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Beneficiaries of international protection travelling to
their country of origin:
Challenges, Policies and Practices in France

*French Contact Point for the European Migration
Network*

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- French NCP website (in French):
<https://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3>

BENEFICIARIES OF INTERNATIONAL PROTECTION TRAVELLING TO THEIR COUNTRY OF ORIGIN: CHALLENGES, POLICIES AND PRACTICES IN FRANCE

***Study carried out by the French National Contact Point
for the European Migration Network (EMN)***

January 2019

Disclaimer:

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List of Acronyms

- CE: Council of State
- CESEDA: Code on Entry and Residence of Foreign Nationals and Right of Asylum
- CNDA: National Court of Asylum
- CRR: Refugee Appeals Board
- DGEF: General Directorate for Foreign Nationals in France
- ECHR: European Convention on Human Rights
- OFPRA: French Office for the Protection of Refugees and Stateless Persons
- RTD: Refugee Travel Document
- TIV: Travel and Identity Document

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EXECUTIVE SUMMARY

Travels of beneficiaries of international protection to their country of origin or applications for a passport at the embassy of their country of origin were observed by competent authorities in several (Member) States. While such acts do not automatically imply a misuse of their international protection status, they could, in certain circumstances, contradict the grounds that led to granting protection, namely the individual's fear of persecution in the country of origin (or habitual residence for stateless persons) or real risk of suffering serious harm.

The study aims to map, firstly, information on the reasons for such travels of persons granted international protection in France.

Furthermore, the study aims to analyse the possible consequences of such acts on the international protection status and residence rights of the persons concerned. The assessment needs to take into account the 1951 Refugee Convention and relevant EU asylum law (recast Qualification Directive and Asylum Procedures Directive), the European Convention on Human Rights and national legislation.

The main objectives of this study are therefore (1) to provide objective and reliable information about beneficiaries of international protection who travel to their country of origin or come into contact with national authorities of their country of origin, and (2) information on cases where international protection statuses were ceased leading to, for example, the status being ended, revoked or not renewed (as per Article 45 and 46 of the recast Asylum Procedures Directive) and, ultimately, the permission to stay withdrawn.

For the purpose of this study, 'beneficiaries of international protection' comprise persons who are granted refugee status or subsidiary protection status in France. National forms of protection and humanitarian statuses thus fall outside the scope of the study. Similarly, applicants for international protection, persons excluded from international protection, persons with international protection who have acquired citizenship in France are not included in this study.

Section 1: Overview of national policy context

This introductory section will aim at contextualising the study by providing an overview of the national policy priorities related to beneficiaries of international protection travelling to their country of origin.

Q1. Is the topic of beneficiaries of international protection travelling to their country of origin a national policy priority in your Member State?

The issue of BIPs travelling to their country of origin is an issue of concern to the French authorities as it raises the problem of the credibility of the right of asylum. However, it is not considered to be a priority issue. Few cessation decisions are taken every year.

The French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*, OFPRA) and/or the Directorate for Asylum within the General Directorate for Foreign Nationals in France (*Direction générale des étrangers en France*, DGEF), are generally informed by the police or border authorities if BIPs are identified when returning to their own countries.

Regardless of the type of protection granted (refugee status or subsidiary protection status), the individual is not authorised to return to his/her country of origin. Although the texts governing the two cases of protection are different, in this regard, they are treated in the same way. Simply contacting the authorities or travelling to the country of origin does not automatically mean that protection ends. Once the OFPRA has been notified, it launches a contradictory procedure to examine whether the fears which justified granting protection status continue to be justified and to assess the specific circumstances that could explain the reasons for travelling to the country of origin.

Q2. If available, please provide (estimated) statistics on the number of beneficiaries of international protection (allegedly) travelling to their country of origin registered from 2012 to 2018 (until 30 June 2018, if available).

Neither the OFPRA nor any other national authority holds statistics on the number of BIPs believed to have travelled to their country of origin.

Section 2: Travels to or contacts with national authorities of the country of origin and possible cessation of international protection

This section will provide information on beneficiaries of international protection contacting authorities of their country of origin or travelling to their country of origin, and the possible cessation of their international protection status as a result. This section thus draws a distinction between refugees (section 2.1 and 2.2) and beneficiaries of subsidiary protection (section 2.3).

2.1. REFUGEES CONTACTING AUTHORITIES OF COUNTRY OF ORIGIN AND RE-AVAILMENT OF THE PROTECTION OF THE COUNTRY OF NATIONALITY

This sub-section will provide information on refugees contacting official authorities of their country of origin such as consulates and embassies (e.g. visits in person or other forms) of their country of nationality established in France with the purpose of requesting the issuance or extension of their passports.

This section will thus consider which circumstances lead to the loss of refugee status and how they are assessed by national authorities, including jurisprudence.

Q3. If a refugee in France contacts official authorities of his/her country of origin (e.g. consulates, embassies, or other official representations of the country of origin in France), can this possibly lead to the cessation of his/her refugee status? **YES**

If yes, please elaborate (e.g. this can be considered as re-availment of national protection of the country of nationality in certain circumstances (see options in question 5)):

According to article L. 711-4 of the CESEDA, "the French Office for the Protection of Refugees and Stateless Persons may terminate refugee status, on its own initiative or by request of an administrative authority, when the person in question falls under one of the cessation clauses in article 1, Section C of the Geneva Convention of 28 July 1951, cited above."

The Convention relating to the Status of Refugees (1951 Refugee Convention) includes six cessation clauses which justify the cessation of refugee status once it has been granted. One of these clauses applies to people who have **voluntarily re-availed themselves of the protection of their country of nationality**. This act of allegiance by the refugee renders international protection unnecessary. Certain acts or contacts with the authorities in the country of origin are assumed to constitute acts of allegiance. In this case, the OFPRA may put an end to the refugee status. According to the Council of State, simply making contact with the authorities of the country of origin cannot constitute conclusive presumption and an examination of all the particular circumstances is required (CE, 13 Jan. 1989, No.78055).

Q3a. If a refugee in France contacts official authorities of his/her country of origin, can this have other consequences on his/her refugee status? **YES**

If yes, please elaborate (e.g. this can trigger a (re)assessment of the initial application for refugee protection):

If a refugee living in France contacts the official authorities in his/her country of origin, **protection is not automatically ceased. Decisions to end** the recognition of refugee status are taken on a **case-by-case** basis by the OFPRA after an individual examination of each situation. The Office examines whether fears of persecution persist. If the fears persist, protection may be upheld, even if the individual has taken a risk by returning to his/her country. The status may also be maintained in light of past persecution (such as psychological trauma in the event of returning to the country of origin).

The procedure to end protection is set out in **articles L. 724-1 to L.724-3 of the CESEDA** (see Q.30b).

Q4. If yes to Q3, is it specified:

In national legislation

- Article L. 711-4 of the CESEDA

In case law

For example:

- CRR SR 18 July 1997 M. D. No. 95008581/286135 R;
- CE, 13 January 1989, 78055, T.;
- CNDA 21 December 2016 M. D. No. 15013973 C+.

See also Q5.

In practice

Q5. If yes to Q3, which of the following acts (by the refugee) can lead to re-avilment of protection of the country of origin:

Administrative contacts with the embassy or consulate of his/her country of origin may be made with a view to obtaining documents. Often the French authorities are aware that these contacts have been made when the documents are presented as part of other administrative procedures initiated with their departments.

This may include delivery of a passport (CRR, 22 Apr. 1993: Rec. CRR, p. 88; CRR, SR, 18 July. 1997: Rec. CRR, p. 74), renewal of a passport (CRR, 8 Oct. 1996: rec. CRR, p. 132; CNDA, 9 Feb. 2012, No. 11016239) or any other document (driving licence, etc.), or to celebrate a marriage at the consulate of the country of origin (CRR, SR, 18 July 1997: Rec. CRR, p.74).

- Frequency of contacts with national authorities over a certain period of time
- Obtaining the issuance or renewal of a passport
- Requesting administrative documents (*E.g. documents pertaining to family reunification or civil status such birth certificates*)
- Marriage in the country of origin
- Other

Q6. If yes to Q3, are exceptions or derogations possible (*e.g. if the fear of persecution emanates from non-State actors*)? YES

Q6a. If yes to Q6, is it specified:

- In national legislation
- In case law

See Q.6b.

In practice

Q6b. If yes to Q6, please specify which circumstances are taken into account:

A procedure which may be interpreted as an act of allegiance may not be judged as such if there is **compelling need**. Several legal decisions have thus identified a certain number of cases which were considered to constitute a "compelling need".

- a passport application in order to urgently have an ID (CRR, 12 Nov. 1957, No. 8157 / CRR, 24 June 1998: Rec. CRR, p. 19), to enable a marriage ceremony to take place (CRR, 7 May 1993: Rec. CRR, p. 88 / CRR, SR, 7 July 1995: Rec. CRR, p. 19), or to enable minor children to join their mother living in her country of origin (CE, 15 May 2009, No. 288747);

- when the applicant requests from a third person the extension of his/her passport with the consular authorities in order to continue to receive life-sustaining treatment (CNDA, 24 July. 2013, No. 12002308);
- to obtain a request for naturalisation (CRR, 29 Jan. 1959, No. 3502);
- for a short-term stay in the country of origin following the death of a close family member (CRR, 6 Dec. 1996: Rec. CRR, 112);
- for a short stopover between flights (CRR, SR, 21 Nov. 1997: Rec. CRR, 75).

Q7. What challenges do national authorities encounter in practice when assessing such circumstances and cessation ground?

It may sometimes be difficult to contact certain people if they have moved without informing the Office. As indicated in the welcome booklet issued to BIPs when they are granted their status, if BIPs change address, they are asked to inform the OFPRA. This is not, however, a legal obligation. Consequently, **notification of the procedure to re-examine the status of international protection is sent to the last known address**, which can create difficulties when the individual has moved without informing the OFPRA.

In order to ensure that beneficiaries of international protection inform the French authorities of any change of address, Decree No. 2018-1159 of 14 December 2018 created article R. 754-1 of the CESEDA which states that: "Foreign nationals who obtain refugee status or subsidiary protection status are obliged to inform the French Office for the Protection of Refugees and Stateless Persons of their address and any changes to this address within three months after the change. If they change address without informing the Office, any notification sent by the Office to the last known address will be considered to be legitimate."

-CNDA, 24 Oct. 2018, No. 17053317

Q8. Is guidance or any other form of established practice on cessation on the grounds of 'voluntary re-avaiement of the protection of the country of nationality' available to national authorities in your (Member) State? **YES**

If yes, please elaborate whether it takes the form of:

Internal guidelines

Please specify:

UNHCR guidelines (e.g. guidelines on cessation)

Other

Please specify:

Article 1, Section C of the **1951 Refugee Convention** lists six circumstances in which refugee status can be ceased or withdrawn. France has applied the 1951 Refugee Convention since it ratified it on 23 June 1954, and administrative case law has confirmed that these provisions are directly applicable under national law.

See Q.3.

The OFPRA published its **guide on the OFPRA procedures**, which provides useful information on all the Office's procedures.

2.2. REFUGEES TRAVELLING TO AND 'VOLUNTARY RE-ESTABLISHMENT' IN THE COUNTRY OF ORIGIN

This sub-section will provide information on refugees travelling to the country of origin and whether such acts can amount to cessation of protection, such as voluntary re-establishment in the country of origin. This cessation ground is regulated in Article 1C(4) of the 1951 Refugee Convention and Article 11(1)(d) of the recast Qualification Directive in the same manner. This is the only cessation clause which takes – explicitly – into account the travels and return of a refugee to his or her country of origin.

Q9. Please describe national legislation applicable to refugees regarding their right to travel (i.e. outside the State that granted them protection).

People who have been granted refugee status or beneficiary of subsidiary protection status by the OFPRA, may only travel outside France on the condition that they have first obtained a travel document to replace their passport.

Article L.753-1 of the CESEDA states that, for refugees this travel document is the **refugee travel document** (RTD). For beneficiaries of subsidiary protection, it is, according to article **L.753-2 of the CESEDA**, the **identity and travel document** (TIV). These travel documents enable their holders to request entry into any state, with the exclusion of the state in which they are reported to be under threat (whether this be their country of nationality or their country of habitual residence). There are no limitations on countries neighbouring the country of origin.

These travel documents are issued for a duration of five years for refugees and one year for beneficiaries of subsidiary protection (see article 953 of the General Tax Code). The following information is mentioned on the RTD and the TIV (in line with the provisions of Annex 6-4 of the CESEDA, point B, section 2): nature of the travel document, civil status, address, date of issue and expiry date, country of origin, excluded countries, issuing authority, travel document number, holder's signature, and registration number in the AGDREF system.

In the event of returning to their country of origin, in addition to being the specific target of the threat of persecution which justified their placement under the protection of the OFPRA, protected persons may be exposing themselves to the risk of having the Office withdraw the protection which was granted to them, because this return may indicate a lack of a real threat of persecution.

However, despite the threats to which a protected person is exposed in his/her country of origin, this person may, exceptionally, wish to go there for humanitarian reasons, such as the death or serious illness of a close family member. In such circumstances, a protected person may, exceptionally and for a short duration, be authorised to carry out this trip without exposing himself/herself to the risk of the OFPRA putting an end to the protection that has been obtained. This authorisation takes the form of a **prefectoral safe conduct**.

Under these circumstances, when the OFPRA is informed, it does not initiate cessation proceedings against protected individuals. Nevertheless, individuals undertake the journey at their own risk and peril, and without any guarantee of crossing the borders of other states without difficulty, nor of being authorised by the country of origin to enter its territory.

Q10. Is a travel limitation:

- a) To the country of origin (or country of habitual residence) specified in the travel document issued to refugees in France? **YES**

See Q9.

These travel documents do not authorise BIPs to return to their country of origin. However, in exceptional circumstances (death or serious illness of a close family member, for example), the individual may, by requesting the prefecture, receive a **safe conduct** lasting a maximum of three months authorising them to return to their country of origin.

E.g. the name of the country the refugee is not allowed to travel to is explicitly mentioned in the travel document.

If yes, please elaborate whether this limitation stems from:

National legislation

- Article L. 753-2 of the CESEDA

- Practice developed by competent authorities
- Case law
- Other sources

a) To neighbouring countries of the country of origin (or country of habitual residence) specified in the travel document issued to refugees in France? **NO**

See Q9.

Q11. If refugees travel to their country of origin:

- a)** Do they need to notify in advance the French authorities? **YES**
- b)** Do they need to request a specific permission or authorisation to do so to a designated French authority? **YES**

The procedure for issuing a safe conduct

The application must be made by the individual to the **prefecture of his/her place of residence**, accompanied by all supporting documents.

The reason given by the applicant must be strictly humanitarian in nature. The prefecture then checks the reality of the reasons given, as any other reasons, particularly travel for tourism, business or professional purposes are not valid. If the individual nonetheless wishes to return to his/her country of origin for reasons other than humanitarian reasons, he/she will be told that he/she must renounce their protection and contact the authorities of his/her country of origin to obtain a passport.

The Prefect is the only authority able to judge whether a safe conduct should be issued, based on the reasons given but also based on the level of risk incurred by returning to the country of origin. The OFPRA may be consulted in this regard. The Prefect is under no obligation to issue a safe conduct, which remains a benefit and not a right.

Before issuing a safe conduct, the police authorities are systematically consulted to check that there are no obstacles connected with public order or public security.

In the event of a safe conduct being granted, it is issued for a maximum duration of three months. A prefectural re-entry visa is affixed to it. In line with article 953 of the General Tax Code, the issuance of the safe conduct is also subject to payment of a tax of €15. It is issued in exchange for the residence permit and the travel document.

Q12. Can refugees request their original passport from the French authorities? **NO**

Q13. What are the most common reasons for travel to their country of origin stated by refugees to authorities in France?

- Visits for family reasons
- Marriage in the country of origin
- Business reasons
- Other reasons

Q13a. Please specify if this information is recorded by national authorities (e.g. in a database). **NO**

Q14. If a refugee travelled to his/her country of origin, can this possibly lead to the cessation of his/her refugee status? **YES**

Refugees who have travelled to their country of origin are assumed to have voluntarily re-availed themselves of the protection of the country of nationality in the sense of article 1, C1 of the Geneva Convention. See Q. 3.

Q14a. If a refugee travelled to his/her country of origin, can this have other consequences on his/her refugee status? **YES**

If yes, please elaborate (e.g. this can trigger a (re)assessment of the initial application for refugee protection): See Q3a

Q15. If travelling to the country of origin may lead to cessation of protection (see question 14), is it specified:

In national legislation

- Article I.711-4 of the CESEDA

In case law

- **CNDA Grande formation 6 July 2017 M.Q. No. 16032301 R:**

The court ruled on the conditions under which the asylum judge applies the cessation clauses set out in article 1, C1 of the Geneva Convention. The court heard an appeal from a Vietnam national whose refugee status the OFPRA had ceased to recognise because, by using his refugee travel document to return to Vietnam for a period of four weeks, he had voluntarily re-availed himself of the protection of the authorities of his country of origin in the sense of article 1, C1 of the Geneva Convention. The Court considered, on the one hand, that by boarding a flight to his country of origin when he had been informed by the border police that his refugee travel document did not authorise him to do so, the applicant was fully aware that he was not respecting the conditions of international protection that had been recognised and, on the other, that permission had been granted by the Vietnam consular authorities in Paris for him to return to his country. The Court held that the medical certificate relating to the health of his elderly father, aiming to justify a family reason for his return, and which he had held for nine months before travelling, established no absolute grounds for his urgent departure. Finally, it noted that the individual had not tried to apply for a safe conduct from the French authorities. The Court deduced from this consistent range of documents that the voluntary behaviour of the applicant himself revealed that he had re-availed himself of the protection of the authorities of his country and, as a result, the fear of persecution on the basis of which he had been recognised as a refugee had ceased to exist.

- **CRR SR 21 November 1997 M. L. No. 96005257/300164 R:**

Congolese national – Statutory refugee – Applicant had not returned to his country of origin but had transited through it during travel (transit via Kinshasa during a trip from Brazzaville-Brussels-Paris in August 1995).

- Act of allegiance towards the State of Zaire (absence)
- Cessation of protection (absence).

- **CNDA 20 October 2011 M. K. No. 10010000 R:**

SERBIA / KOSOVO – Applicant born in 1957 in Priština, within the autonomous region of Kosovo and Metohija, at that time under the jurisdiction of the Republic of Serbia, itself part of the Federal Republic of Yugoslavia - the applicant's place of usual and continual residence in this region until his departure in 1999 – at the time of his departure, the applicant held Yugoslav nationality – his region of origin became independent in February 2008 – eligibility for Kosovan nationality as a result of the Constitution of 15 June 2008 and the law of 2 June 2008 on the possession of Kosovan nationality (existence) – effective return of the applicant to Kosovo following Kosovo's declaration of independence in February 2008 – individual issued with a passport and identity card by the Kosovo authorities – applicant should be regarded, in the sense of the provisions of article 1 C1) of the Geneva Convention, as having voluntarily re-availed himself of the protection of the authorities of the Republic of Kosovo, the nationality of which he is entitled to claim.

In practice

Q16. Which of the following circumstances are taken into account when assessing cessation of protection (e.g. re-establishment in the country of origin):

- Frequency of travels to the country of origin
- Length of stay in the country of origin
- Specific place of stay in the country of origin
- Reasons to travel to the country of origin
- Other

The Office takes these circumstances into account in its work and they are validated by the jurisprudence of the Council of State and the National Court for Right of Asylum (*Cour nationale du droit d'asile*, CNDA). See examples above.

Q17. If travelling to the country of origin could lead to cessation of refugee protection, are there any criteria to assess the voluntariness and/or refugee's intent to re-establish himself/herself in the country of origin?

The voluntary/intentional nature of the travel is assessed *a contrario*: being removed or deported to the country of origin by the authorities of a third country does not constitute this intention to settle in the country of origin. Similarly, the case of *force majeure*, compelling need, or even force, means the cessation clause cannot be applied.

These aspects are assessed as part of the contradictory procedure.

Q18. Do French authorities encounter any **challenges** when assessing such cases of cessation? **NO**

The application of these cessation clauses is clear, insofar as it most often applies to objectively verifiable facts.

Q19. Is guidance or any other form of established practice on cessation on the grounds of '*voluntary re-establishment in the country of origin*' available to authorities in France? **YES**

If yes, do these take the form of:

- Internal guidelines

Please specify: The OFPRA has internal notes on how cessation cases should be instructed.

- UNHCR guidelines on cessation

- Other

Please specify: The OFPRA has an internal EASO training module relating to end of protection procedures.

2.3. BENEFICIARIES OF SUBSIDIARY PROTECTION TRAVELLING TO AND/OR CONTACTING AUTHORITIES OF THE COUNTRY OF ORIGIN

This sub-section will specifically collect information on beneficiaries of subsidiary protection travelling to and/or contacting authorities of the country of origin. This section will examine if contacts with and/or travels to countries of origin can lead to considering that the risk of serious harm and eligibility for subsidiary protection has ceased to exist.

Contacting official authorities of the country of origin

Q20. If a beneficiary of subsidiary protection in France contacts official authorities of his/her country of origin (e.g. *consulates, embassies, other official representations of the country of origin*), can this possibly lead to the *cessation* of the subsidiary protection status? **YES**

The cessation clauses contained in the 1951 Refugee Convention (see Q.3) can also be enforced against a beneficiary of subsidiary protection.

According to **article L. 712-3 of the CESEDA**, the OFPRA may end subsidiary protection on its own initiative or on request of an administrative authority in the case of a **change in circumstances** which is "sufficiently significant and durable that this be no longer required".

Q20a. If a beneficiary of subsidiary protection in France contacts official authorities of his/her country of origin, can this can have other consequences. **YES**

As for the refugee status, the end of protection is not automatic. Decisions to end the recognition of subsidiary protection are taken on a case-by-case basis by the OFPRA after an individual examination of each situation.

Protection will not be withdrawn "when the beneficiary can provide evidence of **pressing reasons** relating to previous serious violations to refuse to re-avail themselves of the protection of their country" (article L. 712-3 of the CESEDA).

Q21. If a beneficiary of subsidiary protection contacting official authorities of his/her country of origin may lead to cessation of subsidiary protection, is it specified:

- In national legislation
 - **Article L. 712-3 of the CESEDA which applies to refugees and to the beneficiaries of subsidiary protection.**
- In case law
- In practice

Q22. If a beneficiary of subsidiary protection contacts official authorities of his/her country of origin, which of the following circumstances can lead to cessation of subsidiary protection?

- Frequency of contacts with national authorities of the country of origin
- Obtaining the issuance or renewal of a passport
- Requesting administrative documents (e.g. document pertaining to family reunification or civil status such as birth certificates)
- Marriage
- Other

The OFPRA applies the same instruction procedure as for refugees.

Travelling to the country of origin

Q23. Please briefly describe national legislation on the right to travel of beneficiaries of subsidiary protection in France?

Article L.753-2 of the CESEDA states that the beneficiaries of subsidiary protection may be issued with a travel document entitled a **"travel and identity document"** (TIV) which authorises them to travel outside France. This travel document enables its holders to request entry into any state, excluding the state in which they are reported to be under threat (whether this be their country of nationality or their country of habitual residence). There are no limitations on countries neighbouring the country of origin. The document mentions the excluded country.

For more details, see Q.9.

Q24. Can a beneficiary of subsidiary protection request a travel document in your Member State? **YES** (See Q23)

The formalities are the same as for refugees.

Q25. What are the most common reasons for travel to their country of origin stated by beneficiaries of subsidiary protection to national authorities:

- Visits for family reasons
- Marriage in the country of origin
- Business reasons
- Other reasons

Q25a. Please specify if this information is recorded by French authorities (e.g. in a database). **NO**

Q26. If a beneficiary of subsidiary protection in France travels to his/her country of origin, can his/her protection status be ceased (e.g. re-establishment in the country of origin)? **YES** (see Q20)

Q26a. If yes to Q26, is it specified:

- In national legislation
 - **Article L. 712-3 of the CESEDA which applies to refugees and to the beneficiaries of subsidiary protection.**
- In case law
- In practice

Q26b. If yes to Q26, which of the following circumstances are taken into account when assessing cessation of protection:

- Frequency of travels to the country of origin
- Duration of stay in the country of origin
- Specific place of the stay in the country of origin
- Reason for travel to the country of origin
- Other

The OFPRA applies the same instruction procedure as for refugees.

Guidance and challenges in assessing cases of cessation of subsidiary protection

Q27. Is guidance or any other form of established practice on cessation of subsidiary protection available to national authorities? [YES](#)

If yes, please indicate whether they take the form of:

Internal guidelines

Please explain: [The OFPRA has internal notes on how BPI cessation cases should be instructed.](#)

UNHCR guidelines on cessation

Other

Q28. Based on previous answers to questions in this sub-section 2.3., what challenges do French authorities encounter when assessing cases of cessation of subsidiary protection?

[See Q18.](#)

Section 3: Adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection

This section will present France's practices in relation to procedural aspects of the adoption of a decision on cessation of international protection based on cessation grounds examined in the previous section.

This section will also present information on the procedural guarantees available to third-country nationals throughout the procedure, including the right to an effective remedy. It will also examine the implications that such decision may have on the right to stay on the territory of a Member State by the third-country national concerned by the decision, as well as on the right to stay of his/her family members.

3.1. INFORMING BENEFICIARIES OF INTERNATIONAL PROTECTION

Q29. Are beneficiaries of international protection informed about possible consequences on their protection status if they contact authorities or travel to their country of origin? **YES**

Table 1 informing beneficiaries of international protection

Means used to inform beneficiaries of international protection	Contacting authorities of the country of origin	Travelling to the country of origin (or country of habitual residence)
It is indicated on beneficiaries' travel document	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Beneficiaries are informed in writing by national authorities <i>Please specify language of communication used by national authorities: French</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Beneficiaries are informed orally by competent authorities	<input type="checkbox"/>	<input type="checkbox"/>
Beneficiaries are informed at their request	<input type="checkbox"/>	<input type="checkbox"/>
Other means	<input type="checkbox"/>	<input type="checkbox"/>

These points are mentioned in the **welcome booklet** given to individuals by the OFPRA when they are told of the protection decision, as well as in the supporting letter.

It is also mentioned that "as a refugee/BSP, you may no longer travel to your country or hold a national passport. You may no longer contact your consulate to obtain these documents. These approaches, which are evidence of your allegiance to the authorities of your country of origin and a lack of fear of persecution, may result in the loss of your status as a refugee/BSP."

Currently, the booklet provided to BIPs is only available in French. An English translation is, however, under way.

3.2. REVIEW OF PROTECTION STATUS

Q30. Is the status of beneficiaries of international protection that travelled to and/or contacted authorities of his/her country of origin reviewed in France? **YES**

Q30a. If yes to Q30, please briefly elaborate on the framework of the review in your (Member) State:

- There is a systematic review of all international protection statuses.
- There is a possibility to review the international protection status upon renewal of residence permit accompanying status.
- A review can be triggered ex officio by national authorities
as part of a procedure to cease international protection.

Q30b. If yes to Q30, please briefly elaborate on (i) authorities involved and procedure followed (e.g. same authorities involved in the review and adoption of a decision to cease international protection), and (ii) whether a beneficiary of international protection is informed of the review.

The procedure to end protection (withdrawal or cessation), both in terms of the right of asylum (articles L.711-4 and L. -6 of the CESEDA), and subsidiary protection (article L.712-3 of the CESEDA) is set out in **articles L.724-1 to L.724-3 of the CESEDA**.

The OFPRA informs the person in writing of the procedure that has begun, as well as of the reasons for launching this procedure and the time scale for a response. The individual must present in writing (contradictory procedure), his/her observations on the reasons for objecting to the cessation decision, and the Office may, if necessary, request a personal interview (article L. 723-6 of the CESEDA). The individual may be assisted by a lawyer or third party (in line with the same procedural guarantees as for their first application).

In cases where the elements do not lead to a reconsideration of international protection, the individual is advised of the continuation of protection in a letter containing copies of the birth certificate and, where appropriate, the marriage certificate. These copies enable the BIP to apply for the renewal of his/her residence permit or his/her travel document, by providing recent documents.

Q31. Can a review of international protection status lead to a decision to cease international protection in France? **YES**

See Q30.

3.3. CESSATION PROCEDURE

Q32. Based on circumstances that can trigger cessation grounds explored in section 2, which authorities are involved in the decision to cease international protection status in France?

The cessation provisions may be applied on initiative of the OFPRA or upon request of the administrative authority (the Prefect). The implementation of the cessation provisions is accompanied by written information and a personal interview, if necessary (article L.724-2 of the CESEDA). See Q30b.

Q33. Can the beneficiary of international protection present contrary evidence or elements during the procedure to cease his/her protection status? **YES**

Q33a. If yes to Q33, can he/she present defence:

- In writing to the competent authority

The individual may present testimonial evidence in writing in order to object to the cessation decision.

Orally

Both

It is the OFPRA who decides whether an individual interview will take place.

The individual may be accompanied by a lawyer under the same procedural guarantees as for his/her first application (article L.723-6 of the CESEDA).

This consists of returning to the context of a standard first application and reassessing the existence of a threat and examining the reasons which led the individual to contact the authorities of his/her country of origin or to travel to this country.

Other

The beneficiary of international protection may be accompanied by a lawyer or a representative of an accredited organisation who may make observations at the end of the interview (article L.723-6 of the CESEDA). According to the same article, "the lack of a lawyer or representative of an organisation does not impede the Office from carrying out the interview."

Q34. Is there a specific deadline set to issue the decision to (possibly) cease international protection? **NO**

The decision must be taken knowingly and conscientiously and as quickly as possible. There is no specific or imperative deadline.

Q34a. If yes to Q34, how is the decision notified to the (former) beneficiary of international protection? Is it done:

In writing

Orally

Other means

Q34b. If yes to Q34, does the decision include the reason(s) for cessation? **YES**

The cessation decision must be notified in writing *de facto* and *de jure*, in the form of a registered letter specifying the appeals procedure and the time scale.

Q35. In case a decision to cease the international protection status is adopted:

a) What are the timeframes for appealing the decision?

According to article L.731-2 of the CESEDA the appeal may be submitted to the CNDA within **one month** of notification of the OFPRA's decision (under the same conditions as those for the first application).

b) Which authority examines the appeal application?

Pursuant to article 731-2 of the CESEDA, all appeals made against cessation decisions regarding refugees or beneficiaries of subsidiary protection fall within the competence of the CNDA.

Q36. When a competent authority assesses elements to cease (or not) an international protection status, does it also assess the proportionality of a removal from national territory? **NO**

The OFPRA's decision only relates to the protection. If the individual is to be removed, another specific inquiry will be carried out on the right of residence and the reasons for removal, which falls to the administrative authorities (prefecture).

Q37. Have there been any court decisions on appeals against a (first instance) decision of cessation of a protection status due to travels to the country of origin in your (Member) State? **YES**

The appeals procedure is identical regardless of the reasons for the refusal (see Q.35).

3.4. CONSEQUENCES OF A CESSATION DECISION

Right to stay, possible change of status or return

Q38. In your (Member) State, is the decision to cease international protection issued together with the decision to end the residence permit? **NO**

When the decision to cease protection is issued, it does not immediately lead to withdrawal of the residence permit. The decision to withdraw the residence permit falls under the responsibility of the administrative authority (prefecture). Similarly, the OFPRA's decision to end protection does not necessarily mean withdrawal of the right to residence.

In the event that protection ends, the prefecture is competent to assess whether the right to residency may be granted on other grounds. Under application of article L.311-8-1 of the CESEDA, when the status of refugee or beneficiary of subsidiary protection is ended through a definitive decision by the OFPRA or a court decision, the residence permit issued to the refugee or the temporary residence permit issued to the beneficiary of subsidiary protection is withdrawn.

These residence permits cannot, however, be withdrawn if the foreign nationals has been in a legal migration situation for at least five years. It also takes into account respect for private and family life and article 8 of the ECHR.

Depending on the case (except in the case of a threat to public order), it is therefore possible to issue a statutory refugee with a ten-year common law residence permit (on the condition of at least three years' residence). Beneficiaries of subsidiary protection may be issued with a "private and family life" residence permit if they meet the conditions.

Q39. What are the consequences of a decision to cease international protection in France on the right to stay of the (former) beneficiary of international protection:

- a) Automatic loss of the right to stay: **NO; see above.**
- b) Individual circumstances of the (former) beneficiary of international protection are taken into account (e.g. the person has a right to stay on other grounds). **YES; see above.**

Q40. Can a (former) beneficiary of international protection be granted another status? **YES**

If yes, this can be:

- A subsidiary protection status
- A national protection status
- A legal migration status
- [See above.](#)
- Other

Right to stay of family members and dependents

Q41. In case of a (final) decision to cease international protection status, what are the consequences on family members and dependents included in the initial application for international protection:

- Keep their international protection status
- Lose their international protection status and lose their right to stay
- Lose international protection status and keep their right to stay on other grounds
- Case by case decision if they keep or lose their international protection status and their right to stay

The situation of family members is assessed according to the nature of the protection granted to them. If they have obtained protection individually, no consequences will arise. However, if protection was obtained according to the principle of family unity, an instruction to end protection will be triggered according to the same procedure indicated above. The situation of minors under the protection of the OFPRA is assessed depending on the situation of both parents as regards international protection.

- Other consequences

Q42. In case of a (final) decision to cease international protection status, what are the consequences on family members and dependents not included in the initial application for international protection, and who got a residence permit through family reunification with the former beneficiary of international protection.

- Keep their right to stay
- Lose their right to stay
- Case by case decision if they keep or lose their right to stay

Decisions take into account individual situations and the reasons why they may obtain a residence permit on other grounds as well as article 8 of the ECHR.

- Other consequences

Case studies

Q43. Illustrative examples on the adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection:

1. CNDA 20 October 2011 Ms. K. No. 10010000 R

KOSOVO – A Yugoslav refugee returned to Kosovo and was issued with a passport and an identity card by the Kosovan authorities – Voluntary re-availing of the protection of the authorities of the Republic of Kosovo, the nationality of which the applicant is entitled to claim (existence) – Cessation of the recognition of refugee status.

Considering the terms of the provisions of Paragraph A, 2 of article 1 of the Geneva Convention of 28 July 1951 (...)

Considering that under the terms of article 1, Section C of the Geneva Convention, “this Convention shall cease to apply to any person falling under the terms of Section A if: 1) He has voluntarily re-availed himself of the protection of the country of his nationality (...) 5) He can no longer, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality”;

Considering that in order to contest the decision by which the Director General of the OFPRA ceased to grant him the benefit of the status of refugee, Ms K. claims that he has been forced to return to Kosovo due to the health of a member of his family; that this territory has acquired independence, and should not be regarded as him returning to the territory of the Former Federal Republic of Yugoslavia (FRY) itself;

Given that, in the first place, Mr K. claims to be born on 19 March 1957 in Priština, in the autonomous region of Kosovo and Metohija, at that time under the jurisdiction of the Republic of Serbia, itself part of the Federal Republic of Yugoslavia; that this region became independent in February 2008; that in any case, the individual, who had lived there continually until 1999, i.e., a duration of 33 years, held Yugoslav nationality at the time of his departure; that, consequently, he is eligible for Kosovo nationality in line with the Constitution of 15 June 2008 and the law on possession of nationality of this new state adopted by the Kosovan Parliament on 20 February 2008; that thus, his request should only be examined in respect of the Republic of Kosovo and that the Director General of the OFPRA thus legitimately upheld this state in the

contested decision, in which he decided to cease conventional protection of the applicant; that consequently, the argument invoked by the applicant that he cannot be accused of having returned to the former FRY proper cannot be taken into account, as soon as the protection which had been granted to the applicant due to the fears he expressed in the event of returning to FRY must be analysed as particularly concerning the province of Kosovo, at the time an integral part of the FRY; that due to the fact that this state ceased to exist in 2003 and gave rise in 2006 and 2008 to three new states, shall not modify this analysis;

Considering that it results from the instruction and, notably, the statements from the applicant, that the applicant effectively returned to Kosovo following the country's declaration of independence in February 2008 and was issued by the authorities of this country with a passport and identity card; that under these conditions, Mr K. must be considered as having voluntarily re-availed himself, in the sense of the above-mentioned provisions of article 1, Section C of the Geneva Convention, of the protection of the authorities of the Republic of Kosovo, the nationality of which he is entitled to claim; and that thus, without examining the reason for return, the appeal must be rejected.

2. CRR, 22 November 2005, 538388, Ms S (née K).

Considering that Ms S (née K), who is Bihari in origin and whose usual place of residence was Bangladesh, contests the decision of 31 March 2005 in which the Director General of the OFPRA ceased to recognise the status of refugee on the grounds that it appears from the sworn statement established by a public notary in Dhaka on 5 August 2002 and signed by the individual that she went to Bangladesh to carry out procedures to change her name, after her conversion to Christianity, and thus re-availed herself of the protection of the authorities of her usual country of residence in the sense of the provisions of article 1 C cited above;

Considering that it does not appear from either the documents in the file nor the statements made in public to the Commission that Ms S (née K) went to Bangladesh to obtain an affidavit and pledged allegiance once again to the authorities of her country of usual residence; it appears that the applicant was represented by a lawyer to whom she had granted proxy; that in August 2002, when the document was established, she was in France with her husband and son; that there are grounds to support the fact that the decision by the Director General of the OFPRA to cease recognition of her status as a refugee was wrong; that Ms S (née K) now has the grounds to claim refugee status; ... (Annulment of the decision by the Director General of the OFPRA).

CONCLUSION

France has established a procedure to cease recognition of international protection based on the 1951 Refugee Convention as part of a contradictory procedure, which respects the rights of the individual. Each case is dealt with individually, on a case-by-case basis, taking into account the reasons for travel put forward by the individual.

France also has a procedure for issuing prefectoral safe conducts to enable BIPs to return to their country of origin for humanitarian reasons.

However, it appears from the research and interviews carried out as part of this study that no procedure to monitor or identify BIPs travelling to their country of origin exists in France. Similarly, no official procedure on cooperation and exchange of information on the European level exists to better identify and monitor these people.

Although the issue of BIPs travelling to their country of origin is an issue of concern to the French authorities insofar as it raises the problem of the credibility of the right of asylum, it is not a priority issue as few cases have been identified in comparison with the total number of international protection statuses granted each year: 85 decisions to cease protection were taken in 2015, 70 in 2016, and 69 in 2017.

ANNEX 1: LIST OF INTERVIEWS CARRIED OUT OR PEOPLE WHO HAVE CONTRIBUTED TO THE STUDY

The interviews and questionnaires were carried out between October and December 2018 by Christelle Caporali-Petit (Coordinator of the French National Contact Point for the EMN), Tamara Buschek-Chauvel and Anne-Cécile Jarasse (policy officers for the EMN).

Ministry of the Interior

General Directorate for Foreign Nationals in France, Directorate of Asylum

Right of asylum and protection department

- Frédérique DOUBLET, Head of Department
- Séverine ORIGNY FLEISHMAN, Deputy Director
- Sophie CHABRIDON, Deputy of Head of Section – National Law Division
- Anne-Louise JACQUET, intern

Central Directorate of Border Police – DCPAF, Cabinet

Directorate for International Cooperation – DCI, Sub-Directorate of Security Cooperation and Governance

French Office for the Protection of Refugees and Stateless Persons - OFPRA

- Sophie PEGLIASCO, Head of Department
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- Graziella SOTTEJEAU, Head of the European and International Affairs Unit
- Ludovic CHAMPAIN-SELLIER, Head of Department, Department of Protection
- Frédérique-Jeanne BESSON, Policy Officer, European Affairs

ANNEX 2: BIBLIOGRAPHY

1. International Treaties

- Geneva Convention of 28 July 1951 Relating to the Status of Refugees, <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

2. French Legislation

• Codes

- Code on Entry and Residence of Foreign Nationals and Right of Asylum, <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>
- General Tax Code, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069577>

3. European Legislation

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted , (recast) (Qualification Directive), OJ L 337, 20.12.2011, p. 9–26, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>
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