

Report of the Convention Refugee Status and Subsidiary Protection Working Party

IMPLEMENTATION OF THE EU QUALIFICATION DIRECTIVE: SOME FEATURES

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INTRODUCTION

A Overview

This Report is comprised of two parts. The first is a partial analysis of the way in which article 15(c) of the Qualification Directive¹ has been interpreted across several EU Member States, drawing in particular on the expertise of judges from particular jurisdictions where it has been the subject of judicial consideration (in particular, the United Kingdom, France and Germany). This builds on UNHCR's analysis of this provision in its 2007 report on the implementation of the Qualification Directive, and provides an up-to-date analysis of a provision that has led to confusion, inconsistency and highly varied recognition rates for protection across the EU.

The second part of the Report examines the implementation of certain economic, social and cultural rights (hereinafter 'social rights') under the Qualification Directive. It provides an empirical analysis of practice in four EU Member States, selected to complement UNHCR's examination in 2007 of practice in five other Member States: France, Germany, Greece, the Slovak Republic and Sweden.²

At the 7th IARLJ World Conference in 2006, the Convention Refugee Status and Subsidiary Protection Working Party concluded that 'the broader the eligibility criteria [under the Qualification Directive] the less extensive the status entitlements'³ afforded to the beneficiaries appeared to be. This part of the Report tests that hypothesis in relation to the comparative protection and promotion of social rights of Convention refugees vis-à-vis beneficiaries of subsidiary protection under the Qualification Directive. For this purpose, case studies of the United Kingdom, Denmark, Romania and Austria will be used to contrast the extent to which implementation (or not) of the Directive has given substantive protection to social rights.⁴ By highlighting the practical and legal differences between Convention refugee status and subsidiary protection status, this analysis underscores the importance of fully assessing applicants for international protection against the Convention grounds before considering them against the subsidiary protection criteria.

Indeed, as French colleagues have observed, the hierarchical order instituted by the Directive is a crucial issue. The entitlements that flow from recognition as a Convention refugee versus a beneficiary of subsidiary protection are significant. For example, article 24 on residence permits provides that Convention refugees are entitled to a minimum three year residence permit, while beneficiaries of subsidiary protection must have a minimum one year permit. French law makes this gap even wider, since the Code of Entry and Residence of Aliens and Asylum Law (CESEDA) grants a 10 year residence permit to Convention refugees (art L.314-11) and only a one year residence permit to beneficiaries of subsidiary protection (art L.313-13). A question that arises is whether the distinction between these two statuses places an

¹ 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 [2004] OJ L304/12 ('Qualification Directive').

² UNHCR, *Asylum in the European Union: A Study of the Implementation of the Qualification Directive* (UNHCR, Brussels, 2007) ('UNHCR Study').

³ IARLJ Convention Refugee Status and Subsidiary Protection Working Party, *First Report* (IARLJ 7th World Conference, Mexico City, 2006) 11.

⁴ This Report will not consider in any depth the implementation of civil and political rights.

added weight on decision-makers' minds, by contrast to the Canadian system where an identical status ensues.⁵ One French decision-maker has argued that: 'The huge gap between the two protections resulting of the 2003 French implementation law has obviously acted as a brake upon expansion of SP as a protection instrument, making the judge very cautious when deciding which protection should be granted.'⁶ He notes that 'the risk of inequity remains, especially in those areas where the boundaries between the two protections are uncertain.'⁷

The European Commission's review of the Qualification Directive in early 2008, pursuant to article 37(1), affirmed UNHCR's observations in 2007 that recognition rates across the EU of protection needs of applicants from the same countries of origin were still significantly varied, and concluded that '[t]o some extent, this phenomenon is rooted in the wording of certain provisions of the QD.'⁸ During 2009, the Commission proposes to 'amend the criteria for qualifying for international protection', which may necessitate the further clarification of 'the eligibility conditions for subsidiary protection'.⁹ Furthermore, it may be necessary to 'reconsider the level of rights and benefits to be secured for beneficiaries of subsidiary protection, in order to enhance their access to social and economic entitlements which are crucial for their successful integration, whilst ensuring respect for the principle of family unity across the EU.'¹⁰

B Methodology and Authorship

This Introduction was compiled by Dr Jane McAdam. Part 1 of the Report was compiled by Dr Jane McAdam (Introduction and United Kingdom), Laurent Dufour (France) and Justice Harald Dörig (Germany). Justice Carolyn Layden-Stevenson has kindly provided some comparative information on Canada.

Part 2 of the Report represents collaborative work between postgraduate students of the LLM programme in comparative and international refugee law at Exeter University in the United Kingdom, and their module co-ordinator and supervisor, Lisa Yarwood. Students selected EU case studies for independent research, meeting frequently to discuss their progressive findings, any difficulties in accessing information, suggested solutions, unforeseen issues and to ensure that the research focused specifically on the implementation of social rights. A common limitation in the research was difficulties in access due to geographic separation. Students who considered Austria and Denmark were assisted by their personal language capability, which facilitated their research. While the research on Romania was undertaken without the benefit of Romanian language skills, the co-operation of local NGOs in providing documents in English translation assisted access. Students had a period of three months in early 2008 to complete their research before presenting and submitting their final reports. In some cases there was insufficient information to make reference to the particular State in the

⁵ See L Dufour, 'Subsidiary Protection according to the Qualification Directive: An Overview of Early Implementation in France', Budapest Intervention paper, referring to J Reekie in 'Complementary Refugee Protection in Canada: The History and Application of Section 97 of the Immigration and Refugee Protection Act', IARLJ Convention Refugee Status and Subsidiary Protection Working Party, *First Report* (IARLJ 7th World Conference, Mexico City, 2006).

⁶ See Dufour, 'Subsidiary Protection according to the Qualification Directive'.

⁷ See Dufour, 'Subsidiary Protection according to the Qualification Directive'.

⁸ Commission of the European Communities, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Policy Plan on Asylum: An Integrated Approach to Protection across the EU' (June 2008) 5. See also UNHCR Study, 13.

⁹ Commission of the European Communities, 'Communication', 5.

¹⁰ *Ibid*, 6.

comparative analysis. Justice Patrice Wellesley-Cole also provided some additional information on the United Kingdom.

The Report as a whole was edited by the Associate Rapporteur, Dr McAdam.

PART 1: QUALIFICATION—ARTICLE 15(C)

A Introduction

This section of the paper focuses on the legal impediments to obtaining subsidiary protection in the EU that have arisen in the interpretation and application of article 15(c) in the two years since the Qualification Directive entered into force for the EU Member States. It draws in particular on the expertise of Working Party members from France and Germany to provide case studies of contemporary practices in those Member States, updating UNHCR's close analysis in its 2007 report on the implementation of the Qualification Directive in five EU Member States.¹¹ Accordingly, the detail provided in that report (which also considered the provision's implementation in Greece, the Slovak Republic and Sweden) is not repeated here.

Article 15(c) has been singled out given the considerable differences in its interpretation that have emerged between the Member States. It provides protection to those facing 'a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.' It is, however, poorly understood, inconsistently applied across the Member States, and in some jurisdictions is the only subsidiary protection category given full consideration when a Convention claim fails.¹² Its individualized and particularized requirements impose higher evidentiary burdens on claimants than are needed to satisfy the Convention definition, and even when protection is granted, it is of a lesser quality and duration than Convention refugee status.¹³ Recital 26 provides further that: 'Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.' This interpretation has been applied widely, including in France, Germany and Sweden.¹⁴

Apart from distinctions arising because of the inconsistent ways in which the provision has been transposed,¹⁵ the main interpretational differences relate to: (a) the extent to which harm must be individually targeted;¹⁶ and (b) whether or not the violence being fled has to reach the threshold of an international or internal armed conflict under international humanitarian law. Furthermore, and linked to the absence of a harmonized approach, the elements of

¹¹ See UNHCR Study. For an overview of the United Kingdom's approach, see H Storey, 'EU Refugee Qualification Directive: A Brave New World?' (2008) 20 *International Journal of Refugee Law* 1.

¹² Indeed, the Netherlands has sought a preliminary ruling from the European Court of Justice to clarify its meaning and purpose: see OJ C 8/5 of 12 January 2008; see also Decision 200702174/1 (12 October 2007) of Dutch Council of State.

¹³ See Qualification Directive, arts 19–34. The issue of status is not examined here, but has been dealt with comprehensively in J McAdam, *Complementary Protection in International Refugee Law* (OUP, Oxford, 2007) 90–110; GS Goodwin-Gill and J McAdam, *The Refugee in International Law* (3rd edn, OUP, Oxford, 2007) 330–35.

¹⁴ UNHCR Study, 72.

¹⁵ For example, Lithuanian and Belgian law contains wording which differs from article 15(c): see Law on the Legal Status of Aliens (29 April 2004) No IX-2206 (Official Gazette No 73-2539, 3 April 2004) s 87 (Lithuania); *Loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* (15 September 2006) s 26 (Belgium), which omits the 'individual' requirement.

¹⁶ See eg UNHCR Study, 71ff, citing the approach of authorities in France, Germany and Sweden. The vast majority of Member States supported the requirement, on the grounds that it would avoid 'an undesired opening of the scope of this subparagraph': 12382/02 ASILE 47 (30 September 2002) para 4. Lithuania, Belgium and Finland do not have an 'individual' requirement: see respectively Law on the Legal Status of Aliens (29 April 2004) No IX-2206 (Official Gazette No 73-2539, 3 April 2004) s 87 (Lithuania); *Loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* (15 September 2006) s 26 (Belgium); Aliens (Consolidation) Act 2005 2004, section 89.

article 15(c)—‘serious and individual threat’ due to ‘indiscriminate violence’ in ‘situations of international or internal armed conflict’—are creating higher evidentiary burdens for claimants compared to articles 15(a) and (b) and Convention-based claims.¹⁷ This is compounded by the fact that in a number of jurisdictions, it appears that articles 15(a) and (b) are not being given any (meaningful) consideration by decision-makers and that article 15(c) may be becoming the residual category for subsidiary protection claims.¹⁸

In order to obtain clarification on how article 15(c) ought to be interpreted, the Netherlands has sought a preliminary ruling from the European Court of Justice on the following questions:

1. Is Article 15(c) of Council Directive 2004/83/EC (1) 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 to be interpreted as offering protection only in a situation on which Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case-law of the European Court of Human Rights, also has a bearing, or does Article 15(c), in comparison with Article 3 of the Convention, offer supplementary or other protection?
2. If Article 15(c) of the Directive, in comparison with Article 3 of the Convention, offers supplementary or other protection, what are the criteria in that case for determining whether a person who claims to be eligible for subsidiary protection status runs a real risk of serious and individual threat by reason of indiscriminate violence within the terms of Article 15(c) of the Directive, read in conjunction with Article 2(e) thereof?¹⁹

On 8 September 2008, the Advocate General stated that the answers to these questions should be as follows:²⁰

1. Article 15(c) of 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 must be interpreted as conferring subsidiary protection where the person concerned demonstrates that he runs a real risk of threats to his life or person in situations of international or internal armed conflict by reason of indiscriminate violence which is so serious that it cannot fail to represent a likely and serious threat to that person. It is for the national courts to ensure that such conditions are fulfilled.
2. Furthermore, that implies from the point of view of the burden of proof that the individual nature of the threat does not have to be established to such a high standard under Article 15(c) of the Directive as under Article 15(a) and (b) thereof.

¹⁷ For an expanded treatment of this issue, see J McAdam, ‘The Standard of Proof in Complementary Protection Cases: Comparative Approaches in North America and Europe’, paper presented at ‘Critical Issues in International Refugee Law’ Research Workshop, York University, 1 May 2008.

¹⁸ UNHCR Study, 12, 70 (Swedish practice). This is somewhat surprising, given the extensive (pre-existing and continuing) jurisprudence of the European Court of Human Rights on article 3 of the ECHR, which parallels article 15(b) of the Qualification Directive and which provides a rich basis for interpretation of cases under that head.

¹⁹ *Elgafaji v Staatssecretaris van Justitie* (Case C-465/07), in OJ C 8/5 (12 January 2008); see also Decision 200702174/1 (12 October 2007) of Dutch Council of State. As at 17 July 2008, no decision by the ECJ had been handed down.

²⁰ Opinion of Advocate General Poiares Maduro, *Elgafaji v Staatssecretaris van Justitie* (Case C-465/07) (9 September 2008) para 42.

However, the seriousness of the violence will have to be clearly established so that no doubt remains as to both the indiscriminate and the serious nature of the violence of which the applicant for subsidiary protection is the target.

In other words,

the more the person is individually affected (for example, by reason of his membership of a given social group), the less it will be necessary to show that he faces indiscriminate violence in his country or a part of the territory which is so serious that there is a serious risk that he will be a victim of it himself. Likewise, the less the person is able to show that he is individually affected, the more the violence must be serious and indiscriminate for him to be eligible for the subsidiary protection claimed.²¹

1 Individual

Overemphasizing the word ‘individual’ in article 15(c) of the Qualification Directive places a burden on applicants that goes beyond that required under the Refugee Convention. It also undermines the notion of subsidiary protection as a complementary basis of protection for people who cannot meet the Convention test (because, for instance, there is no link to a Convention ground).²² As the European Court of Human Rights has observed in the context of article 3 of the ECHR, the effect of such a stringent individual requirement ‘might render the protection offered by that provision illusory if ... the applicant were required to show the existence of further special distinguishing features’.²³ UNHCR has recommended the deletion of recital 26 and of the term ‘individual’ from article 15(c).²⁴

2 Armed Conflict Threshold

The Qualification Directive does not define ‘international or internal armed conflict’, and there is considerable divergence in its interpretation among the Member States. The UK Asylum and Immigration Tribunal (AIT) has placed considerable reliance upon an earlier draft of the provision to conclude that the phrase has to be understood according to its meaning under international humanitarian law,²⁵ a view which seems to be shared by the Swedish authorities.²⁶ However, the UK’s approach does not necessarily solve the disparity that has emerged in State practice. In France, Germany and Sweden, differing interpretations have resulted in particular conflicts being characterized as within the scope of ‘international or internal armed conflict’ in some Member States, but not in others. For example, the French authorities regard the situation in Iraq as an ‘internal armed conflict’, while the Swedish authorities do not, and within Germany, there is inconsistency across the various state

²¹ Ibid, para 37.

²² UNHCR has stressed the importance of a full and inclusive interpretation of the refugee definition in the Convention, including recognizing its applicability in situations of generalized violence and armed conflict where a nexus to at least one of the five Convention grounds can be demonstrated: UNHCR Study, 99; see also UNHCR, ‘UNHCR Statement: Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence’ (January 2008) 5.

²³ *Salah Sheekh v The Netherlands* App No 1948/04 (11 January 2007) para 148.

²⁴ UNHCR, ‘Building a Europe of Asylum: UNHCR’s Recommendations to France for its European Union Presidency (July–December 2008)’ 10. See also UNHCR, ‘UNHCR Statement: Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence’ (January 2008).

²⁵ *KH (Article 15(c) Qualification Directive) Iraq* CG [2008] UKAIT 00023, para 60.

²⁶ UNHCR Study, 77.

jurisdictions.²⁷ Whereas some German courts have stated that an armed conflict only needs to be of an unpredictable duration and an intensity that threatens life or limb,²⁸ others have required the conflict to be comparable to a civil war,²⁹ although as the German case study below shows, a standard interpretation has now been put forward by the Supreme Administrative Court. The upshot of these varied views has meant that applicants from Iraq, Chechnya and Somalia cannot be assured a consistent assessment of their situation across the Member States,³⁰ and this has led to vastly different recognition rates across the EU.³¹

B Case Studies³²

1 France

Although representing a mere five per cent of the French cases in which subsidiary protection has been granted, article 15(c) cases have been described as ‘the battlefield of an intense controversy on the qualification question.’³³ To the extent that this provision seeks to provide protection to victims of generalized violence according to an essentially individual eligibility process, there is an inherent contradiction. In addition to the requirement in article 15(c) that the harm feared is ‘serious and individual’, French law also requires it to be ‘direct’. In other words, the applicant must establish personal reasons for his or her fear in a situation of generalized violence.³⁴ Given these constraints, it is important to recall that the French Conseil d’Etat has held that situations of general armed conflict may also generate Convention refugees,³⁵ and thus the mere existence of an armed conflict should not be seen as automatically triggering article 15(c) rather than the Convention grounds. Indeed, this seems to be borne out in the jurisprudence: when French decision-makers are convinced that a claim is well-founded, they commonly grant refugee status and make only a passing reference, if any, to the armed conflict prevailing in the country (see, for example, cases relating to Colombian, Afghan, Iraqi and Sudanese claimants).³⁶ In cases where the individual element is missing but the claimant nonetheless has a well-founded fear, protection has been forthcoming in accordance with article 15(b).³⁷

2 United Kingdom

²⁷ UNHCR Study, 76.

²⁸ Cited in UNHCR Study, 77, fn 317.

²⁹ Cited in UNHCR Study, 77, fn 318.

³⁰ UNHCR Study, 78.

³¹ For example, the percentage of Iraqi asylum claimants granted Convention refugee status at first instance in the first quarter of 2007 was as follows: 16.3 per cent (Germany), 1.7 per cent (Sweden), 0 per cent (Greece, Slovak Republic). The percentage granted subsidiary protection status was: 1.1 per cent (Germany), 73.2 per cent (Sweden), 0 per cent (Greece, Slovak Republic). See UNHCR Study, 13.

³² See also the papers produced for the IARLJ European Chapter Workshop 2008, ‘Article 15(c) of the Qualification Directive: A New Type of Protection?’ (European Academy Berlin, September 2008).

³³ See Dufour, ‘Subsidiary Protection according to the Qualification Directive’.

³⁴ See eg *Mostfa Saleh*, CRR (16 March 2007).

³⁵ *Mlle Strbo*, CE (12 May 1997), in a case dealing with the siege of Sarajevo.

³⁶ eg *Kona and Alazawi*, CRR, Plenary (17 February 2006).

³⁷ This is the provision under which 95 per cent of subsidiary cases are granted. The threshold between the two protections is exclusively determined by the ground issue: the same threat, depending on its cause, can justify either refugee status or subsidiary protection. No matter how harm is actually inflicted, it is the *will* to persecute that has always been favoured by French jurisprudence. It is highly likely that this vision continues to interfere, at the subsidiary protection level, with an interpretative elaboration on the nature of ill-treatment. More than 50 per cent of the subsidiary protection cases deal with non-State agents of persecution, while on Convention grounds, non-State persecutors remain a minority. For further elaboration, see Dufour, ‘Subsidiary Protection according to the Qualification Directive’.

In a decision handed down in early 2008, the UK Asylum and Immigration Tribunal (AIT) made the following findings about the scope and application of article 15(c), extracted here verbatim:³⁸

- (1) Key terms found in Article 15(c) of the Qualification Directive are to be given an international humanitarian law (IHL) meaning. Subject to (3) below, the approach of the Tribunal in HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022 to this provision is confirmed.
- (2) Article 15(c) does add to the scope of Article 15(a) and (b), but only in a limited way. It is limited so as to make eligible for subsidiary protection (humanitarian protection) only a subset of civilians: those who can show that as civilians they face on return a real risk of suffering certain types of serious violations of IHL caused by indiscriminate violence.
- (3) Article 15(c) is not intended to cover threats that are by reason of all kinds of violence. It does not cover purely criminal violence or indeed any other type of non-military violence. Nor does it cover violence used by combatants which targets adversaries in a legitimate way.
- (4) Where it is suggested that a person can qualify under Article 15(c) merely by virtue of being a civilian, the principal question that must be examined is whether the evidence as to the situation in his or her home area shows that indiscriminate violence there is of such severity as to pose a threat to life or person generally. If such evidence is lacking, then it will be necessary to identify personal characteristics or circumstances that give rise to a “serious and individual threat” to that individual’s “life or person”.
- (5) Given that the whole territory of Iraq is in a state of internal armed conflict for IHL purposes (that being conceded by the respondent in this case), a national of Iraq can satisfy the requirement within Article 15(c) that he or she faces return to a situation of armed conflict, but will still have to show that the other requirements of that provision are met.
- (6) Neither civilians in Iraq generally nor civilians even in provinces and cities worst-affected by the armed conflict can show they face a “serious and individual threat” to their “life or person” within the meaning of Article 15(c) merely by virtue of being civilians.

The AIT also observed that the word ‘individual’ requires the applicant to demonstrate a personal risk ‘relating to the person’s specific characteristics or profile or circumstances’. This was despite a previous ruling from the same body that: ‘It would be ridiculous to suggest that if there were a real risk of serious harm to members of the civilian population in general by reason of indiscriminate violence that an individual Appellant would have to show a risk to himself over and above that general risk’.³⁹

3 Germany

³⁸ *KH (Article 15(c) Qualification Directive) Iraq* CG [2008] UKAIT 00023.

³⁹ *Lukman Hameed Mohamed v Sect’y of State for the Home Dept* AA/14710/2006 (unreported, 16 August 2007) (cited in UNHCR Statement, 6).

Following varied interpretations of article 15(c) of the Qualification Directive by German administrative courts of first and second instance between 2006 and 2008, the Supreme Administrative Court handed down a judgment on 24 June 2008 to give guidance on a uniform interpretation within Germany.⁴⁰ It follows the international humanitarian law approach developed by the UK AIT,⁴¹ as well as within the European Chapter of the IARLJ.

According to the German judgment, the term 'internal armed conflict' has to be interpreted in light of the 1949 Geneva Conventions and 1977 Additional Protocol II. An 'armed conflict' is defined in article 1(1) of Protocol II to mean a conflict between organized armed groups carrying out sustained and concerted military operations. This means that no internal armed conflict exists unless it goes beyond internal disturbances and tensions (Protocol II, art 1(2)), which means that riots and isolated and sporadic acts of violence (such as attacks against refugees in South Africa in 2008) would not reach the 'armed conflict' threshold. However, the German court has acknowledged that not all the criteria in article 1(1) have to be fulfilled: it depends on the protection needs of the people facing an armed conflict in their home country. With regard to this protection goal, the courts have to decide in the concrete case whether the protection seeker can be expected to return. Typical situations are civil war conflicts and guerilla fighting. The conflict need not be in the whole territory of the country; it is enough if it prevails in the home region of the applicant.

The German Supreme Administrative Court has given the 'individual threat' requirement a meaning which does not make the protection illusory. The fact that an individual faces a risk that is faced generally by the population of a country or a section of the population will not exclude him or her from subsidiary protection.⁴² An individual can be personally at risk in two ways: either every member of the population in a country or in a certain region of the country is at risk (such as all Israelis in a war against neighbouring Arab States); or the applicant is at a higher risk than the population in general because he or she belongs to a risk group (such as journalists, politicians, doctors, etc). A decisive element is the intensity of the danger, namely how many people (of the population in general or of the specific group) have been victims of the armed conflict. Concerning the individual threat requirement generally, German courts usually use the same criteria to grant subsidiary protection as they have traditionally used to grant refugee status for years.

Subsidiary protection may not be used to avoid granting refugee status. The German Supreme Administrative Court has ruled that the government, as well as the courts, must first determine whether or not a person is a Convention refugee, and only if they are not may they move to consider any subsidiary protection entitlement. Accordingly, 73.5 per cent of Iraqi applicants in the first half of 2008 were granted refugee status; only for the remainder was it necessary to make a decision on subsidiary protection.

4 Canada

By way of comparison, analogous provisions to article 15(c) are contained in sections 145–147 of the Immigration and Refugee Protection Act and section 139 of the Immigration and Refugee Protection Regulations. In a nutshell, these provisions deal with Convention refugees or humanitarian-protected persons abroad who are in need of resettlement because

⁴⁰ BVerwG 10 C 43.07. A translated version of the decision will be published on the website at www.bverwg.bund.de.

⁴¹ KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023.

⁴² cf Qualification Directive, recital 26.

they are outside their country of nationality, and have been and *continue to be* seriously and personally affected by civil war, armed conflict or a massive violation of human rights.

The regulations require evidence that there is no reasonable prospect within a reasonable period of a durable solution for the foreign national in a country other than Canada. This refers specifically to voluntary repatriation or resettlement in the country of nationality or resettlement in another country. Thus, many who have been declared by UNHCR to be refugees are refused protection in Canada because the situation in the country of origin is now considered to have calmed down.

PART 2: ECONOMIC AND SOCIAL RIGHTS

A Introduction

This section of the Report provides an empirical study of the implementation of economic and social rights in Denmark, Austria, the United Kingdom and Romania for Convention refugees and beneficiaries of subsidiary protection (see Methodology above). Where possible, it distinguishes between the rights that are provided for and accessible by Convention refugees and beneficiaries of subsidiary protection, in order to determine the degree to which entitlements and the exercise of rights in practice overlap or differ.

The choice of case studies provides a broad framework for comparison. The recent accession of Romania to the EU; the traditionally conservative approach of the Austrian government towards migration; and Denmark's decision to opt out of the Qualification Directive reflect a variety of Member State perspectives and experiences. They highlight some of the challenges in harmonizing asylum law in the EU.

It is important to note that Denmark is not formally bound by the Qualification Directive, having exercised its right to opt out of Community harmonization relating to asylum and migration law pursuant to the Protocol on the Position of Denmark.⁴³ Nevertheless, in 2002 the Danish government indicated a political willingness to harmonize its internal practices with those of the EU Member States.⁴⁴ The relevant legislation is the Aliens Act 2005, which provides protection, following the grant of a residence permit, to refugees,⁴⁵ aliens at risk of 'the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin'⁴⁶ (classed as 'B status' refugees), and individuals that are registered under section 48(e) as a 'asylum seeker' who have 'conclusively' established 'essential considerations of a humanitarian nature' that necessitate protection.⁴⁷

The following economic and social rights are examined:

- Family unity
- Residence permits
- Travel documents
- Access to employment
- Access to education
- Social welfare

⁴³ Protocol on the Position of Denmark Annexed to the Treaty on the European Union and to the Treaty Establishing the European Community, 6 October 1997, Doc No CONF 4007/97, TA/P/en 19.

⁴⁴ KU Kjær, 'The Abolition of the Danish *de facto* Concept' (2003) 15 International Journal of Refugee Law 254, 254; European Council on Refugees and Exiles (ECRE) Country Report 2004: Denmark, para 32: http://www.ecre.org/files/Denmark%20%20FINAL_0.pdf.

⁴⁵ Aliens (Consolidation) Act 2005, ss 7 and 8.

⁴⁶ There is no reference to protection on grounds equivalent to those set out in article 15(c) of the Qualification Directive, however the Danish government has indicated that it believes its compliance with obligations arising under article 3 of the ECHR, its additional Protocols 6 and 13, and article 3 of the CAT is sufficient to meet these protection needs: see Denmark's 16th and 17th periodic report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/496/Add.1).

⁴⁷ Aliens (Consolidation) Act 2005, s 9(b). The European Commission against Racism and Intolerance has noted that, in practice, 'status is only afforded to asylum seekers who suffer from a serious illness and cannot receive treatment in their country or who lack any family ties in their country': see Third Report on Denmark, CRI/2006/18.

- Health care
- Access to accommodation
- Integration

The effective exercise of economic, social and cultural rights in the country of asylum is 'integral to successful integration', understood as 'an interactive process involving both a process of acclimatization ... and accommodation by nationals and local communities, and based on the principles of non-discrimination and non-exploitation'.⁴⁸ The UN Committee on Economic, Social and Cultural Rights in relation to several EU Member States, however, has found that these rights are often not considered justiciable, and receive less attention (and therefore enjoy fewer safeguards) than civil and political rights.⁴⁹ It is therefore vital that States guarantee the substantive and effective implementation of economic, social and cultural rights.

Pursuant to recital 8 and article 3 of the Qualification Directive, the designation of minimum standards does not preclude Member States from adopting measures that extend greater entitlements to beneficiaries. Accordingly, in Romania no distinction arises between the rights entitlements of refugees and subsidiary beneficiaries, which are to be provided at the same level as nationals.⁵⁰

By way of comparison, it is interesting to note that Canada provides an identical status for Convention refugees and 'protected persons'. While most end up receiving permanent residence, there is in fact no obligation to actually accord this to them.⁵¹ Travel documents are only provided in exceptional circumstances and at the government's discretion. Furthermore, although protected people have the right to work, their social insurance number begins with a different set of numbers which may indicate something unusual to prospective employers.

B Case Studies

1 Family Unity

Article 23:

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 24 to 34, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.

⁴⁸ R da Costa, 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations', UNHCR Legal and Policy Research Series, POLAS/2006/02 (2006) 9.

⁴⁹ See Concluding Observations: France, E/C.12/Add.72 (2001) para 13; Italy, E/C.12/Add.103 (2004) para 13; UK, E/C.12/Add.79 (2002) para 11; Germany E/C.12/1/Add.68 (2001).

⁵⁰ Ministry of Interior and Administrative Reform, 'The Romanian Office for Immigration Annual Report on the Status of Aliens Granted a Form of Protection' 2006/07. In 2007, 27.5 per cent of successful claimants were granted subsidiary status, while 72.5 per cent were granted refugee status.

⁵¹ See *Haj Khalil v The Queen* 2007 FC 923, (2007) 317 FTR 32, which sets out the application process and the rights granted.

In so far as the family members of beneficiaries of subsidiary protection status are concerned, Member States may define the conditions applicable to such benefits.

In these cases, Member States shall ensure that any benefits provided guarantee an adequate standard of living.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from refugee or subsidiary protection status pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred therein for reasons of national security or public order.

5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time.

Article 2(h):

‘family members’ means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection:

- the spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens,
- the minor children of the couple referred to in the first indent or of the beneficiary of refugee or subsidiary protection status, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

When read in conjunction with article 2(h), it is clear that article 23 includes only those family members in existence at the time of asylum, thereby excluding future partners and unborn children. UNHCR has encouraged members to adopt a wider definition of family members to include ‘close relatives and unmarried children who lived together as a family unit and who are wholly or mainly dependant on the applicant’,⁵² including families founded during flight or upon arrival in the asylum state.

Member States are required under the Convention to ensure that the ‘best interests’ principle is formally expressed in accordance with state legislation and ensure judicial protection in practice. This requirement is specifically adopted under article 20 of the Directive, which designates the ‘best interests’ principle as paramount.

⁵² Article 23(5). See UNHCR, ‘Annotated Comments on the EC 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’, OJ L 304/12 2004 (28 January 2005) 39.

Although article 2(h) extends to an ‘unmarried partner in a stable relationship’, this only applies if the particular Member State already ‘treats unmarried couples in a way comparable to married couples under its law relating to aliens’.

Pursuant to the maintenance of family unity, family members are entitled to the benefits listed in articles 24 to 34. However, Member States retain a broad discretion to refuse protection where the family member is considered a threat by reasons of ‘national security or public order’ pursuant to Article 23(4), or would otherwise be excluded from refugee or subsidiary protection status. Furthermore, distinctions are drawn between the entitlements of family members of Convention refugees, and family members of beneficiaries of subsidiary protection.⁵³ In addition, whereas refugees benefit under the Family Reunion Directive, no commensurate protection extends under that instrument to beneficiaries of subsidiary protection.

(a) Denmark

Family reunification has consistently proven a contentious issue in Denmark, often forming the basis of election debate and vote-seeking promises⁵⁴. Viewed as ‘a backdoor route for spouses and their children to take advantage of generous benefits in the prosperous country’,⁵⁵ statistics cite two-thirds of Danish citizens as supporting restrictions on immigration into Denmark.⁵⁶ In this environment, it is perhaps unsurprising that the conservative government has received strong internal support for restrictive family reunification regulations, which have been strongly criticised by the UN Committee on Economic, Social and Cultural Rights.⁵⁷

Since Denmark has chosen to opt out of the Qualification Directive, it has taken a different approach from that set out in article 23. Family reunification⁵⁸ is permitted between a person in possession of a residence permit and any child up to age 15, at the time of the application. This includes stepchildren, adopted or foster children and ‘if particular reasons make it appropriate, residence with the child’s closest family’ will be allowed.⁵⁹ Indeed the imperative of family unity is cited as an ‘exceptional circumstance’ that would justify the grant of a residence permit under section 9(c) of the Aliens (Consolidation) Act (when the grounds for alien status under section 7 are not satisfied).

Despite the emphasis on family unity inherent in section 9(c), family reunification is conditional on an undertaking by the already resident family member to provide adequate accommodation, help facilitate the other family members’ integration into the community

⁵³ See McAdam, *Complementary Protection in International Refugee Law*, 95–96.

⁵⁴ L Rubin, ‘Love’s Refugees: The Effects of Stringent Danish Immigration Policies on Danes and Their Non-Danish Spouses’ (2004–05) 20 *Connecticut Journal of International Law* 319, 323.

⁵⁵ ‘Immigration Focus on Danish Poll’ CNN News.Com (20 November 2001) available at <http://archives.cnn.com/2001/WORLD/europe/11/20/denmark.election.1130/index.html> (accessed August 2008).

⁵⁶ E Pytel and K Roper, ‘The Impact of Immigration on Danish Politics: The Rise of Populism and the Fall of Social Democracy’ *Student Journal of Politics* presentation at the Tenth Annual Illinois Conference for Students of Political Science, Illinois State University, Normal, Illinois, 4 April 2002, citing L Juhl and T Vennekilde, ‘Denmark Gets Tough on Immigrants’ *BBC News* (27 November 2001) http://news.bbc.co.uk/1/hi/english/world/europe/newsid_1679000/1679235.stm (accessed August 2008).

⁵⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Denmark, 14 December 2004 (E/C.12/1/Add.102) paras 13 and 16; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Denmark, 19 October 2006 (CERD/C/DEN/CO/17) para 15.

⁵⁸ Aliens (Consolidation) Act 2005, s 9.

⁵⁹ Aliens (Consolidation) Act 2005, s 9(1)(iii).

and, if necessary, provide a monetary bond.⁶⁰ It is clear that on these grounds, and in light of the financial capacity necessary to meet these requirements, reunification can be a lengthy process. It implies a degree of stability by the resident family member, through the financial security and community knowledge required to satisfy these criteria.

Limitations on the reunification of domestic partners stem not from a conservative definition of qualifying relationships, but rather from a legislative reluctance to extend entitlements to a broader class of people. Residence is granted to partners defined by cohabitation rather than marital status, and includes those with 'a shared residence, either in marriage or in regular cohabitation of prolonged duration'.⁶¹ Article 9(7), however, states that 'unless exceptional reasons make it inappropriate, including regard for family unity, a residence permit ... when the person living in Denmark has not been a Danish national for 28 years ... can only be issued if the spouses' or the cohabitants' aggregate ties with Denmark are stronger than the spouses' or the cohabitants' aggregate ties with another country'. In addition, anyone wishing to bring a partner into Denmark must not have been on social welfare in the previous year, and any financial bond provided to facilitate the entry of a family member will be forfeited if the resident family member becomes unemployed within seven years of reunification.

Family reunification is an independent basis for being granted residence on humanitarian grounds under section 9(c). Nevertheless, there was a 67 per cent decline in successful applications in 2003,⁶² suggesting that the legislative emphasis on family unity is not necessarily followed through in its implementation. Following the decision of the European Court of Justice in the *Eind* case,⁶³ Since December 2007, Denmark has been on notice, that denying family reunification on the grounds that a sponsoring resident is not, or is no longer, employed is not to be tolerated.

(b) Austria

Section 2(22) of the Austrian Federal Asylum Act 2005 adopts a restrictive definition of 'family members' for reunification purposes. It includes 'the parent of an under-age child, the spouse or the, at the time of filing the application, under-age unmarried child of an asylum-seeker or of an alien to whom subsidiary protection status or asylum status has been granted, insofar as in case of spouses the family already existed in the country of origin'. The Human Rights Committee has expressed concern that 'the Federal Asylum Act (2005) foresees family reunification only for nuclear family members ... and that the exclusion of dependent adult children, minor orphan siblings and other persons with whom persons granted international protection enjoyed family life in their country of origin can result in hardship situations'.⁶⁴ Where family reunification is permitted, the rights extended to family members are commensurate to those to which the principal beneficiary is entitled.

⁶⁰ The Immigration Service may determine what amounts to adequate accommodation. For example, where accommodation is rented, the lease period must exist for at least three years beyond the date of application. Furthermore, the supporting party cannot be in receipt of benefits under the Active Social Policy Act or the Integration Act for a period of one year before the date of the application.

⁶¹ Aliens (Consolidation) Act 2005, s 9(1).

⁶² ECRE Country Report 2003: Denmark: <http://www.ecre.org/files/06.%20Denmark.pdf>; ECRE Country Report 2004: Denmark.

⁶³ *Minister voor Vreemdelingenzaken en Integratie v Eind* Case C/291-05 (Judgment) (December 2007). The ECJ held that a family member of a Community worker cannot be denied entry to a State 'even where the worker does not carry on any effective and genuine economic activities'.

⁶⁴ ICCPR Human Rights Committee, 'Concluding Observations of the Human Rights Committee' UN Doc CCPR/C/AUT/CO/4 (2007) para 19.

The extension of subsidiary protection to the nuclear family is a recent development in Austria. The lack of its inclusion in 1997 legislation was remedied in 2003, but reunification was initially permitted only three years after status recognition of the original asylum seeker.⁶⁵ This time period was reduced in the 2005 Act to one year. While the possibility of family reunification is tolerated, the Austrian government reserves the power under section 34 of the Federal Asylum Act 2005 'in respect of a family member of an alien who has been granted subsidiary protection status where that family member is present in the federal territory [to] grant subsidiary protection status by administrative decision unless it is possible to continue an existing family life, within the meaning of article 8 of the European Convention on Human Rights, with the family member in another country'.

Although the Qualification Directive permits Member States to set conditions on the level of benefits that may be claimed by family members of beneficiaries of subsidiary protection, section 34 of the Federal Asylum Act 2005 provides that the rights of family members are to be commensurate with the status of the family member under Austrian law.

(c) Romania

Section 7 of Law No 122/2006 states that Romania will abide by its obligation to maintain family unity. Sections 24 and 27 of that law offer protection to family members of refugees and subsidiary beneficiaries respectively, while section 71 permits reunification with non-resident family members following submission of an asylum application. Family reunification was not previously available to beneficiaries of subsidiary protection.⁶⁶

The definition of 'family members' adopts but does not exceed that contained in article 2(h) of the Qualification Directive. Section 2(j) of Law No 122/2006 includes spouses (but excludes unmarried domestic partnerships) and unmarried minor children, regardless of whether they were born in or out of wedlock. It retains the Directive's proviso that family members include only those in existence at that time.

No distinction is made between family members of Convention refugees and those of beneficiaries of subsidiary protection.

Where a family reunion claim is hindered by lack of access to family documentation, the National Refugee Office will assume this burden and seek verification of the document in the country where the family member resides, with the assistance of the General Directorate for Consular Affairs. The aim is to complete the family reunification procedure within nine months, although there is discretion to accommodate unforeseen circumstances.⁶⁷ Unlike in Denmark, there are no preconditions imposed on the individual resident in Romania before lodging a family reunification application.

(d) United Kingdom

Prior to amendment of the Immigration Act to bring UK legislation in line with the Qualification Directive, family unity was provided for under Rule 349 of the Immigration

⁶⁵ Asylum Act 1996, s 16.

⁶⁶ Romanian Information Centre in Brussels: <http://crib.mae.ro/index.php?lang=en&id=31&s=10518&arhiva=true> (accessed March 2008).

⁶⁷ A time extension is permitted for up to six months to accommodate administrative problems, pursuant to section 31(4) of the Methodological Norms on the Implementation of Law No 122/2006 (Norma metodologica de aplicare a Legii nr. 122/2006 privind azilul în România).

Rules, in permitting applications for asylum to include the minor children and spouse of the applicant. No restrictions as to provision of accommodation or means for support were imposed on the principal applicant. This provision was not extended per se to individuals granted exceptional leave to remain in the country, and was conditional on attainment of indefinite leave to remain for four years.⁶⁸

Rule 349 has since been amended to include in the definition of family members ‘a spouse, civil partner, unmarried or same sex partner or minor child.’⁶⁹ A child is ‘a person who is under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age’, while an unmarried or same-sex partner ‘is a person who has been living together with the principal applicant in a subsisting relationship akin to marriage or a civil partnership for two years or more’, reconciling the definition of family with domestic legislation, as encouraged under the Directive.⁷⁰

The extension of protection to same-sex and unmarried partners of applicants was finalized in November 2007. The UK government considered that the failure to adhere to the 2006 deadline on implementation of the Directive was of only ‘minimal impact’ given that ‘family reunion has been available as a matter of policy’, as seen for example in the Entry Clearance Guidance Chapter 16 produced by UK Visas London⁷¹.

Although Rule 349 makes no reference to the article 2(h) condition that the family be established prior to flight from the country of origin, Rule 352 requires that the relationships existed prior to the principal applicant’s leaving the country of origin.

2 Residence Permits

Article 24:

1. As soon as possible after their status has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than three years and renewable.

2. As soon as possible after the status has been granted, Member States shall issue to beneficiaries of subsidiary protection status a residence permit which must be valid for at least one year and renewable, unless compelling reasons of national security or public order otherwise require.

⁶⁸ The Home Office retained the discretion to permit those whose leave to stay was granted on exceptional grounds to make an application only in ‘compelling, compassionate circumstances’: Decision Making Services, ‘Family Reunion and Sponsored Migrants’ (DGM Memo 4/47, July 2005) www.dsdni.gov.uk/dms_vol4_47.doc (accessed February 2008).

⁶⁹ ‘Statement of Changes in Immigration Rules’ Cm 6918 September 2006.

⁷⁰ Rules 352FA–FI outline the requirements for a person seeking leave to enter or remain: spouse or civil partner (352FA), unmarried or same-sex partner (352FD) and child (352FG). These changes to the Immigration Rules were effective from November 2007.

⁷¹ House of Commons, ‘Explanatory Memorandum to the Statement of Changes in Immigration Rules Laid on 7 November 2007 (HC28)’ (2007) para 7.1.

As recognized in recital 30, residence permits are important because ‘within the limits set out by international obligations Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit’. Processing applications can take some time, which may be exacerbated where security concerns arise or access to supporting documentation is limited.

Residence permits are renewable, although the reference to automatic renewal was removed from the Directive’s final draft. Member States may distinguish between the length of residence permits for Convention refugees vis-à-vis beneficiaries of subsidiary protection: permits for refugees are to be at least three years in length, while they need only be of one year’s duration for beneficiaries of subsidiary protection. Permits are to be provided ‘as soon as possible after the status has been granted’. They must be renewable, unless ‘compelling reasons of national security or public order otherwise require’.⁷²

UNHCR and others have criticized the decision to issue permits of a shorter duration to beneficiaries of subsidiary protection, since there is no reason to expect the need for subsidiary protection to be of a shorter duration than the need for protection under the Convention.⁷³

Access to social rights is contingent on the grant of residence, in both a formal and informal sense. The formal prerequisite of residence provides physical access, but this may also contribute to ‘psychological’ access. For example, from the perspective of the claimant, the grant of residence may attach a kind of permanence to his or her position in the community and enable him or her to integrate more fully.⁷⁴

(a) Denmark

Under Danish law, ‘B status’ refugees (beneficiaries of subsidiary protection) and Convention refugees are granted residence permits, with a view to being granted permanent residence in the future. Individuals are entitled to two-year permits for the first four years, which are subsequently extended to permits of up to three-years in length. This clearly diverges from article 24 of the Qualification Directive. A permanent residence permit is conditional on five years’ continual residence, of which at least three years must be in on-going employment.⁷⁵

A residence permit may also be granted on humanitarian grounds. This is initially given as a one-year permit for the first two years, followed by two-year permits for at least four years,

⁷² Article 24 operates without prejudice to exclusion under article 21(3), which permits the refusal of a residence permit to a refugee where ‘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 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.’

⁷³ See ‘Amnesty International’s Concerns regarding Amendments to the Draft Report on the Proposal for a Council Directive on a [sic] Minimum Standards for the Qualification and Status of Third Country Nationals and Stateless Persons as Refugees or as Persons who Otherwise Need International Protection’ (12 September 2002) available at www.amnesty-eu.org (accessed March 2008); UNHCR, ‘Annotated Comments on the EC Council Directive’ 39; McAdam, *Complementary Protection in International Refugee Law*, 97.

⁷⁴ R da Costa, ‘Rights of Refugees in the Context of Integration’, 42.

⁷⁵ The European Committee of Social Rights viewed the length of residence requirement as excessive and in breach of article 16 of the 1961 European Social Charter, given that housing benefits are only accessible by permanent residents, creating a significant gap in protection for potential welfare beneficiaries: http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/2_by_year/XVIII1Vol1_en.pdf (accessed March 2008).

after which time three-year permits may be granted.⁷⁶ The Ministry of Refugee, Immigration and Integration Affairs notes that the 'Danish Parliament has decided that humanitarian residence permits should be the exception, not the rule'.⁷⁷

(b) Austria

Prior to the implementation of the Directive in Austria, refugees were issued with a permanent residence permit. Beneficiaries of subsidiary protection were granted a limited residence permit for a maximum of one year and, after the first extension, for a maximum period of five years.⁷⁸ Following the Directive's implementation, beneficiaries of subsidiary protection's entitlement has been reduced to a one year permit, renewable for a maximum of one year.⁷⁹ Post-Directive legislative amendments also saw an extension of the waiting period for applying for citizenship, which was increased from four to six years generally, and from 10 to 15 years for beneficiaries of subsidiary protection.⁸⁰ Citizenship remains conditional on the establishment of financial independence, to the satisfaction of authorities.⁸¹

(c) Romania

Residence is not considered under Romanian law in terms of a temporal period. Rather, section 146 of Law No 122/2006 'grant[s] to the beneficiary of refugee status or subsidiary protection, during his stay on Romania's territory, according to the degree of his integration in society, the right to establish his residence in the country, in the conditions of legal regulations on the status of aliens in Romania'. Protection for both refugees and beneficiaries of subsidiary protection is extended under section 9 for 'an indefinite period of time'. Taken cumulatively with section 20, which provides that 'refugee status or granting subsidiary protection offers the beneficiary the following right ... to remain on Romanian territory and obtain the appropriate documents to prove identity and to cross the state borders', there appears to be no limitation or distinction in length of residence arising from status.

(d) United Kingdom

Prior to steps taken by the government to implement the Directive, the UK granted residence permits on a public policy basis. Residence was granted for up to five years, with a right for indefinite renewal after this time. The introduction of Rule 339Q carried over this provision in relation to refugees, beneficiaries of humanitarian protection, and their respective family members. The Immigration Rules and the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 use the term 'humanitarian protection' rather than 'subsidiary protection', but the Asylum and Immigration Tribunal considers that the terms are commensurate.⁸² Thus, the UK has adopted a wider status entitlement than that provided for under the Directive, and there is no distinction on the basis of Convention versus subsidiary status.

⁷⁶ Aliens Order 2005, ss 22 and 23.

⁷⁷ See the website of the Ministry of Refugee, Immigration and Integration Affairs: http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/humanitarian_residence_permit/humanitarian_residence_permit.htm (accessed March 2008).

⁷⁸ Asylum Act 1997, ss 8 and 15(2).

⁷⁹ Austrian Federal Asylum Act 2005, s 8(4).

⁸⁰ Nationality Act 2006, s 10.

⁸¹ A Knapp, 'Austria: New Citizenship Law' (2006): <http://www.proasyl.de/en/information/europ-network-icf/information/icf-newsletter-may-2006/austria-ii/index.html> (accessed March 2008).

⁸² *KH (Article 15(c) Qualification Directive) Iraq* CG [2008] UKAIT 00023, para 2, confirming the decision in *HH (Mogadishu) Somalia* CG [2008] UKIAT 00022.

While residence is to be granted ‘as soon as possible’, the reality of the application process in the UK is drawn out.⁸³ The Refugee Council has noted the associated concern that without residence permits, access to many other entitlements is delayed.⁸⁴ In practice, procedural delays make this a significant issue for both refugees and beneficiaries of subsidiary protection.

3 Travel Documents

Article 25:

1. Member States shall issue to beneficiaries of refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.
2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.

Consistent with international law, article 25 of the Qualification Directive requires the provision of travel documents to refugees in accordance with the Refugee Convention. By contrast, beneficiaries of subsidiary protection are entitled to travel documents only when ‘unable to obtain a national passport’ and at a minimum ‘when serious humanitarian reasons arise that require their presence in another State’.

(a) Denmark

By virtue of section 6(1) of the Aliens Order 2005,⁸⁵ refugees are entitled to travel documents under the same conditions as set out in article 25 of the Qualification Directive and in accordance with Denmark’s obligations under the Refugee Convention. ‘B status’ refugees, or beneficiaries of subsidiary protection, are also entitled to a ‘alien’s passport’ under section 6(2), placing them in a stronger position than under the Directive. However, an alien’s passport is conditional on the grant of a residence permit, unless ‘particular reasons’ make it otherwise appropriate, thus security reasons may prevent the grant of such a passport.⁸⁶

(b) Austria

Sections 51 and 52 of the Austrian Federal Asylum Act 2005 provide refugees and beneficiaries of subsidiary protection with residence cards as ‘proof of identity and lawfulness of residence in the federal territory’. The Act is silent as to whether these

⁸³ ILPA’s Response to the Home Office Consultation on the Implementation of the Refugee Definition Directive, para 36:

www.ilpa.org.uk/submissions/HO%20consult%20on%20implementation%20of%20Refugee%20Definition%20Directive.doc (accessed February 2008).

⁸⁴ Refugee Council, ‘Response to the Home Office Consultation on the Qualification Directive’ (2006) 13.

⁸⁵ Executive Order on Aliens’ Access to Denmark (Aliens Order): http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/udlaendingebktg_943_eng.pdf (accessed February 2008).

⁸⁶ Aliens Order 2005, ss 6(4) and (5).

documents would constitute travel permits necessary to ensure compliance with the Directive.

(c) Romania

Section 20(6) of Romanian Law 122-2006 requires that travel documents 'are issued to the beneficiaries of refugee status or subsidiary protection for a one-year period, with the possibility of extension'. Romanian authorities provide travel documentation not only to status holders but also where the family member of a status holder is present in the territory without valid travel documentation. Section 32 of the Methodological Norms on the Implementation of Law No 122/2006 provides that 'the National Refugee Office shall require the General Directorate for Consular Affairs to grant [a] visa and issue the travel title' in favour of the family member. The form these documents are to take is not specified.

(d) United Kingdom

The UK complies with the Qualification Directive and extends protection to family members. Rule 344A(i) of the Immigration Rules provides that 'the Secretary of State will issue to a person granted asylum in the United Kingdom and their family members travel documents, in the form set out in the Schedule to the Geneva Convention' and 'will issue travel documents to a person granted humanitarian [subsidiary] protection in the United Kingdom where that person is unable to obtain a national passport or other identity documents which enable him to travel, unless compelling reasons of national security or public order otherwise require'. The Rules therefore ensure that the travel documents permit international travel.

4 Access to Employment

Article 26:

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after the refugee status has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to beneficiaries of refugee status, under equivalent conditions as nationals.
3. Member States shall authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service immediately after the subsidiary protection status has been granted. The situation of the labour market in the Member States may be taken into account, including for possible prioritisation of access to employment for a limited period of time to be determined in accordance with national law. Member States shall ensure that the beneficiary of subsidiary protection status has access to a post for which the beneficiary has received an offer in accordance with national rules on prioritisation in the labour market.
4. Member States shall ensure that beneficiaries of subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under conditions to be decided by the Member States.

5. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

In granting access to employment to Convention refugees under the same conditions as nationals, the Directive goes beyond article 17 of the Refugee Convention on wage-earning employment, whereby States are obliged only to extend to refugees the ‘most favourable treatment accorded to nationals of a foreign country in the same circumstances’.

The benefits extended to refugees under the Directive are not, however, replicated for beneficiaries of subsidiary protection, whose access to employment is ‘subject to rules generally applicable to the profession and to the public service’. Furthermore, access to vocational training to assist in this process is ‘under conditions to be decided by the Member States’. Such discretion seems to reflect an underlying political and economic pragmatism in the Qualification Directive.⁸⁷ And yet, employment is very important to successful integration in Member States, not least because of its role in facilitating social networks and community access, fostering language skills, and providing a means by which individuals may live independently, self-sufficiently and with dignity.⁸⁸ In a UNHCR survey, refugees identified inhibitions on the access to employment as one of the five greatest obstacles to effective integration.⁸⁹

It is also important to recognize, as noted in recital 32, that the ‘practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification’ may constitute a significant burden in their seeking employment.

(a) Denmark

Following a grant of refugee status or ‘B status’ protection, individuals in Denmark have unencumbered access to the labour market.⁹⁰ This accords with government policy that seeks to ‘bring an end to the subsidisation mentality and the jumble of special schemes’⁹¹ and integrate people as quickly as possible. Accordingly, the Danish government emphasizes access to effective vocational training to overcome any perceived difficulties in labour market access, such as language capacity. The government prioritizes employment as a means of self-sufficiency and integration into the community.

Prior to determination of status and the grant of a residence permit, all aliens must apply for and be granted a permit to undertake either paid or voluntary work.⁹² The Minister of Refugee, Immigration and Integration Affairs is entitled under sections 15 and 16 of the Aliens (Consolidation) Act 2005 to attach any conditions to the permit, including that the

⁸⁷ See eg the report by the International Centre for Migration Policy Development on ‘Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union’ (2003), relating to the Racial Equality Directive and Employment Equality Directive.

⁸⁸ da Costa, ‘Rights of Refugees in the Context of Integration’, 56.

⁸⁹ See UNHCR, ‘Empfehlungen zur Integration von Flüchtlingen in der EU’ (2007) 2:

http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-UNHCR/HCR-Integration-de.pdf (accessed March 2008).

⁹⁰ Aliens (Consolidation) Act 2005, ss 13 and 14; Aliens Order 2005, ss 32 and 34.

⁹¹ Ministry of Refugee, Immigration and Integration Affairs, ‘Towards a New Integration Policy’ (2002) 2,

[http://www.inm.dk/NR/rdonlyres/CFF15B78-D240-4FE1-A0FD-](http://www.inm.dk/NR/rdonlyres/CFF15B78-D240-4FE1-A0FD-54148CA42236/0/towards_a_new_integration_policy.pdf)

[54148CA42236/0/towards_a_new_integration_policy.pdf](http://www.inm.dk/NR/rdonlyres/CFF15B78-D240-4FE1-A0FD-54148CA42236/0/towards_a_new_integration_policy.pdf) (accessed March 2008).

⁹² Aliens (Consolidation) Act 2005, s 13. Section 14 notes that following the grant of status and accompanying residence permit the individual is exempt from requiring a permit.

permit holder is required to contribute to 'unemployment insurance'. Following determination of status, all beneficiaries of protection theoretically have equal access to the employment market. In reality, however, equality of access between holder of resident permits and nationals has proven elusive. The gap in employment rates between immigrants and citizens is the highest in the OECD.⁹³ Only 53.3 per cent of males and 39.7 per cent of females originating from countries outside Europe, the US, Canada, Australia and New Zealand gained employment in Denmark 2005.⁹⁴ In 2006, the Committee on the Elimination of Racial Discrimination recommended assessment of the extent to which unemployment in Denmark was the result of discrimination, and urged the government to address this.⁹⁵ Human rights groups in Denmark supported this measure.⁹⁶

(b) Austria

Under the 1997 legislation, and following implementation of the 2005 legislation, Convention refugees have consistently enjoyed free access to the Austrian labour market.⁹⁷ By contrast, both before and after Austria's implementation of the Qualification Directive, beneficiaries of subsidiary protection have received less favourable access.⁹⁸ Prior to implementation, beneficiaries of subsidiary protection required a working permit to access the labour market.⁹⁹ Following implementation, and pursuant to the 2005 legislative amendments, beneficiaries of subsidiary protection were still required to obtain an initial one-year work permit before being entitled to unlimited access to the labour market.¹⁰⁰ This was incongruous with the continuing condition that linked social welfare benefits to employment. Following criticism by UNHCR,¹⁰¹ Austria amended this provision in 2007 to grant free access to the labour market following the grant of subsidiary protection status.¹⁰² Both Convention refugees and beneficiaries of subsidiary protection are entitled to register a business following the acquisition of a residence permit.

Although foreign qualifications may theoretically receive domestic recognition in Austria, the absence of a centralized authority to assess these, and the arduous process of gaining the necessary recognition, may discourage people from seeking it.¹⁰³ Survey evidence shows that

⁹³ T Liebig, 'The Labour Market Integration of Immigrants in Denmark (OECD Social, Employment and Migration Working Papers, No 50, 2007) 4, 31, [http://www.oilis.oecd.org/olis/2007doc.nsf/LinkTo/NT00000C16/\\$FILE/JT03222979.PDF](http://www.oilis.oecd.org/olis/2007doc.nsf/LinkTo/NT00000C16/$FILE/JT03222979.PDF) (accessed March 2008).

⁹⁴ Ministry of Refugee, Immigration and Integration Affairs, 'International Migration and Denmark: Report to OECD 2006' (2006) 30, http://www.nyidanmark.dk/NR/rdonlyres/B39AF55A-8455-47E7-B378-8D1548483A21/0/sopemi_report_2006.pdf (accessed March 2008).

⁹⁵ 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Denmark' (2006) (CERD/C/DEN/CO/17) para 16; 'Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Denmark' (2006) (CEDAW/C/DEN/CO/6) para 27.

⁹⁶ 'Even though there exists legislation that prohibits discrimination on the grounds of race and ethnic origin in the labour market, the recognition of how individuals perceive being racially discriminated against is not being taken seriously by the authorities': Danish Institute for Human Rights, Supplementary Report to Denmark's Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination (2006) 4, 22, <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/dihr-supplementary-new.pdf> (accessed March 2008).

⁹⁷ ECRE, 'Legal Conditions in Austria', <http://www.ecre.org/conditions/2003/austria.shtml> (accessed April 2008).

⁹⁸ Act Governing the Employment of Foreign Nationals 1997 and 2005.

⁹⁹ Act Governing the Employment of Foreign Nationals 1997, s 4.

¹⁰⁰ See Act Governing the Employment of Foreign Nationals 2005.

¹⁰¹ See UNHCR, 'Analyse des Entwurfs einer Novelle zum Ausländerbeschäftigungsgesetz' (2007): http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/5.2_A-Stellungnahmen/045_UNHCR-Analyse_AuslBG_23jul07.pdf (accessed March 2008).

¹⁰² Bundesministerium für Wirtschaft und Arbeit, Pressemitteilung vom (2007): http://www.bmwa.gv.at/BMWA/Presse/Archiv2007/20070919_01.htm (accessed April 2008).

¹⁰³ See eg Bundesministerium für Gesundheit, Familie und Jugend, 'Allgemeine Information betreffend

the majority of protection beneficiaries work in jobs for which they are overqualified due to insufficient language skills and the inability to establish satisfactory qualifications for more skilled work.¹⁰⁴

(c) Romania

Access to the labour market, access to unemployment insurance and measures to address unemployment are provided on an equal basis with Romanian citizens.¹⁰⁵ In fact, the treatment of refugees and beneficiaries of subsidiary protection could be considered more favourable than that afforded to nationals, given that Ordinance 44/2004 explicitly requires the National Agency for Employment to tailor its services to address the unique employment needs of such protected people. This recognises that the obstacles faced in accessing the labour market may differ from those faced by nationals and seeks to encourage integration through both theoretical and practical access to the labour market.

The unimpeded access of protection beneficiaries to the labour market in Romania is apparent in statistics from 2007, which show that 64.3 per cent of beneficiaries of international protection found employment.¹⁰⁶ While the unemployment figure at 35.7 per cent is high compared to a national figure of 4.1 per cent,¹⁰⁷ it is low by comparison to migrant unemployment rates in other EU Member States.¹⁰⁸

As noted above, Ordinance 44/2004 envisages a central role for the National Agency for Employment in facilitating the employment of refugees and beneficiaries of subsidiary protection. However, a report by the National Refugee Office shows that only 0.7 per cent of those in employment had obtained employment with that agency's assistance, and the majority of employment was through social contacts.¹⁰⁹ This may imply early social integration into the community, whether through self-help measures or due to State initiatives. Given that in 2006, 39.4 per cent of surveyed employees were working without a labour contract and the protections inherent therein, there is a risk that the availability of government assistance to access the labour market may not be widely known.¹¹⁰

(d) United Kingdom

Nostrifikation (Feststellung der Gleichwertigkeit) von Ausbildungen als Hebamme, Physiotherapeut/-in, Ergotherapeut/-in, Logopäde/-in, Diätologe/-in, Radiologietechnologe/-in, Biomedizinische/r Analytiker/-in, Orthoptist/-in' (2008):

http://www.bmgfj.gv.at/cms/site/attachments/4/8/2/CH0941/CMS1203514236943/anerkennung_durch_nostrifikation_n_-_allgemeine_information.pdf (accessed April 2008).

¹⁰⁴ G Scheiber, 'Dequalifizierung und Anerkannte Flüchtlinge Dequalifizierung und Anerkannte Flüchtlinge mit besonderem Augenmerk auf die Situation auf die Situation am oberösterreichischen Arbeitsmarkt (2007): http://www.migrare.at/cms/images/news/tagung_praesentation_scheiber.pdf (accessed April 2008).

¹⁰⁵ Law 122/2006, s 20(c).

¹⁰⁶ Ministry of Interior and Administrative Reform, 'The Romanian Office for Immigration Annual Report on the Status of Aliens Granted a Form of Protection' (2006–07).

¹⁰⁷ Annual Report National Refugee Office 2005–06:

http://aps.mira.gov.ro/pagini/inf_utile/RAPORT_ANUAL_2006_final%20engleza.pdf (accessed March 2008).

¹⁰⁸ For example, a 2007 Welsh Refugee Council study showed that 67 per cent of refugees there were unemployed: 'Refugee "Disturbing" Job Chances', *BBC News* <http://news.bbc.co.uk/1/hi/wales/6997724.stm> (accessed March 2008).

¹⁰⁹ Report National Refugee Office 2005–06:

http://aps.mira.gov.ro/pagini/inf_utile/RAPORT_ANUAL_2006_final%20engleza.pdf (accessed March 2008).

¹¹⁰ Report National Refugee Office 2005–06:

http://aps.mira.gov.ro/pagini/inf_utile/RAPORT_ANUAL_2006_final%20engleza.pdf (accessed March 2008).

Convention refugees and beneficiaries of subsidiary protection have equal and unrestricted access to the labour market.¹¹¹ Furthermore, the United Kingdom implemented European Council Directive 2003/9/EC to provide the Home Office with the capacity to grant permission to work where asylum seekers have not been granted a formal legal status within 12 months of application and where the delay was not the applicant's fault.¹¹²

A 2002 research project commissioned by the Department for Education Skills and Department for Work and Pensions found, however, that only 29 per cent of refugees surveyed were working at the time of the survey.¹¹³ Despite government-funded training schemes to assist in access to the labour market,¹¹⁴ limitations such as poor language skills, a lack of information about employment and training services, a lack of understanding by employers as to different types of immigration status, and racial prejudice were seen as barriers to obtaining employment.¹¹⁵

5 Access to Education

Article 27:

1. Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals.
2. Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.
3. Member States shall ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

While 'minors' are given equal access to education on 'the same conditions as nationals', adults are treated 'under the same conditions other legal residents from third countries'. The Directive does not provide for differentiated entitlements on the basis of the protected status granted. UNHCR considers education as paramount in the framework of protection¹¹⁶ and the UN Committee on Economic, Social and Cultural Rights cites education as a precondition for the satisfaction of other social rights.¹¹⁷

(a) Denmark

¹¹¹ UK Immigration Rules 2006, rule 344B.

¹¹² Refugee Council Information, 'Adult Education and Employment', <http://www.refugeecouncil.org.uk/practice/asylum/supportpack/education.htm> (accessed February 2008).

¹¹³ Institute for Employment Studies, 'Employing Refugees', 2, <http://www.employment-studies.co.uk/pubs/report.php?id=01550ef> (accessed February 2008).

¹¹⁴ Refugee Council Information, 'Adult Education and Employment', 1: <http://www.refugeecouncil.org.uk/practice/asylum/supportpack/education.htm> (accessed February 2008).

¹¹⁵ See the website of the Information Centre About Asylum and Refugees in the UK: <http://www.icar.webbler.co.uk/?lid=1017> (accessed February 2008).

¹¹⁶ UNHCR, 'Education Field Guidelines' (2003), <http://www.unhcr.org/protect/PROTECTION/40586bd34.pdf> (accessed March 2008).

¹¹⁷ Committee on Economic, Social and Cultural Rights, General Comment No 13 on the Right to Education (Doc No EC.12/1999/10) (1999) para 1.

During the period in which an asylum application is being processed in Denmark, the applicant is obliged to participate in on-going vocational training to facilitate access to employment or other financial self-sufficiency in their country of origin. This may be because 'the majority of applications for asylum today are rejected'.¹¹⁸

Following the grant of status, both Convention refugees and 'B status' refugees are entitled to vocational training, before language training, to assist in employment placement. Cumulatively these provisions suggest that the Danish government encourages access to education, primarily as a means of facilitating the potential for integration.

(b) Austria

Primary education is compulsory for all children in Austria between the age of six and 15.¹¹⁹ Refugees who do not speak German are entitled under sections 2 and 9 of the 'Schülerbeihilfengesetz' (SchBeiG) to take language classes for a limited period. Despite amendment of the SchBeiG in 2006, this provision has not been extended to beneficiaries of subsidiary protection, who must rely on language support offered in schools or by non-governmental organizations.

Both refugees and beneficiaries of subsidiary protection are legally entitled to access further and higher education opportunities, provided they have satisfied any pre-entry requirements (such as passing a German language test and providing an equivalent matriculation certificate).¹²⁰ Under the 'Studienförderungsgesetz' (StudFG), refugees are entitled to apply for additional financial support on the same terms as nationals for higher education, primarily university education.¹²¹ Refugees are exempt from paying tuition fees,¹²² which in fact places them in a better position than nationals (who pay a minimal fee of approximately 370 Euros per semester). Beneficiaries of subsidiary protection, however, must pay tuition and are not entitled to public funding assistance. Universities may independently reduce or waive fees for beneficiaries of subsidiary protection.¹²³

(c) Romania

Romania provides access to all levels of education on conditions equal to Romanian nationals.¹²⁴ Language proficiency is considered central to integration within the Romanian school system. Following the provision of an initial preparatory year, children are tested, free of charge, to determine the appropriate year of study in light of their language skills and educational ability.¹²⁵ Children may also request to undertake a preparatory year before

¹¹⁸ See <http://www.nyidanmark.dk/en-us/coming-to-dk/asylum/conditions-for-asylum-applicants/conditions-for-asylum-applicants.htm>.

¹¹⁹ ECRE, 'Legal Conditions in Austria', <http://www.ecre.org/conditions/2003/austria.shtml> (accessed April 2008).

¹²⁰ While beneficiaries of subsidiary protection are required to submit a notarized matriculation certificate, refugees may rely on a certificate that has not been notarized. The distinctions in treatment should be viewed in light of the fact that these provisions were not implemented in response to the Qualification Directive, but instead represent the traditional policy of the Austrian government. See W Moser, 'Studium in Österreich: Zwischen Behördenstrenge und Kulanz, Flüchtlinge in Österreichs Schulen und Universitäten, Zebratl No 2/99 (1999), <http://www.zebra.or.t/zebratl/99/studium.htm> (accessed April 2008).

¹²¹ See <http://archiv.bmbwk.gv.at/universitaeten/recht/gesetze/studfg/Studienfoerderungsgesetz4468.xml#5> (accessed April 2008).

¹²² See <http://www.oead.ac.at/oesterreich/moeglichkeiten/uni/studienbeitrag/index.html> (accessed April 2008).

¹²³ W Moser, 'Studium in Österreich'.

¹²⁴ Law 122/2006, s 20(g).

¹²⁵ Ordinance 44/2004, s 10.

entering the school system in the year corresponding to their educational background,¹²⁶ and all levels of primary education is free.

The period of pre-university education spans 10 years and is structured to encourage as widespread access as possible. Specific provisions accommodate issues facing migrants, including the provision of free public education, free textbooks for compulsory education, and scholarships for children from disadvantaged families.¹²⁷ Save the Children and other NGOs assume a pivotal role in assisting refugee children and those benefiting from subsidiary protection with their integration into Romanian schools through the provision of food, school supplies and supplementary tuition.¹²⁸

Similar to other Member States analysed, adult education is linked with access to the labour market. The Romanian government perceives language training to be essential for this purpose. While the 2006 report of the National Refugee Office noted that 81.4 per cent of protection beneficiaries reported having either advanced or average knowledge of Romanian language, only 32.2 per cent had attended a Romanian language course.¹²⁹

Article 27(3) of the Qualification Directive requires that recognition procedures for diplomas, certificates and other forms of qualifications give equal treatment to refugees, beneficiaries of subsidiary protection status and nationals. In 2006, Ordinance No 41/2006 introduced a tailored system to rectify difficulties in the recognition process arising from an inability to access documents in the country of origin.

(d) United Kingdom

The traditional UK practice broadly reflects the imperatives set out in the Qualification Directive.¹³⁰ In the United Kingdom local authorities have a legal responsibility pursuant to sections 13 and 14 Education Act 1996 to secure sufficient school placements for all children of compulsory school age. All children aged five to 16 are legally entitled to a free school education, regardless of their immigration status. However, in 2001 the Refugee Council estimated that 2,100 refugee children were unable to secure placement in a school.¹³¹ In 2008 the Council issued findings that canvassed the barriers against inclusion in education facilities, including a lack of awareness, delays due to arrival in the middle of the academic year, discrimination and racism. In some cases, intervention by the local Member of Parliament was required to ensure that access was provided.¹³²

In theory, asylum seekers, refugees and those entitled to subsidiary ('humanitarian')

¹²⁶ Ministry of Interior and Administrative Reform, 'The Romanian Office for Immigration Annual Report on the Status of Aliens Granted a Form of Protection' (2006–07).

¹²⁷ See 'Strategy For The Development Of Pre-University Education in 2001–2004' which includes 'prospective planning until 2010': National Report on the Development of the Education in Romania 2004, http://www.ibe.unesco.org/International/ICE47/english/Natreps/reports/romania_en.pdf (accessed April 2008).

¹²⁸ See Save the Children Romania: http://www.salvaticopiii.ro/romania_en/ce_facem/programe/refugiati_cumseimplicaSC.html (accessed March 2008).

¹²⁹ NRO: Oficiul National pentru Refugiati.

¹³⁰ See ILPA's Response to the Home Office Consultation on the Implementation of the Refugee Definition Directive, para 42: www.ilpa.org.uk/submissions/HO%20consult%20on%20implementation%20of%20Refugee%20Definition%20Directive.doc (accessed February 2008).

¹³¹ 'Daring to Dream: Raising the Achievement of 14 to 16 Year Old Asylum-Seeking and Refugee Children and Young People (2005): <http://www.refugeecouncil.org.uk/policy/position/2005/children.htm> (accessed February 2008).

¹³² Refugee Council, 'Beyond the School Gates: Supporting Refugees and Asylum Seeker in Secondary School' (2008) 35–38, http://www.refugeecouncil.org.uk/NR/rdonlyres/20DFFA86-F65B-4C2B-84EC-855A2A0B59A4/0/inclusiveschools_may08.pdf (accessed May 2008).

protection are legally entitled to access further and higher education on the satisfaction of pre-entry requirements and the ability to pay any associated course costs:¹³³

Higher education:

Status	Fee	Further Financial Support
Asylum Seeker	Overseas student fees	Not eligible
Subsidiary Protection	Home student fees	Eligible after three years residency in the UK
Refugee status	Home student fees	Eligible

Further education:

Status	Fee	Support
Asylum Seeker	Overseas student fees (Colleges retain discretion to charge home student fees or waive fees altogether)	Not eligible
Subsidiary Protection	Home student fees (Free to those on benefits unless the course is self-financing)	Eligible after three years residency in the UK
Refugee Status	Home student fees (Free to single parents, registered disabled people, or those who are on benefits unless the course is self-financing)	Eligible

Refugees are not required to satisfy a three-year residence test. A person refused refugee status but given leave to enter or remain as an asylum seeker or as a beneficiary of subsidiary protection will be entitled to access higher education on the same grounds as nationals. Asylum seekers present in the UK whose status determination is pending are not entitled to financial assistance for further education. The high costs of international student fees may prove prohibitive.

Those granted refugee status or subsidiary protection have access to vocational and employment training, such as that funded and administered by the Learning and Skills Council.¹³⁴ Previously, refugees and those awaiting determination of their asylum claims were entitled to free Skills for Life courses, including English tuition for non-native speakers through Learning and Skills Council-funded providers.¹³⁵ This is now limited to refugees and asylum seekers who have been waiting for more than six months for a final determination of their status.¹³⁶

The Scottish Executive Funding for Learners Division has removed the three-year residency

¹³³ Refugee Council, 'Information, Adult Education and Employment' 1, <http://www.refugeecouncil.org.uk/practice/asylum/supportpack/education.htm> (accessed February 2008).

¹³⁴ Home Office Consultation Paper, 'Implementation of Council Directive 2004/83/EC' (2004) 40, <http://www.homeoffice.gov.uk/documents/cons-2006-asylum-qual-directive/?version=1> (accessed February 2008).

¹³⁵ Ibid, 41.

¹³⁶ For example, see <http://www.kingston-college.ac.uk/study/1090507562.html> (accessed August 2008).

requirement for beneficiaries of subsidiary protection seeking student support and the payment of tuition fees, going beyond the minimum requirements of article 26(2) of the Qualification Directive.¹³⁷

6 Social Welfare

Article 28:

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status receive, in the Member State that has granted such statuses, the necessary social assistance, as provided to nationals of that Member State.
2. By exception to the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.

Under article 28, both Convention refugees and beneficiaries of subsidiary protection groups are entitled to social assistance on the same terms as nationals, however Member States may limit the benefits provided to beneficiaries of subsidiary protection to 'core benefits'. This permits a distinction in the breadth, rather than the depth, of social assistance provided to beneficiaries of subsidiary protection.

There is no direct reference made in the Directive as to what constitutes 'necessary social assistance' or 'core benefits'.¹³⁸ Recital 33 notes in relation to social assistance that it includes 'without discrimination in the context of social assistance the adequate social welfare and means of subsistence', while recital 34 notes that 'with regard to social assistance and health care, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting the benefits for beneficiaries of subsidiary protection status to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance, in so far as they are granted to nationals'.

Core benefits are not referred to in the Refugee Convention. Article 22 of the Convention instead defines 'social security' as 'legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme'. 'Core benefits' may relate to and overlap with these factors. Reference is made in article 25 of the Universal Declaration of Human Rights to every person's entitlement to a standard of living adequate for their health and well-being, including 'including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'. Article 11 of the ICESCR states that an adequate standard of living includes 'adequate food, clothing and housing, and ... the continuous improvement of living conditions.'

UNHCR argues that article 28 of the Qualification Directive is of particular significance given the potential restrictions affecting beneficiaries' access to the labour market under article 26(3).¹³⁹

¹³⁷ See www.scottishrefugeecouncil.org.uk/pub/Qualification (accessed February 2008).

¹³⁸ See also art 29 on health care.

¹³⁹ UNHCR, 'Analyse des Entwurfs einer Novelle zum Ausländerbeschäftigungsgesetz' (2007),

(a) Denmark

Where an individual is legally resident in Denmark and is neither self-sufficient nor maintained by a third party, he or she is entitled to financial assistance (kontanthjælp). This is, however, conditional on continued residence for seven of the past eight years. Continued assistance (vedvarende hjælp)—social benefits for a period exceeding six months—is limited to nationals. Thus, where an individual cannot fulfill the residence requirement and is not a national, he or she may be deported at the discretion of the National Social Security Agency. The European Committee on Social Rights has concluded that these requirements may amount to indirect discrimination against non-nationals.¹⁴⁰

Once an individual is considered legally resident and has been allocated a programme for integration (see below), section 25 of the Integration of Aliens Act 2003 provides for an introduction allowance (integrationsydelse), which is conditional on the exploration of all employment opportunities. The Danish Immigration Service retains the discretion to determine whether an alien comes within the Act.¹⁴¹ The allowance is payable for up to three years and is equivalent to a starting allowance (starthjælp), which is paid at a lower rate than other forms of social assistance and amounts to relief in extreme situations. Following expiration of a starting allowance, there remains a four-year period where individuals may not fulfill the residence requirement to be entitled to substantive financial assistance (kontanthjælp), and are thus required to either subsist on the minimal starting allowance or expose themselves to the risk of deportation.

The starting allowance is significantly below the financial assistance allowance level (at approximately 45–64 per cent).¹⁴² This equates to between 56–73 per cent of the estimated minimum amount needed for subsistence living in Denmark.¹⁴³ One estimate places 64 per cent of recipients of the starting allowance below the poverty threshold.¹⁴⁴ It has been argued that the motivation behind this policy is to encourage asylum seekers to seek employment.¹⁴⁵

(b) Austria

By comparison to the centralized Danish approach, the Austrian framework is more complex as each province has its own system of regulation. Prior to the implementation of the Qualification Directive, each province could choose to grant assistance either unencumbered,

http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/5.2_A-Stellungnahmen/045_UNHCR-Analyse_AuslBG_23jul07.pdf (accessed March 2008).

¹⁴⁰ European Committee of Social Rights, 'Conclusions (Denmark)' (2004):

http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/2_by_year/XVII1Vol%201_en.pdf (accessed August 2008); European Committee of Social Rights, 2006, Conclusions XVIII-1 (Denmark), arts 1, 5, 6, 12, 13 and 16 of the Charter, 143.

¹⁴¹ Integration of Aliens Act 2003, s 2(4).

¹⁴² Danish Institute for Human Rights, 'Supplementary Report to Denmark's Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination' (2006) 23. This figure was cited as 50 per cent to 70 per cent by the Ministry of Refugee, Immigration and Integration Affairs in 'International Migration and Denmark Report to OECD 2006' (2006) 65.

¹⁴³ Danish Institute for Human Rights, 'Supplementary Report to Denmark's Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination' (2006) 24.

¹⁴⁴ Submission by the Documentary and Advisory Centre on Racial Discrimination (2006) 2, <http://www2.ohchr.org/english/bodies/cerd/cerds69.htm> (accessed March 2008).

¹⁴⁵ See Danish Institute for Human Rights, 'Supplementary Report to Denmark's Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination' (2006) 23; Periodic Report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/496/Add.1) (2005) para 21.

or with a caveat requiring repayment when the individual gained employment.¹⁴⁶ Convention refugees were entitled to claim social assistance on the same terms as nationals.¹⁴⁷

In conjunction with the amendment of the Asylum Law in 2005, the Basic Welfare Support Act 2005 introduced the Basic Welfare Support Agreement between the federal government and individual provinces, which seeks to harmonize the provision of welfare entitlements.¹⁴⁸ Section 1 states that the object of the Act is 'to standardize throughout the country ... the guaranteeing of temporary basic welfare support for aliens in the federal territory who are in need of assistance and protection'. 'Basic welfare' is defined in section 6 as relating to accommodation, food, medical care¹⁴⁹ and certain benefits contextually determined, such as travel expenses for school attendance. Under the Agreement, Convention refugees are entitled to 'basic care' for the first four months, before this entitlement is broadened to 'social care' at the level provided to nationals.¹⁵⁰ By comparison, beneficiaries of subsidiary protection are only entitled to on-going 'basic care' (section 2(1)).

The Agreement fails to comply with the Directive by differentiating the 'basic care' provided to refugees (for the first four months) and beneficiaries of subsidiary protection, from the broader 'social care' entitlement of nationals. Furthermore, pursuant to the Basic Welfare Support Act 2005 any form of social assistance may be limited if an individual has a criminal conviction, although the provision of medical care will not be restricted.

In addition to the Basic Welfare Support Agreement, the Child Allowance Act (Kinderbetreuungsgeldgesetz-KBGG) and the Family Allowance Act (Familienlastenausgleichsgesetz – FLAG) were amended. Whereas Convention refugees were already entitled to allowances under this legislative framework prior to its amendment, the changes have extended these entitlements to beneficiaries of subsidiary protection who are not in receipt of social or basic assistance and are employed.¹⁵¹

(c) United Kingdom

Section 115 of the Immigration and Asylum Act 1999 provides that a person who has been granted refugee or humanitarian protection status (equivalent to subsidiary protection) is entitled to the same income-related benefits as a UK national, provided that he or she satisfies the normal conditions of entitlement. These benefits include income support, State pension credit, housing and child benefits.¹⁵² A review of the regulatory framework (undertaken to ensure that the UK system was compliant with the Qualification Directive) resulted in some amendments to the Immigration Rules and the creation of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Many parts of the Directive were

¹⁴⁶ ECRE, 'Legal Conditions in Austria' (2003), <http://www.ecre.org/conditions/2003/austria.shtml> (accessed April 2008).

¹⁴⁷ Ibid.

¹⁴⁸ Federal Law Regulating Basic Welfare Support of Asylum-Seekers in Admission Procedures and of Certain Other Aliens (Federal Government Basic Welfare Support Act 2005 – GVG-B 2005), http://www.unhcr.at/fileadmin/unhcr_data/pdfs_at/information_in_english/Basic_Welfare_Support_Act_2005.pdf (accessed March 2008).

¹⁴⁹ All employees in Austria are covered by health insurance.

¹⁵⁰ ECRE, Country Report 2004 on Austria (2005) para 24, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=43b296852> (accessed March 2008).

¹⁵¹ KBGG, s 2(1); see also UNHCR, 'Analyse des Entwurfs einer Novelle zum Familienlastenausgleichsgesetz' (2007), http://www.unhcr.de/fileadmin/unhcr_data/pdfs/rechtsinformationen/5.2_A-Stellungnahmen/046_UNHCR-Analyse_FLAG-Novelle-2007_24sep07.pdf (accessed March 2008).

¹⁵² Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, No 2525 http://www.opsi.gov.uk/si/em2006/uksiem_20062525_en.pdf.

not considered to require implementation because they were already consistent with existing domestic legislation.¹⁵³

7 Health Care

Article 29:

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

2. By exception to the general rule laid down in paragraph 1, Member States may limit health care granted to beneficiaries of subsidiary protection to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.

3. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

Health care access for refugees and beneficiaries of subsidiary protection is to be on the same basis as nationals. The practical effect of this is limited, since Member States may limit the health care granted to subsidiary beneficiaries to 'core benefits' except in so far as the care relates to special needs, such as pregnancy or trauma. Recital 35 notes that health care includes services necessary for both physical and mental health care.

(a) Denmark

No specific mention is made of health care in either the Aliens Act 2005 or the Aliens Order 2005. Section 3 of the Act on an Active Social Policy 2004 provides for social assistance and public health care for all those legally resident in Denmark, which includes refugees and beneficiaries of subsidiary protection with a residence permit. In 2004 the European Committee on Social Rights noted, however, that 'restrictions on the entitlement of non-nationals to social assistance remain in effect and that further restrictions have been introduced'.¹⁵⁴ Residence on humanitarian grounds may be denied if it is anticipated that health care for a pre-existing condition will be required. The Danish government states that where an 'applicant suffers from a serious illness which can substantiate a humanitarian residence permit, the Ministry will also assess whether the applicant can receive the necessary treatment for this illness in his or her country of origin'.¹⁵⁵

¹⁵³ See eg the Social Security (Persons from Abroad) Amendment (No 2) Regulations 2006 No 2528 http://www.opsi.gov.uk/si/em2006/uksiem_20062528_en.pdf.

¹⁵⁴ European Committee of Social Rights, 'Conclusions (Denmark)' (2004) 143, http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/2_by_year/XVII1Vol%201_en.pdf (accessed March 2008).

¹⁵⁵ See the website of the Ministry of Refugee, Immigration and Integration Affairs: http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/humanitarian_residence_permit/humanitarian_residence_permit.htm (accessed March 2008).

(b) Austria

Health insurance and 'social counselling' are available to Convention refugees and beneficiaries of subsidiary protection as part of the provision of 'basic care'.¹⁵⁶ 'Basic care' is 'basic welfare support to aliens in need of assistance and protection in Austria (asylum-seekers, persons having entitlement to asylum, displaced persons and other persons who may not be deported for legal or practical reasons)'.¹⁵⁷ It is distinguished from 'social care', which means the wider bundle of social welfare support rights available to Austrian nationals and Convention refugees who have been in the country for four months.

(c) Romania

Express protection and implementation of the right to health care is provided under Romanian law to asylum seekers, irrespective of status. For example, section 17(1) of Law No 122-2006 provides to all aliens, irrespective of status and the class of protection for which they are applying, 'free primary medical aid and emergency hospital aid, as well as medical aid and free treatment, in the case of acute or chronic illnesses that imminently endanger one's life', while 'asylum-seekers with special needs' are additionally entitled 'to receive adequate medical aid'.¹⁵⁸ Under Romanian legislation the categories of Convention refugee, beneficiary of subsidiary protection and beneficiary of temporary protection following a mass influx all receive recognition. The rights entitlement of beneficiaries of temporary protection are temporally limited under section 130 to a period of one year, but the scope of protection afforded is substantive, as can be seen in their equivalent rights of access to medical care.¹⁵⁹

Section 20(1)(g) of Law No 122-2006 specifically relates to the broader class of health care entitlements provided to Convention refugees and beneficiaries of subsidiary protection. It permits beneficiaries the right to benefit from 'social insurance, measures of social assistance and social health insurance, under the conditions stipulated by law for Romanian citizens'. Since citizens' access to health care is dependant on contributions they make to the national health insurance system, this may limit access in practice. According to 2007 statistics issued by the Immigration Office, only 46.3 per cent of adults benefiting from subsidiary protection have medical insurance. Thus, Romania's decision not to limit beneficiaries' entitlements to 'core benefits' may be neutralized when a majority of beneficiaries cannot access additional health services, beyond the basic entitlement under section 17, because they cannot afford medical insurance.

(d) United Kingdom

Primary medical services are free of charge to all persons lawfully resident in the UK regardless of their immigration status. This includes basic and emergency medical care.¹⁶⁰ Furthermore, as provided by the National Health Service (Charges for Overseas Visitors)

¹⁵⁶ ECRE, 'Country Reports 2004: Austria', 7, http://www.ecre.org/files/Austriaper cent20-FINAL_0.pdf (accessed April 2008).

¹⁵⁷ Austrian Federal Asylum Act 2005, s 2(10).

¹⁵⁸ Law No 122-2006, ss 17(1)(m) and (n).

¹⁵⁹ Confirmed for this category in Law No 122-2006, ss 31 and 133.

¹⁶⁰ There is a duty on the Secretary of State for Health to provide health care to all those 'ordinarily resident' in the UK (Section 1 National Health Service Act 1977 and 2006), which includes those granted asylum status as refugees or beneficiaries of humanitarian protection. Section 16CC(1) of the National Health Service Act 1977 provides that 'each Primary Care Trust must ... to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services within its area'.

Regulations 1989,¹⁶¹ persons granted refugee or humanitarian protection status (equivalent to subsidiary protection) enjoy the same entitlement to free non-emergency NHS hospital treatment as British citizens. Those regulations also extend to asylum seekers.¹⁶²

While implementation of the Qualification Directive required little legislative amendment by UK authorities, given the broad statutory assurance of health care for all people irrespective of their immigration status, issues relating to practical ease of access have still not been addressed.

For example, a common practical problem is doctors refusing to register asylum seekers in their practices.¹⁶³ In addressing some of these concerns, the National Health Service (Primary Care) Act 1997 enables health authorities to approve additional payments for practitioners involved in providing an extended range of services to asylum seekers. Even where a person's immigration status is formalized, associated issues, such as the need for interpreters, have been cited as reasons why doctors are sometimes disinclined to register such patients.¹⁶⁴ A 1997 survey of National Health Service staff in the UK revealed that 67 per cent wrongly believed that refugees, despite their legal recognition and the protection afforded to them, were not entitled to free health care.¹⁶⁵

8 Access to Accommodation

Article 31:

The Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.

It is important to note that while both refugees and beneficiaries of subsidiary protection have equivalent access to accommodation, 'access' is not the same as the provision of actual accommodation. In any event, it is provided on the same conditions as other legally-resident non-EU nationals. This is best illustrated with reference to Romania and the UK. The researchers had insufficient information available to them on the situation in Austria and Denmark.

(a) Romania

Romania exceeds the requirements under article 31 of the Qualification Directive by providing actual accommodation, under the same conditions as provided to nationals.¹⁶⁶ By July 2007, 91.8 per cent of beneficiaries under the Directive had access to rented accommodation provided by local authorities, with the remainder benefiting from accommodation in a centre administered by government authorities.¹⁶⁷ In cases where individuals are unable to access housing from local

¹⁶¹ As amended by National Health Service (Treatment of Overseas Visitors) (Amendment) Regulations 2004 SI 2004/614. See generally <http://www.dh.gov.uk/en/Healthcare/International/AsylumseekersAndrefugees/index.htm>.

¹⁶² See <http://ukba.homeoffice.gov.uk/asylum/support/health/>.

¹⁶³ http://www.ecre.org/eu_developments/reception/RCres.doc (accessed March 2008) 10.

¹⁶⁴ http://www.ecre.org/eu_developments/reception/RCres.doc (accessed March 2008) 11.

¹⁶⁵ See 'The Refugee Council's Response to the Department of Health Consultation Paper: "Proposal to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services"' (2004) 4, http://www.refugeecouncil.org.uk/NR/rdonlyres/93017931-662B-4469-AEDF-00FF37071EE/0/doh_cons_aug04.pdf (accessed February 2008).

¹⁶⁶ Ordinance 44/2004, s 6.

¹⁶⁷ Ministry of Interior and Administrative Reform, 'The Romanian Office for Immigration Annual Report on the Status of Aliens Granted a Form of Protection' (2006–2007).

authorities, they are entitled to rent private accommodation with a 50 per cent subsidy provided by the authority for up to a year.¹⁶⁸ In its 2006 Annual Report, the Ministry of Interior and Administrative Support found that 74.4 per cent of protection beneficiaries were satisfied with their housing conditions.

(b) United Kingdom

UK legislation also provides for housing, rather than simply providing for access to it.¹⁶⁹

Housing entitlements under the Allocation of Housing (Wales) (Amendment) Regulations 2006 have been extended to 'a person who has humanitarian protection granted under the Immigration Rules' (namely, beneficiaries of subsidiary protection).¹⁷⁰ The Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2006 has been similarly amended.¹⁷¹ Regulation 3 of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 and regulation 4 of the Allocation of Housing (Wales) Regulations 2003 ensure that those granted refugee status or subsidiary protection are eligible for tenancy or a licence to occupy housing authority accommodation in England, Scotland and Northern Ireland, pursuant to section 118 of the Immigration and Asylum Act 1999.

The cumulative effect of these legislative amendments is that under the Housing Act 1996, refugees continue to be allocated social housing and beneficiaries of subsidiary protection are now also eligible for it. Their entitlements are the same as UK nationals.¹⁷² The primary problem is not access to housing per se, but rather placement in areas where problems of racial violence and discrimination may arise out of poor housing conditions.¹⁷³

9 Integration

Article 33:

1. In order to facilitate the integration of refugees into society, Member States shall make provision for integration programmes, which they consider to be appropriate or create pre-conditions, which guarantee access to such programmes.
2. Where it is considered appropriate by Member States, beneficiaries of subsidiary protection status shall be granted access to integration programmes.

The distinction between the access rights of Convention refugees and beneficiaries of subsidiary protection to integration facilities suggests that refugee status is viewed as a more permanent status than subsidiary protection. While this is also reflected in the length of residence permits granted, it is not necessarily borne out in practice.

¹⁶⁸ Ordinance 44/2004, s 20.

¹⁶⁹ Housing Act 1996, parts VI and VII.

¹⁷⁰ Allocation of Housing (Wales) (Amendment) Regulations 2006, reg 2.

¹⁷¹ Scotland and Northern Ireland have made similar legislative amendments.

¹⁷² ILPA's Response to the Home Office Consultation on the Implementation of the Refugee Definition Directive, para 49:

www.ilpa.org.uk/submissions/HO%20consult%20on%20implementation%20of%20Refugee%20Definition%20Directive.doc (accessed February 2008).

¹⁷³ www.scotland.gov.uk/Publications/2006/06/05152256/2 (accessed February 2008).

Integration refers to the role of the state in familiarizing beneficiaries of protection with the customs, language and way of life of the country of asylum.¹⁷⁴ It is equally important that integration programmes promote acceptance and respect for the individual's cultural origins, while assisting adaptation into the host society.¹⁷⁵

(a) Denmark

Since 1999 local municipalities have borne the primary responsibility for the integration of refugees and beneficiaries of 'B status' in Denmark.¹⁷⁶ Local integration councils¹⁷⁷ are the most important personal point of contact, responsible for housing,¹⁷⁸ introduction programmes and the payment of introduction allowances.¹⁷⁹ Integration is individualized and implemented over a maximum three-year period.¹⁸⁰ The programme is designed on the basis of an individual assessment to accommodate the individual's abilities and background,¹⁸¹ with a focus on introduction to the labour market. An integration contract is drawn up within one month of the municipal authority assuming responsibility for the individual.¹⁸² The contract includes job training or employment, with a wage supplement to encourage employers to hire Convention and 'B status' refugees.¹⁸³

The Immigration Service works in conjunction with the municipalities to distribute responsibility, thus limiting the choice of residence following the grant of protection status. In 2003, 501 out of 1325 placements were granted in accordance with the nominated choice of municipality.¹⁸⁴ A subsequent request for relocation may be made, and where this is due to employment reasons the placement cannot be declined.¹⁸⁵

Danish language courses are free of charge for both Convention and 'B status' refugees,¹⁸⁶ and are adapted to different levels of education, ranging from little or no schooling, a limited educational background, to a lower or upper secondary or higher educational background.¹⁸⁷ Given that language is not the priority in integration, it is effectively a part-time programme which, over a

¹⁷⁴ da Costa, 'Rights of Refugees in the Context of Integration', 24.

¹⁷⁵ Ibid.

¹⁷⁶ Danish Ministry of Refugee, Immigration and Integration Affairs, 'International Migration and Denmark: Report to OECD 2006' (2006) 59.

¹⁷⁷ From December 2003, local municipalities were no longer under an obligation to establish integration councils: see 16th and 17th Periodic Report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/496/Add.1) (2005) para 14.

¹⁷⁸ Act on Integration of Aliens in Denmark 2003, s 10(1): http://www.nyidanmark.dk/en-us/legislation/consolidation_act_no_643.htm (accessed March 2008).

¹⁷⁹ Act on Integration of Aliens in Denmark 2003, s 4(1).

¹⁸⁰ Danish Ministry for Refugees, Immigration and Integration Affairs, 'Citizens in Denmark: Information to New Citizens about Danish Society', 38, http://www.nyidanmark.dk/NR/rdonlyres/E3D9AF6C-8469-4CA9-A74A-3FAA15229CAF/0/MedborgerEngelsk_72.pdf (accessed March 2008).

¹⁸¹ 16th and 17th Periodic Report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/496/Add.1) (2005) para 24; Act on Integration of Aliens in Denmark 2003, s 19(2).

¹⁸² Act on Integration of Aliens in Denmark 2003, ss 16(3) and 19(1); Danish Ministry for Refugees, Immigration and Integration Affairs, 'Citizens in Denmark: Information to New Citizens about Danish Society', 37.

¹⁸³ Ministry of Refugee, Immigration and Integration Affairs, 'International Migration and Denmark: SOPEMI Report to OECD 2006' (2006) 62–64.

¹⁸⁴ Denmark's 16th and 17th Periodic Report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/496/Add.1) (2005) para 94.

¹⁸⁵ Ministry of Refugee, Immigration and Integration Affairs, 'International Migration and Denmark: SOPEMI Report to OECD 2006' (2006) 62.

¹⁸⁶ Act No 375 of 28 May 2003 on Danish Courses for Adult Aliens, s 14(1): http://www.nyidanmark.dk/resources.ashx/resources/lovstof/love/uk/danish_courses_act_375_28_may_2003.pdf (accessed March 2008).

¹⁸⁷ Act No 375 of 28 May 2003 on Danish Courses for Adult Aliens, s 3.

three-year period, is equivalent to approximately one year's study. It must accommodate any employment or training being undertaken.¹⁸⁸

(b) Romania

Ordinance 44/2004 focuses on the social integration of people granted protection under the Qualification Directive on a legal, economic, social and cultural basis, regardless of their particular protection status. The integration programme is accessible following a request by the individual, and relies on an understanding signed by the individual and the National Refugee Office (now the ORI).¹⁸⁹ The effectiveness of the programme lies in the establishment of an integration plan tailored to individual needs. The programme is extremely comprehensive and aims to provide for cultural integration by emphasizing and raising awareness of societal traditions and customs in Romania.¹⁹⁰

An application to take part in the integration programme must be submitted within 30 days of obtaining protection status.¹⁹¹ Although this ought to ensure prompt access to the programme, it may exclude individuals who are not aware of it in time. The duration of the programme is six months, with provision for a further six months¹⁹² (including, where necessary, accommodation for the duration of the plan's implementation¹⁹³). Furthermore the government makes provision for a guaranteed minimum income. Section 21(1) of Ordinance 22/2004 provides that 'aliens who were granted a form of protection in Romania and who do not have any means of subsistence shall have the right to a guaranteed minimum income under the conditions of the law'. Section 21(3) states that for 'the first month of receiving the social support, the aliens who were granted a form of protection in Romania and who do not have any subsistence means shall benefit from a financial support equal in amount to that of asylum seekers, granted by the National Refugee Office'.

Following the end of the integration programme, local authorities are obliged to inform individuals about possible social housing benefits, access to social support, medical assistance and education.¹⁹⁴

Despite the progressive nature of the Romanian integration policy, only 47 of the 167 people granted protection status in 2007 elected to participate.¹⁹⁵ This may imply the need for greater promotion of the programme. Ultimately, increased participation can assist access to other social rights.

(c) United Kingdom

The UK experience is multifaceted, and rather than adopting an institutionalized approach it relies on a collaborative effort between multiple government and non-government organizations.

The UK has a wide range of programmes run in collaboration with the Home Office to help refugees integrate into their new communities, such as the National Refugee Integration Forum. Organisations such as Migrant Helpline offer free confidential, impartial and independent information, advice and assistance on a wide range of areas, including welfare benefits, debt,

¹⁸⁸ Act No 375 of 28 May 2003 on Danish Courses for Adult Aliens, ss 3 and 4.

¹⁸⁹ Ordinance 44/2004 on the Social Integration of Aliens Who Were Granted a Form of Protection in Romania, s 14.

¹⁹⁰ Ordinance 44/2004, ss 12 and 13.

¹⁹¹ Ordinance 44/2004, s 15.

¹⁹² Ordinance 44/2004, s 19.

¹⁹³ Ordinance 44/2004, s 20.

¹⁹⁴ Ordinance 44/2004, s 27.

¹⁹⁵ Ministry of Interior and Administrative Reform, 'The Romanian Office for Immigration Annual Report on the Status of Aliens Granted a Form of Protection' (2006–2007).

employment, housing and immigration; the Commission for Racial Equality is a publicly funded organization that exists to tackle racial discrimination and promote racial equality; the Refugee Assessment and Guidance Unit (RAGU) at London Metropolitan University supports refugees with high-level education or professional qualifications to access employment and education. Many language facilities exist, including private colleges, which, in collaboration with community organizations, run free English courses for refugees. However, it is unclear whether refugees and (where applicable) beneficiaries of subsidiary protection are always aware of these resources.

In terms of financial assistance, persons who have been granted refugee status¹⁹⁶ or humanitarian protection (equivalent to subsidiary protection) status¹⁹⁷ and their respective dependants may be eligible to apply for an integration loan.¹⁹⁸ People under 18 years of age, who are insolvent, or who have already received a loan under other immigration regulations are excluded from entitlement.

¹⁹⁶ Asylum and Immigration Act 2004, s 13. Certain factors which are considered during the application for the loan include the applicant's income or assets, ability to repay the loan, as well as the length of time the person has been involved in the asylum process.

¹⁹⁷ Integration Loans for Refugees and Others Regulations 2007 SI 2007/1598.

¹⁹⁸ The Home Office policy about Integration Loans is accessible at:
http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/integrationloan_policyguide.pdf.