Submission by the Office of the United Nations High Commissioner for Refugees in the case of

A.Z. v. Section for Asylum,
Ministry of Interior of The former Yugoslav Republic of Macedonia

1. Introduction*

1.1. On 21 June 2010 the Office of the United Nations High Commissioner for Refugees ("UNHCR") was granted leave to intervene by way of *amicus curiae* within these proceedings in order to assist this Honourable Court in the determination of issues of law and the interpretation and application of the 1951 United Nations Convention Relating to the Status of Refugees ("the 1951 Convention"), its 1967 Protocol Relating to the Status of Refugees ("the 1967 Protocol"), and related international law obligations. UNHCR welcomes the opportunity to intervene in light of its supervisory responsibility with respect to the 1951 Convention and to operate as *amicus curiae* in the present judicial review proceedings.

1.2. On 19 May 2010, the Section for Asylum with its Decision delivered to the petitioner A.Z. on 02 June 2010, terminated his status as a beneficiary of subsidiary protection, otherwise valid until 1 January 2011. With the same decision the Section for Asylum ordered the petitioner to leave the territory of The former Yugoslav Republic of Macedonia within 20 days of receipt of the final decision. In the reasoning of the decision, the Section for Asylum stated that, acting upon Article 6, paragraph 2 (1) of the Law on Asylum and Temporary Protection ("*LATP*")[1], it was established that the petitioner, who was granted subsidiary protection, cannot enjoy the right of asylum in the former Yugoslav Republic of Macedonia for the reason that he constitutes a danger to the security of the Republic.. In addition, the Section for Asylum took into consideration Article 38 of the LATP on cessation of the right to asylum.

1.3. UNHCR intervenes in cases concerning the proper interpretation and application of provisions of the 1951 Convention and 1967 Protocol and other related international law obligations. UNHCR has extensive experience in intervening in cases in national jurisdictions and before the European Court of Human Rights ("*ECtHR*"). More

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law.

[1] Refined text of *Law on Asylum and Temporary Protection*, 12 February 2009, Official Gazette of RM, No. 19 of 13.02.2009.

generally, UNHCR issues authoritative legal as well as country-specific position papers on the protection of asylum-seekers, refugees and other persons of concern to UNHCR.

1.4. The former Yugoslav Republic of Macedonia is a State Party to the 1951 Convention and its 1967 Protocol. The LATP adopted in 2003 incorporates the provisions of the 1951 Convention and 1967 Protocol into national law, including the refugee definition, cessation clauses, exclusion clauses and the principle of non-*refoulement*. The 1951 Convention and 1967 Protocol remain the foundation of the international protection regime and need to be fully observed when applying "subsidiary" or "complementary" forms of protection.[2]

1.5. In addition to general principles of international refugee law, in the light of The former Yugoslav Republic of Macedonia's current status as a candidate country to join the European Union, as well as of its efforts to incorporate the European legislative instruments into the national legislation, it is pertinent to refer to the legislative framework and general principles which embody the EU asylum acquis.

1.6. Article 63 of the Treaty establishing the European Community ("*TEC*")[3] (succeeded by Article 78 of the Lisbon Treaty) provided the legal basis for the Community to enact legislative "*measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.*" Moreover, those legislative acts must ensure full compliance with the Charter of Fundamental Rights of the European Union[4] ("*EU Charter*").

1.7. Since the 1970s,[5] the Court of Justice of the European Union ("*CJEU*") has held that all acts adopted under powers conferred by the Treaties must respect fundamental rights. The CJEU itself reviews European legal acts in order to ascertain their compliance with fundamental rights, which are deemed to form part of the general principles of EU law, drawing on the constitutional traditions of the Member States and international treaties for the protection of human rights of which the Member States are signatories, including the European Convention for the Protection of Human Rights and Fundamental Freedoms ("*ECHR*").[6] Hence, the CJEU uses these general principles of EU law as

[2] ExCom Conclusions No. 87 (L) – 1999, No. 89 (LVI) - 2000 and No. 103 (LVI) - 2005.
[3] European Union, *Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community*, at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf.
[4] Article 18 of the Charter affirms the right to asylum shall be guaranteed in accordance with the 1951 Convention and Article 19 (2) enshrines the principle of *non-refoulement*. European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), at: http://www.unhcr.org/refworld/docid/3ae6b3b70.html.
[5] *Internationale Handelsgesellschaft v. Einfuhr*, C-11/70, European Union: European Court of Justice, 1970 P-01125, at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61970J0011&lg=en.
[6] *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, European Union: European Court of Justice, 17 February 2009, at: http://www.unhcr.org/refworld/docid/499aaee52.html, para 28.

grounds for review, as well as tools for interpreting European Union legal acts, including asylum legislation enacted under Article 63 of the TEC, and national acts based on EU asylum legislation.[7]

1.8. While UNHCR will provide the Court with a courtesy translation, the English version of this submission is the official one.

2. UNHCR's protection mandate and supervisory responsibility

2.1. UNHCR has an interest in this matter as the organisation entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees and other persons of concern, and, together with governments, for seeking permanent solutions for their problems.[8]

2.2. According to its Statute, UNHCR fulfils its mandate *inter alia* by *"[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."*[9] UNHCR's supervisory responsibility is also reflected in both the Preamble and Article 35 of the 1951 Convention and Article II of the 1967 Protocol,[10] obliging States Parties to cooperate with UNHCR in the exercise of its functions, including in particular to facilitate UNHCR's supervision of the application of these instruments.[11]

2.3. Since its creation in 1951, UNHCR has been working with States to identify and respond to international protection needs, including those arising in situations of international or internal armed conflict.

2.4. In the years following adoption of UNHCR's Statute, the United Nations General Assembly, with support from the Executive Committee of the High Commissioner's Programme ("*EXCOM*"), and the United Nations Economic and Social Council ("*ECOSOC*") extended UNHCR's competence *ratione personae*.[12] This was done not by

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[7] See, for instance, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary*, C-222/84, European Union: European Court of Justice, 1986 P-01651, paras 19 and 28, at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61984J0222:EN:HTML.

[8] See *Statute of the Office of the United Nations High Commissioner for Refugees*, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628, G.A. Res. 428(V), Annex, UN Doc. A/1775, paragraph 1 (1950) ("*the Statute*").

[9] *Ibidem*, paragraph 8(a).

[10] UNTS No. 2545, Vol. 189, p. 137 and UNTS No. 8791, Vol. 606, p. 267.

[11] *Ibid*.

[12] See UNHCR, *Note on International Protection*, submitted to the 45th session of the Executive Committee of the High Commissioner's Programme, UN Doc. A/AC.96/830, 7 September 1994, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3f0a935f2, paragraphs 31-32 and note 8: With respect to the mandate of UNHCR, successive General Assembly and ECOSOC resolutions have had the effect of extending the High Commissioner's competence to refugees fleeing armed conflict and generalized violence. Using a variety of formulations, the General Assembly has regularly called upon the High Commissioner *"to continue his assistance and protection activities in favour of refugees within his mandate as well as for those to whom he extends his good offices or is called upon to assist in accordance with relevant resolutions of the General Assembly,"* see, e.g., GA res. 3143 (XXVIII), 14 Dec.1973. Other resolutions refer, e.g., to *"refugees for whom [the High Commissioner] lends his good offices"*, GA

amending the statutory refugee definition contained in the Statute of UNHCR and in the 1951 Convention, but by entrusting UNHCR with protecting and assisting particular groups of people whose circumstances may not necessarily have met the definition in the Statute or the 1951 Convention.[13] In addition, UNHCR has adopted the usage of regional instruments such as the 1969 Organization of African Union Convention Governing Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, using the term refugee in a wider sense and representing a more authoritative expression of the refugee concept.[14] In practical terms, this has extended UNHCR's mandate to a variety of situations of forced displacement resulting from conflict, indiscriminate violence or public disorder. In light of this evolution, UNHCR considers that serious (including indiscriminate) threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order are valid reasons for international protection under its mandate.[15]

2.5 In view of The former Yugoslav Republic of Macedonia's status as a candidate country to join the European Union, as well as of its efforts to incorporate the content of European Union legislative instruments into the national legislation, it is relevant to mention that UNHCR's supervisory responsibility has been reflected in European Union law. Article 78 (1) of the Treaty on the Functioning of the European Union ("*TFEU*")[16] stipulates that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Convention. In addition, Article 18 of the Charter of Fundamental Rights of the European Union[17] states that the right to asylum shall be guaranteed with due respect for the rules of the 1951 Convention and the 1967 Protocol. Further, Declaration 17 to the Treaty of Amsterdam provides that "consultations shall be established with the United Nations High Commissioner for Refugees (…) on matters relating to asylum policy".[18] EU secondary legislation also emphasizes the role of UNHCR. For instance, Recital 15 of the Qualification Directive

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Res.1673 (XVI), 18 Dec. 1961; *"refugees who are of [the High Commissioner's] concern"*, GA res. 2294 (XXII), 11 Dec 1967; *"refugees and displaced persons, victims of man-made disasters"*, ECOSOC Res. 2011(LXI), 2 Aug.1976, endorsed by GA res. 31J.55 of 30 Nov. 1976; *"refugees and displaced persons of concern to the Office of the High Commissioner"*, GA res.36/125, 14 Dec.1981; *"refugees and externally displaced persons"*, GA res. 44/150, 15 Dec. 1988; *"refugees and other persons to whom the High Commissioner's Office is called upon to provide assistance and protection"*, GA res. 48/118, 20 Dec.1993).

[13] In such cases, the institutional competence of UNHCR is based on paragraph 9 of its Statute: *"The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal."*

[14] See "*Note on International Protection"*, footnote 12 , paragraph 32.

[15] UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, Executive Committee of the High Commissioner's Programme, Standing Committee, UN Doc. EC/55/SC/CRP.16, 2 June 2005, paragraph 26, http://www.unhcr.org/excom/EXCOM/ 42a005972.pdf.

[16] European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, at: http://www.unhcr.org/refworld/docid/4b17a07e2.html.

[17] See "*EU Charter*", footnote 4.

[18] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, 2 September 1997, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340, 10.11.1997, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML.

("*QD*")[19] states that consultations with the UNHCR "*may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.*" The supervisory responsibility of UNHCR is also specifically articulated in Article 21 (1) (c) of the Asylum Procedures Directive ("*APD*") according to which Member States shall allow UNHCR to "*present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure*".[20] It is further reflected in the Regulation establishing a European Asylum Support Office ("*EASO*"),[21] which recognizes UNHCR's expertise in the field of asylum[22] and foresees a non-voting seat for UNHCR on EASO's Management Board.[23]

2.5. UNHCR's supervisory responsibility has also been reflected in the national law of the former Yugoslav Republic of Macedonia. Article 13 of the LATP provides that the competent bodies "*shall co-operate with the United Nations High Commissioner for Refugees in all stages of the procedure for recognition of the right to asylum.*"

3. **Structure and scope of submissions**

3.1. The submission below is made in order to assist the Court in clarifying issues concerning:

(i) the reasons for termination of a status as a beneficiary of subsidiary protection including ensuring procedural safeguards and the right to an effective remedy, and

(ii) interpretation and application of the principle of *non-refoulement* in international refugee law in the context of national security.

3.2. The terms "*subsidiary*" or "*complementary*" forms of protection refer to legal mechanisms for protection and according a status to a person in need of international protection who does not fulfil the refugee definition of the 1951 Convention. UNHCR wishes to ensure that subsidiary protection complements and does not undermine refugee status under the 1951 Convention and 1967 Protocol. The criteria for refugee status need to be interpreted in such a manner that individuals who fulfil the criteria are so

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[19] European Union: Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 19 May 2004, 2004/83/EC, at: http://www.unhcr.org/refworld/docid/4157e75e4.html.

[20] European Union: Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006, 2005/85/EC, at: http://www.unhcr.org/refworld/docid/4394203c4.html.

[21] European Union, *Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office*, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF.

[22] *Ibid*. Recital 9 of the EASO Regulation indicates that "*the Office should act in close cooperation with the Office of the UN High Commissioner for Refugees (UNHCR) in order to benefit from its expertise and support*".

[23] *Ibid*. Recital 14 of the EASO Regulation underlines that "*given its expertise in the field of asylum, UNHCR should be a non-voting member of the Board so that it is fully involved in the work of the Office*". UNHCR's membership on the EASO Management Boards is governed by Article 23(4).

recognized and protected under the 1951 Convention and 1967 Protocol, rather than being granted complementary protection. UNHCR thus encourages states to apply subsidiary protection in line with international standards and in a way which helps to fill protection gaps.[24]

3.3. Beneficiaries of subsidiary or complementary forms of protection generally fall within UNHCR's extended international protection mandate, which as indicated above, includes those who are outside their country of origin or habitual residence and are unable or unwilling to return, owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence, or events seriously disturbing public order.[25]

4. Termination of subsidiary protection status

4.1. Both refugee status and subsidiary protection status pertain to persons in need of international protection falling within UNHCR's mandate. While these statuses are legally distinct, the termination of subsidiary protection may usefully be guided by the same principles as those applicable to the termination of refugee status. Thus, under applicable legal principles and standards, a person who is recognized as a refugee may lose refugee status, and by analogy a subsidiary protection beneficiary may lose subsidiary protection status, only if certain conditions are met.

4.2. Termination of refugee status under the 1951 Convention, and by analogy of subsidiary protection status, may occur on the basis of cessation, cancellation or revocation. Each of these categories needs to be distinguished from the others because they refer to separate legal and conceptual frameworks.

- **Cessation** -- involving the ending of refugee status pursuant to Article 1C of the 1951 Convention, applies when international protection is no longer necessary or justified whether because of a fundamental change in the situation prevailing in the country of origin or because of certain voluntary acts of the individual concerned, namely voluntary re-availing oneself of the protection of one's country of origin.[26]
- **Cancellation** -- involving a decision to invalidate a refugee status which should not have been granted in the first place. Cancellation affects

[24] UNHCR Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence, January 2008, http://www.unhcr.org/refworld/pdfid/479df7472.pdf, p. 3.
[25] See UNHCR, *"Providing International Protection Including Through Complementary Forms of Protection"*, footnote 15, paragraph 26.
[26] See UNHCR, *"Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)"*, HCR/GIP/03/03, 10 February 2003; UNHCR, "The Cessation Clauses: Guidelines on their Application", 26 April 1999; UNHCR, *"Note on the Cessation Clauses"*, 30 May 1997; UNHCR, *"Discussion Note on the Application of the 'Ceased Circumstances' Cessation Clauses in the 1951 Convention"*, 20 December 1991. See also UN High Commissioner for Refugees, *UNHCR Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive*, August 2008, at: http://www.unhcr.org/refworld/docid/48a2f0782.html.

determinations that have become final (that is, they are no longer subject to appeal or review), and it has the effect of rendering refugee status null and void from the date of the initial determination (*ab initio* or *ex tunc*).[27]

- **Revocation** -- involving the withdrawal of refugee status that was properly conferred in situations where a person engages in conduct falling within the exclusion clauses of Article 1F(a) or 1F(c) of the 1951 Convention after his or her recognition as a refugee.[28]

4.3. In light of the above, cancellation or revocation of refugee status, and by analogy of a subsidiary protection status, may thus occur on the basis of the exclusion clauses contained in Article 1F of the 1951 Convention. Where facts come to light after an individual has been granted refugee status and by analogy subsidiary protection, indicating that the exclusion clauses under Article 1F might have been applicable at the time of recognition of the international protection needs, the status may be cancelled. In other words, where an individual has been properly granted international protection, but subsequently engages in conduct which falls within the exclusion clauses of Article 1F (a) or (c), his or her status may be revoked.

4.4. The grounds for terminating an international protection status (refugee status or subsidiary protection status) need to be distinguished from the exceptions to the principle of *non-refoulement* permitted under Article 33 (2) of the 1951 Convention. Article 1F and 33 (2) are distinct legal provisions serving different purposes under the 1951 Convention. Unlike Article 1F, Article 33 (2) does not provide for the termination of international protection.[29] Section 5 below analyzes the application of Article 33 and whether the exceptions contained in Article 33 (2) could be the basis for termination of refugee status and, by analogy, subsidiary protection status.

4.5. Concerning EU law, the Qualification Directive[30] contains the criteria based on which international protection, in the form of refugee status or subsidiary protection

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[27] The question of cancellation arises if there are grounds for considering that the decision was incorrect and the individual concerned was wrongly accorded refugee status at the time of the initial recognition decision. This will be the case where the facts indicate that: (i) the applicant did not meet the refugee definition under the 1951 Convention; or (ii) the applicant was not in need of international protection on the basis of Article 1D or 1E of the 1951 Convention; or (iii) the applicant was not deserving of international protection because there were serious reasons for considering that he or she had committed acts falling within the scope of Article 1F of the 1951. See UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, available at: http://www.unhcr.org/refworld/docid/3ae6b3314.html (hereafter "*UNHCR Handbook*"), paragraph 117. See also S. Kapferer, *Cancellation of Refugee Status*, UNHCR Legal and Protection Policy Research Series, Department of International Protection, PPLA/2003/02, March 2003.

[28] See UNHCR Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05, 4 Sept. 2003 (hereafter "UNHCR Guidelines on Exclusion") paragraph 6, and its accompanying *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951Convention relating to the Status of Refugees*, 4 Sept. 2003 (hereafter "UNHCR *Background Note on Exclusion*") paragraphs 11, 13-16 and 17.

[29] UNHCR, *Note on Cancellation of Refugee Status*, 22 November 2004, http://www.unhcr.org/refworld/pdfid/41a5dfd94.pdf, para. 2.

[30] See *"QD"*, footnote 19, Article 1.

status, should be granted by the Member States. When the applicant's individual situation meets the requirements of the QD, he or she acquires protection granted by EU law, which cannot be made ineffective by the national procedural rules.[31] Articles 16, 17 and 19 QD establish the conditions under which a person may be excluded from subsidiary protection or when that status may cease or be revoked. In UNHCR's view, these provisions should be applied in a way that clearly distinguishes the three concepts, as described above (see section 4.2).

5. **The Principle of Non-refoulement**

5.1. *The principle of non-refoulement under Article 33 of the 1951 Convention*

5.1.1. International refugee law specifically provides for the protection of refugees against removal to a country where their life or freedom would be threatened. This is known as the principle of *non-refoulement*.[32] Often referred to as the cornerstone of international refugee protection, it is enshrined in Article 33 of the 1951 Convention and has attained the status of customary international law.[33]

5.1.2. Article 33(1) provides:

> *No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would the threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.*

Reservations to Article 33 are specifically prohibited under both the 1951 Convention and the 1967 Protocol.[34]

5.1.3. The principle of *non-refoulement* applies to any person who is a refugee under the terms of the 1951 Convention, that is, anyone who meets the inclusion criteria of Article 1A (2) of the 1951 Convention and does not come within the scope of one of its exclusion provisions.[35] The principle of *non-refoulement* applies not only in respect of

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[31] See *"QD"*, footnote 19, Articles 13 and 18.

[32] A detailed analysis of the scope of the principle of *non-refoulement* can be found in a legal opinion commissioned by UNHCR in the context of the Global Consultations on International Protection, a process launched by UNHCR in 2000 to reinvigorate the refugee protection framework, *inter alia*, by reaffirming its fundamental components and clarifying disputed notions. See E. Lauterpacht and D. Bethlehem, The scope and content of the principle of *non-refoulement: Opinion*, in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press, Cambridge (2003).

[33] See *Declaration of States Parties to the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, U.N. Doc. HCR/MMSP/2001/09 (16 January 2002), at para.4; UNHCR Executive Committee Conclusion No. 25 (XXXII) (1982); See also E. Lauterpacht and D. Bethlehem, footnote 32**,** at paragraphs 140-164.

[34] 1951 Convention, Article 42(1) and 1967 Protocol, Article VII(2).

[35] See UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refuges and its 1967 Protocol*, 26 January 2007, at para. 6.

return to the country of origin but also with regard to forcible removal to any other country where a person has reason to fear persecution related to one or more of the grounds set out in the 1951 Convention, or from where he or she risks being sent to his or her country of origin.[36]

5.1.4. The principle of *non-refoulement* includes any form of forcible removal, including extradition, deportation, informal transfer or *"renditions"*. This is evident from the wording of Article 33 (1) of the 1951 Convention, which refers to expulsion or return *"in any manner whatsoever"*.

5.2. *Exceptions to the principle of non-refoulement under Article 33 (2) of the 1951 Convention*

5.2.1. While the principle of *non-refoulement* contained in Article 33 (1) of the 1951 Convention is fundamental, Article 33 (2) of the 1951 Convention allows for exceptions to be made only in the circumstances expressly provided for in the Article. The 1951 Convention recognizes that there may be certain legitimate exceptions to the principle of *non-refoulement* as well as limited circumstances of overriding importance that would, within the framework of the 1951 Convention, legitimately allow for the removal or expulsion of refugees.

5.2.2. According to Article 33 (2) of the 1951 Convention,

> *The benefit of [Article 33(1)] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he [or she] is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*

5.2.3. Article 33 (2) of the 1951 Convention provides for an exception to the obligation of non-refoulement in two situations: (1) where there are "reasonable grounds for regarding [the refugee] as a danger to the security of the country in which he is", and, (2) where the refugee, "having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country". The focus of this submission is on the first of these two exceptions.

5.2.4. For the "security of the country" exception to apply, there must be an individualized finding that the refugee poses a current or future danger to the host country.[37] Article 33 (2) hinges on the appreciation of a future threat from the person concerned, rather than on the commission of an act in the past. The exception is thus concerned with the danger to the security of the country in the future, not in the past.[38]

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[36] See UNHCR, Note on *Non-Refoulement* (EC/SCP/2), 1977, at paragraph 4. See also Paul Weis, *The Refugee Convention, 1951*, at p. 341, quoted in E. Lauterpacht and D. Bethlehem, footnote 32**,** at paragraph 124.

[37] See U.N. doc. A/CONF.2/SR.16, at 8 (23 November 1951).

[38] See also E. Lauterpacht and D. Bethlehem, footnote 32, at paragraphs 147 and 164.

(i) The nature and seriousness of the danger

5.2.5. The danger envisaged under the "security of the country" exception to Article 33(2) of the 1951 Convention must be very serious, rather than of a lesser order, and it must be a threat to the national security of the host country.

5.2.6. The *travaux préparatoires* make it clear that the drafters of the 1951 Convention were concerned only with significant threats to the security of the country. The nature of the concerns that led to the inclusion of the threat to security provision is captured in the following statement by the United Kingdom representative:

> *Among the great mass of refugees it was inevitable that some persons should be tempted to engage in activities on behalf of a foreign power against the country of their asylum, and it would be unreasonable to expect the latter not to safeguard itself against such a contingency.*[39]

5.2.7. Atle Grahl-Madsen, a leading refugee law scholar, summarized the discussions of the drafters of the 1951 Convention on this point as follows:

> *Generally speaking, the 'security of the country' exception may be invoked against acts of a rather serious nature, endangering directly or indirectly the constitution, government, the territorial integrity, the independence, or the external peace of the country concerned.*[40]

(ii) Application of the "security of the country" exception under Article 33(2)

5.2.8. Under Article 33 (2), States Parties must demonstrate that there exist *"reasonable grounds"* for regarding a refugee as a danger to the security of the country of refuge. A finding of such a danger can only be "reasonable" if it is adequately supported by reliable and credible evidence.[41]

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[39] See UNHCR, *Manickavasagam Suresh (Appellant) and the Minister of Citizenship and Immigration, the Attorney General of Canada (Respondents). Factum of the Intervenor, United Nations High Commissioner for Refugees ("UNHCR")*, 8 March 2001, available at: http://www.unhcr.org/refworld/docid/3e71bbe24.html, paragraphs 68–73 ("*Suresh Factum*"). See also E. Lauterpacht and D. Bethlehem, footnote 32, at paragraphs 164–166.

[40] See A. Grahl-Madsen, *Commentary on the Refugee Convention, Articles 2–11, 13–37*, published by UNHCR (1997), commentary to Article 33, at (8). Similarly, Professor Walter Kälin, a European expert in international refugee law, has noted that Article 33(2) covers conduct such as *"attempts to overthrow the government of the host State through violence or otherwise illegal means, activities against another State which may result in reprisals against the host State, acts of terror and espionage*, and that the requirement of a danger to the security of the country *"can only mean that the refugee must pose a serious danger to the foundations or the very existence of the State, for his or her return to the country of persecution to be permissible."*. See W. Kälin: *Das Prinzip des Non-refoulement*, Europäische Hochschulschriften Bd./Vol.298, at 131, Bern, Frankfurt am Main: Peter Lang, 1982. Unofficial translation from the German original.

[41] See also E. Lauterpacht and D. Bethlehem, footnote 32, at para. 168.

5.2.9. Furthermore, the removal of a refugee in application of an exception provided for in Article 33 (2) of the 1951 Convention is lawful only if it is necessary and proportionate, as with any exception to a human rights guarantee. This means that:

- There must be a rational connection between the removal of the refugee and the elimination of the danger resulting from his or her presence for the security of the host country.[42]

- *Refoulement* must be the last possible resort for eliminating the danger to the security or community of the host country – if less serious measures, including, for example, expulsion to a third country where there is no risk of persecution, would be sufficient to remove the threat posed by the refugee to the security or the community of the host country, *refoulement* cannot be justified under Article 33 (2) of the 1951 Convention.[43]

- In keeping with the general legal principle of proportionality, the danger for the host country must outweigh the risk of harm to the wanted person as a result of *refoulement*.[44]

The burden of proof for establishing that the criteria as outlined above are met lies on the State applying the provision.

(iii) Due process requirements

5.2.10. Moreover, the determination of whether or not one of the exceptions provided for in Article 33 (2) is applicable must be made in a procedure which offers adequate safeguards. At a minimum, these should be the same as the procedural safeguards required for expulsion under Article 32 of the 1951 Convention.[45]

5.2.11. More specifically, Article 32 (2) of the 1951 Convention requires that the refugee be given an opportunity to submit evidence to clear him or herself, and to appeal to and be represented for the purpose before a competent authority or a person or persons specially designated by the competent authority.[46] Pursuant to Article 32 (3) of the 1951 Convention, the host State shall allow a refugee whom it intends to expel a reasonable period within which to seek legal admission into another country.

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[42] As Professor Grahl-Madsen has stated, the removal of a refugee must *"have a salutary effect on those public goods"*, see A. Grahl-Madsen, footnote 40, commentary to Article 33, at (4). Also, UNHCR, *Suresh Factum*, footnote 39, at paragraph 75.

[43] See UNHCR, *Suresh Factum*, footnote 39, at paragraph 77.

[44] See UNHCR, *Suresh Factum*, footnote 39, at paragraph 81; see also E. Lauterpacht and D. Bethlehem, footnote 32, at paragraphs 177–178.

[45] See E. Lauterpacht and D. Bethlehem, footnote 32, at paragraph 159.

[46] Pursuant to Article 32(2) of the 1951 Convention, the host State may be exempted from observing the specific requirements of procedural fairness listed in that provision only if this is required due to compelling reasons of national security.

5.2.12. It should be noted that the specific guarantees of Article 32 (2) and (3) of the 1951 Convention do not limit the rights of the individual concerned as guaranteed under relevant international and regional human rights treaties as well as applicable general principles of law.

5.3. *Consequences of the application of Article 33 (2) of the 1951 Convention*

5.3.1. As already noted, the application of Article 33 (2) of the 1951 Convention does not result in the termination of the refugee status. Rather, it means that he or she no longer enjoys the protection against *refoulement* as provided for under Article 33 (1) of the 1951 Convention. The person remains a refugee.

5.3.2. In contrast to the exclusion clauses provided under Article 1F, Article 33 (2) does not form part of the refugee definition and does not constitute a ground for termination of international protection. While Article 1F concerns the "integrity" of the refugee protection regime and ensures that the institution of asylum is not abused by those undeserving of international protection, Article 33 (2) concerns protecting the national security of the host country, governs the treatment afforded to those already recognized as refugees, and permits, under exceptional circumstances, the withdrawal of protection against *refoulement* of refugees who pose a danger to the host country.

5.3.3. A determination that a subsidiary protection status is terminated due to the fact that the individual concerned constitutes a risk to the security of the host country, would not be consistent with the conceptual legal framework of the international protection regime. As indicated above, revocation of refugee status and, by analogy subsidiary protection status, can only occur on the basis of Article 1F (a) or (c) of the Convention. Individuals granted subsidiary protection, who are determined to be a "danger to the security of the host country", are nevertheless subject to the host country's criminal law, and, by analogy, in certain cases to expulsion procedures in accordance with Article 32 of the 1951 Convention[47], and/or exceptionally to *refoulement* under Article 33 (2).

5.3.4. The exception to the principle of *non-refoulement* allowed under Article 33 (2) of the 1951 Convention is nevertheless restricted and limited by the absolute prohibition against *refoulement* to torture and other cruel, inhuman or degrading treatment or punishment under international human rights law, contained in and developed under *inter alia* Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading

[47] Article 32 of the 1951 Convention provides:

> *1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.*
>
> *2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.*
>
> *3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.*

Treatment or Punishment, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[48] and Articles 6 and 7 of the International Covenant on Civil and Political Rights. This absolute prohibition prevails even in circumstances where the 1951 Convention is considered to be applicable. Accordingly, the ECtHR continuously held, since its judgment *Soering v. UK*[49], that the prohibition of refoulement under Article 3 shall apply irrespective of the behaviour of the applicant. In this regard, in *Chahal v. UK*,[50] the ECtHR emphasized that:

> *79. Article 3 (art. 3) enshrines one of the most fundamental values of democratic society […]. The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols […], Article 3 (art. 3) makes no provision for exceptions and no derogation from it is permissible under Article 15 (art. 15) even in the event of a public emergency threatening the life of the nation […].*
>
> *80. The prohibition provided by Article 3 (art. 3) against ill-treatment is equally absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 (art. 3) if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion […]. In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration. The protection afforded by Article 3 (art. 3) is thus wider than that provided by Articles 32 and 33 of the United Nations 1951 Convention on the Status of Refugees […].*

The Court reiterated the absolute character of the prohibition of refoulement under Article 3 in a number of subsequent judgments including in *Saadi v. Italy*[51] where it reaffirmed that:

> *As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct (see Chahal, cited above, § 79), the nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3.*

5.3.5 As a result, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 he

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[48] See "*EU Charter*", footnote 4.

[49] *Soering v. The United Kingdom*, 14038/88, Council of Europe: European Court of Human Rights, 7 July 1989, para. 88, at: http://www.unhcr.org/refworld/docid/3ae6b6fec.html

[50] *Chahal v. The United Kingdom*, 70/1995/576/662, Council of Europe: European Court of Human Rights, 15 November 1996, para 79 and 80, at: http://www.unhcr.org/refworld/docid/3ae6b69920.html.

[51] *Saadi v. Italy*, 37201/06, Council of Europe: European Court of Human, 28 February 2008, para. 127, at: http://www.unhcr.org/refworld/docid/47c6882e2.html

or she cannot be removed even when constituting a danger to the national security of the host country.

5.4. *Non-refoulement* and *EU Asylum Law*

5.4.1. The EU Charter expressly recognizes the principle of *non-refoulement* in Article 19(2). This means that European institutions, as well as Member States, must take this prohibition into account whenever implementing or acting in the context of European law.[52] Furthermore, the principle of *non-refoulement* is mentioned in the relevant legislative instruments, such as the QD, which aims to ensure, in its Article 21 ("*Protection from Refoulement*"), that Member States comply with their international obligations regarding this principle. Article 21 (2) lists the acceptable derogations.[53] The APD also contains several mentions of the principle of *non-refoulement*.[54]

6. The right to an effective remedy and access to information which led to the termination of the subsidiary protection status

6.1. With regard to the 1951 Convention, UNHCR strongly supports the right of an individual to appeal against a negative decision, including a decision to terminate a subsidiary protection status.[55] In UNHCR's view, it is essential that the appeal be considered by an authority, court or tribunal, which is separate from and independent of the authority which made the initial decision, and that a full review is allowed. The review must examine both facts and law based on up-to-date information.[56]

6.2. *European Convention for the Protection of Human Rights and Fundamental Freedoms*

6.2.1. Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that the "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority […]."[57]

6.2.2. The ECtHR has established extensive case law on the question of effective remedies. According to the ECtHR, "rigorous scrutiny" of an arguable claim is required because of the irreversible nature of the harm that might occur, in case of a risk of

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[52] See *"Charter"*, footnote 4, Article 5 (1).
[53] *"2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:*
(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or
(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State."
[54] See *"APD"*, footnote 20, Recital (2) and Article 20 (2).
[55] See UNHCR Handbook, para. 192 (vi), footnote 27.
[56] UNHCR, *Statement on the right to an effective remedy in relation to accelerated asylum procedures*, para. 21, 21 May 2010, at: http://www.unhcr.org/refworld/docid/4bf67fa12.html.
[57]

refoulement contrary to Article 3 of the ECHR.[58] The remedy must be effective in practice as well as in law. It must take the form of a guarantee, and not a mere statement of intent or a practical arrangement,[59] and it must have automatic suspensive effect.[60]

6.2.3. In asylum and deportation cases, the ECtHR has stressed "*the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged [by the applicant] materialized*".[61] It has accordingly interpreted Article 13, in conjunction with Article 3, to require governments to suspend deportation proceedings pending "*independent and rigorous scrutiny*" of the applicant's claims.[62] The expulsion before a definitive decision on status may violate obligations under Articles 3 and 13 of ECHR.[63]

6.2.4. The right to an effective remedy must include sufficient procedural safeguards also in case of matters related to national security. In *Chahal v UK*, the Court held that: "*[…] there are techniques which can be employed which both accommodate legitimate security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice*".[64]

6.2.5. Procedural guarantees include the right of the applicant to have access to the information based upon which the decision was taken. In a case concerning national security, the Court observed:

> *that the domestic courts which dealt with the decision to expel the first applicant did not properly scrutinise whether it had been made on genuine national security grounds and whether the executive was able to demonstrate the factual basis for its assessment that he presented a risk in that regard. Secondly, the applicant was initially given no information concerning the facts which had led the executive to make such an assessment, and was later not given a fair and reasonable opportunity of refuting those facts […]. It follows that these proceedings cannot be considered as an effective remedy for the applicants' complaint under Article 8 of the Convention.*[65]

6.3. *Procedural Safeguards in EU Secondary Legislation*

6.3.1. Article 19 (2) QD (which refers to Article 17(1)) allows Member States to revoke subsidiary protection status on the grounds that the person constitutes a danger to the

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[58] *Jabari v. Turkey*, Appl. No. 40035/98, ECtHR, 11 July 2000, para 50, at: http://www.unhcr.org/refworld/docid/3ae6b6dac.html.

[59] *Conka v. Belgium*, 51564/99, ECtHR, 5 February 2002, para 83, at: http://www.unhcr.org/refworld/docid/3e71fdfb4.html.

[60] *Gebremedhin [Gaberamadhian] c. France*, 25389/05, ECtHR, 10 October 2006, para 66, at: http://www.unhcr.org/refworld/docid/45d5c3642.html.

[61] See *Čonka*, para. 79, footnote 59; *Jabari*, para. 50, footnote 58;

[62] See *Baysakov; Bahaddar v. the Netherlands*, ECtHR 19 February 1998, Appl. No. 25894/94.

[63] See ECtHR, *Jabari*, footnote 58, and subsequent case-law, especially, ECtHR, *Gebremedhin*, footnote 60, para. 67.

[64] See *Chahal, footnote 50*, para 131.

[65] *C.G. and Others v. Bulgaria*, Appl. no. 1365/07, ECtHR, 24 April 2008, para 60 at: http://www.unhcr.org/refworld/docid/48215e422.html.

community or to the security of the Member State in which he or she is present. UNHCR maintains that when applying this Article, Member States should have due regard to the APD.

6.3.2. While the APD only applies expressly to procedures for recognition of refugee status, the provisions of the Directive should be applicable, by analogy, to the procedures regarding the grant of subsidiary protection. First, because the procedure to grant subsidiary protection to an asylum-seeker is very similar to the one for the grant of refugee status: it involves, for instance, a similar assessment of the facts and circumstances which might constitute grounds for international protection.[66] Secondly, 26 Member States out of 27 are already operating a single procedure based on the transposition of the Asylum Procedure Directive to determine both refugee status and subsidiary protection.[67] Addressing this practice, the European Commission recently put forward a proposal to amend the APD, in order to implement a single procedure for recognition of both statuses.[68]

6.3.3. Taking these elements into account, UNHCR supports an analogous application of the procedural guarantees contained in the APD to the recognition and withdrawal of subsidiary protection status. Concerning the procedure for revocation of status, the APD sets forth, in Article 38, that the refugee or, by analogy the subsidiary protection beneficiary should be informed in writing that the competent authority is considering revoking his/her status.[69] The person should also be granted an opportunity to submit the reasons, in a personal interview, as to why his/her status should not be withdrawn.[70] Moreover, the decision to withdraw the status should be given in writing, stating the reasons for revocation in fact and in law.[71] Furthermore, in the context of a withdrawal procedure, the competent authority must obtain information (including potentially from UNHCR) regarding the situation prevailing in the country of origin, so as to avoid *refoulement*.[72]

6.3.4. UNHCR considers that compliance with these guarantees is of the utmost importance, since they enshrine well-established general principles of European law, often subject of scrutiny from both ECJ and ECtHR, such as the right to a good administration, the right to be heard, the right to defence and the right to effective judicial remedy.

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[66] See *"QD"*, footnote 19, chapter V.
[67] European Union: European Commission, *Annexes to the Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection - Impact Assessment*, at http://register.consilium.europa.eu/pdf/en/09/st14/st14959-ad03.en09.pdf.
[68] European Union: European Commission, *Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast)*, 21 October 2009, COM(2009) 554 final; 2009/0165 (COD), at: http://www.unhcr.org/refworld/docid/4ae960022.html.
[69] See *"APD"*, footnote 20, Article 38 (1) (a).
[70] See *"APD"*, footnote 20, , Article 38 (1) (b).
[71] See *"APD"*, footnote 20, Article 38 (2).
[72] See *"APD"*, footnote 20, Article 38.

6.4. *Applicability of EU General Principles*

6.4.1. The right to be heard and the right of defence are general principles of EU law. This view is supported by Article 41 of the Charter[73] providing for the "right to good administration" which includes the "*right of every person to be heard, before any individual measure which would affect him or her adversely is taken"*. Though Article 41 of the Charter is only applicable to measures of the institutions and bodies of the EU, "this does not prevent it being invoked where Member States implement EC law".[74]

6.4.2. On the rights to be heard and of defence, the ECJ has held that

> *36. Observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual.*
>
> *37. In accordance with that principle, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. They must be given a sufficient period of time in which to do so (see, inter alia, Commission v Lisrestal and Others, paragraph 21, and Mediocurso v Commission, paragraph 36). [...]*
>
> *49. The purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content.*
>
> *50. Accordingly, respect for the rights of the defence implies that, in order that the person entitled to those rights can be regarded as having been placed in a position in which he may effectively make known his views, the authorities must take note, with all requisite attention, of the observations made by the person or undertaking concerned. [75]*

6.4.3. In fact, the ECJ established the relationship between the duty to inform and the right to effective judicial remedy in the *Kadi* case. [76] The Court submitted firstly that

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[73] See *"Charter"*, footnote 4.

[74] Cathryn Costello, *The European asylum procedures directive in legal context*, PDES Working Papers, UNHCR, 10 November 2006, page 26, at http://www.unhcr.org/4552f1cc2.html.

[75] *Sopropé − Organizações de Calçado Lda v Fazenda Pública*, C-349/07, European Union: European Court of Justice, 17 18 December 2008, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0349:EN:HTML.

[76] *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, European Union: European Court of Justice, Joined Cases C-

reasons of national security cannot prevent administrative decisions from being subject to full judicial review, namely to scrutinize their compliance with general principles and fundamental rights.[77] In such cases, the Court upheld the ECtHR's reasoning in the abovementioned case *Chahal v UK*, by stating that the Community judicature should apply

> *techniques which accommodate, on the one hand, legitimate security concerns about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need to accord the individual a sufficient measure of procedural justice.*[78]

6.4.4. Moreover, in the same judgment, the ECJ held that

> *observance of that obligation to communicate the grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions (…) and to put the latter [Community judicature] fully in a position in which it may carry out the review of the lawfulness of the Community measure in question (…).*[79]

6.4.5. National security exemptions to international protection should be applied with great caution. The Article 8(2)(b) APD – which explicitly mentions UNHCR as a source of information on the situation prevailing in countries of origin -- obliges Member States to obtain precise and up-to-date information from various sources. The use of information from sources not available to the claimant is therefore highly problematic. While a state may have legitimate reasons for protecting its security, such reasons must be balanced against the obligation and the need to share information and sources with the claimant. Information and its sources may be withheld only under clearly defined conditions, where disclosure of sources would seriously jeopardize national security or the security of the organisations or people providing information.

6.4.6. The jurisprudence of both the ECtHR and the ECJ uphold the principle that the deprivation of rights so fundamental as the right to subsidiary protection would necessitate rigorous scrutiny of the grounds for this decision. With full respect to the security concerns of the state, the petitioner should nevertheless and without exception have adequate opportunity to challenge and rebut the grounds for the decision through the full review of the evidence provided by the state, including, *inter alia*, through a full oral hearing with legal counsel present.

7. **Conclusion**

402/05 P and C-415/05 P, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0402:EN:HTML.

[77] See *Kadi*, footnote 76, paras 336, 337, 344.

[78] See *Kadi*, footnote 76, para 344.

[79] See *Kadi*, footnote 76, para 337.

7.1. In UNHCR's view, termination of international protection must be in accordance with the relevant legal standards for the cancellation or revocation of refugee status, and by analogy, of subsidiary protection status.

7.2. The termination of international protection must be subject to adequate procedural guarantees and should be in strict compliance with due process of law. Due process safeguards that must be part of such procedure include a written notification of the state's intention to consider revocation, an opportunity to be heard and to submit argument and evidence opposing revocation, a written decision at the end of the process, an individualized determination by the country of asylum that the person concerned constitutes a present or future danger to the security or the community of the host country and access to an effective remedy. Restrictions and exceptions to international protection, including to the principle of *non-refoulement*, must be interpreted and applied restrictively, in line with the general principle of limiting exceptions to human rights guarantees.

7.3. Under exceptional circumstances, protection against *refoulement* under Article 33 (2) may be withdrawn from refugees who pose a threat to the host country's national security. Based on absolute prohibitions of *refoulement* in international human rights law, however, the removal or expulsion of the person concerned is prohibited when there are substantial grounds for believing that he or she will be at risk of being subjected to torture or other cruel or inhuman or degrading treatment or punishment.

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