consultation has been completed.

However, our interviews point to challenges both in relation to the extent of errors and omissions in the minutes (as also mentioned above) and in relation to the procedures for correcting these.

Both lay representatives and refugees have experienced that there were significant aspects of the interview that were not included in the minutes when they were read

out the first time. They say that they were given the opportunity to make additions and corrections to the minutes, but do not remember that the revised minutes were subsequently actually reviewed and translated.<sup>159</sup>

Hassan, a man in his fifties, says:

**‘At the end of the interview, the interpreter had to read out the minutes. I think they were almost 30 pages long. Many of the things I had mentioned at the interview had not been noted down. They said that if you think something is missing, they would write it down. But I don’t think the interpreter read anything out loud after I made my additions’.**

Thomas, who has been a lay representative at a friend’s interview and speaks both Arabic and Danish, has had a similar experience:

**‘When we got to the minutes, we could see that there were things that were downplayed, things that were left out – even things that were important to her case. It took an hour and a half to go through the minutes because there were so many things that needed to be added. [...] But you do not get to see what the caseworker adds so you can check whether everything has been included in the second round. You simply get a printout of the minutes to take home. We still think that several things were not accurate in the final version of the minutes’.**

Some of the people we have spoken to also say that they have submitted corrections or additions to their own or a family member’s minutes after the interview, but that they did not receive any confirmation from the Danish Immigration Service that they had received these.

Thus, Hafsa says that she and her father went through his minutes after he had been interviewed and found approximately 12 mistakes or misunderstandings which she corrected:

**‘I highlighted all the mistakes and sent it to the Danish Immigration Service with a long letter explaining where the mistakes were and adding the correct translations. They accepted the letter, but they have not sent a response as to whether they have changed the minutes’.**

The Institute assesses that the inadequate review of the revised minutes may contribute to the authorities’ decision not being made on the best possible factual basis, as the refugee has not had sufficient opportunity to check whether corrections and additions have been correctly incorporated. It contributes to unnecessary insecurity and uncertainty that the authorities do not acknowledge receipt of corrections and additions submitted after the interview.



Especially for people who do not have the opportunity to bring a lay representative with them, it can be helpful to record the interview at the Danish Immigration Service so that you can subsequently review what was said and compare this with the minutes. However, refugees are not informed at the start of the interview about their right to record the interview, and it is our impression that only a few make use of this option.

## 5.5 RECOMMENDATIONS

The Institute recommends that the authorities adjust the revocation interview in order to ensure that the refugee in question, to a greater extent than is the case today, has a reasonable opportunity to look after his or her interests.

Several of the Institute's recommendations in relation to the authorities' guidance are relevant in this respect. This applies in particular to the recommendations to ensure clear and distinct information about the criteria for revocation, thorough information about the purpose of the party consultation as well as information about the possibility of having a lay representative present (see chapter 4).

In addition, the Institute recommends that:

- The Danish Immigration Service inform refugees about the right to record the interview.
- The Danish Immigration Service send a receipt for submission of additions and corrections after the interview, clearly stating that this is now part of the assessment.
- The Ministry of Immigration and Integration take the initiative to establish a certification scheme, so that interpreters are certified after graduation or on the basis of a test in interpretation and language, and establish a national register of certified interpreters.
- The Danish Immigration Service and the Refugee Appeals Board, after a transition period, be obliged to exclusively use certified interpreters.<sup>160</sup>

## CHAPTER 6

# CASE PROCESSING AND WAITING TIME

### 6.1 INTRODUCTION

In this chapter, we shed light on the issue of case processing times, which may be very long in revocation cases. Several of our interviewees talk about a total case processing time of well over a year.

Case processing by public authorities shall, according to the guidance to the Public Administration Act, be processed as quickly, simply and economically as possible.<sup>161</sup> If a case cannot be decided soon after the start of the case, or if the case takes longer than expected, the relevant authority shall notify the party concerned and indicate when a decision is expected to be made.<sup>162</sup>

The long processing time is a strong presence in the lives of all the refugees we have spoken to. The waiting period from the first interview until the case is decided is characterised by anxiety and frustration because the decision has great significance for the future of the individuals and potentially their entire family.

Besides, several experience inadequate ongoing notifications when the stated case processing time is exceeded by several months, just as some have experienced inadequate notification in connection with the cancellation of interviews or acknowledgement of receipt of documents.

The Institute has a number of recommendations which are presented in detail at the end of this chapter. In summary, we recommend that:

- The Ministry of Immigration and Integration take the initiative to investigate the processing times in revocation cases with a view to assessing whether these are acceptable.
- The Immigration Service generally provide better information about the status and changes during the case processing.

### 6.2 WHAT DOES THE LAW SAY?

The case processing time in the public sector shall be reasonable and, as a starting point, it is the total case processing time that applies. When assessing whether the case processing time is reasonable, the authority's subjective circumstances, such as generally insufficient resources, are not important.<sup>163</sup>

In the guidance to the Public Administration Act, it is stated that case processing by public authorities shall be as quick, simple and economical as possible.<sup>164</sup> At the same time, it shall be ensured to the greatest extent possible that no duties are imposed on the person concerned, such as having to inform the person's own case, if that would require the involvement of an expert because the information may be too complicated.<sup>165</sup>

If a case cannot be decided shortly after it has started, or if the case takes longer than expected the guidance states that the relevant authority shall notify the party involved and indicate when a decision is expected to be made.<sup>166</sup> This shall be seen in the context of the obligation to provide guidance which is described above.

It appears from the circular letter about goals for quick case processing that an administration shall make a decision as quickly as it is possible and justifiable.<sup>167</sup> At the same time, it appears that it is difficult to draw up general rules in this respect as the nature of the cases are very different and may give rise to principled considerations which, by nature, will take time. According to the circular letter, it is therefore appropriate for the authorities to formulate a goal for case processing times which is both justifiable and realistic. The set goals should be publicly available and should be supplemented by a control system that continuously checks whether the authorities are meeting their goals, or whether these should possibly be adjusted.<sup>168</sup>

The Parliamentary Ombudsman has in several contexts commented on what must be assumed to be good administrative practice in relation to case processing times, implying that the authority shall provide guidance on the expected case processing time and the course of the case processing in general – elements that are linked to the obligation to provide guidance, as described above. The Ombudsman has also stated that an authority should have effective reminder systems to ensure that a case is not forgotten.<sup>169</sup>

In 2020, the Ombudsman investigated the Immigration Appeals Board's case processing times. As part of the investigation, the Ombudsman found out that in 43 percent of the cases in 2019, there had been a case processing time of between one and two years. On this background and in view of the importance of the case for the parties involved, the Ombudsman concluded that the processing times in the Immigration Appeals Board were generally too long.<sup>170</sup>

### **6.3 WHAT ARE THE RESPONSIBLE AUTHORITIES DOING?<sup>171</sup>**

The Danish Immigration Service provides information that the average processing time in revocation cases from interview to decision was 262 days in 2020 and 277 days in 2021.<sup>172</sup> The Immigration Service also states that the revocation cases in the asylum area are of a very different nature, which is why some cases may be decided immediately following the opening of the case, while other cases take longer because the outcome, for example, depends on consultations with other

authorities, hereunder foreign authorities, document scrutiny and the like. This means that there are probably a number of cases that have a significantly longer case processing time than 277 days.

The Immigration Service states that, after a revocation interview, the refugee will normally be informed that they will receive a decision within six weeks. If there are delays in the case processing, the Immigration Service will in some cases inform about this of its own motion, but there does not seem to be any firmly established practice in this respect.

It is not only in connection with the decision from the Danish Immigration Service that there may be a long case processing time. There is often a long time between the decision by the Immigration Service and the hearing at the Refugee Appeals Board. It usually takes several months from the time a lawyer is appointed until the person receives all the files. The average processing time for revocation cases in the Refugee Appeals Board was 239 days in 2020 and 166 days in 2021.<sup>173</sup>

If you receive a final rejection from the Refugee Appeals Board and decide to apply for the case to be re-opened, you often have to wait for a long time again. Between 2019 and up to 6 February 2022, the Refugee Appeals Board received a total of 43 requests for the re-opening of a case. The procedure is that the Refugee Appeals Board shall first decide whether the case may indeed be re-opened. The average processing time for such requests was 157 days in 2020 and 165 days in 2021.<sup>174</sup> Once the application for re-opening has been approved, there is another waiting period until you are invited to a hearing of the Refugee Appeals Board which will deal with the matter substantively.

Both the Refugee Appeals Board and the Danish Immigration Service have set internal goals for their case processing times. The Refugee Appeals Board has set internal goals for the average case processing time for spontaneous asylum cases, revocation and extension cases, while the Immigration Service has set internal goals for the case processing time in extension cases. The target figures are thus not immediately comparable to the figures mentioned above, which is the reason they cannot be used to conclude anything about whether the authorities are complying with their own goals.<sup>175</sup>

#### **6.4 WHAT ARE THE CHALLENGES?**

Based on our analysis of relevant administrative law and practice in the area as well as interview data on refugees' own experiences, we have identified two challenges in relation to the processing time in revocation cases, i.e.:

- Long waiting time
- Lack of information about delays and status of the process along the way

#### 6.4.1 LONG WAITING TIME

The processing time in revocation cases poses a significant challenge in relation to refugees' rights to due process. There is a very long waiting time from the time when the refugee receives the first invitation letter from the Danish Immigration Service until the process is completed at the Refugee Appeals Board.

Several of the people we have spoken to have experienced a total case processing time of well over a year. Laila points out that her father went to two interviews at the Danish Immigration Service, and more than half a year passed between the two interviews. At the time of our interview, he was still waiting for an invitation to appear before the Refugee Appeals Board. It had been 15 months since he had attended the first interview at the Immigration Service.

The long case processing times are exhausting for those affected and their relatives. 'Before, the goal was that you had to find a job, you had to integrate – now you just wait', says Yousef, a young man whose parents are waiting for an invitation to appear before the Refugee Appeals Board: 'Life has almost stopped now'.

Walid says that the waiting time affects all decisions in the family, big and small. The family has received an offer to move to a new and better home, but they do not know whether to accept the offer. They don't even know if they should buy a new coffee table, as he says: 'Everything has come to a standstill. [...] Everything in the family depends on my residence permit'.

Many report that the waiting time has caused stress, insomnia, depression and anxiety. 'I sometimes cry at night. There is another person controlling your life. You don't know what's going to happen – maybe you'll have to go to an exit centre', says Laila, a young woman in her 20s. She points out that the waiting time may also have consequences in relation to people's job situation:

**'The Immigration Service's system is slow. It takes a long time, so many people lose their jobs along the way. It would be good if they could do it faster so people don't have to go through all that stress'.**

Maryam says that she was rejected by the Refugee Appeals Board and therefore had to stop her education. When the case was re-opened, she was able to continue with her studies, but the long processing time meant that she lost a semester.

Long case processing times are particularly burdensome in cases that involve drastic decisions, and the waiting time significantly contributes to intensifying and prolonging refugees' uncertainty and anxiety. Therefore, the authorities should particularly ensure that case processing in revocation cases takes place without unnecessary delays.

#### 6.4.2 INFORMATION ABOUT STATUS AND CHANGES THROUGHOUT THE PROCESS

The second challenge we have identified relates to the lack of information about the status of the case processing along the way, hereunder delays and changes.

Some of the people we have spoken to have experienced that the stated case processing time is exceeded by several months, but that the authorities do not inform about this of their own motion. This applies, e.g., to Kadeem, who was interviewed by the Danish Immigration Service in October 2020. Here, he was informed that he would receive a decision from the Immigration Service within six weeks. At the time of the interview in January 2022, Kadeem had not yet received a decision. The Danish Immigration Service had thus spent 15 months, or over 450 days, on case processing. Kadeem has contacted the authorities several times and has just been told that his case is being processed.

When there are changes that affect the case processing – for example, if a reunified family member applies for asylum independently – some also experience insufficient communication from the authorities. Salma says that she and her husband had been invited to a hearing at the Refugee Appeals Board. At the same time, their eldest son had just started his own asylum case. Two days before the couple were to appear before the Refugee Appeals Board, they received a letter stating that their hearing had been cancelled:

**‘We just received a letter with two lines. We didn’t understand what happened. So, we called the Danish Refugee Council and our lawyer. After two weeks we were told that our case had been remanded to the Danish Immigration Service because our son had applied for asylum, and there was new information in the case. But before that we had all sorts of thoughts – we thought that it was because they had changed their minds [and we were allowed to stay in Denmark]’.**

Also in relation to the authorities’ acknowledgement of receipt of complaints, there may be a long waiting time. Farah says that she and her family complained about the Immigration Appeals Board’s decision. They waited for two months for confirmation from the Board that they had received the complaint, and finally their lawyer contacted the Board himself. Only then did they receive a letter confirming receipt of the complaint. The long waiting time gave rise to great uncertainty. Her son Ibrahim talks about how it affected the family:

**‘You don’t know where you are or what it’s like in that situation. Are they coming to pull us out of our house, or is the complaint upheld, or what will happen? You should receive a letter stating that once you have submitted your complaint, it may take so and so long, and during that period you have such and such rights’.**

The challenges with lack of communication on the part of the authorities are further aggravated by the fact that it may be difficult for the persons concerned to obtain information about their case themselves. You may contact the Danish Immigration Service by telephone if you want information about your case, including the status of the process, changes in the case or acknowledgement of receipt of documents. However, several say that it is very difficult to get in touch with an employee. 'If you're lucky, you're number 50 in line', says Ali, while Aida says: 'When you call the Danish Immigration Service, it takes an hour just to be told that you have to wait'.

Some are also afraid of contacting the Immigration Service themselves and thus be seen as difficult. Ibrahim says that he has been told that it may speed up the process if you call once in a while: 'But we didn't call because we were afraid that we would have to pressure them, and they would end up making a wrong decision'.

Finally, it may also be a problem that during the process you do not receive clear documentation that you have the right to reside in Denmark. This applies in situations where the extended case processing time means that a residence permit has expired, but the case has not yet been concluded. In such situations, some of the people we have spoken to have been informed that the most recent letter from the authorities constitutes documentation for their right to still reside in Denmark. However, they express concern whether such forms of documentation are recognised and not least accepted by other authorities, e.g., the police. Hafsa says:

**'I was really scared if I was driving a car and the police might stop me. Because what was I supposed to say? First of all, they could probably take the car. Second, put me in jail. I have no ID to stay in Denmark. Even if they take my CPR number, I don't think they will be able to see in their system that my residence permit is being assessed. So, it was really something that affected me a lot'.**

Lack of and unclear information in relation to status, changes and own rights during the case processing unnecessarily contributes to refugees' uncertainty in the revocation process. The Institute considers that the authorities in revocation cases have a duty to ensure that the persons involved are continuously well informed about the handling of their case.

## 6.5 RECOMMENDATIONS

Based on the above analysis, the Institute for Human Rights recommends that:

- The Ministry of Immigration and Integration take the initiative to investigate the case processing times in revocation cases in the Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board in order to assess whether these are acceptable.
- In their communication with refugees and their family members, the Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board ensure that they are given a realistic expectation of the time perspective for their case with the introduction of the following parameters:
  - Realistic announcements about case processing time
  - Official, published case processing times in revocation cases
  - Introduction of control measures, according to which the authorities consider once a year whether their case processing times are appropriate.
- The Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board to a greater extent provide information and guidance during the revocation process to ensure good public administrative practice and compliance with the obligation to provide guidance, including:
  - Ongoing information to the parties about the status of their case, for example automatic status updates every three months
  - Better opportunity to contact the Danish Immigration Service
  - Detailed explanation in case of cancellation of meetings or other changes in the process
  - Quick confirmation of receipt of complaints and applications for re-opening (the Refugee Appeals Board)



# OVERVIEW OF AUTHORITIES

**THE DANISH IMMIGRATION SERVICE:** The Danish Immigration Service is an agency under the Ministry of Immigration and Integration, where cases concerning the right of foreign nationals to visit and reside in Denmark are dealt with in accordance with the Aliens Act. In cases concerning refugees who have been granted a residence permit pursuant to Section 7, the Danish Immigration Service makes a decision as the authority of first instance on the revocation and refusal to extend a residence permit, where the basis for the residence permit of a refugee or the reunified family of a refugee is no longer considered to be present.

**THE REFUGEE APPEALS BOARD:** The Refugee Appeals Board is an independent, court-like, legal recourse body to the Danish Immigration Service which deals with complaints about decisions made by the Danish Immigration Service as the authority of first instance.<sup>176</sup> The Refugee Appeals Board makes decisions in various types of cases, including cases where the Danish Immigration Service has revoked or refused to extend a residence permit issued pursuant to Section 7 of the Aliens Act. Such cases are automatically appealed to the Refugee Appeals Board.<sup>177</sup> The hearings of the Board are dealt with orally.<sup>178</sup> The foreigner in question, whose case shall be assessed by the Board, is entitled to have a lawyer assigned.<sup>179</sup> The Refugee Appeals Board may also remand cases for a renewed decision by the authority of first instance. A case may be remanded, if, e.g., following a decision by the Danish Immigration Service, new information of significant importance has come to light, and where, with this new information, the possibility of an assessment by both the authority of first instance and at the appellate level should be ensured.<sup>180</sup>

**THE IMMIGRATION APPEALS BOARD:** The Immigration Appeals Board is an independent court-like body that handles complaints about certain decisions made by the Danish Immigration Service, the Danish Return Agency and the Agency for International Recruitment and Integration as authorities of first instance.<sup>181</sup> The competence of the Immigration Appeals Board includes complaints about decisions regarding residence permits in Denmark in connection with family reunification. A case in the Immigration Appeals Board is dealt with on a written basis, and the foreigner in question is not assigned a lawyer.

**THE DANISH RETURN AGENCY:** The Danish Return Agency was established in August 2020<sup>182</sup> and is responsible for the return of foreign nationals who are staying illegally in Denmark.<sup>183</sup> The Danish Return Agency handles foreign nationals who do not or do not any longer have legal residence in Denmark and obligations for foreign nationals who do not leave Denmark. Also, the Agency provides counselling, help and support to foreign nationals who have to leave Denmark. It is also the Danish Return Agency that handles return journey interviews and motivation promoting measures such as deprivation of liberty, obligation to report, obligation to stay and obligation to notify. These tasks were previously handled by the police, who are now only involved in cases where a rejected asylum seeker refuses to return home, and coercion or the use of force need be used.<sup>184</sup>

- 1 The Ministry of Immigration and Integration (2020), 'Regeringen sætter gang i genvurderingen af syriske flygtninges behov for beskyttelse' (The government starts the reassessment of Syrian refugees' need for protection), available at <https://uim.dk/nyhedsarkiv/2020/juni/regeringen-saetter-gang-i-genvurdering-af-syriske-flygtninges-behov-for-beskyttelse/>
- 2 Figures obtained from the Danish Immigration Service on 19 May 2022. In the period from June 2019 to 31 December 2022, the number of decisions concerning persons from Damascus and the Rif Damascus Province in Syria amounted to 1,115. The figures include the total number of decisions that have been made regarding residence permits pursuant to Section 7 (2) or (3) of the Aliens Act. The Danish Immigration Service notes that the same person may appear several times in the figures in cases where the Immigration Service has made a decision to revoke or refuse to extend the residence permit, where the decision has been appealed, and the Refugee Appeals Board has remanded the case for renewed consideration by the Immigration Service, after which the Immigration Service has made another decision in the case.
- 3 Figures obtained from the Refugee Appeals Board on 8 February 2022. In the period from 19 June 2019 up to and including 6 February 2022, the number of Syrian nationals from Damascus and Rif Damascus amounted to 116. Since 2016, more than 1,000 Somali nationals have also lost their residence permit in Denmark, as the authorities assess that the situation in Somalia has improved. See the Danish Immigration Service's publications 'Tal og fakta på Udlændingområdet' (Numbers and facts in the Immigration area) from 2017-2021 and 'Tal på udlændingområdet pr. 28.02.2022' (Numbers and facts in the immigration area as of 28 February 2022), all available at [https://www.nyidanmark.dk/da/Numbers/ta\\_fakta](https://www.nyidanmark.dk/da/Numbers/ta_fakta).
- 4 For further analysis of the Danish paradigm shift, see Jens Vedsted-Hansen, Jan-Paul Brekke and Rebecca Thorburn Sterns (2021), 'Temporary asylum and cessation of refugee status in Scandinavia', *EMN Norway Occasional Papers*; Jens Vedsted-Hansen, 'Legislative and Judicial Strategies in Danish Law: Accommodation or Evasion of International Obligations?', *Nordic Journal of International Law* 91.1 (2022); Nikolas Feith Tan (2021), 'The End of Protection: The Danish "Paradigm Shift" and the Law of Cessation', *Nordic Journal of International Law*, volume 90(1); and Maria O'Sullivan and Nikolas Feith Tan (forthcoming 2022), *Cessation of International Protection*, UNHCR Legal and Protection Policy Research Series.

- 5 See Jan-Paul Brekke, Simon Roland Birkvad and Martha Bivand Erdal (2019), *Losing the Right to Stay, Revocation of immigrant residence permits and citizenship in Norway—Experiences and effects*, Institute for Social Research, for a sociological analysis of the revocation process and its consequences in a Norwegian context.
- 6 The text is based on Ingelise Bech Hansen, 'Borgerens retsstilling og menneskerettigheder i den sociale forvaltning' (The resident's due process rights and human rights in the social administration), in Nell Rasmussen (ed.), *Menneskerettigheder i socialt arbejde* (Human rights in social work), Nyt Juridisk Forlag, 2013, p. 38.
- 7 The procedural legal guarantees do not appear explicitly from the wording of the provision, but follow from the Court's practice. The Court has primarily ruled in cases concerning the forcible removal of children, but it must be assumed that the interpretation by the Court applies in a broader sense. See, e.g., the European Court of Human Rights, *Petrov and X v. Russia*, judgment delivered on 23 October 2018, case No.: 23608/16, paragraph: 101. See also Jon Fridrik Kjølbro (2020), *Den Europæiske Menneskerettighedskonvention for praktikere* (The European Convention on Human Rights for Practitioners), Djøf Forlag, p. 928.
- 8 Instrukskommissionen (2020), *Instrukskommissionens beretning* (Report from the Instruction Commission), volume 1, p. 562, available at <https://www.justitsministeriet.dk/wp-content/uploads/2020/12/Instrukskommissionen-Bind-1-kapitel-1-7.pdf>
- 9 The conditions at the exit centres have been sharply criticised from several sides. In his report from 2018, the Ombudsman writes that he finds the conditions for people on tolerated stays at Kærshovedgård to be 'very burdensome and constraining in relation to basic living conditions'. Since then, conditions have further worsened, not just for people on tolerated stays, but also for the Syrian refugees who have been refused an extension of their residence permit. Among other things, the penalty for violating the obligation to notification and stay has become harsher, and the possibility of activation has been removed for people who do not cooperate in the return to the country of origin. The Institute calls for the Ombudsman to carry out an assessment of the conditions at the exit centres.
- 10 The Refugee Appeals Board has read the draft and provided comments on 24 May 2022. The Danish Immigration Service has read the draft and commented on 30 May 2022. We have primarily included factual corrections, particularly in relation to the authorities' practice.
- 11 A person had divorced her husband and fled to another EU country, which meant that she had to start all over in the asylum system. She was refused asylum and is now at an exit centre. Two other people had their residence permits revoked when the Danish Immigration Service assessed that the case was fraudulent. However, the Refugee Appeals Board overturned the Immigration Service's decision, and the two people are now awaiting a new interview at the Immigration Service. Interviews with these three people are

used exclusively to illuminate refugees' experiences with the more general aspects of the revocation process, especially the consequences of living under conditions characterised by a high degree of temporariness, uncertainty and insecurity.

12 Some quotes from the interview material may have been subjected to a slight linguistic rewriting to ensure readability, but the meaning of what was said is unchanged.

13 Danish asylum legislation makes a distinction between spontaneous asylum seekers (who are granted a residence permit pursuant to Section 7) and quota refugees (who are granted a residence permit pursuant to Section 8). A spontaneous asylum seeker requests asylum at the border or upon entering Denmark. If the person in question clearly fulfils the conditions for a permit, an information and motivation interview will be held. A quota refugee is designated by UNHCR. See, e.g., the Institute for Human Rights' website for further information <https://menneskeret.dk/viden/laeringsportalen/faq/flygtninge#:~:text=I%20Danmark%20sondres%20der%20mellem,efter%20indrejse%20her%20i%20landet>). In this report, we describe the conditions for the refugees who have come to Denmark as spontaneous asylum seekers as it is primarily this group of refugees who are at risk of losing their residence permit. However, also some quota refugees have had their residence permits revoked in connection with Project Damascus.

14 The Ministry of Foreign Affairs (1954), *Bekendtgørelse om Danmarks ratifikation af Flygtningekonventionen (Ministerial Order on Denmark's ratification of the Refugee Convention)*, Ministerial Order No. 55 of 24 November 1954, available at <https://www.retsinformation.dk/eli/ltc/1954/55>

15 The Ministry of Immigration and Integration (2002), *Lov om ændring af udlændingeloven og ægteskabsloven med flere love (Act amending the Aliens Act and the Marriage Act and various other acts)*, Act No. 365 of 6 June 2002, available at <https://www.retsinformation.dk/eli/lta/2002/365>. Protection status is also called subsidiary protection, with primary asylum protection being convention status as per the Refugee Convention.

16 The Ministry of Immigration and Integration (2015), *Lov om ændring af udlændingeloven (Act amending the Aliens Act) No. 153 of 18 February 2015*, available at <https://www.retsinformation.dk/eli/lta/2015/153>

17 The Ministry of Justice (2014), *Bill No. 72 as presented on 14 November 2014 regarding act amending the Aliens Act*, available at <https://www.retsinformation.dk/eli/ft/201412L00072>

18 Two ECtHR judgments in particular are important for understanding how Denmark interprets the prohibition against refoulement, i.e., *Sufi and Elmi v. Great Britain* (28 June 2011) and *K.A.B v. Sweden* (5 September 2013). When the Danish Immigration Service and the Refugee Appeals Board shall assess the security situation in a given area in relation to Article 3 of the ECHR, it is with direct reference to the criteria established in these judgments. The two judgments thus provide a strong indication of the factors that are emphasised when the authorities assess the individual revocation case.

- 19 The Ministry of Justice (2014), *Bill No. 72 as presented on 14 November 2014 regarding proposal for an act amending the Aliens Act*, Section 2.1.2., available at: <https://www.retsinformation.dk/eli/ft/201412L00072>
- 20 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3., available at: <https://www.retsinformation.dk/eli/ft/201812L00140>
- 21 UNHCR (1992) *Cessation of Status, Executive Committee Conclusion No. 69 (XLIII)*, A/47/12/Add.1, para. B and UNHCR's Handbook on procedures and criteria for determining refugee status (article 1 c, No. 5). See also Bill No. 140, Section 2.1.2. available at: <https://www.retsinformation.dk/eli/ft/201812L00140>
- 22 The Ministry of Justice (2014), *Bill No. 72 presented on 14 November 2014 regarding proposal for an act amending the Aliens Act*, Section 2.5.2. available at: <https://www.retsinformation.dk/eli/ft/201412L00072>
- 23 Refusal to extend a refugee's residence permit is, however, described in the Aliens Act, Section 11 (2). See also Institute for Human Rights' fact sheet (2019), 'Hvornår kan flygtninge miste deres opholdstilladelse?' (When do refugees risk losing their residence permit?), available at [https://menneskeret.dk/sites/menneskeret.dk/files/media/document/~%2019\\_02922-2%20FAKTAARK%2C%20Hvorn%C3%A5r%20kan%20flygtninge%20miste%20deres%20opholdstilladelse-pdfUA%20446867\\_1\\_1.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/document/~%2019_02922-2%20FAKTAARK%2C%20Hvorn%C3%A5r%20kan%20flygtninge%20miste%20deres%20opholdstilladelse-pdfUA%20446867_1_1.pdf)
- 24 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 19 (1), No. 1, available at <https://www.retsinformation.dk/eli/lta/2021/1910>
- 25 The Ministry of Justice (2014), *Bill No. 72 presented on 14 November 2014 regarding proposal for an act amending the Aliens Act*, Section 2.5.2. <https://www.retsinformation.dk/eli/ft/201412L00072>
- 26 UNHCR (1992) *Cessation of Status, Executive Committee Conclusion No. 69 (XLIII)*,XA/47/12/Add.1.
- 27 The Ministry of Justice (2014), *Bill No. 72 presented on 14 November 2014 regarding proposal for an act amending the Aliens Act*, Section 2.3.2. <https://www.retsinformation.dk/eli/ft/201412L00072>. See also Ministry of Immigration and Integration (2018), *Answer to question No. 5 to L 239*, 22 May 2018, available at <https://www.ft.dk/samling/20171/lovforslag/l239/spm/5/svar/1493020/1901493/index.htm>
- 28 The Ministry of Justice (2014), *Bill No. 72 presented on 14 November 2014 regarding proposal for an act amending the Aliens Act*, Section 2.5.2. <https://www.retsinformation.dk/eli/ft/201412L00072>
- 29 The Institute for Human Rights, Response to consultation on draft bill amending the Aliens Act (temporary protection status for certain foreign nationals, etc.), 7 November 2014, available at: [https://menneskeret.dk/files/media/dokumenter/nyheder/imr\\_540\\_10-1282\\_10\\_11\\_2014.pdf](https://menneskeret.dk/files/media/dokumenter/nyheder/imr_540_10-1282_10_11_2014.pdf)
- 30 The European Parliament and the European Council (2011), *Directive laying down standards for the qualification of third-country nationals or stateless persons*, Directive of 13 December 2011, 2011/95/EU.

- 31 The European Parliament and the European Council (2011), *Directive laying down standards for the qualification of third-country nationals or stateless persons*, Directive of 13 December 2011, 2011/95/EU.
- 32 The European Parliament and the European Council (2011), *Directive laying down standards for the qualification of third-country nationals or stateless persons*, Directive of 13 December 2011, 2011/95/EU, Article 16.
- 33 The European Council, *Directive 2004/83/EF of 29 April 2004 on minimum standards for the qualification of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, Article 16.
- 34 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2., available at <https://www.retsinformation.dk/eli/ft/201812L00140>. Today, the Section 26 criteria are not used in connection with revocation cases, as Section 19a is used instead.
- 35 The Ministry of Immigration and Integration (2018), *Bill 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section: 2.1.6.1., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 36 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section: 2.1.6.1., available at <https://www.retsinformation.dk/eli/ft/201812L00140>. Also, reference is made to the European Court of Human Rights, *Osman v. Denmark*, judgment of 14 June 2011, case No.: 38058/09, available at <https://hudoc.echr.coe.int/eng?i=001-105129>
- 37 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 26 (1) (historic in relation to the assessment of revocation), available at <https://www.retsinformation.dk/eli/lta/2021/1910>
- 38 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section: 2.3.2., available at <https://www.retsinformation.dk/eli/ft/201812L00140>. See also Linda Degn Petersen (2021), *Udlændingerettens 'paradigmeskift' i relation til inddragelse af flygtninges opholdstilladelser* ('Paradigm shift' in the asylum policy in relation to the revocation of refugees' asylum permits), Aarhus University, p. 9.
- 39 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section: 2.2., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 40 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section: 2.2.,

- available at <https://www.retsinformation.dk/eli/ft/201812L00140>. See also the website [www.nyidanmark.dk](http://www.nyidanmark.dk), 'Nye regler om bl.a. opholdstilladelser til flygtninge og familiemedlemmer til flygtninge' (New rules on i.a. residence permits for refugees and family members of refugees), available at <https://www.nyidanmark.dk/da/Nyheder/2019/03/Nye-regler-L140>
- 41 The description of the authorities' practice in the area is based on the authors' prior knowledge of the area as well as information from the relevant authorities. The Danish Immigration Service and the Refugee Appeals Board have had the opportunity to correct errors and omissions in this respect and the other sections on the authorities' practice in the following chapters.
  - 42 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 53 a (2), 3<sup>rd</sup> sentence, available at <https://www.retsinformation.dk/eli/lta/2021/1910>
  - 43 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 46 a (3), available at <https://www.retsinformation.dk/eli/lta/2021/1910>
  - 44 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 56 (8), available at <https://www.retsinformation.dk/eli/lta/2021/1910>. You may only have your case tried by the courts if the basis for the decision is flawed, there are case processing errors or unlawful exercise of discretion.
  - 45 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 52 a (8), available at <https://www.retsinformation.dk/eli/lta/2021/1910>
  - 46 If you are ultimately refused by the Refugee Appeals Board, you have the option of applying for a residence permit under the labour market attachment scheme if you have worked full-time in Denmark for two years. According to information from SIRI, only very few people have actually applied for a residence permit under this scheme; thus in 2021, only 11 refugees applied and none were granted a residence permit.
  - 47 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 33 a (2), 3<sup>rd</sup> sentence, available at <https://www.retsinformation.dk/eli/lta/2021/1910>
  - 48 The Danish Immigration Service (2019), 'Udlændingestyrelsen ændrer praksis i sager vedrørende de generelle forhold i Syrien' (The Danish Immigration Service changes practice in cases concerning the general conditions in Syria), 27 February 2019, available at [https://www.nyidanmark.dk/da/News%20Front%20Page/2019/02/us\\_aendrer\\_praksis\\_i\\_sager\\_vedr\\_syrien](https://www.nyidanmark.dk/da/News%20Front%20Page/2019/02/us_aendrer_praksis_i_sager_vedr_syrien). See also the Refugee Appeals Board (2019) 'Flygtningenævnet vurderer, at de generelle forhold i Syrien er ændret' (The Refugee Appeals Board assesses that the general conditions in Syria have changed), 27 February 2019, available at <https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/27022019>
  - 49 The Danish Immigration Service (2019), 'Udlændingestyrelsen ændrer praksis i sager vedrørende de generelle forhold i Syrien' (The Danish Immigration Service changes practice in cases concerning the general conditions in Syria), 27 February 2019, available at [https://www.nyidanmark.dk/da/News%20Front%20Page/2019/02/us\\_aendrer\\_praksis\\_i\\_sager\\_vedr\\_syrien](https://www.nyidanmark.dk/da/News%20Front%20Page/2019/02/us_aendrer_praksis_i_sager_vedr_syrien). See also the Danish Immigration Service's country report, *Syria: Security*

- Situation in Damascus Province and Issues Regarding Return to Syria*, February 2019, available at: <https://nyidanmark.dk/da/Nyheder/2019/02/Udl%C3%A6ndingestyrelsen-offentligg%C3%B8r-nylanderapport-om-Syrien>
- 50 The Refugee Appeals Board (2019), 'status på prøvesager vedrørende personer fra Syrien' (status for trial cases concerning persons from Syria), 27 June 2019, available at <https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/27062019>. The Board assessed that the mere presence in Damascus was not itself a violation of Article 3 of the ECHR, but did not decide whether the changed conditions in Damascus were of a 'purely temporary nature', which is a decisive criterion in cases regarding revocation of residence permits.
- 51 The Refugee Appeals Board (2019), 'Flygtningenævnet stadfæster afslag på asyl til syriske statsborgere' (The Refugee Appeals Board upholds refusal of asylum for Syrian nationals), 17 December 2019, available at <https://fln.dk/da/Nyheder/Nyhedsarkiv/2019/17-12-2019>
- 52 The Refugee Appeals Board (2021), 'Flygtningenævnet stadfæster afgørelser vedrørende syriske statsborgere fra Rif Damaskus-området' (The Refugee Appeals Board upholds decisions regarding Syrian nationals from the Rif Damascus area), 18 February 2021, available at <https://fln.dk/da/Nyheder/Nyhedsarkiv/2021/18022021>
- 53 Figures obtained from the Danish Immigration Service 19 May 2022. The figures cover the Danish Immigration Service's decisions regarding persons from the city of Damascus or the Rif Damascus Province in Syria, who have been granted a residence permit on the basis of the general conditions pursuant to either the Aliens Act Section 7 (2) or (3) in the period from 1 January 2019 up to and including 31 December 2021. We have not been able to obtain more recent figures from the Immigration Service.
- 54 Figures obtained from the Danish Immigration Service 19 May 2022. The figures cover the Danish Immigration Service's decisions regarding persons from the city of Damascus or the Rif Damascus Province in Syria, who have been granted a residence permit on the basis of the general conditions under either the Aliens Act, Section 7 (2) or (3) in the period from 1 January 2019 up to and including 31 December 2021.
- 55 Figures obtained from the Danish Immigration Service 19 May 2022. The figures cover the Danish Immigration Service's decisions regarding persons from the city of Damascus or the Rif Damascus Province in Syria, who have been granted a residence permit on the basis of the general conditions under either the Aliens Act, Section 7 (2) or (3) in the period from 1 January 2019 up to and including 31 December 2021. The category 'extended or not revoked' also includes cases where a new residence permit has been issued pursuant to the Aliens Act, Section 7 (1) or (2). The Danish Immigration Service notes that the same person may appear several times in the statements in cases where the Danish Immigration Service has made a decision to revoke or refuse to extend the residence permit, where the decision has been appealed, and the Refugee Appeals Board has remanded the case for renewed consideration by



- the Danish Immigration Service, after which the Danish Immigration Service has made another decision in the case..
- 56 Figures obtained from the Refugee Appeals Board on 8 February 2022. The figures cover the number of decisions made by the Refugee Appeals Board in personal cases regarding the revocation or refusal to extend residence permits regarding Syrian nationals from Damascus and Rif Damascus from 19 June 2019 up to and including 6 February 2022. The figures are preliminary and calculated on the basis of registrations in the immigration authorities' electronic case processing system on 6 February 2022. As of 18 April 2022, new figures are available regarding reversal in the Ministry of Immigration and Integration's parliamentary response to question 371, available at <https://www.ft.dk/samling/20211/almdel/uu/spm/371/svar/1884593/2576123.pdf>. As of 18 April 2022, a total of 329 cases had been decided in the Refugee Appeals Board, of which 121 cases (37%) were upheld; 161 cases (49%) were reversed; and 47 cases (14%) were remanded. Thus, a very large number of cases are still been reversed.
- 57 The Refugee Appeals Board, 29. *Beretning 2020* (Report 29th report 2020), p. 587, June 2020, available at [https://fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/1005647-Beretning-2020\\_Low.pdf?la=da&hash=F781A6F0396F1AF6A52937EDEC68594E47892BF3](https://fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/1005647-Beretning-2020_Low.pdf?la=da&hash=F781A6F0396F1AF6A52937EDEC68594E47892BF3)
- 58 Figures obtained from the Refugee Appeals Board on 8 February 2022. There are 288 cases in total in the period from 19 June 2019 up to and including 6 February 2022. The above figures cover the number of decisions made by the Refugee Appeals Board in personal cases regarding revocation or denial of extension of residence permits regarding Syrian nationals from Damascus and Rif Damascus. The figures are preliminary and have been calculated on the basis of registrations in the immigration authorities' electronic case processing system as of February 6 2022.
- 59 Figures obtained from the Refugee Appeals Board on 8 February 2022. Numbers from the period 19 June 2019 up to and including 21 February 2022 cover the requests for re-opening of cases concerning Syrian nationals from Damascus and Rif Damascus. The figures for 2019 and 2020 do not contain figures regarding the number of requests for re-opening of cases regarding refusal of extension and decisions in cases regarding requests for re-opening in cases regarding refusal of extension.
- 60 In five personal cases, the Board has overturned the decision of the Danish Immigration Service and issued a residence permit pursuant to Section 7 (1) of the Aliens Act., while in two personal cases, the Board has extended the residence permit of the persons in question pursuant to the Section 7 (3), with reference to the ECHR, article 8 (Information from the Refugee Appeals Board by email on 11 March 2022).
- 61 Figures obtained from the Refugee Appeals Board on 8 February 2022. The figures are preliminary and calculated on the basis of registrations in the immigration authorities' electronic case processing system as of February 6 2022.

- 62 The Danish Immigration Service informs that as of 28 November 2021, six people were accommodated at the exit centre, while nine people were registered as having departed and 43 people had disappeared and were wanted. The Danish Immigration Service has advised that they are not in possession of more recent figures in this area (Ministry of Immigration and Integration (2021), *Answer to question No. 107*).
- 63 Der Spiegel (2022), 'Wie Dänemark Syrer in die Flucht treibt', <https://www.spiegel.de/ausland/repressive-asyllpolitik-wie-daenemark-syrer-in-die-fluchttreibt-a-5726a990-ca73-4eaf-b8a8-a84e7f24a8a5> 11. januar 2022
- 64 The examples in the box are from interviews conducted for the report.
- 65 Other researchers and practitioners in the field have also documented such consequences of the paradigm shift with respect to temporary nature and uncertainty. Based on her experiences from the trauma treatment centre Oasis, Anna Jessen writes, e.g., that 'generelt [ses] et forhøjet symptomniveau blandt klienter, når der sker bevægelser på området omkring opholdstilladelser, og når den offentlige debat kredser om mulighederne for at inddrage flere opholdstilladelser: Øget angst, yderligere forhøjet alarmberedskab og dårligere kognitiv funktionsevne' (in general, an increased level of symptoms is seen among clients when there are changes in the area of residence permits and when the public debate revolves around the possibilities of revoking more residence permits: Increased anxiety, further increased state of alertness and poorer cognitive functioning) (Mette Lind Kusk and Anna Jessen (2022), 'At være ung på midlertidigt ophold: midlertidighedens sociale konsekvenser' (Being a young person on a temporary stay: the social consequences of temporariness), under review). For a discussion of uncertainty as a concept, see C. Horst and K. Grabska (2015), 'Introduction. Flight and Exile. Uncertainty in the Context of Conflict-induced Displacement', *Social Analysis*, volume 59(1), pp. 2ff.
- 66 Jan-Paul Brekke (2001), 'The Dilemmas of Temporary Protection: The Norwegian Experience', *Policy Studies* volume 22(2). For a discussion of uncertainty as a concept, see C. Horst and K. Grabska (2015), Introduction. Flight and Exile. Uncertainty in the Context of Conflict-induced Displacement, *Social Analysis*, volume 59(1), pp. 2ff.
- 67 Mette Lind Kusk and Anna Jessen (2022), 'At være ung på midlertidigt ophold: midlertidighedens sociale konsekvenser' (Being a young person on a temporary stay: the social consequences of temporariness), under peer review.
- 68 The European Court of Human Rights, *Tuquabo-Tekle v. Netherlands*, judgment of 1 December 2015, case No.: 60665/00, available at: <https://hudoc.echr.coe.int/eng?i=001-71439>
- 69 On the basis of external consultation, the Refugee Appeals Board has noted in a telephone conversation of 24 May 2022 that the purpose of the memo is not to describe their own practice, but instead to explain the ECtHR's practice in the area. The Danish Immigration Service also notes that the Immigration Service closely monitors both the practice of the ECtHR and the concrete

interpretation of the Court's judgments in the Refugee Appeals Board, and that the lack of completion of the note has no significance. However, it is the Institute's assessment that precisely the explanation of the ECtHR's practice, which is missing from the note, would contribute to an understanding of what the authorities emphasise in their assessment of Article 8, i.e., what is the basis for their revocation practice.

- 70 The European Convention on Human Rights, Article 8 (2).
- 71 Jon Fridrik Kjølbro (2020), *Den Europæiske Menneskerettighedskonvention for praktikere* (The European Convention on Human Rights for Practitioners), Djøf Forlag, p. 928.
- 72 Jon Fridrik Kjølbro (2020), *Den Europæiske Menneskerettighedskonvention for praktikere* (The European Convention on Human Rights for Practitioners), Djøf Forlag, p. 842.
- 73 The procedural legal guarantees do not appear explicitly from the wording of the provision, but follow from the Court's practice. The Court has primarily ruled in cases concerning the forcible removal of children, but it must be assumed that the interpretation from the Court applies in a broader sense. See, e.g., the European Court of Human Rights, *Petrov and X v. Russia*, judgment delivered on 23 October 2018, case No.: 23608/16, paragraph: 101. See also Jon Fridrik Kjølbro (2020), *Den Europæiske Menneskerettighedskonvention for praktikere* (The European Convention on Human Rights for Practitioners), Djøf Forlag, p. 928.
- 74 Instrukskommissionen beretning (Report from the Instruction Commission), volume 1, p. 562, 2020, available at <https://www.justitsministeriet.dk/wp-content/uploads/2020/12/Instrukskommissionen-Bind-1-kapitel-1-7.pdf>
- 75 The Danish Immigration Service (2019), 'nye regler om bl.a. opholdstilladelser til flygtninge og familiemedlemmer til flygtninge' (new rules on, i.a., residence permits for refugees and family members of refugees), 1 March 2019, available at: <https://www.nyidanmark.dk/da/Nyheder/2019/03/Nye-regler-L140>
- 76 This is also clear from the explanatory memorandum to the legislative amendment in connection with the introduction of Section 19a in 2019: 'Der er så vidt ses ikke praksis fra EMD, der vedrører den situation, at en opholdstilladelse til en udlænding, der har fået asyl i et land, er blevet inddraget eller nægtet forlænget som følge af, at forholdene, der har begrundet opholdstilladelsen, har ændret sig på en sådan måde, at udlændingen ikke længere risikerer forfølgelse' (As far as we can tell, there is no practice from the ECtHR that relates to the situation that a residence permit for a foreigner who has been granted asylum in a country has been revoked or refused extension as a result of the circumstances that justified the residence permit having changed in such a way that the foreigner no longer risks persecution), Section 2.1.7, available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 77 The European Court of Human Rights, see, e.g., *Maslov v. Austria*, case No. 1638/03, 22 March 2007, available at: <https://hudoc.echr.coe.int/eng?i=001-87156>

- 78 The European Court of Human Rights, see, e.g., *Maslov v. Austria*, case No. 1638/03, 22 March 2007, available at: <https://hudoc.echr.coe.int/eng?i=001-87156>
- 79 The Institute finds that the assessment by particularly the Danish Immigration Service is too superficial, and that the Refugee Appeals Board considers more aspects in their assessment of dependency to a greater extent. See, e.g., minutes from the Refugee Appeals Board's Coordination Committee: <https://fln.dk/-/media/FLN/Koordinationsudvalg/Referat-k-udvalg-24022022.pdf?la=da&has h=AFEC4F40730E7076C50CE43CEAFEC12B728CE4CF>
- 80 The Refugee Appeals Board, see, e.g., concrete decision from March 2022, search for 'practice' then 'consequential status' and '18 years'. Excerpt from the decision: 'Flygtningenævnet finder på den baggrund, at klageren og klagerens søn udgør en familieenhed, uanset at sønnen [er over 18 år]. Flygtningenævnet bemærker endelig, at det forhold, at klageren og klagerens søn er udrejst af Syrien og indrejst i Danmark med cirka et års mellemrum, ikke kan føre til, at klageren og klagerens søn ikke kan anses som en familieenhed, idet de siden sønnens indrejse i Danmark har boet sammen, og idet de boede sammen på det tidspunkt, hvor klagerens søns asylmotiv opstod' (On this basis, the Refugee Appeals Board finds that the complainant and the complainant's son constitute a family unit, regardless of the fact that the son [is over 18 years of age]. The Refugee Appeals Board finally notes that the fact that the complainant and the complainant's son left Syria and entered Denmark approximately one year apart cannot lead to the complainant and the complainant's son not being considered a family unit, as – since the son's entry into Denmark – they have lived together, and as they lived together at the time when the complainant's son's asylum motive arose), available at <https://fln.dk/da/Praksis>. Consequential status is the situation where a person – e.g., an adult child – derives rights from his or her parent and thus is granted the same type residence permit.
- 81 The European Court of Human Rights, *Pormes v. Netherlands*, case No: 25402/14, 14 June 2011, paragraph 47, available at <https://hudoc.echr.coe.int/eng?i=001-203836>
- 82 The European Court of Human Rights, *Bouchelkia v. France*, case No: 23078/93, 29 January 1997, paragraph 41, available at <https://hudoc.echr.coe.int/eng?i=001-62573>. Also, in the case of *Maslov v. Austria*, which deals with the deportation of an 18-year-old man for crime, the Court found that the complainant had a family life in Austria that was protected by the ECHR, Article 8.
- 83 Elements of dependence have been translated from 'additional elements of dependence'.
- 84 The European Court of Human Rights, *F.N. v. Great Britain*, case No.: 3202/09, 17 September 2013, paragraph 36.
- 85 The European Court of Human Rights, *F.N. v. United Kingdom*, case No.: 3202/09, 17 September 2013, paragraph 37. See also the European Court of Human Rights, *AS v. Switzerland*, case No. 39350/13, 30 June 2015, paragraphs 49-50, available at <https://hudoc.echr.coe.int/eng?i=001-155717>

- 86 The European Court of Human Rights, *Kwaky-Nti and Dufie v. the Netherlands*, case No.: 31519/96, 7 November 2000.
- 87 The European Court of Human Rights *Senchishak v. Finland*, case No: 5049/12, 18 November 2014, paragraphs 55-57, available at <https://hudoc.echr.coe.int/eng?i=001-148076>
- 88 Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2., available at <https://www.retsinformation.dk/eli/ft/201812L00140>. The Ministry also writes: 'Hvis der er tale om unge voksne (dvs. personer over 18), som endnu ikke har stiftet deres egen familie, kan forholdet til deres forældre og andre tætte familiemedlemmer imidlertid udgøre familieliv i konventionens forstand' (If it is a question of young adults (i.e., people over 18) who have not yet started their own family, the relationship with their parents and other close family members may, however, constitute family life in the sense of the convention), cf. *Maslov v. Austria*, paragraph 62.
- 89 The Refugee Appeals Board, search for 'practice' and 'Syria', available at: <https://fln.dk/Praksis>
- 90 The Danish Institute for Human Rights (2018), fact sheet, 'Barnets tarv, når familien får afslag på asyl' (The best interests of the child when the family is refused asylum), September 2018, available at: [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/faktaark\\_qa/faktaark\\_om\\_opholdstilladelse\\_til\\_afviste\\_asylboern.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/faktaark_qa/faktaark_om_opholdstilladelse_til_afviste_asylboern.pdf). The best interests of the child is a general principle in the UN Convention on the Rights of the Child, where Article 3 emphasises that 'in all actions where the authorities make decisions concerning a child, the best interests of the child shall be a primary consideration', but the principle is also used in the ECtHR's practice in Article 8 cases concerning children, and the ECtHR has determined that the child's interests are of decisive importance here. However, consideration for the child is not necessarily all-important and will not always be decisive. Denmark may at any time choose to place greater emphasis on the child's welfare and interests in cases regarding rejected asylum children than the Court's decisions require.
- 91 The European Court of Human Rights, *El-Ghatet v. Switzerland*, case No: 56971/10, 8 November 2016, paragraph 46, available at <https://hudoc.echr.coe.int/eng?i=001-168377>
- 92 The Institute for Human Rights (2018), fact sheet, '*Barnets tarv, når familien får afslag på asyl*' (The best interests of the child when the family is refused asylum), September 2018, available at: [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/faktaark\\_qa/faktaark\\_om\\_opholdstilladelse\\_til\\_afviste\\_asylboern.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/faktaark_qa/faktaark_om_opholdstilladelse_til_afviste_asylboern.pdf)
- 93 The European Court of Human Rights, *El-Ghatet v. Switzerland*, case No: 56971/10, 8 November 2016, paragraph 52, available at <https://hudoc.echr.coe.int/eng?i=001-168377>

- 94 The European Court of Human Rights, *El-Ghatet v. Switzerland*, case No: 56971/10, 8 November 2016, paragraph 53, available at <https://hudoc.echr.coe.int/eng?i=001-168377>
- 95 The European Court of Human Rights, *Maslov v. Austria*, case No.: 1638/03, 22 March 2007. The right to privacy entails 'the totality of social ties between settled migrants and the community in which they are living', cf. Maslov, paragraph 63.
- 96 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2.1.1.5., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 97 The European Court of Human Rights, *Osman v. Denmark*, case No.: 38058/09, 14 June 2011, available at <https://hudoc.echr.coe.int/eng?i=001-105129>
- 98 The European Court of Human Rights, *Pormes v. Netherlands*, case No: 25402/14, 14 June 2011, paragraph 45, available at <https://hudoc.echr.coe.int/eng?i=001-203836>
- 99 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2.1.1.5., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 100 The European Court of Human Rights, *Salija v. Switzerland*, case No: 55470/10, 10 April 2017, paragraph 50, available at <https://hudoc.echr.coe.int/eng?i=001-170050>
- 101 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2.1.1.5., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 102 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.1.6.1, available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 103 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2.1.1.5., available at <https://www.retsinformation.dk/eli/ft/201812L00140> with reference to the European Court of Human Rights, *Salija v. Switzerland*, case No.: 55470/10, 10 April 2017, available at <https://hudoc.echr.coe.int/eng?i=001-170050>
- 104 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2.1.1.5., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 105 The European Court of Human Rights, *Jeunesse v. Netherlands*, case No.: 12738/10, judgment of 3 October 2014, available at <https://hudoc.echr.coe.int/eng?i=001-147117>

- 106 Decision from the interviewee.
- 107 The Refugee Appeals Board, search for 'practice', 'Syria' and 'accompanying children', available at <https://fln.dk/da/Praksis>
- 108 The Aliens Act, *Consolidation Act No. 1910 of 26 September 2021*, Section 46 a and Section 53 a 1, available at <https://www.retsinformation.dk/eli/lta/2021/1910>
- 109 The European Court of Human Rights, *Petrov and X v. Russia*, case No.: 23608/16, 23 October 2018. In this judgment, the ECtHR found that the state shall look at the 'entire family situation', 'the decision-making process involved in measures of interference must be fair and sufficient to afford due respect to the interests safeguarded by Article 8', paragraph 98. Available at <https://hudoc.echr.coe.int/eng?i=001-187196>
- 110 Letter from the Immigration Appeals Board of 17 March 2022. The Danish Immigration Service informs that there have subsequently been decisions regarding this in the Immigration Appeals Board.
- 111 The European Court of Human Rights, guide on ECHR, Article 8, paragraph 342, available at [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf)
- 112 The European Court of Human Rights, guide on ECHR, Article 8, paragraph 342, available at [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf)
- 113 Decision from January 2022, Refugee Appeals Board's website, search for 'practice', 'Syria' and 'January 2022', available at <https://fln.dk/da/Praksis>. In a telephone conversation on 24 May 2022, the Refugee Appeals Board informed that it is no longer their practice to re-open cases on their own motion, but that an application for re-opening needs to be submitted.
- 114 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 115 The Ministry of Immigration and Integration (2018), *Bill No. 140 as presented on 15 January 2019 regarding proposal for an act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, Section 2.3.2., available at <https://www.retsinformation.dk/eli/ft/201812L00140>
- 116 The Danish Immigration Service, the Refugee Appeals Board and the Immigration Appeals Board, '*Beskyttelsen af udlændinges privat- og familieliv efter Den Europæiske Menneskerettighedskonvention og FN's konventioner*' (The protection of foreign nationals' private and family life according to the European Convention on Human Rights and UN conventions), June 2020, available at <https://fln.dk/-/media/FLN/Publikationer-og-notater/Notat-om-familieliv/Notat-om-beskyttelsen-af-udlændinges-privat-og-familieliv--30032021-opdateret.pdf?la=da&hash=B6F9525F014E9A779C808F01499B97A8372C05> DD
- 117 The Parliamentary Ombudsman, FOB 2016-11 and FOB 2002-194.
- 118 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 384.
- 119 Steen Rønsholdt (2018) *Forvaltningsret. Retssikkerhed, proces, sagsbehandling* (Administrative law. Rule of law, due process, case processing), Karnov, p. 274.

- 120 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 387.
- 121 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 385.
- 122 The Parliamentary Ombudsman, FOB 1990.240, FOB 2001.807, FOB 2002.194 and U 1998.509 V. See also FOB 02.194, Section 16, item c, available at <https://www.retsinformation.dk/eli/fob/2002/194>. See also guidance on the Public Administration Act, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 123 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, items 214-216, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 124 The Parliamentary Ombudsman, guidance, available at <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/vejledningspligt/>
- 125 The Parliamentary Ombudsman, FOB 08.238, e.g., p. 62 and p. 67, available at [https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle\\_bsager/2008-9-4/2008-9-4.pdf/](https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/2008-9-4/2008-9-4.pdf/)
- 126 The Parliamentary Ombudsman, 'Good public administrative practice', available at [https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/god\\_forvaltningssskik/](https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/god_forvaltningssskik/)
- 127 The description of the authorities' practice in the area is based on the authors' prior knowledge of the area as well as information from the relevant authorities. The Danish Immigration Service and the Refugee Appeals Board have had the opportunity to correct errors and omissions in this and the other sections on the authorities' practice in the following chapters.
- 128 The Danish Immigration Service, available at <https://www.nyidanmark.dk/da/Applying/Asylum>
- 129 The Danish Immigration Service, 'Ophør af opholdstilladelse som flygtning (Termination of residence permit as a refugee)', available at <https://www.nyidanmark.dk/da/SituationChange/Asylum/Termination%20of%20residence%20permit>. See also an example regarding the introduction of Section 19a here: <https://www.nyidanmark.dk/da/News%20Front%20Page/2019/03/Nye%20regler%20L140#:~:text=En%20opholdstilladelse%2C%20som%20er%20givet,marts%202019>
- 130 However, this does not mean that challenges cannot arise later in the process. Several of our interviewees thus talk about challenges, both in relation to choosing a lawyer and in relation to the quality of the guidance and advice they have received from their lawyer.
- 131 When refugees arrive in Denmark, they participate in an information meeting with the authorities. In addition, the Danish Refugee Council offers guidance and information, including the possibility of applying for a change of asylum status. The majority of the people we have interviewed arrived in Denmark in the years 2014-2015. During this period, many Syrian refugees arrived in Denmark and the asylum system was under pressure, which may have influenced the thoroughness of information procedures on arrival.
- 132 The Parliamentary Ombudsman, 'Vejledning' (Guidance), available at <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/>



- vejledningspligt/. See also Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 392.
- 133 It is stipulated in the Danish Refugee Council's performance contract with the Danish Immigration Service that the organisation has a mandate to advise refugees.
- 134 Guidance on the Public Administrative Act No. 11740 of 4 December 1986, items 214-216, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 135 The letter contains in-depth information about the further process, including the possibility of appealing and the suspensory effect in connection with this. However, this is only clarified several pages into the letter.
- 136 The Public Administration Act, Section 19 (1).
- 137 'Folketingstidende' 1985-86, appendix A, Bill No. L 4 as presented on 2 October 1985 on the proposal for a public administrative act, comments on section 20, column 61 f and p. 153, available at [https://www.folketingstidende.dk/samling/19851/lovforslag/L4/19851\\_L4\\_som\\_fremsat.pdf](https://www.folketingstidende.dk/samling/19851/lovforslag/L4/19851_L4_som_fremsat.pdf)
- 138 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, item 105, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 139 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 595.
- 140 The Parliamentary Ombudsman, see, e.g., FOB 2008.483 and FOB 2015.17.
- 141 Steen Rønsholdt (2018) *Forvaltningsret. Retssikkerhed, proces, sagsbehandling* (Administrative law. Rule of law, due process, case processing), Karnov, p. 504.
- 142 The Parliamentary Ombudsman, 'Partshøring' (party consultation), available at <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/partshoering/>
- 143 Guidance No. 11740 of 4 December 1986 on the Public Administration Act, item 105, <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 144 The Parliamentary Ombudsman, 'Officialprincippet' (The doctrine of inquisitorial procedure), available at <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/officialprincippet/>
- 145 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 543.
- 146 KOM No. 19065 of 31 March 1998, 'Nyt fra Ankestyrelsen – officialprincippet' (News from the Appeals Board – the doctrine of inquisitorial procedure), available at [https://www.retsinformation.dk/eli/retsinfo/1998/19065#:~:text=I%20official%2D%20eller%20unders%3%B8gelsesprincippet%20\(ben%3%A6vnes,oplyst%2C%20n%3%A5r%20der%20tr%3%A6ffes%20afg%3%B8relse](https://www.retsinformation.dk/eli/retsinfo/1998/19065#:~:text=I%20official%2D%20eller%20unders%3%B8gelsesprincippet%20(ben%3%A6vnes,oplyst%2C%20n%3%A5r%20der%20tr%3%A6ffes%20afg%3%B8relse)
- 147 The Parliamentary Ombudsman, 'Officialprincippet' (the doctrine of inquisitorial procedure), available at <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/officialprincippet/>
- 148 The Public Administration Act, Sections 8 (1) and (2).
- 149 The Parliamentary Ombudsman, 'Partsrepræsentation' (party representation), available at <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/partsrepraesentation/>
- 150 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, p. 595.

- 151 The Parliamentary Ombudsman, FOB 2019-29. See also Karsten Revsbech et al. (2019), *Sagsbehandling* (Case processing), Djøf Forlag, pp. 223-225.
- 152 The Parliamentary Ombudsman, FOB 1990.240, FOB 2001.807, FOB 2002.194 and U 1998.509 V. See also FOB 02.194, section 16, item c, available at <https://www.retsinformation.dk/eli/fob/2002/194> as well as guidance on the Public Administration Act No. 32 – 36, available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=60828>
- 153 The Parliamentary Ombudsman, 'Partshoering' (party consultation), available at: <https://www.ombudsmanden.dk/myndighedsguiden/generel-forvaltningsret/partshoering/>
- 154 Niels Fenger (2018) *Forvaltningsret* (Administrative Law), Djøf Forlag, pp. 598-99.
- 155 The description of the authorities' practice in the area is based on the authors' prior knowledge of the area as well as information from the relevant authorities. The Danish Immigration Service and the Refugee Appeals Board have had the opportunity to correct errors and omissions in this and the other sections on the authorities' practice in the following chapters.
- 156 See the Register of Interpreters at the Danish National Police, available here: <https://politi.dk/virksohmheden/rigspolitiets-tolkefortegnelse> and the Danish Immigration Service's website, 'Tolke (interpreters), available at <https://us.dk/for-samarbejdspartneretolke/>. See also 'Vejledning til brug for myndighedernes aftale om priser for tolkning og oversættelse (Guidance in connection with the authorities' agreement on prices for interpretation and translation), 11 December 2019, <https://us.dk/media/9578/prisvejledning-til-myndigheder.pdf> and *Tolkehåndbogen* (the Interpreter Handbook) <https://us.dk/media/9576/tolkehaandbogen.pdf>
- 157 The Danish Immigration Service states that this appears from the invitation letter. However, from our interviewees, we are aware of cases where this has not been the case.
- 158 Some also talk about incorrect interpretation in connection with their original asylum interview. Thus, Omar says: 'I don't feel I have been received guidance. There were many refugees who came at that time. To be honest, it was like the interpreters they used were not the best. It was a bit chaotic. You were told that you had to sign – you often signed things you did not understand. They said: "now the interpreter will read it to you", but the interpreter could not speak proper Danish, so you did not know what you were signing'. We have also spoken to people who did not sign the minutes from their first asylum interview, or who know family members who did not. Ibrahim says: 'Right when I came to Denmark, I did not sign my minutes. It all went so expedient. I have heard that they have actually used that against someone: "you said such and such"'. Lawyer Niels Erik Hansen has lodged a complaint in this respect with the Ombudsman.
- 159 The Danish Immigration Service notes that additions and corrections to the minutes, which come to light during the translation of the minutes, are entered on the last page of the minutes and subsequently translated for the refugee.

- 160 The Institute for Human Rights (2015), *Tolkning i retsvæsenet* (Interpretation in the legal system), p. 7, available at [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling\\_2015/tolkning\\_retsvaesenet\\_2015.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling_2015/tolkning_retsvaesenet_2015.pdf). On 24 February 2022, Frie Grønne (Danish political party) presented a bill on the certification of public interpreters.
- 161 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, item 200, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 162 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, items 206-208, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 163 The Parliamentary Ombudsman, *Udlændingenævnets sagsbehandlingstider – Udlændinge- og Integrationsministeriet* (The Immigration Service's case processing times – the Ministry of Immigration and Integration), case No.: 2020-15386, 26 November 2020, p. 11, available at [https://www.ombudsmanden.dk/find/nyheder/alle/stigende\\_sagsbehandlingstider\\_i\\_udlaendingenaevnet/udtalelse/](https://www.ombudsmanden.dk/find/nyheder/alle/stigende_sagsbehandlingstider_i_udlaendingenaevnet/udtalelse/)
- 164 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, item 200, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 165 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, item 200, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 166 Guidance on the Public Administration Act, No. 11740 of 4 December 1986, items 206-208, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 167 Circular Letter No. 73 of 4 June 1997 on objectives for expedient case processing, etc. item 1, available at <https://www.retsinformation.dk/eli/mt/1997/73#:~:text=1.,behandle%20sine%20sager%2C%20er%20bl>
- 168 Circular Letter No. 73 of 4 June 1997 on objectives for expedient case processing, etc. item 2, available at <https://www.retsinformation.dk/eli/mt/1997/73#:~:text=1.,behandle%20sine%20sager%2C%20er%20bl>
- 169 Guidance on the Public Administration Act No. 11740 of 4 December 1986, item 205, available at <https://www.retsinformation.dk/eli/retsinfo/1986/11740>
- 170 The Parliamentary Ombudsman, *Udlændingenævnets sagsbehandlingstider – Udlændinge og Integrationsministeriet* (the Immigration Appeals Board's case processing times – Ministry of Immigration and Integration), case No.: 2020-15386, 26 November 2020, available at [https://www.ombudsmanden.dk/find/nyheder/alle/stigende\\_sagsbehandlingstider\\_i\\_udlaendingenaevnet/udtalelse/](https://www.ombudsmanden.dk/find/nyheder/alle/stigende_sagsbehandlingstider_i_udlaendingenaevnet/udtalelse/)
- 171 The description of the authorities' practice in the area is based on the authors' prior knowledge of the area as well as information from the relevant authorities. The Danish Immigration Service and the Refugee Appeals Board have had the opportunity to correct errors and omissions in this and the other sections on the authorities' practice in the following chapters.

- 172 Figure obtained from the Danish Immigration Service, 14 February 2022. The figure covers the average case processing time for revocation cases in the asylum area. It is further stated that the average processing time for time-limited extensions of asylum cases in 2020 was 89 days, while in 2021 it was 81 days. This figure was obtained from the Danish Immigration Service on 31 March 2022.
- 173 Figure obtained from the Refugee Appeals Board on 8 February 2022.
- 174 Figure obtained from the Refugee Appeals Board on 29 March 2022. The figure covers the average case processing time for re-opening requests in cases about revocation or refusal of extension for 2021.
- 175 The Danish Immigration Service has set internal targets for case processing times in cases concerning the extension of time-limited asylum residence permits. Here, the Immigration Service had to observe a case processing time of seven months in at least 90 percent of the cases up to and including December 2021, according to the Immigration Service's *Mål- og resultatplan for 2021* (Goal and Result Plan for 2021), available at <https://www.us.dk/media/10484/udlaendingestyrelsens-maal-og-resultatplan-med-underskrifter.pdf>). This was changed as of 1 January 2022, after which the Danish Immigration Service must observe a case processing time of six months in 90 percent of the cases (the Danish Immigration Service, *Mål- og resultatplan 2022* (Goal and Result Plan 2022), available at <https://www.us.dk/media/10484/udlaendingestyrelsens-maal-og-resultatplan-med-underskrifter.pdf>). The Refugee Appeals Board has set internal targets for the overall average case processing time for spontaneous cases, revocation as well as refusal of extension cases. Here, it has been decided that the average case processing time in 2022 shall be maximum of 120 days for 95 percent of the cases (see the Refugee Appeals Board, *Mål- og resultatplan 2022* (Goal and Result Plan 2022), available at <https://www.us.dk/media/10484/udlaendingestyrelsens-maal-og-resultatplan-med-underskrifter.pdf>).
- 176 The Aliens Act, Section 53 a.
- 177 The Aliens Act, Section 53 a (2), 3rd sentence.
- 178 Ny i Danmark (New in Denmark), 'Klagebehandling i Flygtningenævnet' (The processing of complaints in the Refugee Appeals Board), available at [https://nyidanmark.dk/da/Words%20and%20Concepts%20Front%20Page/US/Asylum/Avenues\\_for\\_appeal\\_in\\_Refugee\\_Appeals\\_Board](https://nyidanmark.dk/da/Words%20and%20Concepts%20Front%20Page/US/Asylum/Avenues_for_appeal_in_Refugee_Appeals_Board)
- 179 The Aliens Act, Section 55 (1).
- 180 The Danish Refugee Council, *Formandskabsberetning 2020* (Chairman's report 2020), 29th report, p. 527, available at [https://fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/1005647-Beretning-2020\\_low.pdf?la=da&hash=F781A6F0396F1AF6A52937EDEC68594E47892BF3](https://fln.dk/-/media/FLN/Publikationer-og-notater/Publikationer/Beretninger/1005647-Beretning-2020_low.pdf?la=da&hash=F781A6F0396F1AF6A52937EDEC68594E47892BF3)
- 181 The Aliens Act, Section 46 a.
- 182 The Danish Return Agency, 'Opgaver overgår fra Udlændingestyrelsen til Hjemrejsestyrelsen' (Tasks are transferred from the Danish Immigration Service to the Danish Return Agency), available at <https://hjemst.dk/>

- nyheder/2020/august/ opgaver-overgaar-fra-udlaendingestyrelsen-til-hjemrejsestyrelsen/
- 183 The Danish Return Agency, *Mål- og resultatplan 2022* (Goal and Result Plan 2022), available at <https://hjemst.dk/media/9464/maal-og-resultatplan2022.pdf>
- 184 The Danish Act of Repatriation, Act No. 982 of 26/05/2021, cf. Section 1 (3).

**THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS**